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Staff Country Reports

**Maldives: Detailed Assessment Report on
Anti-Money Laundering and Combating the Financing of Terrorism**

This Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism for Maldives was prepared by a team of the International Monetary Fund using the assessment methodology adopted by the Financial Action Task Force in February 2004 and endorsed by the Executive Board of the IMF in March 2004. The views expressed in this document are those of the IMF team and do not necessarily reflect the views of the Government of Maldives or the Executive Board of the IMF.

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REPUBLIC OF MALDIVES

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

JULY 20, 2011

International Monetary Fund
LEGAL DEPARTMENT

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ACRONYMS

ACB	Anti-Corruption Board
ACC	Anti-Corruption Commission
AGO	Attorney General's Office
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APG	Asia/Pacific Group on Money Laundering
AuGO	Auditor General's Office
CBSS	Credit and Bank Supervision Section of the MMA
CDD	Customer Due Diligence
CMDA	Capital Market Development Authority
DIE	Department of Immigration and Emigration
DJA	Department of Judicial Administration
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
ICSFT	International Convention for the Suppression of the Financing of Terrorism
JSC	Judicial Services Commission
KYC	Know your customer/client
LEG	Legal Department of the IMF
LeT	Lashkar-e-Taiba
MAD	Ministry of Atolls Development
MCS	Maldives Customs Service
MDNS	Ministry of Defence and National Security
MED	Ministry of Economic Development
MFA	Ministry of Foreign Affairs
MFT	Ministry of Finance and Treasury
MHA	Ministry of Home Affairs
ML	Money laundering
MLA	Mutual legal assistance
MMA	Maldives Monetary Authority
MNDF	Maldives National Defence Force
MoU	Memorandum of Understanding
MPRD	Monetary Policy and Research Division of the MMA
MPS	Maldives Police Service
MSD	Maldives Securities Depository
MVT	Money and value transfer
NBFI	Non-Bank Financial Institution
NBFIS	Non-Bank Financial Institutions Supervision Section of the MMA
NNCB	National Narcotics Control Board
NPO	Non-profit organization
PC	Penal Code
PEP	Politically exposed person
PGO	Prosecutor General's Office

PIC	Police Integrity Commission
Rf	Maldivian Rufiyaa
SAARC	South Asian Association for Regional Cooperation
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Provider
TF	Terrorist financing
UN	United Nations
UNSCR	United Nations Security Council Resolution
WCO	World Customs Organization

PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Maldives is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT assessment Methodology 2004, as updated in June 2010. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from October 17-28, 2010, and other verifiable information subsequently provided by the authorities. During the mission, the assessment team met with officials and representatives of all relevant government agencies and the private sector. A list of the bodies met is set out in Annex 1 to the detailed assessment report.

The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and three experts acting under the supervision of the IMF. The evaluation team consisted of: Ms. Nadine Schwarz (LEG, team leader and legal expert); Mr. Bert Feys (LEG, legal expert); Ms. Sisilia Eteuati (Asia/Pacific Group on Money Laundering, legal expert); Mr. Ashish Kumar (SEBI, India, financial sector expert) and Ms. Ke Chen (People's Bank of China, financial sector expert). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering and terrorist financing through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in the Maldives at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out the Maldives' levels of compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the IMF at the request of the Asia/Pacific Group on Money Laundering (APG) Secretariat and the authorities of the Maldives. [[It was presented to the Asia/Pacific Group on Money Laundering (APG) and endorsed by this organization during its 14th Annual Meeting on July 18-22, 2011 in Cochin, India]].

The assessors would like to express their gratitude to the Maldivian authorities for their kind support and cooperation throughout the assessment mission.

EXECUTIVE SUMMARY

1. **This report summarizes the anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the Republic of Maldives at the time of the on-site visit (October 17–28, 2010) and shortly thereafter.** It describes and analyzes these measures and offers recommendations on how to strengthen certain aspects of the AML/CFT system. It also assesses the Maldives' level of compliance with the 40+9 Recommendations of the Financial Action Task Force (FATF) (see the attached table on the Ratings of Compliance with the FATF Recommendations).

Key Findings

2. **The financial sector of the Maldives, although small and not very developed, is susceptible to both money laundering and, to a lesser extent, terrorist financing.** While the authorities do not have estimates of the size of the crime economy, anecdotal evidence suggest that trafficking in illegal drugs and corruption alone produce significant amounts of illegal funds. There are also indications that resources have been raised in the country to fund terrorists and terrorist activities abroad.

3. **Over the last years, the Maldives has taken steps to lay down the foundations of an AML/CFT framework.** Institutional measures have been taken to set up a financial intelligence unit (FIU), and laws have been passed to criminalize, albeit insufficiently, the laundering of the proceeds of drug-related offenses and impose basic AML/CFT preventive measures on banks. Regulations were adopted to address some AML/CFT aspects in the securities sector.

4. **The current AML/CFT framework is very recent and in need of considerable improvements, both in terms of substance and implementation.** Domestic inter-agency interaction relies on informal arrangements between the competent authorities rather than on formal arrangements, the criminal legal framework is minimal, and most of the measures for the private sector are issued in the form of guidance rather than mandatory requirements. At the time of the assessment, no enforceable AML/CFT obligations were in place. Shortly thereafter, the authorities passed a new Banking Act which requires banks to implement basic AML/CFT measures such as customer identification and reporting of suspicious transactions to the FIU. Intermediaries in the securities sector are required to implement limited AML/CFT measures which became enforceable in April 2011. Financial institutions other than banks and securities intermediaries, as well as designated businesses and professions (DNFBPs) active in Maldives are not subject to AML/CFT requirements. The authorities are working on a draft AML/CFT law which would impose more comprehensive AML/CFT preventive measures on financial institutions and DNFBPs, strengthen key agencies such as the FIU, and enhance domestic cooperation and coordination.

Legal Systems and Related Institutional Measures

5. **The Maldives has criminalized money laundering, but only with respect to the proceeds of offenses listed in the Drugs Act.** The money laundering offense covers some aspects of the standard but not, for example, the conversion of criminal property and the concealment or disguise of the location, disposition and movement of that property. The authorities believe that, although not

mentioned in the law, it is necessary to obtain a conviction for the predicate offense in order to secure money laundering charges.

6. **The framework for provisional measures and confiscation suffers from major shortcomings and is rarely used.** The types of property that may be confiscated are limited to tangible, corporeal assets with a direct link to the predicate offense, and there is no possibility to confiscate property of corresponding value.

7. **The authorities' action against money laundering is not commensurate to the risk thereof.** No investigation has taken place and no charges have been brought for money laundering under the Drugs Act. Drug trafficking is, however, one of the most frequent asset-generating crimes in the Maldives with an increasingly high number of the population using and or trafficking in illegal psychotropic substances. Anecdotal evidence suggests that it may generate up to US\$157,000 a day, or US\$57 million per year.

8. **Activities other than those listed in the Drugs Act do not constitute predicate offenses for money laundering.** All of the FATF-designated categories of offenses have been criminalized in the Maldives. However, asset generating crimes other than drug-related offenses such as corruption are not predicate offenses for money laundering and this constitutes a major shortcoming of the current AML/CFT framework.

9. **Terrorist financing is not criminalized in a separate and autonomous way.** The provision of "finance and property" for the commission of a terrorist act only constitutes an ancillary offense (aiding and abetting) to the commission of that act. The offense is drafted in broad and undefined terms. This would entail that some aspects of the standard are covered (such as the direct and indirect provision of financial support, for example), but it also creates considerable ambiguity in the authorities' mind as to the precise scope of the offense. No charges have ever been brought before the courts for this offense.

10. **There are no laws or procedures in place to freeze terrorist funds or assets of persons in line with United Nations Security Council Resolutions (UNSCR) 1267 and 1373 (and their successor resolutions), and those designated under the freezing mechanisms of other countries.** The Maldivian central bank, the Maldives Monetary Authority (MMA), has sent the UNSCR Consolidated list to banks, credit card operators and money transfer businesses with an "instruction" to freeze the account of designated persons and entities, but there is no legal basis (for the MMA or any other authority) to require financial institutions to compare their list of clients with the Consolidated list (or any other list), and, in case of a positive match, to freeze and report the assets.

11. **The Maldives suffered one terrorist attack in its capital, the Sultan Park bombing, in September 2007 but reached no clear conclusion as to its funding.** The intelligence gathered by Maldivian authorities and by foreign law enforcement agencies (both in respect to this attack and in relation to terrorist activities conducted in other countries) indicated that funds may occasionally be raised in Maldives to support terrorism abroad. There is, however, no information on the amounts involved.

12. **Shortcomings in the overall criminal legislative framework, in particular with respect to criminal procedure, and the lack of resources of competent authorities make it challenging for**

the Maldives to fight effectively against money laundering and terrorist financing. The criminal process is slow and fraught with legal uncertainty mainly due to the paucity of criminal procedure rules. In addition, the AML/CFT system is strained by a lack of capacity in the Maldives Police Service (MPS), the Prosecutor General's Office (PGO), and the judiciary.

13. **The authorities set up an FIU within the central bank on the basis of a 2004 inter-ministerial agreement.** The FIU did not become operational until 2006, when the MMA issued an "AML/CFT" Circular to all banks and other money transfer businesses instructing them to report suspicious transactions to the FIU. Despite its title, the Circular only address AML. Absent a legal basis for the MMA to impose AML/CFT obligations, the Circular is not mandatory and not enforceable, but two banks and two money remitters nevertheless filed suspicious transactions reports (STRs) with the FIU in 2009. All four reports were analyzed by the FIU; two were closed because they contained no suspicious elements, one was forwarded to the MPS for further investigation, and one is still with the FIU.

14. **The FIU lacks operational independence and has not been granted the necessary powers to conduct its functions in an effective manner.** The FIU is the national center for the receipt and analysis of STRs filed by banks, but does not have the authority to disseminate financial intelligence; only the MMA has this authority. The analysis function is limited notably because the FIU has not been afforded access to all relevant information. While so far all the FIU's requests for information from other agencies have been complied with, there is no legal basis for these agencies to provide the requested information. The FIU does not have the authority to receive, analyze and disseminate STRs from entities other than banks. Since it became operational, the FIU has spear headed the country's AML/CFT efforts and created a useful (although informal) network of contacts with other key authorities.

Preventive Measures—Financial Institutions

15. **Banks and intermediaries in the securities sector are the only entities in the Maldives required to implement AML/CFT measures:** Mandatory measures for banks were introduced in December 2010 (i.e. less than 8 weeks after the end of the assessment) with the enactment of the Banking Act; The Capital Market Development Authority (CMDA) 2010 Regulation on Anti-Money Laundering in Securities-Related Transactions (the CMDA 2010 Regulation) requires CMDA licensees to apply a number of AML/CFT measures, but, because the Regulation does not constitute primary or secondary legislation, it does not fully conform with the FATF standard.

16. **The 2010 Banking Act sets out CDD and record keeping obligations for banks, as well as a requirement to report suspicious transactions to the FIU.** Until December 2010, the only text that addressed AML measures was a 2006 MMA Circular to banks and other institutions involved in money transfer activities which provides general information on money laundering and lists some preventive measures that should be implemented. The Circular is, however, neither mandatory nor enforceable and thus falls short of the standard.

17. **While the issuance of the 2010 Banking Act is a very positive step in establishing a mandatory framework for AML/CFT preventive measures, the Act should be enhanced in order to be in line with the standard:** The identification requirements in particular need to be strengthened (notably with respect to the identification of beneficial owners and the verification of the

identity of all customers), and record keeping requirements should be more specific. Internal control requirements are very broad and are yet to be elaborated in regulation. Furthermore, the Banking Act is silent on a number of additional measures that banks should be required to undertake. There are, in particular, no obligations: to apply enhanced due diligence with respect to customers or beneficial owners who are politically-exposed persons; to pay special attention to complex, unusual large or unusual patterns of transactions; to apply correspondent banking relationships and wire transfer rules in line with the standard.

18. **AML/CFT measures for intermediaries in the securities sector were issued in 2010 and only became enforceable in April 2011 (i.e. more than 8 weeks after the assessment), but their legal basis is, in many instances, insufficient to be in compliance with the standard.** The CMDA 2010 AML Regulations set out some (albeit basic) customer identification requirements and requires licensees to exercise special due diligence to extraordinary complex and large transactions that do not have a clear investment purpose, or that appear otherwise suspicious. It does not, however, require licensees to report suspicious transactions to the FIU. Moreover, record keeping and internal control requirements are too broad to be effective. Overall, considering that the CMDA Regulation is neither primary nor secondary legislation, it is insufficient to meet many of the requirements of the standard.

19. **At the time of the assessment, monitoring and supervision of the banks' and securities intermediaries' compliance with AML/CFT requirements had not formally begun.** The MMA and the CMDA, which are responsible for supervision of financial institutions in the banking and securities industries respectively, have been granted a range of powers to fulfill their functions, but have not started using them for AML/CFT purposes. This is due, in the banking sector, to the recent enactment of the Banking Act and, in the securities sector, to the fact that the CMDA Regulation provided the CMDA licensees with a 6 month timeframe (i.e. until April 2011) to comply with its provisions. It is nevertheless worth mentioning that the MMA did, in the course of prudential supervision, conduct some form of monitoring of banks' compliance with the 2006 AML Circular (although it was not mandatory) and suggested ways to improve the banks' nascent AML/CFT systems.

20. **Financial institutions other than banks and intermediaries in the securities sector are not subject to AML/CFT obligations.** Insurance companies and intermediaries, finance companies, money remittance services providers, foreign exchange businesses and credit card companies therefore operate outside the AML/CFT framework. The authorities are planning on including some, if not all, of these institutions in their draft AML/CFT legislation.

Preventive Measures—Designated Non-Financial Businesses and Professions

21. **Designated non-financial businesses and professions (DNFBPs) are not subject to AML/CFT obligations and to supervision of any kind.** DNFBPs active in Maldives are lawyers, accountants and dealers in precious metals and stones. Casinos are outlawed under the Constitution and Shari'ah. The buying and selling of real estate is conducted by the seller and buyer themselves, or by lawyers. The latter also act as notaries and provide company formation activities and other companies services. Trusts cannot be established under current Maldivian law, but a draft Trust Law was prepared in 2008. According to the authorities, there is at the moment no trust business in Maldives, and no services to trusts formed in other jurisdictions, but the website of some Malé based law firms suggests otherwise. The draft AML/CFT legislation currently being prepared imposes

AML/CFT obligations, including reporting of suspicious transactions requirements, on DNFBPs active in the Maldives.

Legal Persons and Arrangements & Non-Profit Organizations

22. **The current framework does not ensure sufficient transparency of legal persons nor timely access to beneficial ownership and control information.** Legal entities may take the form of a company, partnership, cooperative society or non-profit association. According to the authorities' latest figures, there are 8,657 legal entities in the Maldives most of which are companies. The Ministry of Economic Development holds some information on registered legal entities, but this information is neither comprehensive nor updated in a consistent manner, and, in the absence of an electronic database, is not readily accessible.

23. **The Maldives has a system of registration in place for NPOs but the information maintained by the registrar is insufficient to ensure sufficient transparency of NPOs.** Information available at the registrar is limited to that pertaining to the purposes and objectives of registered NPOs, and the identity of their executive committees. There is no active or adequate system to promote effective supervision and monitoring of the NPOs, and no true understanding of risks of terrorist financing in the sector. The authorities suspect that NPOs have been misused to provide funding to terrorists abroad, but their suspicions remain unsubstantiated and no charges were ever brought before the courts. There is no coordinated national strategy to aim at protecting NPOs from abuse for terrorist financing. The authorities are conducting a "scoping exercise" within the NPO sector, which will notably result in a redrafting of the Association Act, but the extent to which it will also look into the NPOs' vulnerability to terrorist financing risks is unclear.

National and International Co-operation

24. **A domestic cooperation mechanism specifically dedicated to AML/CFT issues has been set up.** A Coordination Committee for Combating Money Laundering and Terrorist Financing was created under the lead of the FIU and brings together representatives from the majority of the relevant authorities (including prosecutors, police, MMA, CMDA). It has not however delivered tangible results at this stage, with the exception of the responses to the detailed assessment questionnaire.

25. **There is no legislative framework regulating mutual legal assistance and extradition.** The types and range of measures that the Maldivian authorities may take on behalf of another State are mainly defined in memorandums of understanding concluded with other jurisdictions (copies of which were not provided to the assessment team). According to the authorities, very few requests for assistance have been addressed to the Maldives. Informal assistance however is more frequent.

Other Issues

26. **Overall, the staff of the relevant Maldivian authorities should be increased and provided with training to increase AML/CFT expertise.** The FIU has raised awareness on AML/CFT issues amongst the key agencies but there is a need for further AML/CFT training, in particular for the purposes of AML/CFT investigations and supervision.

27. **It is important that key pieces of legislation be passed. In addition to comprehensive AML/CFT legislation, the draft revised Penal Code** should be adopted and criminal procedure rules should be set out in law in order to enable the authorities to fight against money laundering and terrorist financing in an effective way.

1. GENERAL

1.1. General Information on the Maldives

Overview

28. The Republic of Maldives (hereafter: the Maldives) is an archipelago of 1,192 islands in the Indian Ocean, spread out over roughly 9,000 square kilometers (3,400 square miles), with a distance of almost 1,000 kilometers (621 miles) from north to south. The Maldives has a land mass of roughly 298 square kilometers (115 square miles) and is administratively divided into 20 atolls, with more than one third of its population of approximately 400,000¹ residing on or near the island of Malé, the capital of the Maldives. It is the smallest Asian country in both population and land area. Its closest neighbors to the north are India's Laccadive Islands. To the northeast is the Indian subcontinent and Sri Lanka. To the south it borders the British Indian Ocean Territory.² About 2,600 kilometers (1,600 miles) further east, across the Indian Ocean, is Malaysia. To the west the Horn of Africa is approximately 3,000 kilometers (1,800 miles) away.

29. The Maldives is a presidential republic with a president as head of government and head of state. The Maldives became an independent nation on July 26, 1965 after having been a British protectorate for about 78 years. After having been governed by the same leader since 1978 the Maldives transitioned to a multi-party democracy in 2008. A young multi-party democracy, the country is working to build its democratic institutions.

Economy

30. The Maldives is a lower middle-income country with a small market based economy. Its 2010 GDP (Current Prices, US\$) was estimated at 1.87 billion.³ The major income generator is the tourism industry, which is also the main source of foreign currency. The second main industry is fishing. Other industries include fish processing, shipping, boat building, coconut processing, textiles and related products, and coral and sand mining. As of 2009, approximately 11% of the Maldivian population was employed by the civil service, a very high percentage compared to other countries in the region.⁴

31. The economy is largely cash based. The Maldivian currency (Maldivian Rufiyaa, hereafter: Rf) is pegged to the U.S. dollar and as of April 11, 2011 the exchange rate system sets a central parity of Rf 12.85 for US\$1.00, with flotation in a band of 20% in each direction around this figure, i.e.

¹ The official mid-year 2010 population figure stood at 319,738. The total number of expatriates is estimated to hover between 110,000 and 120,000 (of which 80,000 – 90,000 are legal, and 30,000 are illegal). The total resident population figure, citizens, legal immigrants, and illegal immigrants combined, could therefore lie in the vicinity of 430,000.

² Also known as the Chagos Islands.

³ World Economic Outlook Database – April 2011 (IMF).

⁴ “Maldives: 2009 Article IV Consultation – Staff Report” (International Monetary Fund, IMF Country Report No. 10/28, January 2010).

between Rf 10.28 and Rf 15.42.⁵ The U.S. dollar is the most widely accepted foreign currency in the country.⁶ It can trade for more than the official exchange rate on the black market.⁷ Because the majority of goods the Maldives needs are imported, and foreign exporters need to be paid in a foreign currency, dollars can be hard to come by.⁸

32. The 2011 Index of Economic Freedom ranked the Maldives 154th out of 179 countries.⁹ According to the Index, the country's main weaknesses are "chronically high government spending, inefficiency of the outsized public sector, and widespread corruption."

33. After sustained growth for three decades, the Maldivian economy was severely hit by the 2004 tsunami and the 2008 world financial crisis. Real GDP contracted by 2.3% in 2009. Nonetheless, real output is projected to recover in 2010 with growth forecast at 4.8% as the tourism and construction sectors are expected to rebound, reflecting the improved global economic and financial conditions. Hence, after having shrunk by 5.2%, tourism growth is projected to turn positive to 14.0% in 2010, while construction growth is projected to rebound to 2.6% from a decline of 29.2% in 2009.¹⁰

34. Statistics show that, as of 2009, government expenditure increased from 64% to 66% of GDP, of which 81% was financed domestically, raising the total outstanding debt to Rf 5.2 billion (approximately US\$406 million). A large part of this debt has been financed by the Maldivian central bank, the Maldives Monetary Authority (MMA), through special advances and cash grants against T-bills and T-bonds. The MMA has converted the cash loans to T-bonds in August 2009.¹¹

System of Government

Parliament and the Executive

35. In 2008, Parliament passed a new constitution separating the executive, legislative, and judiciary. The first multi-party elections in the country were held in September and October of 2008. The President is elected for a term of five years. As head of the executive branch, the President appoints the cabinet of ministers. The cabinet consists of the President, the Vice President, and the Ministers. Ministers are appointed by the President but must be approved by Parliament before taking office.

⁵ "Statement by IMF Staff Mission to the Maldives" (Press Release No. 11/127, April 11, 2011); Maldives Monetary Authority, see: <http://www.mma.gov.mv/er.php>.

⁶ "Statement at the Conclusion of the IMF Staff Mission to Maldives" (IMF Press Release No. 10/421, November 8, 2010).

⁷ Importers concerned about dollar shortage (Minivan News, October 6, 2010); Dollar shortage is due to demand from the black market: Hussein Waheed (Miadhu News, March 25, 2011).

⁸ Black market dollar crackdown won't address demand, warn businesses, financial experts (Minivan News, March 29, 2011); Police asks banks to track people trading large amounts of dollars (Minivan News, March 31, 2011).

⁹ "The 2011 Index of Economic Freedom" (The Wall Street Journal and The Heritage Foundation, find it here: <http://www.heritage.org/Index/>).

¹⁰ Maldives Monetary Authority, Monetary Policy and Research Division (MPRD).

¹¹ Ibid.

36. The legislative branch is the Parliament (also known as the People’s Majlis), a unicameral legislature of 77 members elected for a five year term.

Judiciary and legal system

37. The judiciary consists of the trial courts (Magistrate Courts, Civil and Criminal Courts, Juvenile Court, Family Court), the High Court and the Supreme Court. The Judicial Services Commission (JSC) oversees the administrative matters including the admission of trial court judges as well as High Court judges. It also advises the President on the appointment of the Chief Justice to the Supreme Court.

Source of law

38. The legal system of the Maldives is based on written laws enacted by Parliament, but Shari’ah principles are also considered by the courts during trials, especially in criminal and family matters. Written laws are mostly administered by Government agencies, with subsidiary legislation made by those bodies responsible for the administration of such laws.

39. The Maldivian Constitution in its Article 5 states that “[a]ll legislative power in the Maldives is vested in the People’s Majlis.” According to article 10(a) “[...] Islam shall be the one of the basis [sic] of all the laws of the Maldives.” While the courts may consider Shari’ah, they convict and sentence on the basis of written laws, enacted by Parliament.

Structure necessary for an effective AML/CFT framework

Transparency and good governance

The Maldives acceded to the United Nations Convention against Corruption (the Merida Convention) in March 2007. It has set up an Anti-Corruption Commission’s (ACC) which is an important player in ensuring good governance. The Auditor General’s Office (AuGO) audits of government ministries and publicly owned companies are critical to ensure transparency. Corruption nevertheless remains a problem. Transparency International’s 2010 Corruption Perceptions Index ranks the Maldives 143rd out of a total of 178 countries, indicating that the conditions for transparency and good governance are poor.

40. Most Ministries have a website with relatively adequate and up to date information, accessible to the public at large.

Culture of AML/CFT compliance

41. There is no overarching, comprehensive AML/CFT framework in the Maldives and, overall, awareness of AML/CFT measures is low. The elements that do exist have been introduced relatively recently and only apply to the banking and, to a certain extent, securities sectors. AML/CFT measures are at an early stage of implementation in both sectors. The authorities are planning to improve the AML/CFT legal framework further, strengthen new agencies such as the FIU, and generally enhance cooperation and coordination between government agencies and with the private sector.

42. There are currently no AML/CFT requirements for designated non-financial businesses and professions (DNFBPs).

Appropriate measures to prevent and combat corruption

43. Corruption is criminalized by the Prevention and Prohibition of Corruption Act 2000 (Act No. 2/2000) of August 31, 2000 (hereafter: the Corruption Act). The ACC, provided for by Articles 199-208 of the 2008 Constitution, is the main body in charge of combating corruption. Sanctions for corruption are imprisonment, banishment, or house arrest, but corruption charges have not often been brought before the courts. No statistics on the size of corruption cases pursued by the ACC were provided to the assessment team, but the authorities recognize that corruption is a problem. Corruption is not a predicate offense to money laundering.

A reasonably efficient court system

44. The effectiveness of the court system is hampered by the fact that a number of critical pieces of legislation, in particular criminal legislation, are either missing or require urgent updating. The current Penal Code (PC) was drafted in 1966 and amended several times in subsequent years. A new PC has been pending before Parliament for some time. It is notably expected to reflect better Maldivian current statutes, Shari'ah principles, and shared Maldivian community values, and it will introduce a gradation of offenses distinguishing infraction, misdemeanor, and felony.¹²

45. Criminal procedure is not set out in statute and this has a serious impact on the ability of the judiciary to effectively deliver justice. In practice, the procedure, and in particular the amount of evidence required, varies greatly from one case to the next. For example, in a case mentioned by the authorities, the conviction of a person linked to drugs who had a very large sum of cash hidden in his home was overturned because the reviewing judge deemed the evidence to be insufficient. According to the authorities, the level of evidence required is very subjective. The lack of legislation makes the legal process fraught with uncertainty for police investigators, judges, criminal prosecutors, and defendants alike. The assessors reached the same conclusion as the International Commission of Jurists (ICJ), namely that “[m]ost decisions are given without written reasons. These limitations affect the ability of judges and magistrates to reach consistent decisions, creating legal uncertainty and, with it, a cascade of negative social, economic and political consequences.”¹³

46. Criminal procedure matters are dealt with on the basis of Court Regulations, the PC, and the Constitution. A draft Criminal Procedure Code and a draft Evidence Act have been prepared and are pending in Parliament. No timeframe was given for the adoption of either law.

¹² “Final Report of the Maldivian Penal Law and Sentencing Codification Project: Text of Draft Code (Volume 1) and Official Commentary (Volume 2)” by Paul H. Robinson and the Criminal Law Research Group, Commissioned by the Office of the Attorney General of the Maldives and the United Nations Development Programme (University of Pennsylvania Law School, Public Law and Legal Theory Research Paper Series, Research Paper No. 09-38, January 2006).

¹³ “Maldives: Securing an Independent Judiciary in a Time of Transition” (International Commission of Jurists, February 2011). See p. 30, para. 93. An ICJ delegation visited the Maldives in September 2010 to assess progress made in the establishment of an independent judiciary.

47. The ICJ's conclusions are in keeping with those of the assessors when it noted the "challenge of passing a series of laws that are fundamental to the daily operations of the courts. The still pending Drug Bill is a key example. Laws not actively blocked by the opposition parties also suffer delays in enactment because of slow follow-up in their respective committees; some of these laws include the Penal Code, a Criminal Procedure Code, a Civil Procedure Code, and an Evidence Act."¹⁴ The parliamentary process in Maldives is notoriously slow and draft criminal laws are now accumulating in Parliament. In addition to the code and laws mentioned above, current drafts awaiting parliamentary approval include the Amendments to the Gang Violence Act and the Crime Prevention Bill.

High ethical and professional requirements for police officers, prosecutors, judges etc.

48. The MPS has a Police Code of Ethics and a Police Code of Conduct. A complete translation was not provided to the assessment team, but the authorities indicated that the Code of Conduct deals with topics such as honesty in performing their duty, not to abuse police powers, and not to engage in bribery and corruption. Again according to the authorities, Section 7(a) of Police Regulation No. MPS-7/2009-1 (Regulation on Imposing Administrative and Disciplinary Penalties), the MPS can impose administrative and disciplinary penalties for violations of the Code of Ethics and the Code of Conduct.

49. The Police Integrity Commission (PIC), called for under the 2008 Constitution, was created in 2009 and its five member committee can look into misconduct involving police officers. Pursuant to Section 11(b) of the Police Bill the purposes of the PIC are "(i) to investigate complaints brought against the employees of the Maldives Police Services; (ii) to identify, ascertain and investigate the offences committed by employees of the Maldives Police Service during the carrying out of their role and function; (iii) to minimise and bring to an end corruption, excessive use of force and the commission of other offences by the police in carrying out their duties and functions; (iv) to appeal any disciplinary or administrative action brought against an employee of the Maldives Police Services."

50. The Prosecutor General's Office (PGO) introduced a Code of Conduct for Prosecutors on October 4, 2010. Prior to August 2010, at which date the Judges Act (Act No. 13/2010) was passed, there were no qualification requirements for judges.¹⁵ According to the Department of Judicial Administration (DJA) judges must have either an LL.B. or a Shari'ah degree, and two years of work experience (Section 15). Judges who currently do not possess the necessary qualifications have seven years to come into compliance. A Code of Conduct exists for the judiciary. According to the authorities, there are currently several judges in Malé who do not have the necessary qualifications. Some of them are taking classes to come into compliance with the new requirements, others will soon reach the voluntary retirement age.

¹⁴ Ibid, p. 30, Enabling Statutes and Regulations.

¹⁵ In the Maldives, "magistrate" is the title for judges in the atolls; "judge" is the title for judges based in Malé. Currently there are 157 members of the judiciary, 17 of whom are judges in Malé.

51. In December 2009 the Judicial Services Commission (JSC) endorsed and declared as binding the Code of Ethical Conduct for the Judges of the Courts of Maldives which sets out various principles, including independence, impartiality, integrity, and competency.

System for ensuring ethical and professional behavior on the part of professionals (e.g. accountants, auditors, lawyers)

52. To practice law in the Maldives it is required to have an LL.B. and either Maldivian citizenship, or to be married to a Maldivian citizen, and then apply to the Attorney General's Office (AGO) for a certificate. No authority or self-regulatory organization has been designated to oversee the legal profession.

53. Similarly, accountants and auditors are not regulated and are not subject to codes of ethics.

1.2. General Situation of Money Laundering and Financing of Terrorism

54. According to recent MPS statistics the main asset generating crimes in the Maldives logged between 2008 and 2010 were, by order of frequency of occurrence: theft, drugs, and robbery, followed at a distance by bounced checks and embezzlement.¹⁶ There is limited information on theft and robbery, including on the amounts involved. As described below, other relevant crimes include corruption, human trafficking, piracy, and offenses committed by gangs. Even though the MPS's statistics show that the number of corruption cases is low, news reports indicate that the sums involved can be significant. Human trafficking and piracy are also discussed as issues the country needs to tackle, notably by introducing them as criminal offenses. Since criminal gangs are involved in much of the drug dealing and the violence, they are also discussed below.

General Crime Overview

55. Overall, crime has been rising steadily since 1992. Statistics show a fivefold increase of registered offenses between 1992 and 2010. Between 1992 and 2001 registered offenses increased from 3,843 to over 6,417, and in 2010 were as high as 16,995, as shown by the graph below which shows the number of criminal cases between 1992 and 2010.¹⁷

¹⁶ Maldives Police Service (MPS) Annual Report 2010, p. 1.

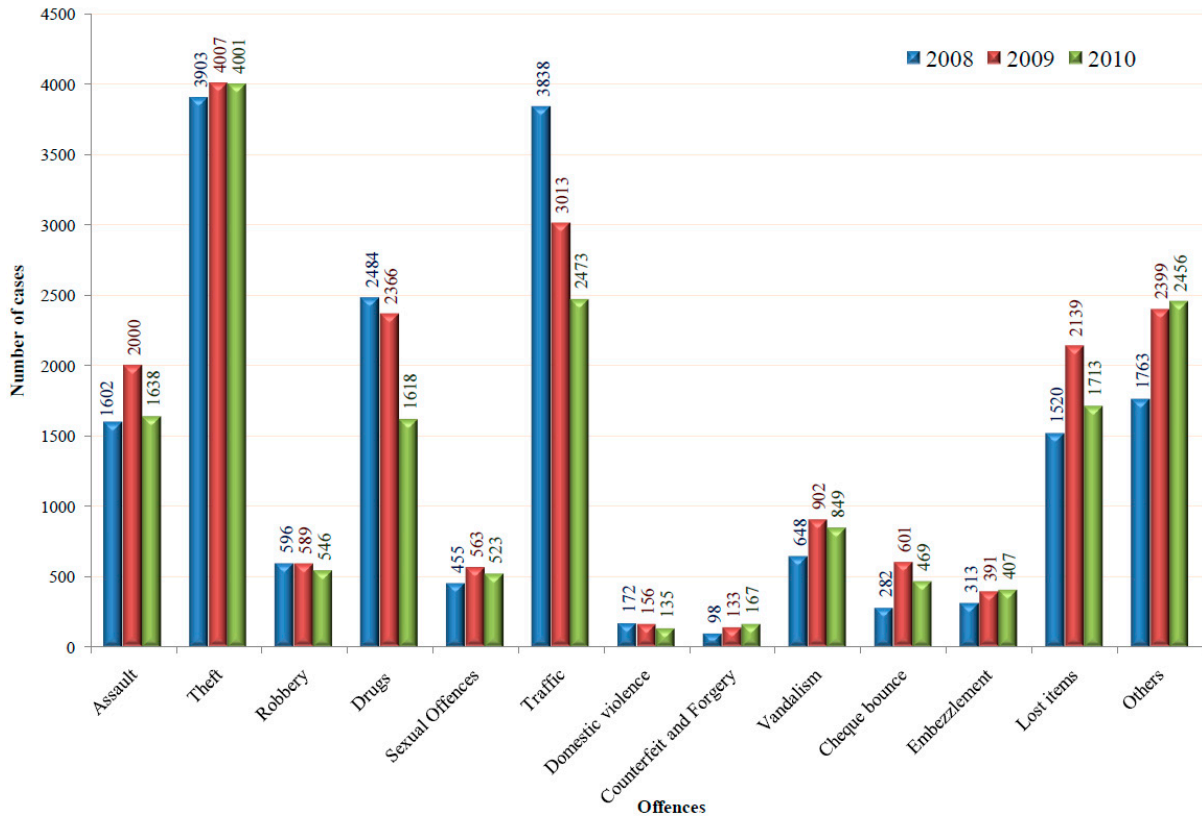
¹⁷ Police statistics for 2010 show 11 percent fall in cases reported (Minivan News, January 19, 2011).

Table 1: Criminal Cases



56. The following chart shows the number of cases logged by predicate offense for the period 2008 – 2010.¹⁸

¹⁸ Maldives Police Service (MPS) Annual Report 2010, p. 2.

Table 2: Recorded offenses between 2008-2010

57. The top three most serious proceeds-generating offenses over the past three years, as shown by the chart above, are theft, drugs, and robbery.

58. This is confirmed by the numbers in the MPS Annual Report 2010 related to the number of arrests made in 2010 by type of offense, broken down by type of proceeds-generating predicate offense: 1,153 arrests were made for drug offenses, 773 for theft, and 199 for robbery.¹⁹

59. Many of the assaults and drug offenses are committed by gangs.

Drugs

60. Since the late 1980s there has been an increase in the use of drugs. The National Narcotics Control Board (NNCB) in 2008 estimated the number of addicts in the Maldives between 10,000 and 12,000.²⁰ Some unofficial sources estimate there are as many as 30,000 addicts, and that one in three young people are addicted to drugs.²¹ The NNCB estimated that the market for illegal drugs was

¹⁹ MPS Annual Report 2010, p. 9.

²⁰ Maldives Launches First Drug Control Master Plan (Minivan News, May 22, 2008): “Figures from the NNCB indicate there are 10,000 to 12,000 drug users in the country, but unofficial estimates suggest the number could be as high as 30,000.”

²¹ NGO urges president to arrest drugs kingpins (Minivan News, May 19, 2009).

worth US\$157,000 a day in 2008.²² On this basis, news reports value the drug trade in the Maldives at US\$57 million per year.²³ If these estimates are correct the size of the drug trade would be the equivalent of roughly 3% of the country's 2010 GDP.

61. The two main types of illicit drugs in the Maldives are cannabis (hash oil) and heroin.²⁴ A 2009 study showed that 87% of drug cases involve heroin and cannabis. The other 13% involve alcohol, adhesives (e.g. glue), and cologne.²⁵ As no illicit drugs are produced domestically all of the supply must be imported. According to the authorities, the main air routes for incoming drugs are Pakistan-Qatar-Maldives, Pakistan-Dubai-Maldives, Pakistan-Qatar-Sri Lanka-Maldives, Sri Lanka-Maldives, Sri Lanka-Madras (India)-Maldives, and Thiruvananthapuram (India)-Maldives. Drugs are transported in smaller or larger quantities by passengers who carry it on their person or in their luggage. Sea routes are also used but they remain virtually unknown. The drug shipments are presumed to be offloaded on remote islands at various locations throughout the country, as demand is high also outside of the capital city of Malé.²⁶

62. The authorities mentioned that in April 2006, some 1,700 plastic bags containing cannabis, weighing in at 1.6 tons total, were discovered on the seabed of a lagoon near Alif Alif atoll. This is the country's largest drugs haul to date. In March 2008, 13.6 kilograms of heroin (brown sugar) were found in Malé.

63. According to the MCS, the drugs they encounter most often are heroin and cannabis. They sometimes also find hashish, benzodiazepines, and once a shipment of ketamine was intercepted. Benzodiazepines are often used to adulterate heroin prior to sale. Observers and some government officials have expressed concern for the possibility that the country could become a transshipment point for smugglers due to the large amount of seagoing traffic, and the challenges the authorities encounter to check all these vessels.²⁷ Indeed, the authorities suspect that the ultimate destination of the 1.6 tons of cannabis found in 2006 was the Far East.

64. Given the estimated size of the drug economy the amount of drug money seized by the MPS seems relatively low. The MPS has seized cash related to drug offenses as indicated below (no figures were provided for previous years).

²² Maldives Drugs Trade "Worth Rf 2 Million Per Day" (Minivan News, March 6, 2008). According to the NNCB the number Rf 2,000,000 (US\$157,000) is based on an estimated 10,000 addicts each spending Rf 200 (US\$15.70) a day on their addiction.

²³ Maldives Launches First Drug Control Master Plan (Minivan News, May 22, 2008).

²⁴ The type of heroin most commonly found in the country is Heroin No. 3, also known as brown sugar. See: "Trends in Trafficking and Consumption of Heroin and Cannabis in Maldives" by Iththisham Ali, Younus Sobah, Ahmed Azhan, and Ahmed Bilal (SLOG Publications – Mutant Society, Vol. 2, No. 1, October 2009).

²⁵ *Ibid*, p. 4.

²⁶ "Trends in Trafficking and Consumption of Heroin and Cannabis in Maldives," pp. 2, 11.

²⁷ "South Asia – Regional Profile 2005" (UNODC, 2005), p. 78.

Table 3: Seized cash Related to Drug Offenses

Year	US\$	Rf	Total Seized (in US\$)
2010	43,420	5,426,280	467,348

Corruption

65. Even though embezzlement/corruption cases appear to be few according to the police statistics, anecdotal evidence, in particular from the Maldivian press, indicates that they often involve significant sums of money. The authorities, in particular the law enforcement agencies, themselves acknowledge that corruption is a problem. They believe that approximately 80% of corruption cases relate to procurement.

66. As mentioned above, according to Transparency International’s 2010 Corruption Perceptions Index, the Maldives ranks 143rd out of 178 countries and scored 2.3 on a scale from 0 (highly corrupt) to 10 (highly clean).²⁸ On a regional level, out of 34 countries surveyed in the Asia Pacific region, the Maldives ranked 27th.

67. In light of the above, the lack of convictions for corruption raises particular concerns.

Human Trafficking

68. Reports by the South Asian Association for Regional Cooperation (SAARC), which has the mandate to monitor implementation of the Convention on Preventing and Combating Trafficking of Women and Children for Prostitution, and the U.S. Department of State noted serious concerns with respect to human trafficking and exploitation of foreign workers in Maldives.²⁹ The Maldivian Department of Immigration and Emigration (hereafter: DIE) noted the same issues. According to the authorities, human trafficking in the Maldives could generate significant criminal proceeds.

69. At present the trafficking of human beings is not an offense in the Maldives.

Piracy

70. Piracy is not criminalized in the Maldives despite the fact that it is increasingly becoming a concern. As of late Somali pirates have, on several occasions, drifted into Maldivian waters. The Maldives is seeking regional cooperation to tackle the issue.

²⁸ Find TI’s 2010 CPI here: http://www.transparency.org/policy_research/surveys_indices/cpi/2010.

²⁹ Human trafficking an emerging issue for the Maldives (Minivan News, April 20, 2010); “Trafficking in Persons Report – 10th Edition,” pp. 225-226 (U.S. Department of State, June 2010).

Criminal Gangs

71. According to the authorities, for the past couple of years criminal gangs have been a serious concern, especially in the country's capital, Malé. A lot of violence can be attributed to them, and they are involved in the drug trade. In 2009, the MPS reported that they believed as many as 16 gangs were active in the capital.

Money Laundering

72. Currently money laundering is only criminalized with respect to the proceeds of drug related offenses. The MPS believes that the most common ways in which proceeds of crime are integrated into the economy are: cash smuggling, money orders and cashier's checks, structure deposits, bureaux de change, wire transfers, false invoices/receipts, credit cards, front companies, purchases of high value goods, alternative remittance systems, real estate, offshore accounts, and trusts established in foreign countries.

73. According to the authorities, there are indications that the financial institutions such as banks, money remitters, credit card companies and stock brokers are most vulnerable to money laundering. The insurance sector also faces the potential risk of being used for money laundering activities. Since Maldives has a largely cash based economy, cash intensive businesses such as shops, restaurants and cafes, motels, and construction companies are also likely to be used in the various stages of money laundering.

Terrorism

74. The Maldives experienced one terrorist attack, the Sultan Park bombing on September 29, 2007. A few days after the bombing, a number of people were arrested. Several suspects fled the country, some of them with the help of a Maldivian immigration official who was later given a one-year prison sentence.³⁰ The people behind the bombing are believed to be Islamist extremists with possible links with Al-Qaeda and Lashkar-e-Taiba (LeT).³¹ The investigation into the attack indicated that a LeT charity may have been used to raise funds, but there is no indication that the Maldivian authorities specifically investigated the funding of the attack.

75. According to the authorities, some Maldivians have travelled to countries in the region, in particular Pakistan, where they are suspected to have engaged in acts of violence. A suicide attack on

³⁰ Sultan Park Suspects On Run In Pakistan (Minivan News, November 7, 2007); Sultan Park Suspects Fled To Pakistan: High Commission (Minivan News, February 7, 2008); Immigration Officer Sentenced In Sultan Park Case (Minivan News, February 23, 2008).

³¹ Has Islamic terrorism arrived on Maldives? (Telegraph.co.uk, September 30, 2007); "Why is Maldives getting restive?" by Anjali Sharma (Observer Research Foundation, October 17, 2007); Himandhoo Propaganda Video On Al Qaeda Site (Minivan News, November 19, 2007); "Maldives: Sultan Park Explosion – Dealing with Religious Extremism" by S. Chandrasekharan (South Asia Analysis Group, Paper No. 2476, November 25, 2007).

the Directorate for Inter-Services Intelligence's (ISI) Lahore headquarters in May 2009 was committed by a Maldivian with alleged affiliation to Al-Qaeda.³²

Terrorist Financing

76. According to intelligence, terrorist financing activities in relation to extremist ideologies mostly involve support for individuals seeking to pursue radical Islamic education, and conducting recruiting for Jihadist activities. Local religious extremists are not primarily engaged in terrorist financing activities in the Maldives, but are nevertheless suspected of supporting financially those engaged in insurgent activities abroad by financing their travel and providing money to families left behind in the Maldives. The MPS's investigations have indicated that funds are raised for insurgent activities abroad such as Jihad by various means. In one case, financial aid from local textile salesmen and other businessmen who donated money for religious education was used to finance Jihad training and other illegal activities abroad. Local religious extremists are also engaged in criminal activities such as theft and robbery to raise funds and assist those willing to travel abroad for Jihad.

Other Issue – Prison System

77. When suspects are convicted and sentenced to jail, the authorities are not always able to keep them there: According to the authorities, there have been instances where prisoners have been “informally released,” whilst others escaped, because the country has, for many years, struggled to maintain a proper correctional facility.

1.3. Overview of the Financial Sector

78. The financial sector of Maldives is small and still at a relatively early stage of development. It consists of banks (which dominate the sector), insurance companies, insurance intermediaries, finance companies, money remittance service providers, foreign exchange businesses, credit card companies and securities market intermediaries.

Banking Sector

79. The Maldivian banking sector consists of six commercial banks: one domestic bank - the Bank of Maldives which was established in 1982 and is partly government owned - and branches of five foreign commercial banks.

Non-Bank Financial Sector (NBFIs)

80. Non-banking financial institutions in the Maldives include entities in the general insurance market, a finance leasing company, a specialized housing finance institution and money transfer businesses. There is one locally incorporated composite company and several foreign insurance companies operating in the Maldives. General insurance is the main type of insurance service that the insurance companies provide and covers transport, property, marine, motor, sea transport, accident

³² Terrorists attack Lahore ISI office (The Nation, May 28, 2009); “Why Taliban Attacked ISI at Lahore? – International Terrorism Monitor – Paper No. 530” (South Asia Analysis Group, Paper No. 3219, May 29, 2009).

and health services. At present, motor insurance is not compulsory in the Maldives, but the authorities are planning to make it mandatory in the course of 2011.

81. Money value transfer (MVT) businesses in Maldives include three local companies operating as agents of international money transfer companies. The services of these companies are largely geared towards the expatriates in the country who utilize their services for outward remittances from the Maldives.

82. Foreign exchange businesses are for the most part small shops and tourists resorts which mainly buy foreign currency or accept payments in foreign currency.

83. The capital market in Maldives is still nascent with only four companies listed on the stock exchange (out of which only three were found to have been traded very recently). The total volume traded was 1,007 shares and the number of trades stood at 16 as per the statistics for the month of August 2010. In terms of value, the trading amounted to Rf 0.27 million (approximately US\$21,000). The total number of accounts held by the Maldives Securities Depository, as per the data available for the month of August 2010, was 407, holding around 777,547 shares.³³

84. The banking sector occupies a prominent place in the Maldivian financial system, accounting for about 96% of total financial sector assets. The NBFIs (excluding insurance sector) hold an insignificant share of the wider financial system. In terms of asset size, the housing finance company and the finance leasing company rank ahead of the others in the NBFIs subsector. The following tables provide information about the structure of the financial sector:

Table 4: Structure of the Financial Sector

Financial Institution	Total Assets (million US\$)
Banks	1,953.13 (as of March 2010)
Other Financial Institutions (excluding securities sector and money remittance business)	93.75 (as of Dec 2009)
Securities Sector	N/A (4 listed companies whose shares are traded by 4 dealing companies, with an annual trading turnover of less than one million US\$).

85. The following table sets out an overview of the different types of financial institutions operating in Maldives financial sector:

³³ As per the website of Capital Market Development Authority (www.cmda.gov.mv).

Table 5: Overview of Financial Institutions

Type of Institution	No. of institutions
Banks	6
Foreign Exchange Dealers (other than Banks)	188
Insurance Companies	4
Insurance Brokers	2
Insurance Agents	7
Money Transmitters (other than Banks)	5
Credit Card Operators (including Banks)	5
Finance Companies	2
Stock Exchange	1
Securities Depository	1
Securities Dealers	4
Licensed Brokers (Dealers' representatives)	7

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

Table 6: Financial Activity by Type of Financial Institution

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks	1. MMA/FIU
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Finance Companies (limited to housing finance)	1. MMA/FIU 2. N/A
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Financial Leasing companies	1. N/A
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Banks 2. Money and value transfer (MVT) services operators	1. MMA/FIU 2. N/A

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks 2. Credit cards operators	1. MMA/FIU 2. N/A
6. Financial guarantees and commitments	1. Banks 2. Finance leasing companies 3. Finance Companies (limited to housing finance)	1. MMA/FIU 2. N/A 3. N/A
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading	Not authorized in the Maldives other than 7(d) (d) Stock exchange, securities dealers	N/A CMDA*
8. Participation in securities issues and the provision of financial services related to such issues	1. Banks 2. Securities dealers 3. Investment Advisors 4. Lawyers 5. Auditors	1. MMA/FIU 2. CMDA* 3. CMDA* 4. N/A 5. N/A
9. Individual and collective portfolio management	Not authorized in the Maldives	N/A
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banks 2. Maldives Securities Depository.	1. MMA/FIU 2. CMDA*
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Securities dealers	1. CMDA*
12. Underwriting and placement of life	1. Life insurance companies	1. N/A

* As the CMDA 2010 AML Regulations issued on October 10, 2010 provide securities market licensees with a time period not exceeding 6 months to start complying with the provisions of the regulations, licensees are subject to AML/CFT supervision as of April 2011.

Type of financial activity (See glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	2. Insurance agents and brokers	2. N/A
13. Money and currency exchange	1. Banks 2. Foreign exchange dealers	1. MMA/FIU 2. N/A

Licensing, registration and supervision

87. Supervision of the financial sector is divided between the MMA and the CMDA, but in many instances, the legal basis for that supervision is either lacking or temporary.

88. The banks are licensed, regulated and supervised by the MMA as prescribed by the MMA Act and the 2010 Banking Act. Fit and proper requirements were introduced in 2010 and are still in the process of being implemented.

89. Insurance companies and finance leasing companies are licensed and supervised by the MMA on temporary legal basis. MVT service operators, foreign exchange businesses and credit card operators are also subject to some kind of licensing, registration and supervision by the MMA in practice, but the MMA does not have a legal basis to conduct these functions.

90. The insurance industry is not governed by any law, but by a regulation which (temporarily) derives its legal basis from the Law for the General Regulations (see Section 3 of the report for more details). Insurance intermediaries are not required to be licensed. Licensing requirements for insurance companies were issued in 2004. Companies that were already operational at the time were issued a temporary license and granted a transitional period to come into compliance with the new requirements before being provided with a permanent license. At the time of the on-site visit, all operating insurance companies except one had completed the implementation of the new requirements and been granted a permanent license.

91. The securities market intermediaries, such as the Maldives Stock Exchange (MSE), the Maldives Security Depository (MSD), registered dealers and brokers and investment advisors are licensed and regulated by the CMDA under the Securities Act.

92. MVT service operators are not regulated by law. They are nevertheless expected to obtain a license from the MMA. To this effect the MMA issued an application form for them to fill out. In practice, MVT services are subject to (albeit limited) supervision by the MMA. In the absence of a clear legal basis, however, the MMA conducts this supervision without authority.

93. Money changers must obtain a license from the MMA to do business pursuant to the Regulation Outlining Arrangements for Money Changers. This regulation, however, was issued without a clear legal basis. There is only one operative finance leasing company. Pursuant to the

terms of the Regulation for Finance Leasing Companies and Finance Leasing Transactions, this company is subject to the MMA's supervision.

94. Credit card operators are not subject to any law regulation, but, according to an MMA Decision, may only operate once they have been "authorized" by the MMA.

95. Only banks and intermediaries in the securities sector are subject to CDD measures, and only banks are required to file suspicious transaction reports (STRs) with the FIU. The 2010 Banking Act contains broad CDD measures but the implementing regulation is yet to be issued. CDD measures for the securities sector are laid down in the CMDA 2010 AML Regulations which was issued in October 2010 and became enforceable six months later (i.e. more than eight weeks after the assessment).

1.4. Overview of the DNFBP Sector

96. Under Shari'ah law gambling is considered a criminal offense. It is therefore illegal to operate casinos in the Maldives.

97. Individual lawyers (who may also act as notaries), accountants and auditors operate in the Maldives but are not supervised or regulated by any State institution, and there are no self-regulatory organizations for these professionals. Approximately 450 persons are registered to practice law in the Maldives. No figures were provided on the number of accountants and auditors.

98. According to the authorities, real estate agency is not a separate profession; selling and buying of real estate is conducted either through lawyers or by the buying and seller themselves.

99. Company formation activities and other company services are provided by lawyers. According to the authorities, there are no services provided to trusts established under another jurisdiction's legislation, but anecdotal evidence suggests that lawyers in Maldives do provide trust services. A draft Trust Law has been prepared and, if adopted, will enable the establishment of Maldivian trusts.

100. None of the DNFbps currently active in the Maldives are subject to AML/CFT requirements.

Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

101. The types of legal entities that may be established under Maldivian legislation are companies, partnerships, co-operative societies and non-profit associations. As of 2009, there were 7,539 Companies, 3 Partnerships, 7 Co-Operative Societies and 1,108 associations. The MED maintains information on registered companies, partnerships and co-operations, to which law enforcement and other authorities may have access upon filing a formal application. While useful, the information held, however, does not include adequate, accurate and current information on the beneficial ownership and control of legal entities. Moreover, the fact that the MED maintains this information manually can lead to some delay in providing the requested information to relevant authorities. The MED is working on the establishment of an electronic database for all the information maintained.

102. Current Maldivian law does not allow the establishment of legal arrangements such as the common law trust, but draft legislation has been prepared in 2008 to enable the establishment of Maldivian trusts. According to the authorities and the representatives of the private sector met during

the assessment, there is no trust business in the Maldives, although the website of some lawyers' firms in Malé suggests that they provide services in relation with trusts established under other jurisdictions' legal system.

103. There are some 1,100 NPOs registered as associations, most of which are dedicated to community development in all (except two) of the inhabited islands of Maldives. As a result of the registration system in place for associations, a certain amount of information is available on the purposes and objectives of registered NPOs, and the identity of their executive committees is available. The authorities are currently reviewing the current legal framework for NPOs in the course of a "scoping exercise", but it is not clear this exercise includes an assessment of the terrorist financing risk in the NPO sector. There is no system in place to promote effective supervision and monitoring of the NPOs.

1.5. Overview of Strategy to Prevent Money Laundering and Terrorist Financing

104. General AML/CFT preventive measures are few and, in the case of the banking sector, very recent. The authorities use various law enforcement provisions and supervision powers to combat (albeit in a limited way) money laundering and terrorist financing.

105. The MMA Financial Intelligence Unit (FIU) acts as the leading national agency for AML/CFT issues, including the drafting of relevant laws and regulations.

AML/CFT Strategies and Priorities

106. Since the late 1990s, the MMA has led the way to establish an AML/CFT regime in the Maldives, notably by attending the APG meetings as observer. In April 2002, the government mandated the MMA to coordinate the Government's effort to establish an AML/CFT regime. The key competent authorities agreed to establish an FIU within the MMA to coordinate the country's AML/CFT efforts.

107. The authorities started drafting AML/CFT legislation in 2004. The AML/CFT bill is in the process of being finalized by the AGO and the MMA for transmission to Parliament. The authorities view passage of this law as a high priority.

108. A national coordination mechanism called the AML/CFT Steering Committee (see R.31 analysis below for more details) was established based on an understanding between the member institutions. The agencies participating in the Committee are currently contemplating a formal MoU. The FIU acts as the leading and coordinating agency. At this time, the member institutions at this time include various law enforcement and investigation institutions, regulatory bodies and the judiciary.

109. It is important to note that the FIU is operational at this point, but does not yet have a clear legal basis.

The Institutional Framework for Combating Money Laundering and Terrorist Financing

110. Several institutions are responsible for various aspects of crime prevention and investigation. Since money laundering and terrorist financing concern different areas and aspects of various

institutions, some of the issues are addressed by those institutions and relevant legislations and those institutions are also expected to have their own AML/CFT-related policies and controls.

Ministry of Finance and Treasury (MFT):

111. Even though the MFT does not play a large role, it is a contributor to the policies and strategies formation through participation in the AML/CFT Steering Committee coordinated by the FIU.

Ministry of Home Affairs (MHA):

112. The MHA is responsible for the regulation and supervision of the non-profit sector of the Maldives and there are specific provisions in the Law on Non-Profit Organizations 2003 (Law No. 1/2003) for supervision and regulation of non-profit organizations in the Maldives.

Ministry of Foreign Affairs (MFA):

113. The MFA is the main contact point for international cooperation and the main depository for the international and regional conventions to which the Maldives is a party.

Ministry of Economic Development (MED):

114. The MED is responsible for laws relating to legal persons. The Registrar of Companies and Co-Operative Societies is situated in the MED and it is also responsible for registration of partnerships and dealers in precious stones and metals.

Ministry of Defence and National Security (MDNS):

115. The Maldives National Defence Force (MNDF) is established within the MDNS. It is responsible for national security issues. Since terrorism relates to national security, the MNDF has a role as far as combating terrorism is concerned. However, its role is largely based on military action.

116. With regard to CFT the MNDF's primary role will be intelligence, by supporting investigations, sharing information, and performing surveillance in coordination with other agencies in order to detect the structure and financial flow of terrorist networks.

Maldives Police Service (MPS):

117. The MPS is the leading investigative and law enforcement agency established pursuant to the Police Act 2008 (Law No. 5/2008). This Act provides various investigative powers including access to information and records maintained by entities in Maldives.

Anti-Corruption Commission (ACC):

118. The ACC is responsible for investigation of corruption offenses under the Prohibition and Prevention of Corruption Act 2000. It was established in 2008 pursuant to the Anti-Corruption Commission Act 2008 (Law No. 13/2008; hereafter: ACC Act). This Act provides various investigative powers including access to information and records maintained by entities in Maldives.

However, prior to the establishment of the ACC, corruption cases were investigated by the Anti-Corruption Board of Maldives (ACB), established by the former Government.

Maldives Customs Service (MCS):

119. The MCS is responsible for administering the Export Import Act 1979. This Act deals with aspects of customs declaration for all the exports and imports.

Department of Immigration and Emigration (DIE):

120. The DIE controls the entry and exit of foreign nationals and issues passports to Maldivian citizens.

Prosecutor General's Office (PGO):

121. The PGO was established in 2008 pursuant to Prosecutor General Act 2008 (Law No. 9/2008). According to Section 15 of the Act, the Prosecutor General is responsible for prosecuting and managing cases involving criminal matters.

Attorney General's Office (AGO):

122. The powers and responsibilities of the AGO are specified in the Article 133 of the Maldives Constitution 2008, with the primary responsibility being providing legal advice to the Government on all legal matters affecting the State. The bills drafted by the State institutions are sent to the AGO for comments and to send them to the Parliament for enactment.

Maldives Monetary Authority (MMA):

123. The MMA is the central bank of the Maldives, established in 1981 by the MMA Act 1981 (hereafter: MMA Act). Chapter II, Section 4 of the Act sets out the principal purposes of the authority to:

- issue currency and regulate the availability and international value of the Maldivian currency (Rf);
- provide advisory services to the Government on banking and monetary matters;
- supervise and regulate banking so as to promote a sound financial structure; and
- promote in the country and outside the country the stability of the Maldivian currency and foster financial conditions conducive to the orderly and balanced economic development of the Maldives.

124. Since its inception on July 1, 1981, the MMA has been operating as part of the Ministry of Finance. Effective April 2007, with the ratification of the second amendment to the MMA Act, the positions of the Finance Minister and the Governor of the MMA were separated. The MMA Board comprises seven members (three executive and four non-executive members) of which one non-executive member represents the Ministry of Finance.

125. The 2010 Banking Act enables the MMA to license and supervise banking business and issue regulations to banks. The MMA is also granted temporary power by the Law for General Regulations over some non-bank financial institutions (NBFIs), including insurance institutions and finance leasing companies.

126. The MMA issues various financial sector regulations on banking, insurance, finance leasing and money changing businesses to achieve its objectives. However, some of the regulations no longer rely on a sound legal basis (See Section 3).

127. As part of supervision, the MMA conducts on-site and off-site supervision over various types of institutions, though some of these are neither authorized nor licensed by the MMA. The Financial Sector Division (FSD) of the MMA is responsible for regulation, supervision and monitoring of the financial sector.

128. The MMA's Credit and Bank Supervision Section (CBSS) is responsible for the supervision of MMA licensed banks. CBSS conducts on-site and off-site supervision of banks on the compliance of bank related regulations issued by the MMA. Since 2008, on-site inspection of banks also includes banks' implementation of the MMA AML Circular. Due to the very recent introduction of the 2010 Banking Act, no supervision has been conducted by the end of 2010 on banks' compliance with the Act.

129. The MMA's Non-Bank Financial Institution Supervision Section (NBFIS) is responsible for supervision of other non-bank financial institutions. NBFIS conducts supervision of other financial institutions (other than banks and foreign exchange dealers), including the insurance sector, credit card companies, MVT services and finance companies licensed by the MMA.

Financial Intelligence Unit (FIU):

130. The FIU is also established within the MMA, albeit without a legal basis.

Capital Market Development Authority (CMDA):

131. A formal mechanism for securities trading was established in 2002 under the supervision of the central bank. The securities market regulator, the CMDA, was established in 2006 under the Maldives Securities Act 2006 (hereafter: Securities Act), and designated to develop and regulate the capital market of the Maldives (which was previously overseen by the MMA).

132. The Maldives Stock Exchange and a Maldives Securities Depository were established in 2008 as demutualized private institutions to provide an organized market for scripless trading of securities. Public awareness of the securities market is relatively low.

133. The CMDA is governed by a Board of Directors composed of seven persons. Members of the Board are appointed by the President on the advice of the cabinet. While the CMDA receives policy directions from the Board of Directors, day to day business is handled by the Chief Executive Officer. The Licensing and Market Regulation Department (LMRD) is one of the CMDA's five departments. It is responsible for issuing licenses pursuant to the Securities Act and the monitoring and regulation of the licensees. The CMDA conducts on-site and off-site supervision of licensees, and gives

directions to the Stock Exchange Company on matters relating to the operation of the securities market.

134. The CMDA is currently undertaking extensive public awareness programs about the securities market with a view to increase public involvement in capital market. The CMDA became a member of the International Organization of Securities Commissions (IOSCO) in June 2010.

DNFBPs and other Organizations and Professional Bodies

135. Since DNFBPs are not subject to AML/CFT measures, there are no organizations or professionals in charge of AML/CFT supervision. The MED maintains registries for companies registered under the Companies Act 1996, partnerships registered under the Partnerships Act 1996, co-operative societies registered under the Co-Operative Societies Act 2008 and foreign investments registered under the Foreign Investment Act. The MHA maintains the registry for non-profit organizations registered under the Associations Act 2003.

NPOs

136. Non-profit organizations (NPOs) are subject to registration requirements under the Associations Act 2003 and the NPO Regulation. Section 2 makes it illegal to establish or operate an NPO without it being properly registered with the Registrar of Association according to the provisions of this Act and the Regulation. According to the NPOs Regulation, the following information and documents must be submitted to the Registrar of Associations:

- Copies of the founding members wishing to register an NPO;
- Specify the motto the association intends to use;
- No objection statement from the person who owns the place where the office of the association is intended to be located;
- Details of logo and other marks the association intends to use;
- Criminal history (in the manner specified by the Registrar) of the founding members;
- Two copies of the governing rules of the association.

137. The MHA is the regulatory body for NPOs and since there are no tax laws in Maldives, NPOs are not required to pay taxes. Section 17 allows NPOs to collect contribution from association members according to their own Memorandums of Association or internal regulations properly constituted and approved by the Registrar. NPOs are allowed to conduct a business activity once approved by the Registrar, but they are required to provide statements of accounts to the Registrar. An NPO may collect funds from a person or body outside the jurisdiction once approved by the MHA. If an NPO intends to obtain foreign aid, information on the purpose of obtaining the aid and the person or body providing the aid should be sent to the MHA. Further, NPOs are not allowed to be used as a facade to commit any criminal activity (Section 25) which may result in cancellation of its registration if it contravenes this provision (Sections 32 and 33). In addition, those who contravene

Section 25 may also be personally liable. As of July 2010, there are a little over 1,100 associations registered as NPOs in the Maldives.

Approach Concerning Risk

138. The Maldives has not adopted a risk-based approach to AML/CFT.

Progress since the Last IMF/WB Assessment or Mutual Evaluation

139. This is the Maldives' first AML/CFT assessment.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1. Description and Analysis³⁴

Legal Framework:

140. The only provision in Maldivian law that criminalizes money laundering is Section 6 of the Narcotic Drugs and Psychotropic Substances Act (Law No. 17/77) of 1977 (hereafter: Drugs Act), which is limited to the laundering of proceeds obtained through offenses listed in the Drugs Act. The laundering of proceeds from other types of predicate offenses is not criminalized in the Maldives. No charges have ever been laid based on Section 6 of the Drugs Act.

141. A draft AML/CFT law has been initiated several years ago and is in the process of being finalized by the AGO and the MMA for transmission to Parliament. The draft law includes a money laundering offense applicable to a broader spectrum of predicate crimes.

Criminalization of Money Laundering (c. 1.1—Physical and Material Elements of the Offense):

142. The FATF Standard requires countries to criminalize money laundering in line with Article 3(1)(b) and (c) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and Article 6(1) of the 2000 United Nations Convention against Transnational Organized Crime (the Palermo Convention). Both provisions require countries to establish as a criminal offense the following intentional acts (material elements): the conversion or transfer of proceeds; the concealment or disguise of the true nature, source, location, disposition, movement or ownership of, or rights with respect to proceeds; and, subject to the fundamental or constitutional principles and basic concepts of the country's legal system (Article 2(1) of the Vienna Convention and Article 6(1) of the Palermo Convention), the acquisition, possession or use of criminal proceeds (Article 3(1)(b)(i)–(ii) of the Vienna Convention and Article 6(1)(a)(i)–(ii) of the Palermo Convention). They furthermore require participation in, association with or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating and counseling the commission of any of the foregoing to be included in the offence (Article 6(1)(b)(iii) of the Palermo Convention).

143. Section 6 (*Offense(s) appertaining to money and property acquired through the commission of an offense*) of the Drugs Act reads as follows:

“(a) Whilst knowing that a property or money was obtained through the commission of an offense stated in this Law, or received as a consequence of the commission of such an offense, or whilst having plausible reasons to believe that such material was obtained or received through the commission of such an offense, it is an offense to receive, keep in

³⁴ For all recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

possession, or use such a property or money. (b) With the intention of concealing that an asset is the proceeds of the commission of an offense stated in this Law, or with the intention of concealing that the asset is the proceeds of an unlawful act, or with the intention of assisting a person who had participated in the [commission of such] offense avoid rightful penalty, it is an offense to carry out any acts to confuse the origin of any item or property or money that has been obtained through the commission of [such] offense, or to assist in altering in any way the ownership of the same or in changing the ownership of the same. (c) The penalty for a person who has committed an offense stated in (a) and (b) of this Article is the imposition of a fine between 100,000/- Rufiyaa and 1,000,000/- Rufiyaa or remand in jail for a term between 10 and 15 years, or the imposition of a fine between 100,000 / - Rufiyaa and 1,000,000/- Rufiyaa with remand in jail or banishment for a term between 10 and 15 years. (d) If the party that committed the offense[s] stated in (a) and (b) of this Article is a Company, the dissolution of the Company with the imposition of the fine stated in (c) of this Article.”

144. In the paragraphs below Sections 6(a) and (b) of the Drugs Act are analyzed using the various requirements of Vienna and Palermo (the Conventions) cited above.

145. The criminalization of “conversion” of criminal property, called for by the Conventions, is not covered in Maldivian law. “[T]ransfer” can be understood to be covered only in part by “altering [...] the ownership” or “changing the ownership,” since property can be transferred in ways other than a change of ownership. Property derived from “an act of participation in such offense or offenses” is not covered either. Section 6(b) requires proof of intent (“intention of concealing” and “intention of assisting”).

146. With regard to the requirement in Vienna and Palermo to criminalize “concealment or disguise” of the “true nature, source, location, disposition, movement, rights with respect to, or ownership of property” the Drugs Act appears to cover “source” (by the words “confus[ing] the origin”) and “ownership” (by the words “altering in any way the ownership” and “changing the ownership”). The Act does not include any of the other Convention requirements, namely the criminalization of the concealment or disguise of the true nature, location, disposition, movement, or rights with respect to proceeds. Contrary to the Conventions, the Drugs Act does not require proof of knowledge that the concealed or disguised property is criminal property. Finally, Maldivian law does require proof of intent in relation to concealment or disguise whereas the Conventions do not require this.

147. The “acquisition, possession or use of property” called for under the Conventions is covered in the Act by the words “receive, keep in possession, or use such a property or money.” Going beyond the requirement of the Conventions, the Drugs Act does not require knowledge or plausible reasons to believe that the property is criminal “at the time of receipt.” Given this broad language, Section 6(a) could in theory be also be used to prosecute “conversion or transfer” or “concealment or disguise” of criminal property in case the defendant has physically possessed or used the property.

The Laundered Property (c. 1.2):

148. Section 6 of the Drugs Act refers to “property or money,” “material,” and “asset.” The exact meaning of these terms is not defined in the law, nor have they been defined through case law. The

authorities maintain that Section 6 is very broad and applies to all types of assets, regardless of their value.

149. Section 6 applies to all property “obtained through the commission of an offense, or received as a consequence of the commission of an offense” this implies that both property “directly or indirectly” representing the proceeds of crime is covered.

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

150. According to the authorities, a conviction for the predicate offense under Section 2³⁵ or Section 4³⁶ of the Drugs Act would be necessary to obtain a conviction for money laundering under Section 6. The PGO indicated that it has never prosecuted conduct under Section 6.

The Scope of the Predicate Offenses (c. 1.3):

151. The only predicate offense for money laundering under Maldivian law is “trafficking in narcotic drugs and psychotropic substances” as criminalized in the Drugs Act.

152. As mentioned in Section 1 of this report, Islam is one of the sources of law and the courts may consider Shari’ah when passing judgment. In addition, Parliament has passed a number of criminal laws. The courts refer to the written laws when available, and when there are no written laws that can be applied, they look to Shari’ah. All of the FATF-designated categories of offenses are covered, either by written law or Shari’ah. However, in some instances, Shari’ah lacks the level of specificity required by international conventions and standards. In practice, the courts do not have much experience with the majority of these offenses.

Table 7: List of Designated Categories of Offenses

Category of offense	Criminalized?	Relevant provisions	Money laundering offense?
Participation in an organized criminal group and racketeering	Yes	Section 2, 23 Law on Prohibition of Gang Related Crimes (Law No. 18/2010) ³⁷	No

³⁵ “Offense(s) of production and dissemination of prohibited psychotropic substances, and offense(s) of trading in the same.”

³⁶ “Offense(s) of using and keeping in possession for use.”

³⁷ Including Al-Maeda verses 2 and 33 and Al-Baqara verse 188.

Terrorism, including terrorist financing	Yes	Sections 2, 3 Terrorism Act ³⁸	No
Trafficking in human beings and migrant smuggling	Yes	An-Nour verse 33 and Al-Isra verse 70	No
Sexual exploitation, including sexual exploitation of children	Yes	Section 8 Child Sex Offenders (Special Procedures) Act (Law No. 12/2009) ³⁹	No
Illicit trafficking in narcotic drugs and psychotropic substances	Yes	Sections 2 – 4 Drugs Act ⁴⁰	Yes, Section 6 Drugs Act
Illicit arms trafficking	Yes	Section 10 Prohibition of Gang Related Offenses Act (Law No. 18/2010) Section 4 Law on Prohibition of Issuance of Threats and Possession of Dangerous and Sharp Weapons (Law No. 17/2010) Section 2 Law on Items Prohibited to Import into the Maldives (Law No. 4/75) ⁴¹	No
Illicit trafficking in stolen and other goods	Yes	Al-Maeda verse 38	No
Corruption and bribery	Yes	Sections 1 – 6 Prevention and Prohibition of Corruption Act (Act No. 2/2000) ⁴²	No
Fraud	Yes	Sections 79 and 121(c) PC ⁴³	No
Counterfeiting currency	Yes	Sections 90 – 96 PC ⁴⁴	No
Counterfeiting and piracy of products	Yes	Sections 1(a), 3 and 9 Law Governing Copyrights and Other Relevant Rights (Law No. 23/2010) ⁴⁵	No
Environmental crimes	Yes	Sections 7, 8, 9 Environmental Protection and Preservation Act of Maldives	No

³⁸ Including Al-Maeda verses 2 and 33.

³⁹ Including Al-Maeda verse 87 and Al-Isra verse 32.

⁴⁰ Including Al-Maeda verse 90 and Al-Araf verse 157.

⁴¹ Including An-Nisa verse 59 and Al-Maeda verse 2.

⁴² Including Al-Baqara verses 11 and 12 and Al-Anfal verse 27.

⁴³ Including Ash-Shura verse 42.

⁴⁴ Considered as an assault on currency protected by Shari'ah and considered one of the five necessities.

⁴⁵ Including Al-Maeda verse 87 and At-Tawba verse 188.

		(Act No. 4/1993) Sections 6, 10 Fisheries Act of Maldives 1987 ⁴⁶	
Murder, grievous bodily injury	Yes	Sections 88(d), 128, 129, 130 PC ⁴⁷	No
Kidnapping, illegal restraint and hostage taking	Yes	Section 2(b) Terrorism Act ⁴⁸	No
Robbery or theft	Yes	Sections 131, 132 PC ⁴⁹	No
Smuggling	Yes	Section 13(b), (c) Export Import Act 1979 ⁵⁰	No
Extortion	Yes	Sections 131, 132 PC ⁵¹	No
Forgery	Yes	Sections 97 – 100 PC ⁵²	No
Piracy	Yes	Al-Maeda verse 23	No
Insider trading and market manipulation	Yes	Sections 54 and 58 Maldives Securities Act (Act No. 02/2006) ⁵³	No

Threshold Approach for Predicate Offenses (c. 1.4):

153. Not applicable. The Maldives uses neither a threshold approach nor a combined approach including a threshold approach.

Extraterritorially Committed Predicate Offenses (c. 1.5):

154. Section 17 of the Drugs Act states that “[e]ven if the commission of an offense stated in this Law occurred outside the Maldives, this Law shall be enforced on a person who committed such an offense.” Since Section 17 does not require that the offense also be criminalized abroad, even drug offenses committed in a foreign country which are not criminalized in that foreign jurisdiction are punishable predicate offenses under Maldivian law.

Laundering One’s Own Illicit Funds (c. 1.6):

155. Neither the wording of Section 6 of the Drugs Act, nor any fundamental principles of Maldivian law prevent the application of Section 6 to self-laundering. The authorities confirm that, in their view, Section 6 criminalizes self-laundering. At the same time, however, the authorities did not seem familiar with the concept and stated that they would prosecute the main offense, not the laundering activities. Since money laundering charges have never been brought before a Maldivian

⁴⁶ Including Al-Araf verse 56.

⁴⁷ Including Al-Isra verse 33, An-Nisa verse 93, and Al-Maeda verse 2.

⁴⁸ Including Al-Maeda verses 33 and 87.

⁴⁹ Including Al-Maeda verse 38.

⁵⁰ Including An-Nisa verse 59 and Al-Maeda verse 2.

⁵¹ Including Al-Maeda verse 87.

⁵² Based on Allah’s saying “So shun the filth of idols, and shun lying speech.”

⁵³ Including Al-Baqara verse 188.

court, there has never been a conviction for money laundering in the Maldives, *a fortiori* not for self-laundering.

Ancillary Offenses (c. 1.7):

156. Both the Vienna and Palermo Conventions require that countries set out a wide range of ancillary offense for money laundering, including “an act of participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling.” Under Maldivian law, however, only “aiding and abetting” is covered in the Act through the words “assist(ing).”

157. Association or conspiracy to commit, facilitating and counseling the money laundering offense are not criminalized.

158. According to the authorities, it is not clear whether the general provisions of the PC criminalizing ancillary activities⁵⁴ would be of use in a money laundering case. One interpretation is that their application is limited to those offenses listed in the PC, another interpretation is that they also apply to other offenses, but this has not been tested before the courts and there is therefore no case law on the topic.

Additional Element—If an act overseas which does not constitute an offense overseas, but would be a predicate offense if occurred domestically, lead to an offense of money laundering (c. 1.8):

159. See also the discussion under criterion 1.5 (above): Section 17 of the Drugs Act, quoted in full above, does not require that the offense be criminalized in the foreign country in which it occurred. Hence, laundering the proceeds of drug related offenses in the Maldives, if they occurred abroad, is punishable under Maldivian law.

Liability of Natural Persons (c. 2.1):

160. Section 6 of the Drugs Act applies to any person who knowingly or negligently (“having plausible reasons to believe”) engage in money laundering. Section 28(d) PC reads “[t]his definition shall also refer to clubs, companies, organizations and similar associations.”

The Mental Element of the Money Laundering Offense (c. 2.2):

161. According to the PGO, intent can only be inferred from objective factual circumstances under very limited circumstances. The current practice is that of Shari’ah evidence – an offense can only be proven by: (i) a confession before the judge; or (ii) a deposition by two eyewitnesses to the act. Judges will not even take into account the fact that a suspect has confessed to the MPS. The authorities did indicate, however, that the testimony of one single eyewitness can be corroborated with strong scientific or documentary evidence. This makes it rather difficult to conduct successful prosecutions since neither situation is likely to occur very often. If the judge decides that there was

⁵⁴ Sections 12, 13 and 14 PC.

intent in case of eyewitness testimony, perhaps corroborated with strong documentary evidence, then at least in that case Maldivian law appears to allow inference from objective factual circumstances.

Liability of Legal Persons (c. 2.3):

162. The money laundering offense of Section 6 of the Drugs Act applies to a “person.” The Drugs Act does not define “person,” but Section 6 provides sanctions for money laundering applicable to “companies” which suggests that both natural and companies may be held criminally liable of money laundering. However, criminal liability is not available for other forms of legal entity.

Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings and c. 2.4):

163. In the authorities’ view, nothing precludes the initiation of parallel civil or administrative proceedings for legal persons in cases where criminal proceedings have also been initiated. However, according to the PGO the concurrence of a criminal sanction and an administrative fine for the same facts could be problematic in practice. If a company’s directors engage in criminal activity, the PGO held that the corporate veil would be pierced and this would allow them to be held liable severally and individually. This has never been tested in court.

Sanctions for Money Laundering (c. 2.5):

164. The penalties for money laundering are set out in Section 6(c) and (d) of the Drugs Act for natural persons and companies, respectively:

- For natural persons (see (c)) the punishment is either a fine between Rf 100,000 and 1,000,000 (approximately between US\$7,800 and 78,000) or a jail term between 10 and 15 years, or an identical fine in combination with either jail or banishment for a period between 10 and 15 years. Banishment means that a person is sent to another island in the Maldives for a certain period of time.
- For companies, the sanctions are the aforementioned fine and the dissolution of the company.

165. These sanctions appear to be proportionate and dissuasive, and in line with other sanctions for other comparable offenses, e.g. Section 131 PC (theft, misappropriation, criminal breach of trust, cheating and extortion) the punishment is imprisonment or banishment for a period between six months and one year for the first offense, two years for the second offense, three years for the third offense, etc. The prison terms and fines are comparable to those in neighboring countries. In practice, no penalties have ever been imposed for money laundering because no money laundering charges have ever been brought. The lack of available sanctions for legal persons beyond companies is a shortcoming considering that, under the standard, all legal persons should be subject to criminal liability.

166. No civil or administrative sanctions are available for Section 6 money laundering.

Statistics (R.32):

167. No money laundering prosecutions have been initiated and consequently no convictions were obtained.

168. For more information regarding illicit narcotics in the Maldives, please see Section 1 above. Table 8 below provides an overview of the total number of drug cases that were recorded by the MPS in 2007, 2008, and 2009. This is then broken down into four separate tables: one for drug trafficking cases (Table 9); one for drug distribution cases (Table 10); one for drug possession cases (Table 11); and finally a table for drug use cases (Table 12). Table 13 shows the breakdown per drug offense for each year in percent. The number of drug cases as a percentage of total logged offenses has gradually decreased between 2008 and 2010 from 14.05%, over 12.28%, to 9.52%.⁵⁵ No information was provided regarding the value involved in these logged drug cases. No statistics were provided regarding the value of seized drugs.

Table 8: Number of persons detained and cases logged for all drug offenses between 2007 and 2009.

	Juveniles	Adults	Foreign Nationals	Total No. of Persons Detained	Illicit Drug Cases Logged
2007	75	1493	7	1575	2706
2008	123	2345	45	2513	4528
2009	96	1285	18	1381	3432

Table 9: Number of persons detained and cases logged for drug trafficking between 2007 and 2009.

	Maldivians	Foreign Nationals	Total No. of Persons Detained for Trafficking	No. of Cases Logged for Trafficking
2007	1	0	1	1
2008	11	20	31	8
2009	3	3	6	10

Table 10: Number of persons detained and cases logged for drug distribution between 2007 and 2009.

	Juveniles	Adults	Foreign Nationals	Total No. of Persons Detained for Distribution	No. of Cases Logged for Drug Distribution
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⁵⁵ Maldives Police Service Annual Report 2010, p. 2. Calculation of the percentage of logged drug cases out of the total number of offenses for each year.

2007	7	63	0	70	106
2008	7	51	1	59	62
2009	0	23	4	27	66

Table 11: Number of persons detained and cases logged for drug possession between 2007 and 2009.

	Juveniles	Adults	Foreign Nationals	Total No. of Persons Detained for Possession	No. of Cases Logged for Possession
2007	17	514	2	297	450
2008	32	568	7	607	1538
2009	53	278	6	573	1836

Table 12: Number of persons detained and cases logged for drug use between 2007 and 2009.

	Juveniles	Adults	Foreign Nationals	Total No. of Persons Detained for Use	Illicit Drug Cases Logged for Use
2007	51	1151	5	1207	2150
2008	81	1707	17	1805	2904
2009	43	723	3	769	1442

Table 13: Percentage of cases logged for each drug offense between 2007 and 2009.

	Drug use	Drug possession	Drug distribution	Drug trafficking
2007	79.5%	16.6%	3.9%	0.03%
2008	64%	34%	1.4%	0.2%
2009	42%	53.5%	2%	0.3%

Effectiveness:

169. In light of the number of arrests for drug offenses, the fact that money laundering has never been investigated and that no one was brought before the courts under money laundering charges is a major shortcoming of the current Maldivian framework. Various factors explain why the money laundering offense has never been used: the authorities' exclusive focus on obtaining a conviction for the predicate offense, the lack of clarity with respect to the amount of evidence that may lead to convictions (regardless of the type of crime prosecuted) and the resulting difficulties to prove the offenses, and a lack of experience with the financial crime among investigators, prosecutors, and judges. The implementation of the money laundering provision that currently exists in the Drugs Act could be improved by providing training to the MPS, the PGO, and the judiciary with regard to the nature and application of Section 6.

170. The absence of legislation criminalizing the laundering of the proceeds of other types of crimes is a major shortcoming in the Maldivian AML/CFT framework. This lack of criminalization means that the authorities cannot investigate, prosecute and sanction the laundering of the proceeds of any other FATF-designated category of offenses committed in the Maldives, and limits the ability to cooperate with other jurisdictions when the offenses were committed abroad (in particular considering the lack of clarity with respect to dual criminality requirements). It is therefore imperative that all categories of serious offenses other than drug-related offenses be criminalized as predicates to the money laundering offense. This will require implementing a broad-ranging money laundering offense in their draft AML/CFT law.

171. Money laundering could be a useful tool to fight crime in the Maldives, first and foremost drug-related crimes, but also theft, corruption, and fraud.

172. Finally, improvements of other elements of the general criminal legislative framework, notably with regard to evidence, criminal procedure, and general penal law are essential to ensure the effective application of future money laundering legislation. Without improvements in these areas the effectiveness and utility of the AML/CFT framework will be severely reduced.

173. The draft AML/CFT law defines “predicate offence” as “any offence, including an offence committed abroad.” It defines “proceeds of crime” as “any funds or property derived from or obtained, directly or indirectly, within our outside Maldives, from any offence under the laws of Maldives. Proceeds of crime shall include substitute assets and investment yields.” It would also explicitly permit inference of intent from objective factual circumstances and self-laundering. This approach to the criminalization of money laundering, if it becomes law, would be in line with the standard.

2.1.2. Recommendations and Comments

174. In order to comply with Recommendation 1, the authorities are recommended to:

- Ensure that the predicate offenses for money laundering cover all serious offenses and not only offenses under the Drugs Act.
- Comprehensively criminalize money laundering in keeping with the international standards. Bring the money laundering offense of the Drugs Act in line with Vienna and Palermo by criminalizing the “conversion” of criminal property, and the concealment or disguise of the true nature, location, disposition, movement, or rights with respect to property. Remove the requirement that intent be proven in relation to concealment or disguise.
- Ensure money laundering charges may also be brought in the absence of a conviction for the predicate offense.
- Ensure that in all instances the criminalization of the categories of offenses is in line with the relevant international conventions and standards.
- Ensure that the ancillary offenses to money laundering, including conspiracy to commit and aiding and abetting, are criminalized.

- Show effective use of the money laundering provisions.
175. In order to comply with Recommendation 2, the authorities are recommended to:
- Allow for the intentional element of the offense of money laundering to be inferred from objective factual circumstances other than eyewitnesses, perhaps corroborated by strong documentary evidence.
 - Extend criminal liability for money laundering offenses to legal persons other than companies.
 - Ensure effective and proportionate sanctions are available for legal persons beyond companies.

2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating ⁵⁶
R.1	NC	<ul style="list-style-type: none"> • Money laundering is only criminalized in relation to offenses under the Drugs Act; none of the other designated categories of offenses are predicate offenses to money laundering. • Money laundering is not comprehensively criminalized in keeping with the international standards. The money laundering offense under the Drugs Act does not extend to “conversion” of criminal property, and the concealment or disguise of the true nature, location, disposition, movement, or rights with respect to property. The Maldives requires proof of intent in relation to concealment or disguise. • A money laundering conviction can only be obtained if there is a conviction for the predicate offense. • Ancillary offenses to money laundering have not all been criminalized. • Effectiveness of the money laundering offense is not established.
R.2	NC	<ul style="list-style-type: none"> • The intentional element of the offense of money laundering cannot be inferred from objective factual circumstances, apart from instances where there are eyewitnesses, perhaps corroborated with strong documentary evidence. • No criminal liability for legal persons other than companies. • No effective and proportionate sanctions for legal persons other than

⁵⁶ These factors are only required to be set out when the rating is less than Compliant.

		companies.
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2.2. Criminalization of Terrorist Financing (SR.II)

2.2.1. Description and Analysis

Legal Framework:

176. In December 1990 the Maldives enacted the Prevention of Terrorism Act (Act No. 10/1990; hereafter: Terrorism Act). The law consists of six sections. Section 3 criminalizes the aiding and abetting. It is copied in the paragraph below:

177. Section 3 (*Aiding, Abetting and Planning*): “The aid[ing] or abet[ting] of any form, *through finance or property*, or planning of any act as stipulated under Section 2 shall be construed as an act of terrorism itself” (emphasis added).

Criminalization of Terrorist Financing (c. II.1):

178. Article 2 of the International Convention for the Suppression of the Financing of Terrorism of 1999 (hereafter the ICSFT) requires that the terrorist financing offense extends to any person who willfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part to carry out a terrorist act(s). Special Recommendation II goes further than the ICSFT and requires that countries also criminalize the provision and collection of funds with the intention that they are to be used by a terrorist organization or by an individual terrorist.

179. There is no separate and autonomous offence of terrorist financing in the Maldives. Section 3 criminalizes the “aid[ing] or abet[ting] of any form, through finance or property, or planning of any act.”

180. It is worth mentioning from the outset that the provisions of aiding and abetting through finance or property as spelled out by the Terrorism Act have never been applied, and that the authorities were not able to provide much detail regarding the meaning and scope of the various terms contained in Section 3.

181. The “provision and collection” and are not specifically mentioned in the text, but the wording appears broad enough to include them. The authorities seemed to believe that “provision” is covered, but were unable to conclusively establish this in the absence of case law. However, as far as the “collection” of finance and property is concerned, their view was that this would probably not be covered.

182. The authorities advised that a better translation of the expression “of any form” in Section 3 would be “in any manner”, which appears to be in line with the requirement of the standard that “by any means” be covered.

183. “Directly or indirectly” would also appear to be covered by “in any manner.”

184. As far as the requirement of “unlawful intention” is concerned, the Terrorism Act is mute.

185. Section 3 does not make clear whether the finance or property must be used “in full” or whether using it “in part” would suffice to constitute an offense.

186. “Terrorist act(s)” under the Standard refers to the offences listed in the nine conventions and protocols in the annex to the Terrorist Financing Convention and “any other act when its purpose is to intimidate a population, or to compel a Government or international organization to do or to abstain from doing any act (the generic offenses).”

187. Section 2 (*Offence of Terrorism*) of the Maldivian Terrorism Act criminalizes seven terrorist acts: “The acts/activities mentioned hereto shall be construed as acts of terrorism: (a) The act of killing or causing any bodily harm or intent to carry out such actions to person(s) with the intention of creating fear or terror with a political motive. (b) The act or the intention of kidnapping or abduction of person(s) or of taking hostage(s). (c) The act or the intention of hijacking of any vessel or vehicle. (d) The unauthorized import of any explosive substance, ammunition or fire arms into the country, the production of such substance or equipment, the use, storage, sale or interchange of such substance or equipment in the Maldives. (e) The use or intent of use of any explosive substance, ammunition or fire arms or any form of weaponry so as to cause harm or damage to person(s) or property. (f) The act of or intent of arson, so as to cause harm or damage to person(s) or property. (g) The use of terror tactics, force or making threats to cause harm or damage to person(s) or property orally or in writing or other means to create fear amongst the community.”

188. As far as the nine anti-terrorism instruments concerned, the Maldives has ratified five⁵⁷ but has not established that it has criminalized all the relevant the activities covered by these treaties.

189. Section 2(b) of the Terrorism Act covers in part what is criminalized in the International Convention against the Taking of Hostages. It does not cover the attempt to take hostages, or complicity in hostage taking.

190. Section 2(c) of the Terrorism Act covers in part what is criminalized in the Convention for the Suppression of Unlawful Seizure of Aircraft. It does not cover the attempt to hijack, nor does it cover complicity.

⁵⁷ Namely the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), and the International Convention for the Suppression of Terrorist Bombings (1997). The Maldives has not, however, ratified the International Convention against the Taking of Hostages (1979), the Convention on the Physical Protection of Nuclear Material (1980), the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988).

191. Sections 2(e) and (f) of the Terrorism Act covers in part the International Convention for the Suppression of Terrorist Bombings. It does not cover the attempt, participation, organization, or contribution to the commission of offenses of the Convention.

192. Sections 2(a) and (g) criminalize acts that are carried out to “creat[e] fear or terror or with a political motive” and “to create fear amongst the community,” which could potentially address the notion of “intimidating a population,” as required under the Standard. The scope of the term “political motive” is not clear though. It could be understood to concern compelling a Government to act, or abstain from acting. As this has never been tested in court the authorities were not certain and did not provide evidence that “compelling a Government to act” is included. No reference is made to “international organization.”

193. As the offense of aiding and abetting through finance or property only refers to the terrorist *acts* of Section 2, the aiding and abetting of terrorist organizations and individual terrorists is not criminalized.

194. Section 3 addresses “finance and property” and, according to the authorities, “property” has a very broad meaning, but were unable to confirm that all of the elements of “funds” as defined by the standard would be included, for example, “legal documents and instruments in any form, including electronic and digital.”

195. As far as from a “legitimate or illegitimate” source is concerned, Section 3 does not distinguish between the source of the “finance and property.”

196. The authorities could not say whether an actual use of the finance and property would be required in order to obtain a conviction. They do believe, however, that it would have to be linked to a specific terrorist act. A link would therefore have to be established between the finance or property and a specific terrorist act for charges to be successfully brought under Section 3.

197. There is no provision in the Terrorism Act that explicitly criminalizes the attempt to provide finance or property.

198. Ancillary offenses to the offense under Section 3 are not criminalized.

Predicate Offense for Money Laundering (c. II.2):

199. Terrorist financing is not a predicate offense for money laundering.

Jurisdiction for Terrorist Financing Offense (c. II.3):

200. There is no explanation of the reach of the Terrorism Act in the Act itself, and the reach of the relevant general provisions under the PC is uncertain because, as explained by the authorities, a court has yet to decide whether these only apply to offenses listed in the PC itself, or whether they also apply outside of the PC.

The Mental Element of the Terrorist Financing Offense (applying c. 2.2 in R.2):

201. According to the authorities, in the absence of a confession before the judge, an offense can only be proven if there are two eyewitnesses to the same act or one eyewitness whose testimony is corroborated by strong documentary or scientific evidence. The intentional element of the provision of funds and property to aid and abet terrorist acts may therefore not be inferred from other objective factual circumstances.

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

202. Section 4 of the Terrorism Act provides for a sanction for legal persons as follows: “The aid[ing] or abet[ting] of any form, through finance or property, or planning of a terrorist act stipulated under this Act by an organization⁵⁸ registered with the Government and operating in the country, shall be caused [sic] for its registration to be terminated.” This means that, as far as legal persons are concerned, only entities registered in and operating in the Maldives can be held liable. Entities not registered with the Maldivian Government and not operating in the country are excluded.

203. The authorities explained that they would be willing to prosecute legal persons but have not yet had the opportunity to do so in practice.

Sanctions for Terrorist Financing (applying c. 2.5 in R.2):

204. Pursuant to Section 6(a), persons guilty of abetting a lethal terrorist act will be sentenced to between 10 and 15 years imprisonment or banishment.

205. Those found According to Section 6(b), those guilty of abetting a terrorist act without loss of life will be sentenced to between 3 and 7 years of imprisonment or banishment. Regardless of the prison terms under 6(a) or (b), the judge may always sentence the person to imprisonment with hard labor.

206. If entities registered with the Government and operating in the Maldives are guilty of terrorist financing their registration will be terminated, according to Section 4.

207. The sanctions for aiding and abetting for natural persons are effective, proportionate, and dissuasive compared to other countries in the region.

208. Very limited sanctions are available, and only for a very narrow range of legal persons, namely those “organization[s]⁵⁹ registered with the Government and operating in the country.” For these entities the only option the authorities have is termination of registration. This may be appropriate, but it should be supplemented with other measures, for example, the ability to impose a fine, and civil or administrative sanctions.

⁵⁸ The authorities advised the assessment team that, to reflect the original Divehi version of the law, the word “organization” in this text should be read as “entity.”

⁵⁹ The authorities advised the assessment team that the word “organization” in this text should be read as “entity.”

209. In practice, none of the above sanctions have ever been applied because there have never been any prosecutions under Section 3.

210. No civil or administrative sanctions are available.

Statistics (R.32):

211. To date, no charges have ever been brought.

Effectiveness:

212. There has never been a terrorist financing case before the Maldivian courts, making the practical application of the concepts of the Terrorism Law, and their conformity with this Special Recommendation, very difficult. The authorities confirmed that there have been investigations into terrorist acts, some of which even resulted in convictions (e.g. the Sultan Park bombing), but that these investigations did not specifically cover the financial aspect of these acts.

213. The authorities are, however, aware that there is a certain flow of money which finances travel expenses and sustenance for families of those who travel abroad to engage in terrorist acts.

2.2.2. Recommendations and Comments

214. In order to comply with SR.II, the authorities are recommended to:

- Criminalize the offense of terrorist financing separately and autonomously in keeping with SR.II, instead of relying on the ancillary offense of aiding and abetting; and in doing so to ensure the following elements are all taken into account:
 - Ensure that the collection of funds for terrorist purposes is criminalized.
 - Ensure that the use in full or in part of funds for terrorist financing purposes is criminalized.
 - Ensure that all acts in the nine anti-terrorism instruments are criminalized.
 - Ensure that the terrorist financing offense applies to terrorist acts meant to compel governments and international organizations to act, or to abstain from acting.
 - Criminalize financing of individual terrorists and terrorist organizations.
 - Ensure that “finance and property” includes all the elements of the definition of “funds” as used in the ICSFT.
 - Ensure that it is not necessary to have to prove an actual use of the funds or a link to a specific terrorist act.
 - Criminalize the attempt to commit a terrorist financing offense.

- Make terrorist financing offenses predicate offenses for money laundering.
- Make sure that the terrorist financing offense applies to persons abroad who finance terrorist acts in the Maldives.
- Permit the inference of the intentional element of the offense from objective factual circumstances.
- For legal entities, allow for sanctions other than deregistration, e.g. fines, ensuring that they are effective, proportionate and dissuasive, and make them applicable also to those entities not registered in the Maldives.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> • No separate, autonomous terrorist financing offense; only partially criminalized by the aiding and abetting provision. • The collection of funds for terrorist purposes has not been criminalized. • No evidence that the use “in full or in part” is covered. • No evidence was provided to show that all the acts in the nine anti-terrorism instruments have been criminalized. • No evidence was provided showing the financing of terrorist acts meant to compel governments or international organizations is criminalized. • The financing of individual terrorists and of terrorist organizations is not criminalized. • The definition of “finance and property” is not clear enough to ascertain that all of the elements of the definition of “funds” in the ICSFT are included. • A link to a specific terrorist must be established in order to successfully bring charges under Section 3. • The attempt to commit the offense under Section 3 is not criminalized. • Terrorist financing offenses are not predicate offenses for money laundering. • It is not possible to prosecute persons abroad who are alleged to have engaged in terrorist financing for acts committed or intended to be committed in the Maldives.

		<ul style="list-style-type: none"> • It is not possible to infer the intentional element from objective factual circumstances. • Very limited sanctions for legal persons are only applicable to those registered with the Government and active in the Maldives.
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2.3. Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

215. There are provisions in several different laws of Maldives that can be used for confiscation, freezing and seizing of proceeds and instrumentalities of certain types of crimes. These provisions are the:

- Section 10 of the Drugs Act (for proceeds of drug related offenses);
- Section 24 of the Prevention and Prohibition of Corruption Act 2000 (for proceeds of corruption related offenses);
- Section 144, Chapter IV of the PC (for proceeds of theft, criminal breach of trust, cheating or extortion against the Government);
- Section 14 of the Prevention of Gang Related Crimes Act (for proceeds obtained through gang related activities);
- Section 14(a) of the Export Import Act 1979 (for proceeds of export/import fraud);
- Sections 11, 12 and 13-1 of the Fisheries Act of Maldives 1987 (for illegal fishing offenses).

216. There are no provisions that enable the authorities to seize, freeze or confiscate assets linked to other types of crime.

2.3.1. Description and Analysis

Confiscation of Property related to Money Laundering, Terrorist Financing or other predicate offenses including property of corresponding value (c. 3.1):

217. Section 10 (*Money, property and materials acquired via the commission of an offense*) of the Drugs Act sets out:

“(a) The psychotropic substances used in the commission of an offense stated in this Law, and utensils [used for the same], and the money, property and materials obtained by the action of [committing] the offense shall be impounded.”

218. The Prosecutor General indicated that, in line with case law,⁶⁰ the word ‘impounded’ in 10(a) should be interpreted to mean “to deprive permanently.” The authorities indicated that the confiscation provision of Section 10(a) is predicated upon a conviction for the underlying offense under the Drugs Act. In practice, confiscation was only sought post-conviction.

219. The Standard defines “property” widely as “assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.”

220. The text of the law covers proceeds (“money, property and materials obtained”). Instrumentalities too are included, but are explicitly limited to those that were actually used (“utensils [used for the same]”), to the exclusion of those instrumentalities “intended for use.”

221. While the Prosecutor General said he considered that “property” would be widely defined, when presented with a scenario where the proceeds of crime were funneled into a house and rent was subsequently earned from that property, he said that he would probably not pursue that rent being earned, thus suggesting that “property” would, in practice, be defined in a narrow way. The property seized in a court case, a copy of which was provided to the assessors, indicates that property includes vehicles, land, shops, and bank accounts.⁶¹

222. The above explanation regarding the income from a rented house also means that the Maldives does not allow for confiscation of property deriving indirectly from proceeds of crime.

223. In the interview it was explained that property held by third parties could in all likelihood not be taken.

224. Finally, there are no provisions indicating that Section 10 of the Drugs Act applies to the money laundering provision of Section 6. As no money laundering charges have ever been brought this has never been tested.

225. Section 24 (*Property and money obtained through commission of an offence*) of the Prevention and Prohibition of Corruption Act 2000 sets out that:

“(a) Property and money received through the commission of an offence stated in this Act and property obtained through such whether with the person, with someone else, and where ever it is, whether sold or given to a person shall be confiscated.”

226. Section 24(a) is conviction based. It covers proceeds as it mentions “property and money received through the commission of an offence” and “obtained through such.”

227. The instrumentalities used and intended to be used are not covered.

⁶⁰ Abdul Hameed Abdul Samad (179/JC/2008) and H. Reedhoo Adam Naseer Aboobakr (86/JC/2010).

⁶¹ Meedhoo Abdul Samad (281/HC-A/2010).

228. The text of the law states that only the proceeds “received through the commission of an offence” are covered. There is no indication that property derived directly or indirectly from the proceeds of corruption is covered.

229. Section 24(a) does explicitly state that the property can be confiscated “whether with the person, with someone else, and where ever it is, whether sold or given to a person.” Thus even if third parties hold the criminal property, Section 24(a) will allow for confiscation.

230. Again there is no definition of property but the remarks of the Prosecutor General above are equally applicable to this section. There are no cases of restraint or confiscation pursuant to Section 24 of the Prevention and Prohibition of Corruption Act 2000, although seizure orders have been made pursuant to Section 22(k) of the Anti-Corruption Commission (Act 13/2008), which gives the ACC “[a]ll such powers as maybe necessary for the investigation and interrogation of cases relating to achieve the objectives of the Act and all other laws relating to corruption.”

231. The PC (a new PC is in the process of being redrafted)⁶² contains Section 144 (*Theft, extortion, cheating or criminal breach of trust involving government property*) which sets out:

“Property in the possession of a person who commits theft, criminal breach of trust, cheating or extortion in respect of government property shall be forfeited where it is established that such person has built dwellings or obtained other property or created other property from money or property obtained through such theft, criminal breach of trust, cheating or extortion or where such reasons exist that the person has created his property through property or money obtained from the acts of theft, criminal breach of trust, cheating or extortion or where he is unable to provide the property that was the subject matter of the offences of theft, criminal breach of trust, cheating or extortion. Properties seized in this respect shall be sold and all its proceeds shall be utilized to regain the property that was the subject of theft, criminal breach of trust, cheating or extortion. Not regaining property but gaining the value of the property.”

232. Section 144 PC is conviction based. It provides for confiscation of “property in the possession of a person” when that person has fraudulently acquired the Government’s property and money. Confiscation of instrumentalities is not covered.

233. Both direct and even indirect property from indirect proceeds appears to be captured by “obtained other property or created other property.” The authorities did not show the confiscation of the proceeds on the basis of this Section.

234. Confiscation will not be possible if the property is no longer in the possession of the person who commits the fraud, as it only applies to “property in the *possession* of a person who commits.” (emphasis added)

⁶² The Penal Code was drafted and sent to Parliament in 2008. When the new Parliament convened in May 2009, it sent back the draft to the AGO where it is currently being redrafted.

235. Section 14 (*Property and money obtained through commission of an offence*) of the Law on Prohibition of Gang Related Crimes 2010 (Law No. 18/2010; hereafter: Gang Related Crimes Act) provides:

“(a) Upon conviction, property and money received and property obtained through operation of gang shall be confiscated to the Government.”

236. Section 14(a) of the Gang Related Crimes Act explicitly states that confiscation will only apply “upon conviction.” The article is mute with regard to instrumentalities of crime.

237. It would appear that neither the property derived directly or indirectly from the proceeds of crime can be taken. As with most of the above provisions, with the notable exception of the Corruption Act, if the property is held by a third party, it would not be subject to confiscation.

238. Section 14(a) of the Export Import Act 1979 reads as follows:

“If an offence has been committed against subsection (a) of Section 13⁶³ of this Act or attempted, in addition to the imposition of penalty described under this Act, the goods in question shall be confiscated without compensation. If any food or money have been obtained by secretly importing or exporting goods, in addition to the imposition of penalty prescribed under this Act, such good or money shall be confiscated.”

239. Section 14(a) is conviction based, just like the other provisions previously indicated. It allows for the confiscation of the proceeds, but not the instrumentalities.

240. Given the text of the Export Import Act the property derived directly or indirectly from the proceeds is not covered. Likewise, confiscation would be unable to reach property owned or held by a third party.

241. Sections 11, 13-1 and 13-2 of the Fisheries Act of Maldives 1987 (Law No. 5/87; hereafter: Fisheries Act) sets out that:

“[T]he Ministry [of Defence and National Security] shall have the right to apprehend such vessel and objects used in carrying out such offences as well as the proceeds obtained from it.” Confiscation is listed under Sections 13-1 and 13-2 (under Penalties) which set out that “[t]he articles used in the contravention together with any gains from such contravention shall be confiscated.”

242. The authorities advised that this provision had been used to sell the catch of a foreign fishing vessel that was caught without a valid license in the Maldivian exclusive economic zone. The vessel was also confiscated.⁶⁴

⁶³ Section 13 deals with “secretly importing/exporting goods.”

⁶⁴ Rahim Bakhush [2009] 2318/JC/2009, 2319/JC/2009, 2320/JC/2010, 2321/JC/2010, Rasahan Puta 4 and 6 [2010] 815/JC/2010, 812/JC/2010.

243. Section 11 requires a conviction for the confiscation to occur. The Fisheries Act allows for confiscation of proceeds and instrumentalities, as in the cited case both the fish and the vessels were confiscated.

244. The Fisheries Act limits itself to confiscation of the “articles used” and the “gains.” Thus it does not appear to include property derived directly or indirectly from the proceeds of crime. Presumably the relevant Sections of the Fisheries Act cannot be used against property held by third parties, as the law makes no mention of it.

245. A Whether or not property held by third parties can be subject to the same freezing, restraining and confiscation provisions varies under each of the relevant Acts cited above. In practice, there have been no cases where the authorities have attempted to take action against third parties. Even where the sections of the relevant Acts do enable the PGO to go after assets held by a third party, the PGO stated that it would be extremely difficult to establish that the third party had knowledge of the crime, and that they would not proceed against the third party unless they had positive evidence relating to the third party’s knowledge.

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

246. Provisional measures are set out in the Drugs Act, the Corruption Act, the Gang Related Crimes Act, and the Fisheries Act.

247. Section 10(b) and (c) of the Drugs Act:

“(b) If a person is suspected of having committed an offence under this law or if a person is charged for the same, the *Qaal’ee* [i.e. judge or magistrate] may order the money, property and materials that have been suspected to have been obtained by committing the said offence be held [in custody] until the court arrives at a final conclusion, or to ensure that the same does not leave the custody of the said person, or not to engage the same in any transactions, or to keep the same under the custody of a certain party.

(c) If a person is suspected of having committed an offence stated in (b) of this section, the Ministry of Defence and National Security and the Ministry of Atolls Development may hold the money, property and materials that have been suspected of having been obtained by the committing the said offence, until the *Qaal’ee* makes a decision.”

248. This allows the judge to take provisional measures when a person is a suspect or charged with a drug offense. The Ministry of Defense and National Security (MDNS) and the Ministry of Atolls Development (MAD) will hold the property pending the outcome of the trial.

249. Section 24(b) and (c) of the Corruption Act (set out below) are similar to the Drugs Act. While a person is a suspect or charged with a corruption offense, the judge may take provisional measures. Even though the law in Section 24(c) says “confiscated,” that does not appear to be what is really meant, as the next steps are described as “taken away from the person and kept with a specific party.” The judge can also “order the accused not to transact with such or [...] ensure that such does not leave the hands of the accused.” Section 24 (c) gives the investigative government agency the responsibility for holding the property pending a court order.

“(b) Where there is suspicion that person has committed an offence stated in this Act or where a person is being prosecuted for such, pending the decision of court, the judge reserves the right to order money and property suspected to have been obtained through commission of the offence to be confiscated, taken away from the person and kept with a specific party or order the accused not to transact with such or to order to ensure that such does not leave the hands of the accused.

(c) Pending a court order stated in subsection (b) above, the government agency investigating the case of a person who is under suspicion for committing an offence stated in this Act shall have the right to confiscate or order the confiscation of property and money suspected to have been obtained through commission of an offence stated in this Act.”

250. Section 14(b) and (c) of the Gang Related Crimes Act allows for provisional measures to be taken by the judge, or the MPS while awaiting a court order.

“(b) Where there is suspicion that person has committed an offence stated in this Act or where a person is being prosecuted for such, pending the decision of court, the judge reserves the right to order money and property suspected to have been obtained through commission of the offence to be confiscated, taken away from the person and kept with a specific party or order the accused not to transact with such or to order to ensure that such does not leave the hands of the accused. (c) Pending a court order stated in subsection (b) above, Maldives Police Service the case of a person who is under suspicion for committing an offence stated in this Act shall have the right to confiscate or order the confiscation of property and money suspected to have been obtained through commission of an offence stated in this Act.”

251. Even though 14(c) uses the words “confiscate or order the confiscation,” when considered in its context it is more likely to mean that the MPS is allowed to freeze the property while awaiting a court order.

252. Section 12 of the Fisheries Act permits the MDNS to hold the vessel and objects while the case is before the court. As the goods the Fisheries Act is concerned with are often perishable, the MDNS shall be able to auction off any such goods.

“Any vessel or article apprehended under the provisions of Article II of this Law shall be under the care of the MDNS until the completion of legal proceedings, and the Ministry shall have the right to sell by auction any perishable articles thus held and to hold the proceeds of such sale.”

***Ex Parte* Application for Provisional Measures (c. 3.3):**

253. There are no provisions for seizing or freezing measures to be applied *ex parte* or without prior notice. It does not appear that such provisions would be inconsistent with fundamental principles of Maldivian domestic law. According to the authorities, in practice the initial application for provisional measures is made *ex parte* and without prior notice.

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

254. Law enforcement agencies and the FIU do not sufficiently utilize their powers to identify and trace property. Law enforcement agencies could focus more on confiscating more cash in relation to drug offenses.

Protection of *Bona Fide* Third Parties (c. 3.5):

255. There are no measures in place providing protection for the rights of *bona fide* third parties. The PGO indicated that they would not seek confiscation from a *bona fide* third party but there was no specific provision that related to how to exclude property of a *bona fide* third party.

256. Section 24(a) of the Corruption Act gives the ACC the power to confiscate the property or money when it is “with someone else, and where ever it is, whether sold or given to a person.” The ACC indicated that this might pose a problem with regard to third party protection, however, the situation had not yet occurred.

Power to Void Actions (c. 3.6):

257. According to Section 17(a) and (b) of the Law of Contract 1991 (Law No. 4/91) a contract is “void if it is illegal” and this is the case when the “purpose of the contract is illegal or immoral.” This would allow the court to void contracts concluded to prejudice the authorities’ ability to recover the property subject to confiscation. It was not established that Section 17 has ever been used for this purpose. As Section 17 can only be used to void contracts, it would not be possible to prevent or void non-contractual actions. According to the authorities, law enforcement agencies may also “apply for cancellation of such actions,” but it is not clear what legal provision would apply, and no such instance has been brought before the courts.

Statistics (R.32):

258. Considering that no money laundering charges have been brought before the courts, no confiscation measure has been ordered under the money laundering offense provided for in the Drugs Act.

259. The MPS maintains annual statistics on property seized and confiscated related to certain crimes they investigate, in particular with respect to drug offenses and theft, but not on money laundering and terrorist financing. The table below shows confiscated drugs.

Table 14: Drugs Confiscated by MPS (in grams)

Year	Benzodiazepines	Opiates	Cannabis	Ketamine
2008	367.622	22,786.6657	950.6405	0
2009	537.5853	1,349.2906	3,711.8717	5,097.700
2010 (January)	16.9795	130.814	850.6783	0

Effectiveness:

260. The division of responsibility among agencies for freezing, seizing and confiscating was not clear in the Maldives and there generally appeared to be a lack of understanding among all agencies about available powers to freeze, seize and confiscate and about how these powers are to be applied. The laws themselves are not entirely clear as to the exact meaning of the terms.

261. The MPS stated that they would only seek to seize assets that were found with the accused, or at the house of the accused at the time the offense was detected. The MPS largely seem to be restraining evidence of the offense as they would traditionally do under Section 8 of the Police Act 2008 (Law No. 05/2008; hereafter: Police Act) which provides for seizure when a property or instrumentality becomes subject of an investigation for the purposes of evidence collection and crime scene management. Representatives of the MPS stated that the MMA may be asked to freeze money in bank accounts. An investigating agency or a court can bar transactions through the MMA where it is suspected that the money in the person's account was obtained through the commission of an offense under Section 26 of the Corruption Act. The MMA does not appear to have any authority to freeze any other proceeds of crime in this way but representatives of the MMA stated that information could be requested from banks and that banks could be requested to freeze money of a suspect.

262. The PGO stated that any freezing and seizing measures would be dealt with by the MPS prior to the brief being sent to the PGO. The PGO said they would generally litigate confiscation after they had first secured a conviction. It was clear that the PGO saw confiscation as a measure that was included in or immediately followed the sentencing process.

263. The Maldives does have provisions relating to restraint, seizure and confiscation of the proceeds of certain types of crime in place, but, these provisions are not sufficiently comprehensive and detailed to be effective: They are broad and open to wide interpretation, which has resulted in uncertainty in the authorities' minds as to each provision's applicability. In addition, there is confusion about which agencies have policy and implementation responsibility for restraint, seizure and confiscation and, as a result, only the most obvious proceeds, such as physical currency found with drugs, are being seized, and then only as evidence of the offense.

264. The Maldives does not have a system in place to confiscate the property of organizations found to be primarily criminal in nature. All confiscations require are conviction based, civil forfeiture does not exist. Offenders do not have to demonstrate the lawful origin of their property.

2.3.2. Recommendations and Comments

265. In order to comply with Recommendation 3, the authorities are recommended to:

- Ensure that the confiscation provisions can be applied to "property" as defined by the Standard: Assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets, regardless of whether these assets are held or owned by the defendant or a third party.

- Provide for the confiscation of instrumentalities for offenses other than those of the Drugs Act and the Fisheries Act.
- Allow for the confiscation of property of corresponding value.
- Allow for the confiscation of property derived directly or indirectly from the proceeds of crime.
- Provide for confiscation even if the property is held by a third party.
- Expand the use of freezing and seizing of property subject to confiscation to offenses other than those under the Drugs Act, the Corruption Act, the Gang Related Crimes Act, and the Fisheries Act.
- Allow in laws or other measures for the initial application to freeze or seize to be made *ex parte* or without prior notice.
- Authorities should utilize the confiscation provisions that do exist more often.
- Provide protection for the rights of *bona fide* third parties, consistent with the Palermo Convention standards.
- Ensure that it is possible to prevent or void any action aimed at prejudicing the ability of authorities to recover property subject to confiscation.
- Make effective use of the confiscation framework by putting in place comprehensive legal provisions allowing the courts to confiscate proceeds and instrumentalities in the context of any money laundering, terrorist financing or other predicate offense.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	NC	<ul style="list-style-type: none"> • Limitations on the kinds of property to which confiscation provisions can be applied. Currently, confiscation appears to be limited to tangible, corporeal assets with a very direct link to the predicate offense. • No possibility to confiscate instrumentalities for offenses other than those contained in the Drugs Act, the Corruption Act, and the Fisheries Act. • No possibility to confiscate property of corresponding value. • No possibility to confiscate all property derived directly or indirectly from the proceeds of the crime. • Confiscation when property is held by a third party is most often not possible. When it does exist, it has never been applied.

		<ul style="list-style-type: none"> • Laws limit the use of freezing and seizing of property to four Acts. • No laws or measures in place to allow the initial application to freeze or seize to be made <i>ex parte</i> or without prior notice. • Law enforcement agencies and the FIU do not sufficiently utilize their powers to identify and trace property. • No protection for the rights of <i>bona fide</i> third parties. • No ability for the authorities to prevent or void actions aimed at prejudicing their ability to recover property subject to confiscation, other than the voiding of contracts with an illegal purpose. • The effectiveness of the confiscation framework was not established because existing legal provisions do not always allow the courts to confiscate proceeds and instrumentalities in the context of a money laundering or terrorist financing offense, and for every predicate offense.
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2.4. Freezing of Funds used for Terrorist Financing (SR.III)

2.4.1. Description and Analysis

Legal Framework:

266. There are no specific legal provisions or written policy on freezing of funds as called for under SR.III.

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

267. The Maldives does not have any laws in place to freeze terrorist funds or assets of persons designated under United Nations Security Council (UNSC) Resolution 1267 (S/RES/1267).⁶⁵ In practice, the updated Consolidated List is made available to the Ministry of Foreign Affairs (MFA) by the Maldives Mission to the United Nations (UN) in New York. The MFA then sends it to the Maldives Monetary Authority (MMA), the Ministry of Defense and National Security (MDNS), the Maldives National Defense Force (MNDF), the Maldives Customs Service (MCS), and the Department of Immigration and Emigration (DIE). The MMA/FIU forwards instructions to banks, credit card operators and MSBs to freeze funds involving any of the designated persons. For banks these instructions are called circulars, for all other institutions they are contained in a letter. The authorities have explained that there is no difference between the two in that both contain specific instructions.

⁶⁵ At the time of issue of the Interpretative Note to FATF Special Recommendation III, these resolutions included S/RES/1333(2000), S/RES/1363(2001), S/RES/1390(2002) and S/RES/1455(2003).

268. However, although the “instructions” are drafted in mandatory terms, they are not supported by a legal basis for the MMA to impose mandatory obligations, and failure to comply with these instructions cannot be sanctioned. In addition, it is unclear what exactly would be the follow-up actions if an institution were to identify and freeze assets pursuant to the MMA instructions. It is unclear whether a financial institution would be able to declare assets as “frozen,” as the client could argue that, without an express legal provision or a court order, his property is inviolable pursuant to Section 40 of the 2008 Constitution.

269. So far, there has never been a case in which funds of designated individuals, entities or groups under S/RES/1267 have been identified in the Maldives.

Freezing Assets under S/RES/1373 (c. III.2) and Freezing Actions Taken by Other Countries (c. III.3):

270. The Maldives does not have any law or procedure in place that would allow for the freezing of funds under UNSC Resolution 1373 (S/RES/1373), nor does it have laws and procedures in place to allow for the examination and the execution, if appropriate, of actions initiated under the freezing mechanisms of other countries. The authorities stated that they have not received any request made under this resolution or another country’s freezing mechanism. They explained that if they were to receive one, they would have to consult with the PGO and other relevant agencies in order to establish whether and how to give suit.

271. This is problematic because, should a request be made by a foreign country, the authorities would need to seek an *ad hoc* solution for its consideration and, if adequate, implementation, which has the potential of potentially slowing down significantly the freezing process. Also in the domestic context this is an obstacle, as freezing mechanisms could not be applied to prevent terrorist acts in the future.

Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):

272. The Maldives does not have procedures in place which would allow for the freezing of funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organizations.

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

273. The FIU issues instructions to financial institutions following designations by the UNSC 1267 Committee. The MMA sends instructions to the managers and managing directors of banks and other financial institutions, attached to which will be the amended list of individuals designated by the U.N., and those who have been taken off the Consolidated List. The letter that is mailed typically contains three instructions: “(1) For those individuals deleted from the List, allow transactions; (2) Refuse transaction involving individuals whose information is amended and report to the Financial Intelligence Section of this Authority, as required by Anti-Money Laundering and Combating Terrorism Financing (AML/CFT) Circular dated 22nd February 2006; and (3) Update your own customer database accordingly and continue enhanced due diligence for **ALL** the individuals in the attached amended list.” According to the authorities the list is communicated to the institutions

immediately upon receipt from the Maldives Mission to the United Nations. As mentioned above, there is no legal basis for the issuance of instructions.

Guidance to Financial Institutions (c. III.6):

274. The Maldives does not provide guidance to financial institutions and other persons or entities that may hold targeted funds or other assets concerning their obligations in taking action under freezing mechanisms. According to the authorities, the financial institutions, however, are clear on what they must do, namely to allow transactions for individuals deleted from the list to go ahead, freeze the funds of individuals on the list until further notice, refuse transactions involving listed individuals, report these cases to the FIU, update the customer database and monitor their client base for listed individuals.

275. As mentioned above however, these instructions only apply in the context of S/RES/1267, and not the other circumstances envisaged under S/RES/1373 and SR.III.

De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7): Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):

276. There are no effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations, nor for unfreezing funds or other assets of persons or entities inadvertently affected by a freezing mechanism.

Access to frozen funds for expenses and other purposes (c. III.9):

277. There are no appropriate procedures for authorizing access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses.

Review of Freezing Decisions (c. III.10):

278. According to the authorities, the affected person can appeal the freezing action based on Article 40(b) of the Constitution pursuant to which funds and property can only be frozen once a court order have been issued. In the absence of a legislative framework for freezing actions, it would appear that an applicant could be successful invoking Article 40(b) because the freeze is not “expressly prescribed by law.”

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

279. There are no provisions in the Terrorism Act or elsewhere on freezing, seizing, and confiscation of terrorist funds or other assets in a criminal context.

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

280. There are no laws or other measures which provide for the protection for the rights of *bona fide* third parties.

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

281. Even if the relevant legislation, rules or regulations governing freezing and confiscation of terrorist assets were in place, there are no appropriate measures in place to effectively monitor compliance and to impose civil, administrative, or criminal sanctions for failure to comply with such legislation, rules or regulations. The authorities admit that the MMA cannot impose any sanction for non-compliance with its freezing instructions.

Statistics (R.32):

282. No freezing measures have been taken.

Additional Element III.14—Implementation of Measures in Best Practices Paper for SR.III (c. III.14) and Additional Element III.15—Implementation of Procedures to Access Frozen Funds (c. III.15):

283. At the time of the on-site visit the FIU had not yet considered the FATF Best Practices paper for SR.III.

Effectiveness:

284. There are no laws and regulations to implement the obligations under SR.III. The MMA does send the 1267 list to financial institutions, money services businesses, and credit card operators, with instructions, but there is no legal basis for these instructions. Still, according to the authorities, all of the recipients follow the freezing instruction as if they were mandatory and enforceable. All the while the authorities admitted that they would be unable to sanction financial institutions in case of noncompliance.

285. The authorities stated that they have never found any assets or funds related to anybody on the 1267 list in the country. No Maldivian national is currently listed.

2.4.2. Recommendations and Comments

286. In order to comply with Special Recommendation III, the authorities are recommended to:

- Enact laws and procedures to freeze terrorist funds or other assets of persons designated by the U.N. Al-Qaida and Taliban Sanction Committee in accordance with S/RES/1267.
- Enact laws and procedures to freeze terrorist funds or other assets of persons under S/RES/1373(2001).
- Enact laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.

- Enact laws and procedures to apply freezing actions to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, terrorist financiers, or terrorist organizations, as well as to funds or other assets derived or generated from funds or other assets owned or controlled by such persons.
- Establish effective systems for communicating actions taken under S/RES/1373(2001), and actions initiated under the freezing mechanisms of other jurisdictions to financial institutions and other persons or entities that may hold targeted funds or assets.
- Provide clear guidance to financial institutions and other persons or entities that may hold targeted funds or assets regarding their obligations in respect of freezing mechanisms.
- Establish effective and publicly-known procedures for considering de-listing and for unfreezing funds or other assets of de-listed persons or entities.
- Establish effective and publicly-known procedures for unfreezing, in a timely manner, funds or assets of persons or entities inadvertently affected by a freezing mechanism upon verification that they are not designated persons.
- Establish appropriate procedures for authorizing access to funds or other assets frozen pursuant to S/RES/1267(1999), and in accordance with S/RES/1452(2002), necessary for basic expenses, payment of certain types of fees, expenses and service charges, or extraordinary expenses.
- Enable the use of provisional measures/confiscation regarding freezing, seizing, and confiscation of terrorist-related funds in other contexts than that of the United Nations Security Council Resolutions and freezing actions initiated in other countries.
- Provide protection for the rights of *bona fide* third parties.
- Establish appropriate measures to monitor effectively compliance with relevant legislation, rules or regulations.
- Establish civil, administrative or criminal sanctions for failure to comply with such rules.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • No laws and procedures in place to freeze terrorist funds or other assets of persons designated under S/RES/1267(1999). • No laws and procedures in place to freeze terrorist funds or other assets of persons under S/RES/1373(2001). • No laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.

	<ul style="list-style-type: none"> • No laws and procedures to apply freezing actions to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, terrorist financiers, or terrorist organizations. Idem for funds or other assets derived or generated from funds or other assets owned or controlled by such persons. • No effective systems for communicating actions taken under S/RES/1373(2001), and actions initiated under the freezing mechanisms of other jurisdictions to financial institutions and other persons or entities that may hold targeted funds or assets. • No clear guidance to financial institutions and other persons or entities that may hold targeted funds or assets regarding their obligations in respect of freezing mechanisms. • No effective and publicly-known procedures for considering de-listing and for unfreezing funds or other assets of de-listed persons or entities. • No effective and publicly-known procedures for unfreezing, in a timely manner, funds or assets of persons or entities inadvertently affected by a freezing mechanism upon verification that they are not designated persons. • No appropriate procedures for authorizing access to funds or other assets frozen pursuant to S/RES/1267(1999), and in accordance with S/RES/1452(2002), necessary for basic expenses, payment of certain types of fees, expenses and service charges, or extraordinary expenses. • No provisional measures/confiscation regarding freezing, seizing, and confiscation of terrorist-related funds in other contexts than that of the United Nations Security Council Resolutions and freezing actions initiated in other countries. • No protection for the rights of <i>bona fide</i> third parties. • No appropriate measures to effectively monitor compliance with relevant legislation, rules or regulations. • No possibility to impose civil, administrative or criminal sanctions for failure to comply with such rules.
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2.5. The Financial Intelligence Unit and its Functions (R.26)

2.5.1. Description and Analysis

Legal Framework:

287. No statute formally establishes the FIU. The 2010 Banking Act makes reference in Section 38(a)(5) to the FIU being “established under the Law No. 6/81 (Maldives Monetary Authority Act)”, but the latter does not, however, mention the FIU. The 2010 Banking Act designates the FIU as the recipient of suspicious transactions reports (STRs) from banks.

288. Not other laws address the FIU’s authority to analyze and disseminate STRs received from banks, and to receive, analyze or disseminate STRs or other relevant financial information provided by persons and entities other than banks.

Establishment of FIU as National Center (c. 26.1):

289. The decision to create an FIU was taken in August 2004 by representatives from the MMA, MPS, MFA, MFT and the Law Commission of Maldives. In February 2006, the MMA issued an “AML/CFT” Circular to all banks and other money transfer businesses informing the FIU for Maldives “is currently established” within MMA. The Circular also outlines basic preventive measures that these institutions are encouraged to undertake which notably include filing STRs with the FIU. There is, however, no legal basis for the issuance of this Circular and, while it has never been challenged and, according to the MMA, financial institutions generally comply with MMA circulars, it does not introduce mandatory AML/CFT measures and is not enforceable (see the introduction to Section 3 below for more information on the legal status of the Circular). In addition, the Circular, despite its title, does not address terrorist financing.

290. Receipt of STR and relevant financial information: Section 38(a)(4) of the Banking Act provides that STRs must be sent to “the Financial Intelligence Unit of the MMA.” Section 38 also sets out that banks must report to the FIU within two working days “where they suspect or have grounds to suspect that funds or property, regardless of the amounts, are the proceeds of crime, or are related or linked to the financing of terrorism” and that they must monitor and report any transactions or information as may be specified by the MMA to the FIU. No other authority is designated for the receipt of STRs in other pieces of legislation or guidance. The FIU therefore appears as the national center for receiving STRs and other relevant money laundering or terrorist financing information from the banking sector.

291. Due to the recent enactment of the Banking Act, no bank has filed a report on the basis of the law.

292. Prior to the issuance of the new Banking Act, four STRs have been submitted to the FIU by a bank and a money remitter in application of MMA AML Circular. Two of the STRs pertained to suspicions of laundering the proceeds of drug trafficking. The other two related to unusually large transactions which, according to the FIU, were legitimate.

293. Analysis of STRs and other financial information: The FIU’s powers to analyze STRs are not set out in any piece of legislation. The authorities mentioned that the FIU considers the specific details of the STR and collects information from various sources (which are listed under 26.3 below) before determining whether the reported transactions are indeed suspicious and, if so, forwarding the case to the LEAs. At the time of the assessment, the FIU had two staff members who analyze the STRs. No information was provided on the type of analysis conducted. In anticipation of the adoption of AML/CFT legislation and allocation of additional staff members, the FIU has drafted standard

operating procedures (SOPs) which notably specify that the FIU will conduct operational and strategic analysis of STRs.

294. Dissemination of STRs and relevant financial information: Section 33 of the 2010 Banking Act provides that the “MMA must notify the relevant authority concerning any need for additional action regarding this matter,” which is interpreted by the authorities as a power for dissemination to law enforcement agencies. Although the Act is not specific on the issue, the authorities understand that the FIU itself has the power to disseminate STRs, without needing to have recourse to other instances within the MMA. Out of four STRs received, the FIU disseminated one to the MPS for further action. This was however done prior to the entry in force of the 2010 Banking Act and without any legal basis. The authorities mentioned that the FIU would, if necessary, also disseminate the reports to other relevant agencies such as MCS or DIE, but that so far this need had not arisen.

295. In sum, the 2010 Banking Act provides the basis for the FIU’s powers of receipt of STRs filed by the banking sector. The FIU’s powers to analyze the STRs, however, have not been defined. In addition, Section 33 of the Banking Act provides that the MMA - and not the FIU - must notify the relevant authority; this entails that the FIU itself is not authorized to disseminate financial information to domestic authorities for investigation or action when there are grounds to suspect money laundering or financing of terrorism. Finally, there are no additional texts that would provide for the FIU’s powers to receive, analyze and disseminate STRs from the other sectors.

Guidelines to Financial Institutions on Reporting STR (c. 26.2):

296. The MMA AML Circular provides some guidance to banks and other institutions involved in money transfers activities on the detection of suspicious transactions and on the form of reporting. Section 8 of the Circular sets out a non exhaustive list of ten activities that may indicate money laundering.

297. Section 9 indicates that the institution should report the same to the FIU within three business days of the suspicious transaction providing sufficient details so that the FIU can “investigate and prosecute the activities.” The authorities mentioned however that the FIU does not conduct investigations or lead prosecutions as such, but transmits cases that require further action to the MPS.

298. A STR form is attached to the MMA AML Circular.

299. The new Banking Act provides that the MMA shall prescribe by regulation the manner and form by which “banks, other financial institutions and designated non-financial business and professions” shall comply with the AML/CFT obligations which include the obligation to report suspicious transactions. This enables the MMA to provide additional guidance to banks, but the wording of this provision is inconsistent with the main objective of the law, in the sense that it enables the MMA to issue regulations to persons and entities that are not subject to the Banking Act, namely “other financial institutions and designated non-financial business and professions” (DNFBPs). No regulations have been issued under this Act yet.

300. No guidance has been provided to other financial institutions or DNFBPs.

Access to Information on Timely Basis by FIU (c. 26.3):

301. There are no provisions (statutory or regulatory) under Maldivian law that enable the FIU to have access to financial, administrative and law enforcement information that it requires to undertake its functions. In practice, the FIU requests (and receives) information from the MPS: it has requested criminal background information from the MPS on all four STRs that have been filed and received the information in less than a day. The FIU has not asked any other agency for information to support its analysis, but mentioned that it could, if necessary, request information from the reporting entity itself, financial institutions such as banks (including when they are not the author of the STR), the MCS, the DIE, the real estate registry maintained by the Housing Ministry, and the Ministry of Transportation (for information on any means of transport - land, air and sea - that the persons linked to the suspicious transactions may own).⁶⁶ It may also request information from the Company Registrar but, because data is kept in manual form, it is unlikely that the requested information can be provided in a timely fashion.

302. In conclusion the information channels used, or that the authorities say they could use, are informal. While they seem to be useful in practice, in the absence of legal basis for the FIU to have access to information, the requested authorities could, for example on the basis of confidentiality, refuse to provide information that may necessary for the FIU to perform its functions.

Additional Information from Reporting Parties (c. 26.4):

303. According to the authorities, Section 38(a)(5) of the 2010 Banking Act, which requires banks to report suspicious transactions to the FIU, enable the FIU to request additional information from reporting banks. The FIU has not used this provision yet but considers it to be broad enough to allow it to request further information from banks, including information related to an STR filed by another bank. This provision, however, merely sets out the reporting requirement and does not provide sufficient grounds to authorize the FIU to obtain information from reporting entities as requested under the standard.

304. Prior to the December 2010 enactment of the Banking Act, the FIU used the AML Circular as a basis for obtaining further information from a reporting institution, even though it had no legal power to require or obtain additional information from reporting parties. In practice, banks nevertheless responded by providing the requested information. No indication was provided on the timing of their response.

Dissemination of Information (c. 26.5):

305. As mentioned above, section 33 of the 2010 Banking Act explicitly provides that the MMA “must notify the relevant authority concerning any need for additional action regarding this matter.” Section 11 of the same Act prohibits the MMA staff from tipping off information expect “for the purpose of the performance of [their] duties or when lawfully required [...] by a court”. The

⁶⁶ At the time of the assessment, the Maldives did not have a fiscal regime in place. Since then, however, a business profit tax and a resort tax have been introduced, and according to the authorities, the FIU may ask the recently established Taxation Administration for fiscal information.

authorities interpret both of these provisions as giving the FIU the power to forward relevant information to the LEAs. This interpretation however is too broad as none of these provisions authorize the FIU to disseminate financial information to LEAs for investigation. Section 33, in particular, grants this power to the MMA, not the FIU (while other provisions of the Law clearly distinguish the FIU from the MMA).

306. The FIU's draft SOPs state that once the FIU classifies a specific STR as "selected for investigation" that STR will be disseminated to the relevant law enforcement agencies for investigation. There is however no legal basis for dissemination.

307. In practice, the FIU has disseminated one STR to the MPS for investigation. The fact that no objections were raised in this case cannot substitute the absence of legal basis for dissemination by the FIU.

Operational Independence (c. 26.6):

308. The FIU operates under the MMA's management and operational structure. It is a unit within the MMA and, as mentioned above, the sole recipient of STRs filed by banks. It is managed under the direct supervision of an Executive Director of the MMA in charge of Human Resources Division who directly reports to the Governor. The overall policies of the MMA govern the operations of the FIU, but, according to the authorities, the day-to-day management of the FIU is left to the FIU manager and the FIU is in practice responsible for all decisions regarding the analysis and dissemination of STRs and other financial intelligence.

309. However, if a specific case touches on "issues relating to the overall management of the MMA", that particular case will be discussed with the Governor. According to the FIU, this would include not only hiring and firing of staff, but also the treatment of requests from other agencies for information from financial institutions. In instances such as these, the FIU is dependent on the MMA Governor's decision.

310. In the FIU manager's view, the influence of the MMA has been positive to set up and support the operation of the FIU.

311. The FIU does not have a separate budget. While the FIU staff conducts the actual recruitment process, overall recruitment and retention of staff are dependent on the budget for the FIU which is determined by the MMA.

Protection of Information Held by FIU (c. 26.7):

312. FIU information is held in the main data server of the MMA, not on a separate, independent server. The MMA server can be accessed (in whole or only in part) by those who have proper authorization granted by the Governor according to the MMA IT policies and management rules on access to information. Only the FIU staff and the IT administrators have access to the FIU data held in the main server. The MMA backs up its main data server and holds these back-ups off-site.

313. The FIU office is physically located in the MMA which is a secure building with security pass controlled entry. The two FIU officers currently do not have a secure and separate office and physical records are kept in a locked filing cabinet. Other MMA staff therefore has direct access to

the FIU's premises. The MMA recognizes the need to protect the information held by the FIU and there are plans to provide the FIU with a separate and secure office. The FIUs draft SOPs address security both of data held electronically and physically.

Publication of Annual Reports (c. 26.8):

314. The FIU does not publicly release periodic reports. The MMA annual report contains a general report on FIU activities but does not include money laundering and terrorist financing statistics or typologies.

Membership of Egmont Group (c. 26.9):

315. According to the authorities, the decision to apply for Egmont membership has been considered but postponed until AML/CFT legislation is passed and the FIU is legally established.

Egmont Principles of Exchange of Information among FIUs (c. 26.10):

316. As per Section 54 of the Maldives Banking Act, 2010, the MMA is authorized to share information with its foreign counterparts. In application of this provision, the MoU was signed in December 2010 with the FIU of the United Arab Emirates to facilitate cooperation and exchange of information on banking supervision, technical assistance and training, as well as for combating money laundering and terrorist financing. Although not specifically addressed in the Act or the MoU, according to the authorities, both the law and the MoU provide the basis for exchange of information related to STRs as well. Outside the banking sector, the lack of legal framework for the FIU inhibits information sharing. The FIU noted that, even where counterpart FIUs were not prohibited by their own laws from spontaneously disseminating to foreign counterparts, other FIUs may be reluctant to share information with the Maldivian FIU because the Maldives has no legal framework that would govern how that information would be dealt with. Therefore, the Egmont Principles have so far not been tested or implemented.

Adequacy of Resources—FIU (R.30):

317. The FIU currently has two staff members and anticipates recruiting more staff in 2011. It may also rely on two officers in the Legal Department (one in the bank supervision section and one in the NBFIS) to provide some limited assistance at the request of the FIU and subject to the demands of their primary duties within the Legal Department. These officers do not have access to the FIU data on the MMA server. The current head of the FIU has a law degree, has been with the FIU since it became operational in 2006, and has been well trained in AML/CFT. The contact officers within the MMA have also received AML/CFT training.

318. As there was previously no legal obligation to report suspicious transactions, and the practice in that matter was limited, one officer was sufficient to analyze and disseminate the four STRs that had been received at the time of the on-site visit. After the on-site visit, the Banking Act 2010 was passed and it is anticipated that this will increase the instances of reporting and the workload of the FIU. The current resources may therefore prove too limited. In addition, the FIU will also need additional staff in order to be able to fulfill other core functions of an FIU, such as providing guidance

with respect to reporting, releasing reports on its activities or on trends and typologies and providing feedback on reporting.

319. The FIU does not have a database but is developing a software and database system that is expected to be running in the first half of 2011. While an electronic database has not been needed for the four STRs that have been received to date, the FIU anticipates such a system will be necessary once the draft AML/CFT legislation is introduced and cross-border currency reporting as well as cash transaction reporting from financial institutions are required in addition to STRs filing.

320. The FIU prepares its own budget annually, and this is submitted as part of the MMA budget to the Board of Directors of the MMA. The MMA budget is considered as a whole and therefore the FIU budget is constrained by the overall budget of the MMA and is not independent. According to the manager of the FIU, the current budget of the FIU is adequate.

Statistics (R.32)

321. Four STRs have been filed so far. All related to suspicions of money laundering and were filed by one bank and one money remitter. There has been no STR that related to terrorist financing.

Table 15: Filed STRs

	2009	2010
STRs received	4	0
STRs analyzed	4	0
STRs disseminated	1	0

Effectiveness

322. Overall the lack of a legal framework undermines the Maldives' efforts to establish an effective FIU. The setting up of an interim FIU in the MMA has laid a ground for an FIU with a clear legal basis to operate once appropriate laws are passed. Since it became operational, the FIU has spear headed the country's AML/CFT efforts, and created useful (although informal) network of contacts amongst other agencies. While the current arrangement for the FIU may have been adequate prior to December 2010 (i.e. at a time when there were no mandatory reporting requirements in place), it should now be strengthened to ensure that the FIU may conduct its core functions with sufficient access to relevant information and sufficient operational independence.

323. The FIU is clearly the sole recipient of STRs filed by banks, but I not authorized to receive STRs from other financial institutions or from DNFBPs. In the absence of information on the analysis performed on the four STRs received so far, and considering that only one STR was disseminated for further action, it is not possible to establish to what extent the FIU analysis is efficient and useful to law enforcement agencies. The fact that the FIU is not granted the power to disseminate its financial intelligence to law enforcement agencies does not seem to have raised difficulties in practice (in the one instance where dissemination was suggested by the FIU, the MMA management gave suit), but should nevertheless be remedied to avoid potential filtering by the MMA. The lack of operational

independence of the FIU was made clear during discussions with other agencies and with representatives from the private sector, where many see the MMA and the FIU as a whole. While the current number of staff was appropriate when reporting was not mandatory, it will need to be increased to reflect the changes introduced by the 2010 Banking Act. The main functions and powers of the FIU will also need to be set out in law where necessary and described in more detail in line with Recommendation 26.

2.5.2. Recommendations and Comments

324. In order to comply with Recommendation 26, the authorities are recommended to:

- Establish on a sound legal basis the FIU as the centre for receipt, analysis and dissemination of suspicious transactions reports from all reporting entities covered by the standard.
- Empower the FIU to have access, directly or indirectly and on a timely basis, to financial, administrative and law enforcement information.
- Enhance the overall quality and depth of analysis through better collection of information, improved analytical tools and further staff training.
- Require the FIU to provide guidance to financial institutions and DNFBPs regarding the manner of reporting, including the specification of reporting forms and the procedures that should be followed when reporting.
- Ensure that the information held by the FIU is securely protected and disseminated only in accordance with the law.
- Grant the FIU sufficient operational independence and autonomy by:
 - ensuring budgetary independence;
 - ensuring that the management of the FIU has autonomy in staff selection and retention within the FIU;
 - determining the conditions for the appointment and dismissal of the FIU head;
 - securing premises that allow for the protection of the information; and
 - allowing the FIU management to have an independent decision making process for the receipt, analysis and dissemination of STRs.
- Require the FIU to publicly release periodic reports including statistics, typologies and trends as well as information regarding its activities.
- Consider applying for Egmont membership once comprehensive AML/CFT legislation is passed and the FIU formally established.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • The FIU has no clear legal authority to receive STRs related to money laundering or terrorist financing from non-bank financial institutions and DNFBPs. • The FIU does not have specific authority to analyse and disseminate money laundering or terrorist financing related STRs. • The FIU does not have sufficient and timely direct or indirect access to financial, administrative and law enforcement information. • The FIU does not provide guidance to financial institutions and DNFBPs on the specifications of reporting forms or the procedures that should be followed when reporting. • The FIU does not have sufficient operational independence and autonomy to ensure that it is free from undue influence or interference. • The information held by the FIU is not securely protected. • The FIU does not publicly release periodic reports.

2.6. Law Enforcement, Prosecution, and other Competent Authorities—the Framework for the Investigation and Prosecution of Offenses, and for Confiscation and Freezing (R.27 and 28)

2.6.1. Description and Analysis

Legal Framework:

325. The relevant laws are the PC, the Police Act 2008 (Act No. 05/2008 of August 5, 2008), the Drugs Act, the Terrorism Act, Corruption Act, ACC Act, the Prosecutor General’s Act (Act No. 9/2008).

326. Investigation of predicate offenses is the responsibility of the MPS under Section 6(6) and (7) of the Police Act.

327. The MPS can investigate corruption, and the Anti-Corruption Commission (ACC) is also mandated to investigate corruption but only when it involves the State (see Section 24 of the ACC Act, set out below, for more details). It is important to keep in mind that, as of the time of the writing of this report, the ACC cannot investigate money laundering.

328. Pursuant to Section 24 of the ACC Act the Commission is vested with the authority to exercise its powers with respect to all institutions and staffs of the State (notably the executive and

legislative bodies and the judiciary), as well as companies owned in whole or in part by the Government and companies, social groups or organizations, political parties or other such bodies that are financed by or subsidized by the State. It may also use its powers against foreign citizens whom the Commission believes to have a connection with a case that it is investigating.

329. According to the authorities, the MPS and the ACC may in some instances communicate on an informal basis regarding their investigations, but there is no established mechanism in place for handling their overlapping remit. Although no conflict has arisen so far, the authorities expressed the desire to regulate this issue in an MoU to be signed by both agencies at some point in the future.

330. All Maldivian law enforcement agencies send all cases that need to be prosecuted to the Prosecutor General's Office (PGO), which was established under the 2008 Constitution. Until September 2008 the Attorney General's Office's (AGO) litigation section handled all civil and criminal prosecutions. On that date the PGO became an independent office tasked to prosecute criminal cases, as per Articles 220-229 of the new Constitution.

331. Section 15 of the Prosecutor General's Act sets out its powers and responsibilities. The PGO supervises the prosecution of all criminal offenses in the Maldives, assesses evidence presented by investigative bodies to determine whether charges should be pursued, institutes and conducts criminal proceedings against any person before any court in respect of any alleged offense, and oversees the legality of preliminary inquiries and investigations into alleged criminal activity, reviews or reverts any decision to prosecute or not to prosecute any alleged offender, or to discontinue any prosecutions, and to appeal any judgment, verdict or decision in a criminal matter.

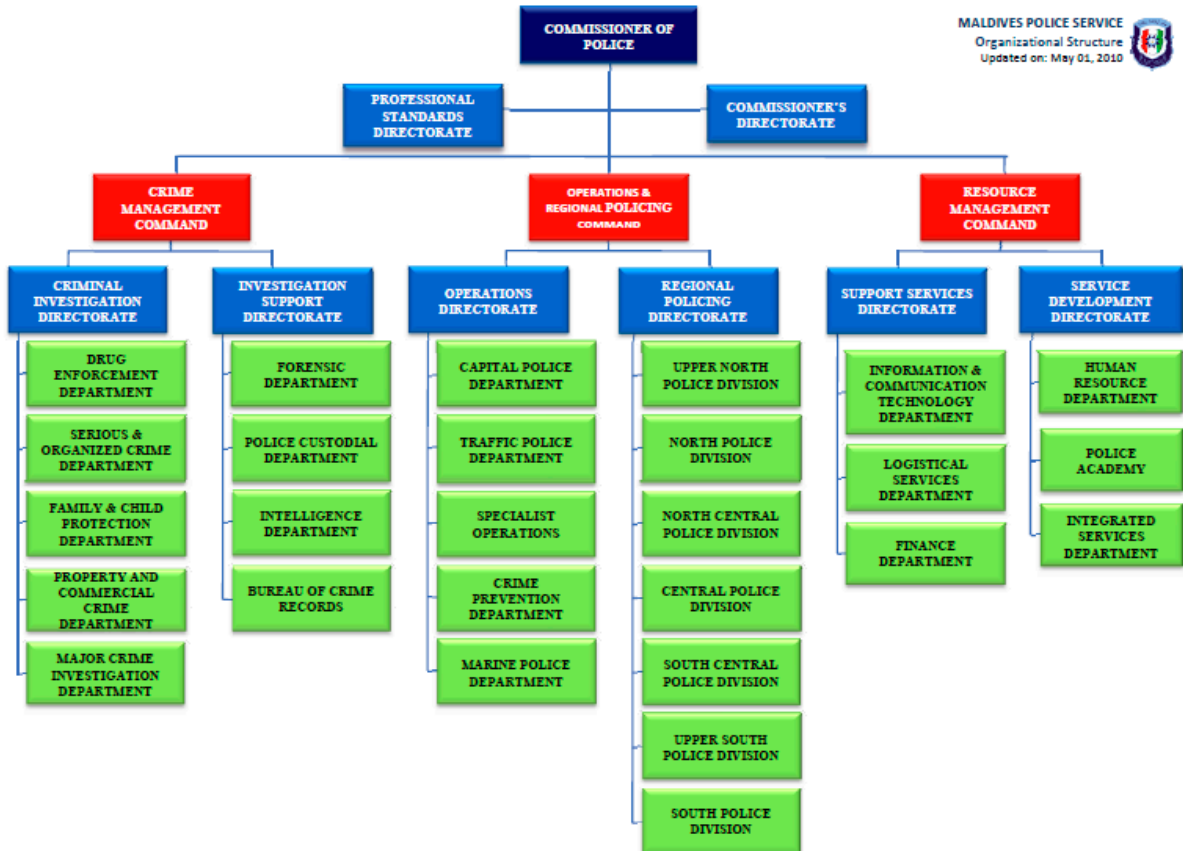
Designation of Authorities Money Laundering/Terrorist Financing Investigations (c. 27.1):

332. The MPS is the sole investigative agency with the mandate to investigate ML/TF.

MPS

333. Section 6(6) and (7) of the Police Act makes the MPS the lead investigative agency for all criminal matters in the Maldives. However, at the time of the assessment there had not been any investigations, prosecutions, or convictions for money laundering or terrorist financing in the country. This is mainly due to the fact that the MPS focuses on the predicate crime (i.e. drug-related offenses) rather than money laundering (see Recommendation 1 for more details).

334. The MPS's current structure is as shown below:



335. The MPS is comprised of three major commands: Crime Management Command, Operations & Regional Policing Command, and Resource Management Command. Specialist areas in criminal investigation and specialist investigation support is located in the Crime Management Command (CMC), and include:

- the Drug Enforcement Department (DED) which specializes in the investigation of sales, consumption and trafficking of narcotics (illicit drugs) and alcohol;
- the Serious and Organized Crime Department (SOCD) which specializes in the investigation of organized crimes such as gang violence and terrorism;
- the Property and Commercial Crime Department (PCCD) which specializes in the investigation of theft, robbery, forgery, counterfeit currency, and other financial crimes;
- the Family and Child Protection Department (FCPS);
- the Major Crime Investigation Department which specializes in the investigation of major corruption and white collar crimes;
- the Forensic Department (FSD) which assists in all types of criminal investigations; and

- the Intelligence Department (ID) which gathers intelligence on criminals, crime groups, and crime patterns, including intelligence on extremism and terrorism.

336. There are a total of 50 police stations in the entire country, distributed based on population density. The total staff of the MPS numbers approximately 700 officers. The MPS disposes of one boat in each atoll, for a total of 20 boats.

337. Table 16 – MPS criminal investigation statistics shows the overall backlog in the criminal judicial system in the difference between *Logged* (recorded by the MPS) and *Sent to PGO* (for prosecution). Because of the general backlog, the MPS no longer forwards cases which only deal with the use of drugs to the PGO for prosecution.

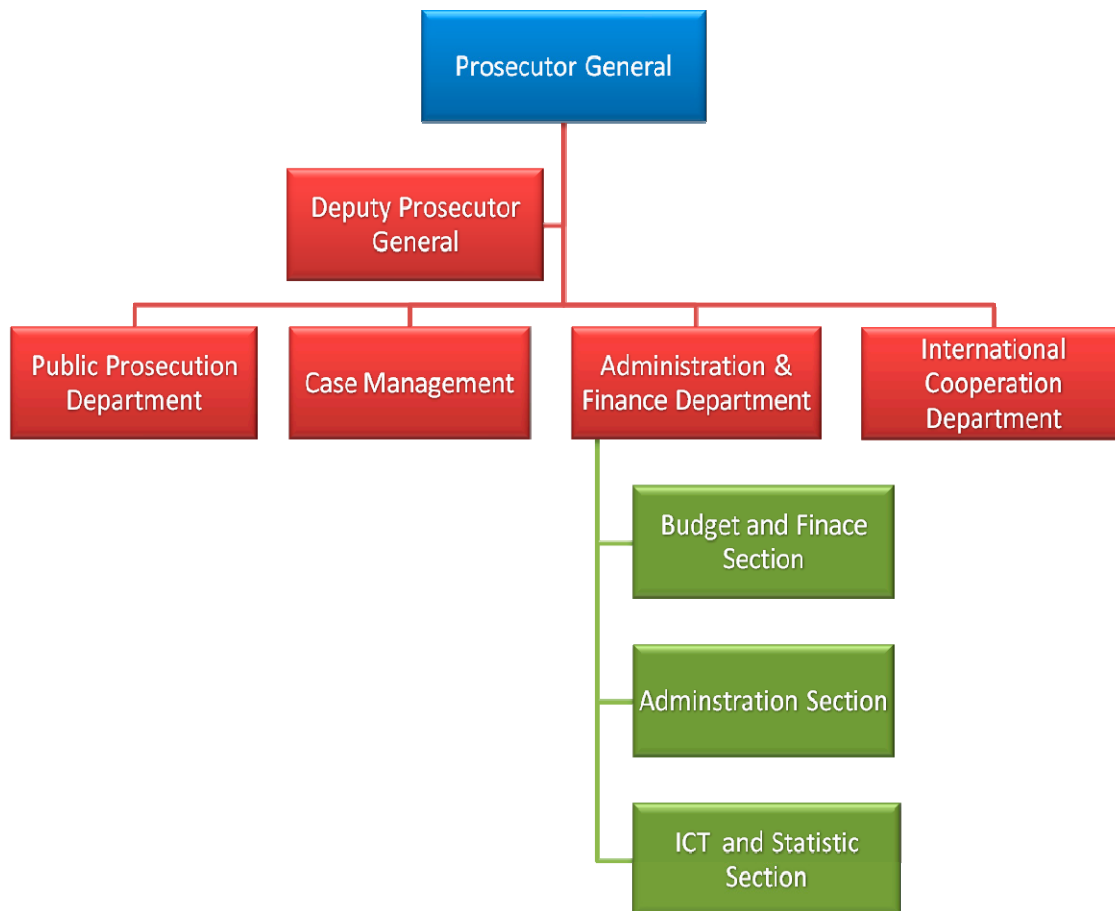
338. In the course of its investigations into money laundering or terrorist financing, the MPS may cooperate with other agencies, notably the MCS and the DIE:

- The MCS has a staff of approximately 730 officers, 100 of which are stationed at the airport. It can search luggage and seize illegal goods, which will then be sent on to the MPS, and must cooperate with an MPS officer in order to detain or search persons. It does not have the power to conduct investigations. Whenever it investigates a case, e.g. related to undervaluation of imports, it must then send it on to the MPS as the latter is the lead investigative agency. The MCS shares information with the MPS regarding transportation of currency and drugs, and other illicit goods. At the time of the assessment a Customs Bill was pending in Parliament, which, if passed, would give the MCS more powers.
- The DIE has approximately 224 employees. They are responsible for the monitoring of the entry and exit of foreigners. When a person raises their suspicion they pass on information to the MCS or the MPS. It maintains a database and exchanges information with the MPS and the MNDF, and is planning to link up the MCS. They do not have the authority to detain persons. If they want to conduct a search of premises an MPS officer must be present.

The Prosecutor General's Office (PGO)

339. The PGO, newly established in 2008, is the organization which handles all criminal prosecutions in the Maldives as per Section 15 of the Prosecutor General's Act. The Prosecutor General is nominated by the President and confirmed by Parliament. The office employs a total of 81 employees, of which 30 are prosecutors. The prosecutors are mostly recent graduates, and they form the largest collection of lawyers in the country. Many lawyers in the Maldives have, at some point in their careers, worked for the PGO. The office hopes to retain young prosecutors for a longer period of time in the future.

340. The PGO's organizational structure is shown below:



341. Cases are logged (registered) by the MPS and the ACC. Once they deem a case is ready for prosecution it is sent on to the PGO. The latter may send it back in case it determines that more investigation is needed. On occasion cases may be pending at the PGO awaiting prosecution for a period of one year. The PGO struggles with a high workload, high turnover of employees, and an outdated case management system. In addition, one third of the cases are in courts outside of Malé, in the atolls, requiring time-consuming travel to those places which are not serviced by a resident prosecutor. As of the time of the interview, the backlog was estimated to amount to 2,000 cases. It also mentioned its relationship with the MPS and the judiciary as being susceptible for improvement.

342. There has never been a prosecution or conviction for the money laundering offense in the Drugs Act or for the limited terrorist financing offense in the Terrorism Act. The PGO never brought a charge under Section 6 of the Drugs Act and indicated that the preferred route is to bring a charge for possession. Like the MPS they also noted the difficulty caused by the switch from a confession-based to an evidence-based system. Prior to 2008 a police confession would be admissible in court, since then only a confession in court before the judge will be allowed. The office also evoked the difficulty caused by the lack of a procedural law and an evidence act, and finds it very hard to know what would be admissible to the court, and what would not.

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

343. The authorities indicated that, even though there is no legal basis for doing so, in practice police officers sometimes postpone or waive an arrest in the interest of the investigation on the authority of a senior officer. In such case they must seek authorization at the level of the Deputy Commissioner of Police or higher, and must submit reasons to justify their request. No consideration has been given to regulating this situation by way of a law or statute.

344. There is no explicit provision under Maldives law which prohibits the agency investigating money laundering from seeking the postponement or waiving the arrest of the suspected person(s) and/or the seizure of the proceeds of crime for the purposes of identifying persons involved in money laundering.

345. The ability to postpone or waive arrest of suspects or seizure of property has not yet been tested in money laundering or terrorist financing investigations as no such investigations had been conducted at the time of the assessment.

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

346. Authorities advised that intelligence is collected using covert human intelligence sources (CHIS), and electronic and intrusive surveillance methods. The authorities did not further explain the exact nature of the intrusive surveillance methods.

347. Undercover operations for purposes of collecting evidence are carried out under Section 8 of the Police Act. According to the MPS, authorization for such operations is given by the Deputy Commissioner of Police. Section 8 of the Police Act is very general, and does not appear to constitute a sufficient legal basis for engaging in such operations.

348. During the on-site visit the authorities advised that telephone intercepts are used, primarily for narcotics investigations. Assessors noted that there does not appear to be any enabling legislation for the use of telephone intercepts in criminal investigations. The authorities expressed concern about the constitutionality of this practice, and their preference for the use of telephone intercepts to be legislated.

349. Both the MPS and the PGO stated that controlled delivery operations were used, although views differed as to the frequency of such operations. According to the authorities they were almost exclusively used for drug operations. No statistics were available.

350. The use of controlled delivery has no legal basis. This could compromise investigations and endanger officers, and the authorities should give due consideration to the constitutionality and legality of these operations.

Additional Element—Use of Special Investigative Techniques for Money Laundering/Terrorist Financing Investigations (c. 27.4):

351. There have not been any ML/TF investigations in the Maldives. Furthermore, the lack of legal basis for telephone intercepts and controlled delivery would seem to preclude their use.

Additional Element—Specialized Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5):

352. Financial crime has been identified as a priority in the MPS's 2011-2013 strategic plan. However, the authorities acknowledged a lack of capacity and technical knowledge.

353. According to the authorities there have not been any requests to or from other countries for cooperative investigations. The FIU is very small and fulfills more of a coordinating role at this point.

354. The MPS indicated that they offer some specialized training to their officers, including through foreign assistance, and that there is a small unit of financial investigators. Some MPS officers were trained abroad in money laundering, credit card fraud, and document examination. A few scholarships were offered in 2011 in financial investigation such as fraud and forensic accounting.

Additional Elements—Review of Money Laundering and Terrorist Financing Trends by Law Enforcement Authorities (c. 27.6):

355. An AML/CFT Coordination Committee was formed in 2007 between representatives from the AGO, the Capital Markets Development Authority, the DIE, the MCS, the MMA (including the FIU), the MPS, the Ministry of Finance and Treasury, Ministry of Foreign Affairs, and the PGO.

356. Information has been exchanged including on methods and trends of money laundering and terrorist financing, but there has so far been no formal review of methods and trends.

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

357. According to Section 8(b) of the Police Act the MPS has “the authority to stop and question persons, arrest persons on suspicion of a crime, conduct searches; obtain samples from suspects, uncover evidence, maintain and safeguard the same, investigate criminal acts, detain suspects held for investigation, and extend the period of detainment of suspects.”

358. Based on the above, the MPS is, in theory, able to compel production of documents. When seeking to obtain documents from financial institutions authorities advised that they have three options. One option is to request the banks directly, but weeks or months may go by before an answer is received. Another option is to compel documents through the MMA. However, the MMA will only pass information back to us which relates to the suspect only, his/her personal account. The MMA will not require the bank to provide information on the suspect's associates. A third option is to obtain a court order, but authorities stated they have to meet a very high threshold to prove probable cause to a court. Section 6 of the Evidence Act 1976 (Act No. 24/76) says that “a Court can deem a fact established if it is satisfied that the necessary principles applicable have been fulfilled. If the Court feels that a particular fact has been established and proven reasonably on a balance of probabilities, the Court may deem such fact established subject to any procedure or principle established on the matter.” In practice, however, the courts do not seem to follow a regular trend when assessing the level of evidence required for obtaining documents, and search persons and premises. In the investigating and prosecuting authorities' view, the amount of evidence required varies considerably on a case-by-case basis. This unpredictability concerning the burden of proof is a factor complicating the MPS's access to information.

359. For the production of a suspect's financial information there appear to be differing interpretations of the law between, on the one hand, the MPS, and, on the other hand, the MMA, as to whether this only relates to the financial records of the suspect itself, or also includes the records of the suspect's associates. The MPS interprets it as to also include the records of the suspect's associates. The MMA's view is that it is limited to the information pertaining to the actual suspect. These differing interpretations can make it harder for the investigating agency to deepen its understanding of the financial and economic ties of the suspect.

360. The MPS's powers are not used in money laundering or terrorist financing investigations because there have never been any such investigations.

361. The ACC has two options when it seeks information from banks, depending on whether the information sought concerns the alleged offender, or persons other than the alleged offender. If the information relates to the alleged offender himself the ACC sends its request through the MMA, as per Section 25 of the Corruption Act. If the information concerns persons other than the alleged offender the ACC can request it directly from the banks under Section 22(e) of the ACC Act. Again, the ACC does currently not have the mandate to investigate money laundering or terrorist financing, only public sector corruption.

Power to Take Witnesses' Statements (c. 28.2):

362. The MPS has the power to take witnesses' statements for use in investigations and prosecutions of money laundering, terrorist financing or any other offense pursuant to Section 8 of the Police Act.

Statistics (R.32) and Adequacy of resources—LEA (R. 30):

363. Table 16 below illustrates the backlog, and it shows the main crimes the authorities are investigating. As explained above, the difference between *Logged* and *Sent to PGO* in this table can be ascribed to a substantial backlog in the judicial system caused by a confluence of factors involving the investigating, prosecuting, and judicial authorities.

Table 16: MPS criminal investigation statistics

	2007		2008		2009		2010 to date	
Offenses	Logged ⁶⁷	Sent to PGO	Logged	Sent to PGO	Logged	Sent to PGO	Logged	Sent to PGO
Weapons / Explosives	5	0	63	13	74	16	55	12
Environmental	0	0	0	0	0	0	66	11

⁶⁷ Logged means registered or recorded.

issues								
Theft	3,966	301	3,927	500	4,007	663	2,323	243
Robbery	414	41	600	102	589	137	314	52
Currency Counterfeit	104	3	32	26	41	18	37	7
Bribery	2	0	1	0	2	1	7	0
Terrorism	2	2	0	0	1	1	0	0
Drugs	1,495	384	2,497	1,068	2,366	982	928	487

Table 17: Corruption Investigation Statistics from 1991 until 2009

	Corruption cases reported	Cases investigated	Cases prosecuted	Convictions	Acquittals
1991-2007 ⁶⁸	779	No information available	92	67	25
2008	140	15	10	N/A	N/A
2009	254	153	12	N/A	N/A
2010	917	324	17	N/A	N/A

364. The table below was provided by the PGO.

Table 18: Criminal prosecution statistics for 2008 and 2009

	2008	2009
Cases Prosecuted in the Courts	1417	2129
Cases returned for various reasons	607	1107
Cases yet to be prosecuted in the courts	1451	596

⁶⁸ These statistics were compiled by the Anti-Corruption Board, which was the predecessor of the Anti-Corruption Commission.

Convictions	230 ⁶⁹	1163
Total Prosecutions	3475	3832

365. All agencies interviewed (MPS, PGO, ACC, MCS, DIE) raised concerns regarding a lack of resources, both technical resources and human resources.

366. The MPS raised concerns regarding the level of training it can provide to its officers taking into account the current evolution of crime, and its ability to effectively conduct money laundering and terrorist financing investigations. Financial investigation training has been provided to a limited number of officers in the MPS. Further money laundering and terrorist financing investigation training is required.

367. The PGO has a professional staff of approximately 30 lawyers educated in various countries in the region and beyond. It has the largest concentration of lawyers in a single office in the Maldives. It has a total of 81 employees as of the end of 2009. It is facing resource constraints related to a heavy workload and the retention of qualified staff, and indicated that its current backlog is approximately 2,000 cases. There are no dedicated resources for money laundering or terrorist financing prosecutions.

Effectiveness:

368. As of the on-site mission there had been no money laundering or terrorist financing investigations by the MPS and, consequently, no money laundering or terrorist financing prosecutions.

369. The MPS focuses on the predicate offenses, and the limited money laundering and terrorist financing offenses that exist in the country, together with a lack of resources, and insufficient specialized training in money laundering and terrorist financing, severely limit any capacity to conduct financial investigations.

370. The MPS does not sufficiently consider financial investigations as part of its overall investigation strategy. The authorities themselves admitted that they focus on the predicate offenses and not on money laundering. Due to the number of drug cases, however, and the amounts of proceeds that they generate, the risk of money laundering seems high in Maldives, and it is therefore important that the authorities to go beyond the predicate and follow the money. The financial aspects of an investigation would enable the authorities to identify higher-level criminals, recover funds, and deprive criminals of the proceeds of their crimes.

371. No specialist teams for the conduct of financial investigations have been established in the law enforcement agencies.

⁶⁹ This information relates to the period September – December 2008. The PGO was established in September 2008 and some of the cases were transferred from the AGO.

372. The fact that the MMA considers that the MPS can only obtain information regarding the suspect himself and not his associates makes it harder for the MPS to get a view of possible accomplices. In theory the MPS can try to get this kind of information on its own, by way of a court order. In practice this avenue turns out to be very difficult because the courts set a very high threshold for probable cause, and unless the FIs do not voluntarily cooperate the assistance of the MMA will be needed.

373. The current general criminal legal framework and the lack of interagency cooperation is not a good background against which to fight against money laundering and terrorist financing.

2.6.2. Recommendations and Comments

374. In order to comply with Recommendation 27, the authorities are recommended to:

- Ensure that money laundering and terrorist financing offenses are investigated.
- Ensure that money laundering and terrorist financing offenses are prosecuted.
- Provide a legislative basis for the MPS to postpone or waive the arrest of suspected persons or the seizure of money.

375. Although not directly required by the Recommendation, the authorities could also consider:

- Creating a legal basis in order to use special investigative techniques.
- Applying special investigative techniques in money laundering and terrorist financing investigations.
- Creating permanent groups to investigate proceeds of crime. Consideration could also be given to cooperation with foreign authorities, including using special investigative techniques, given proper safeguards.

376. In order to comply with Recommendation 28, the authorities are recommended to:

- Enable its investigative agency to compel production of documents and records that also pertain to associates, or to have a reasonable expectation of obtaining a court order.
- Effectively use the power to compel documents and take witness testimony in money laundering and terrorist financing investigations.

2.6.3. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	NC	<ul style="list-style-type: none"> • No money laundering or terrorist financing investigations, prosecutions and convictions. • No clear legal basis for the MPS on which to postpone or waive arrest of

		<p>persons or seizure of money.</p> <ul style="list-style-type: none"> Effectiveness was not established because the MPS has never used its powers for money laundering or terrorist financing investigations.
R.28	PC	<ul style="list-style-type: none"> The MPS cannot always effectively compel documents. Effectiveness has not been established because the MPS has never used its powers for money laundering or terrorist financing investigations.

2.7. Cross-Border Declaration or Disclosure (SR.IX)

2.7.1. Description and Analysis

Legal Framework:

377. There are currently no measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments.

378. There is no Customs Act in Maldives. The MCS derives its powers from a Customs Regulation of 2008 which was initially issued by Presidential Declaration and brought under the new constitutional framework by Law No. 6/2008.

379. At the time of the on-site visit, assessors were advised that a Customs Bill was being debated in Parliament and expected to be passed in 2011. Furthermore, the draft AML/CFT law includes a declaration system for amounts of physical currency and bearer-negotiable instruments greater than Rf 150,000 (approximately US\$11,000) or its foreign equivalent.

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

380. The Maldives does not currently have a disclosure or declaration system in place.

381. The MCS is working with the FIU to establish a non-obligatory cross-border declaration system which is being developed as a temporary measure pending relevant legislation being passed.

382. Article 11(1) of the draft AML/CFT Act sets out that any natural person who enters or leaves the territory of Maldives transporting or arranging to transport cash, or bearer negotiable instruments in an amount equal to or above Maldivian Rf 150,000 (approximately US\$11,000) or its equivalent in foreign currency shall be subject to the obligation to report the said amount to the customs authorities.

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

383. As mentioned above, there are currently no requirements in place.

384. There is no specific power in the draft AML/CFT Act for the MCS to request information on the origin and use of the cash. However as the draft law sets out that Customs can seize non-reported

amounts if they suspect those amounts of being linked to money laundering or terrorist financing, those who do not declare may be inclined to explain origins and use of cash to avoid seizure.

385. The team was not provided with a translation of the Customs Regulation, but was informed that Section 4 of the Regulation gives the power to MCS officers to stop and search, demand the production of relevant documents, open packages and examine goods, and, with the cooperation of an MPS officer, search persons arriving in the Maldives.

386. The MCS is the designated agency to collect import and export duty as per the Export Import Act and they have issued a regulation which is now enforced under the parent act passed by the Parliament in 2008. Under this regulation, the MCS has some general powers including the power to:

- Check whether the imported items are items not prohibited under any laws of Maldives (this includes items imported via post and courier services (Part 1, Section 6.1(a) and Section 7.1 (a));
- Check whether the exported items are items not prohibited under any laws of Maldives (Part 2, Section 7.1(a));
- Routinely checking passenger baggage of incoming and outgoing passengers (Part 4, Section 1);
- Frisk passengers (Part 4, Section 3);
- Confiscate any items imported or exported contrary to the laws of Maldives (Part 4, Section 5). Note that there is no foreign exchange law or restriction on currency being imported into or exported out of the Maldives;
- Check or inspect passenger baggage for any illegal items and items requiring permission from the Government for incoming and outgoing passengers (Part 4, Section 7); and
- Give inward and outward clearance to ships and vessels (Part 9).

Restraint of Currency (c. IX.3):

387. There is no legal provision for the MCS to restrain currency.

388. As set out above, the MCS has general powers of search and seizure under Parts 1, 2 and 4 of the Customs Regulations. However, the Customs representatives stated that these general powers do not allow them to search passengers and seize currency or other proceeds of crime. The powers to investigate are available under the Customs Regulation, which provides for the power to investigate the commission of any offense under this Regulation (which does not include money laundering and terrorist financing).

Retention of Information of Currency and Identification Data by Authorities when appropriate (including in Supra-National Approach) (c. IX.4):

389. There is no legal authority to retain information regarding currency and identification and there is currently no system in place to retain such information. Customs stated that while they do not

check for cash or currency at the borders, if they notice passengers travelling with a large amount of cash they will ask the passenger about the amount and origin of the money and keep the information for intelligence purposes. The MCS shares this information on an ad hoc basis with MPS. The authorities were not able to provide any statistics or figures relating to this intelligence.

390. As set out earlier, in the absence of any legislation the MCS plans to bring in a voluntary disclosure system, however SOPs and policies for this system have yet to be developed.

Access to Information by FIU (including in Supra-National Approach) (c. IX.5):

391. The FIU does not have direct access to information on currency that MCS say they are collecting on an ad hoc basis for intelligence purposes. While the MCS says they have shared information with the MMA in the past, the FIU states that the only information the MMA has received relates to currency that is suspected of being counterfeit.

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

392. The agencies in the Maldives currently involved in border control are the MCS, the DIE, the MNDF and MPS. There is some domestic cooperation between these agencies relating to AML/CFT through the AML/CFT Steering Committee which is set described under Recommendation 31.

393. Further the MNDF, MPS, DIE and MCS meet more frequently (at least fortnightly) in relation to operational matters. The MNDF has a coast guard that assists in controlling the border. Under Article 41 of the Armed Forces Act 1/2008 the Captain at sea has the powers of any Maldivian law enforcement agency. MNDF stated that they had MoUs with MCS, the Maldives Port Authority and the Border Security but the assessment team was not provided with copies of these MoUs.

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (including in Supra-National Approach) (c. IX.7):

394. Maldives is a member of the World Customs Organization (WCO) and shares information in accordance with WCO rules. Maldives has also indicated that they have signed a number of other agreements at the regional level including:

- An MoU with the Centre for Customs & Excise Studies (CCES), signed on February 5, 2007;
- An MoU concerning the Customs Asia Pacific Enforcement Reporting System, signed on January 25, 2006;
- The Maldives is a member country of the South Asian Association for Regional Cooperation (SAARC) and, as such, is obliged to share information with other member Customs Administrations. In addition, the Maldives signed the SAARC Agreement on Mutual Administrative Assistance in Customs Matters on November 13, 2005.

395. The authorities stated that they have signed a number of bilateral agreements and MoUs with other countries' Customs services including:

- An MoU with the General Administration of Customs of the People’s Republic of China concerning corporation and Mutual Assistance in Customs matters signed on March 25, 2009;
- An MoU with the Government of Malaysia on corporation and mutual assistance on Customs matters signed on March 11, 2009;
- An MoU with the Thai Customs Department concerning cooperation and mutual assistance in Customs matters signed on July 18, 2007;
- An MoU with the Australian Customs Service on Customs Cooperation and Mutual Administrative Assistance in Customs matters signed on June 28, 2007;
- An agreement with the United States of America regarding mutual assistance between their Customs Administrations signed on June 23, 2005; and
- A Bilateral Agreement on Mutual Administrative Assistance for the proper Application of Customs Law and for the Prevention, Investigation and Combating of Customs offenses Between the Government of the Republic of Maldives and the Government of Republic of India signed on March 25, 1999.

396. The assessment team was not provided with copies of these agreements.

397. MCS relates that Customs services from other States (such as Sri Lanka and India) have informally conveyed concerns about the transportation of currency across Maldives borders. MCS can only informally convey information relating to cross border currency because there is no legal authority to monitor or require information relating to cross border currency movement.

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

398. There are currently no systems for cash declaration or disclosure at the border, and subsequently there is no system of sanctions for making false declarations or disclosures.

399. Article 11(3) of the draft AML/CFT law provides that the customs authority shall have the power to impose administrative sanctions in cases of non-compliance.

Sanctions for Cross-border Physical Transportation of Currency for Purposes of Money Laundering or Terrorist Financing (applying c. 17.1-17.4 in R.17, c. IX.9):

400. There are currently no sanctions for cross-border physical transportation of currency for the purposes of money laundering or terrorist financing and as set out above in relation to R.1 and SR.II, neither money laundering nor terrorist financing is criminalized in line with the standard.

Confiscation of Currency Related to Money Laundering or Terrorist Financing (applying c. 3.1-3.6 in R.3, c. IX.10):

401. There is currently no confiscation provision that relates specifically to currency crossing the border.

402. While it appears that confiscation provisions set out in relation to Recommendation 3 that relate to specific predicate offenses such as the trafficking of drugs would apply, the MCS were not aware of those restraint and confiscation provisions. MCS simply said that in the event of obvious criminal activity, such as if they found drugs and money being physically transported together, they would contact the MPS.

403. The draft AML/CFT law sets out at Article 11 that the “customs authority shall have the power to seize the whole amount of the non-reported cash or bearer negotiable instruments if there is suspicion of money laundering or financing of terrorism or when there has been a false declaration under this Article.” Confiscation provisions within the draft AML/CFT law would then need to be applied as they would in any other confiscation matter. That is, under the draft AML/CFT law, non-reporting at the border in itself would not be enough to effect restraint or confiscation; however, non-reported amounts could be seized pending a confiscation under the relevant provisions of the draft law.

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

404. There is currently no confiscation of currency pursuant to the UNSCRs as set out in relation to SR.III. Immigration said they manually check UNSCR lists against incoming passenger lists, but no one on the lists has ever come to their attention. DIE says that should someone come up on the list, they would notify the MPS, the MCS and the MNDF.

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

405. Smuggling is criminalized under Section 13 of the Export Import Act 1979. If a person smuggles precious metals and stones in contravention of the Act then the intelligence would be shared with the MPS. Intelligence is shared through the Customs Enforcement Network. There are no policies or procedures for notifying countries of origin or their competent authorities that precious gems and stones have been transported across borders, and it is unclear whether such notifications are carried out in practice.

406. As gold is also subject to the payment of customs duties, its importation and exportation must be declared, and smuggling of gold is therefore in violation of the Export Import Act.

Safeguards for Proper Use of Information (including in Supra-National Approach) (c. IX.13):

407. There is currently no system for cross-border reporting and keeping the information. Subsequently there are no safeguards in place.

Training, Data Collection, Enforcement and Targeting Programs (including in Supra-National Approach) (c. IX.14):

408. Maldives is yet to implement any specific training, data collection, enforcement or targeting programs relating to cross-border currency as it is yet to have a border currency declaration system. The Maldives authorities are considering bringing in a voluntary system of cross-border currency declaration, to prepare and train officers for when AML/ CFT legislation brings in a mandatory declarations system.

409. MCS provides in-house on-the-job training for their officers on the functions of the MCS including investigative techniques, enforcement and data collection.

Supra-National Approach: Timely Access to Information (c. IX.15):

410. No supra-national approach applies to the Maldives. This criterion is therefore not applicable in the context of the current assessment.

Additional Element—Implementation of SR.IX Best Practices (c. IX.16):

411. MCS have designed a currency declaration form and a voluntary disclosure form of currency exceeding US\$15,000.

Table 19: MCS Investigations

	2006	2007	2008	2009
Number of under invoicing cases investigated	96	163	232	177
Number of administrative sanctions imposed (e.g. fine)	57	97	138	88
Number of Section 13 of the Export Import Act 1979 cases sent for investigation	12	5	15	20

Additional Element – Computerization of Database and Accessible to Competent Authorities (c. IX.17)

412. N/A

Statistics (R.32)

413. Statistics relating to arrivals identify the number of passengers entering each port in the Maldives, but there are no statistics with respect to outgoing passengers.

Table 20: Numbers of Passengers Legally Entering the Maldives' Borders Each Year

Year	Total Number of Arrivals
2007	739,650
2008	759,287
2009	719,040
2010	864,506

Adequacy of Resources—Customs (R.30)

414. The MCS has approximately 730 officers, 100 of whom are dedicated to the Malé airport. Any time a plane arrives in Malé, MCS will station 16 to 17 officers at the airport including a Duty executive officer, an officer in charge, a cashier, and a legal officer. If flights are considered high risk (for example, flights originating in India or Sri Lanka are currently considered high risk) two further officers will be stationed at the airport. MCS Officers have yet to be trained in AML or CFT or cross-border declaration but it is anticipated that such training will commence in the near future.

415. The MCS staff is recruited according to the rules and regulations of the Civil Service Commission of the Maldives. While the on-site team was not provided a copy of these standards the Maldives have set out that they include checking criminal records, academic achievement and work experience.

416. Both MCS and the MNDF Coast guard report that they do not have adequate staff or other resources to adequately manage large and porous sea borders. MCS have four patrol boats, two in Malé, one in the Northern area and one in the Southern area. The MNDF Coast guard has four inshore vessels and three offshore vessels at its disposal.

Effectiveness

417. At the time of the assessment there was no disclosure or declaration system in place in the Maldives. Under the current plans, the establishment of a declaration regime is dependent on the draft AML/CFT law being passed.

418. Given the country's geography there is no possibility to effectively enforce borders in all of the approximately 288 inhabited Maldivian islands. Law enforcement authorities and other sectors in Maldives identify that cross-border currency transfers represent a risk of money laundering and terrorist financing. Law enforcement authorities identify that the neighboring countries of Maldives represent a serious risk of proceeds of crime, money laundering, and terrorist financing.

2.1.1 Recommendations and Comments

419. In order to comply with Special Recommendation IX, the authorities are recommended to:
- Introduce a compulsory cross-border currency declaration system or a disclosure system responding to the characteristics laid out in Special Recommendation IX in order to detect cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing, and draft policies and procedures to support that system.
 - Take legislative steps to ensure that a designated agency (such as the MCS, for example) has the authority to collect information from the carrier of currency or bearer negotiable instruments on the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of money laundering or terrorist financing.
 - Provide the designated agency with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering

or terrorist financing may be found, where there is a suspicion of money laundering or terrorist financing; or where there is a false declaration.

- Establish in law effective, proportionate and dissuasive sanctions for false cross-border currency declarations/disclosure or failure to declare/disclose.
- Establish in law effective, proportionate and dissuasive sanctions for the physical transportation of currency or bearer negotiable instruments that are related to money laundering or terrorist financing.
- Ensure that the prescribed threshold for declaration should not exceed US\$/EUR 15,000.
- Seek closer cooperation with other neighboring countries, such as establishing mechanisms for regular information exchange on cash seizures and cross-border transportation reports.
- Ensure that the designated agency reports unusual movements of precious metals and stones to the countries of origination or destination.

2.7.2. Compliance with Special Recommendation IX

	Rating	
SR.IX	NC	<ul style="list-style-type: none"> • There is no declaration or disclosure system in place in the Maldives.

3. PREVENTIVE MEASURES—FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1. General information

420. Several types of financial institutions are active in Maldives, namely banks, insurance companies, insurance intermediaries, finance companies, money remittance service providers, foreign exchange businesses and credit card companies.

421. Only banks and players in the securities market, however, are subject to AML/CFT obligations. Insurance companies and intermediaries, and leasing companies are not subject to obligations of relevance for this Section.⁷⁰ They are therefore not addressed in the write up for the preventive measures and the supervisory framework below. Money exchangers are required to comply with some very limited, indirect and mostly insufficient identification measures (as indicated under Criteria 5.2 and 5.3 below) but none of the other preventive measures required under the standard. They are not supervised for AML/CFT purposes and are therefore not mentioned under the relevant recommendations. The market entry rules that apply to all of these institutions are however discussed below.

422. Banks are supervised by the MMA; securities market intermediaries are regulated by the CMDA.

MMA:

423. The 1981 MMA Act established the MMA and sets out its main functions. The MMA is entitled to issue binding regulations that must be approved by the President of the Maldives before they become effective. The MMA also has powers, albeit limited, to sanction non-compliance with the MMA Act and some of the MMA Regulations.

424. The MMA Act was amended on a few occasions since its adoption, but in a piecemeal fashion, which led to some inconsistencies in the text. This is notably reflected in the types of entities that the MMA may supervise and regulate: While the initial MMA Act was geared towards the banking sector, it was subsequently amended in order to include certain non-bank financial institutions. This was done with the introduction of a definition of “financial institutions” which, in addition to banks, includes entities active in the securities, insurance, investment advice, finance leasing, asset management businesses, as well as “other similar financial business which the [MMA] deems necessary to regulate and supervise for the protection of the financial system of the Maldives” (Section 2 of the MMA Act). Further provisions of the Act, however, were not amended accordingly:

⁷⁰ According to the authorities it is common practice for the insurance companies to identify their customers and conduct CDD as a risk management practice. Representatives of the private sector with whom the assessment team met stated that the procedure followed in this respect include interview of the potential clients, obtaining details contained in the National Identity Card (in case of Maldives nationals), and passports and work permits (in case of foreign expatriates), letter from bankers confirming the status of clients etc. While nevertheless useful, the practice, in the absence of legal requirements, is not sufficient to bring the framework into compliance with the standard.

Section 4 of the MMA Act, for example, which notably establishes the basis for the MMA's supervisory powers, is still limited to supervision and regulation of "banking" activities (lit. c). This results in considerable confusion as to the real powers of the MMA. More details on the exact powers of the MMA are provided below.

CMDA:

425. The CMDA was established under the Securities Act of 2006 and is responsible for the regulation and development of the Maldives capital market and pension industry. It has statutory powers to license securities market intermediaries including brokers, dealers, investment advisers, as well as stock exchanges and central depositories. The CMDA may issue regulations under the Act without seeking Presidential assent.

Laws, regulations, other enforceable means and guidelines

426. At the time of the on-site visit, there were no AML/CFT obligations on the financial sector except for a few (not yet enforceable) requirements in the securities sector. Shortly thereafter, however (i.e. less than eight weeks after the on-site), a new **2010 Banking Act** (Law No. 24/2010) was issued and imposed AML/CFT obligations on banks. As per Section 38(a) of the Act, banks must develop and implement measures to prevent money laundering and terrorist financing. These measures include *inter alia* the identification of the customers, beneficial owners, and ultimate principals in transactions, the identification of source and destination of funds, maintenance of identity and transaction records, submission of suspicious transaction reports to the FIU, monitoring of transactions, and development and implementation of internal programs for AML/CFT. These measures are drafted in general terms and the law provides that the MMA will prescribe in regulation the form and manner in which they are to be complied with. Due to the recent enactment of the law, the regulation has not yet been issued.

427. The only other texts that specifically address the prevention of money laundering and terrorist financing in the financial sector are:

- **The CMDA Regulation on Anti-Money Laundering in Securities-Related transactions (CMDA 2010 AML Regulations).** The regulation was issued by the CMDA Board on October 10, 2010 under Section 60 of the Maldives Securities Act, 2006. It is drafted in mandatory terms and non-compliance with its provisions may be sanctioned under Section 59 of the Maldives Securities Act. Pursuant to Section 10 of the Regulations, securities market licensees have been given a period of up to six months since the issuance of the Regulation to make arrangements to comply with its requirements. This regulation imposes some CDD requirements to securities sector licensees, including enhanced due diligence in certain situations. Issued by the competent regulator under sound regulatory powers, mandatory and in force, the CMDA 2010 AML Regulations is considered as "other enforceable means" for the purposes of this assessment.
- **The MMA AML/CFT Circular to all banks and institutions involved in money transfer activities issued by the MMA of February 22, 2006 (No. CN-CBS/200/05; hereafter: MMA AML Circular or the Circular):** Despite its title, the Circular only deals with AML. It provides a background to money laundering notably by defining money laundering in very

broad terms, indicating that the Government of Maldives places high priority on making sure that the Maldives is not used as a base for money laundering activities, and informing its addressees of the establishment of the FIU within the MMA. It also addresses specific “requirements on institutions involved in deposit taking and money transfer,” such as “knowing your customer,” the “legitimacy of funds and transactions,” as well as suspicious transactions and their reporting to the FIU.

At the time of the on-site assessment mission to the Maldives and up until the entry in force of the 2010 Banking Act, the Circular was the only text that addressed AML/CFT measures for banks. It is not, however, enforceable: Despite the fact that it is drafted in mandatory terms, it mentions that it “attempts to provide sufficient guidance” to financial institutions for the prevention, detection and control of money laundering activities (Section 11). No legal basis is indicated for its issuance and no sanctions are listed for non-compliance with its provisions. The MMA itself considers that the Circular does not rely on a sound legal basis and is not enforceable. In these circumstances, the MMA AML Circular is considered as guidance for the purposes of this assessment and is, as such, insufficient to address the elements of the standard which under the current AML/CFT assessment Methodology should be contained in law, regulation or other enforceable means. The Circular therefore has no impact on the final compliance ratings (except under Recommendation 25).

Although the Circular is not sufficient to ensure formal compliance with the standard, it is worth noting that some of the banks interviewed during the on-site visit mentioned that they considered the Circular to be mandatory (despite the lack of legal basis) and therefore strived to implement it.

428. Although they do not specifically mention AML/CFT, other texts are relevant from an AML/CFT perspective. This is notably the case for the Companies Act, and several regulations. Before listing these regulations, it is worth mentioning that the entry into force in 2008 of the current Constitution brought a notable change to the Maldives legal framework: in order to be enforceable, regulations must now be issued under a parent Act. Presidential decrees (which were the basis for the issuance of Regulations prior to 2008) are no longer considered to be sources of law. Consequently, many of the Regulations adopted prior to 2008 lost their legal basis after the entry into force of the current Constitution. To remedy this situation, the authorities are currently preparing a number of parent Acts. In the meantime, Parliament passed the Law for the General Regulations (Law No. 6/2008) on July 29, 2008, that “re-issued” a total of 83 existing regulations. The Law was accepted by the President and published in the Government Gazette on August 5, 2008. It gives “legal power,” albeit temporarily, to some regulations (i.e. those listed in Appendix of the law) and designates the authority responsible for their enforcement. The “period of enforcement” of these regulations was initially of 12 months starting from the date of enactment of the law, but was subsequently extended until August 5, 2011. The law includes the following two regulations, both of which are to be enforced by the MMA:⁷¹

⁷¹ Article 2 of the Law mentions “The Regulations listed in the Appendices 1 and 2 of this Act are previously issued for the smooth running of the State and to provide relevant public services, and to enforce relevant laws. These Regulations are hereby provided with the legal power under this Act and should be enforced in accordance with the provisions of this Act.”

- the MMA Insurance Industry Regulation; and
- the MMA Regulation for Finance Leasing Companies and Finance Leasing Transactions.

429. In addition, the new Maldives Banking Act explicitly “authorizes” a number of MMA Regulations, notably:

- The MMA Regulation on Fit and Proper Requirements.

430. Finally, other texts of relevance have been issued:

- MMA Regulations Outlining Arrangements for Money Changers dated March 1, 1987. This regulation issued by the MMA is a one page document containing a limited number of rules that “govern” the money changing business in the Maldives. It outlines the rules to be observed by money changers in foreign exchange dealings, notably (albeit in a very limited and non-enforceable way) with respect to customer identification. It does not, however, have a basis in the MMA Act or any other law and is not enforceable. For the purposes of this assessment, it is therefore considered as mere guidance;
- MMA Electronic Funds Transfer Guidelines. These guidelines were issued under Sections 4 and 36 of the MMA Act;
- MMA Regulations for Banks and Financial Institutions of 1988. The regulations were issued under Section 36 of the MMA Act and were in force at the time of the on-site visit but have since been repealed with the December 2010 enactment of the Banking Act;
- CMDA Securities (General) Regulations (2007, as amended in 2009);
- Dealers and Representatives Licensing Regulation;
- CMDA Regulation on the Conduct of Securities Business (Regulation No. 03/2006);
- MMA Guidelines for the Administration of Insurance Agents (2010) issued under the Insurance Industry Regulations of 2004;
- The Stock Exchange Company Licensing Regulation; and
- Regulation on Licensing and Conduct of Central Depository.
- With the exception of the MMA Regulations Outlining Arrangements for Money Changers, the regulations mentioned above have been issued under a competent authority’s powers to regulate, and are enforceable. They are considered as “other enforceable means” for the purposes of this assessment. The MMA Regulations Outlining Arrangements for Money Changers and the two guidelines are not enforceable and therefore only constitute guidance.

3.2. Risk of Money Laundering or Terrorist Financing

431. Maldives does not apply a risk-based approach to AML/CFT. There has been no review or assessment of ML/TF threats, vulnerabilities and risks in different parts of the Maldivian financial sector that would justify the exclusion of some of the financial activities from AML/CFT requirements or a distinction with respect to specific obligations applicable to specific institutions within each sector.

3.3. Customer Due Diligence, including Enhanced or Reduced Measures (R.5 to 8)

3.3.1. Description and Analysis

Recommendation 5

432. As mentioned above, only a few, sector-specific texts are relevant from an AML/CFT perspective and they mainly pertain to the banking and intermediaries sectors. Money changers are subject to some, limited CDD measures, but not to any other AML/CFT relevant measures. Other financial institutions active in Maldives have no relevant customer due diligence, record keeping or suspicious transaction reporting requirements. They are therefore only addressed under the relevant criteria.

Prohibition of Anonymous Accounts (c. 5.1):

Banks

433. There is no direct and explicit prohibition in law or regulation against opening or maintaining anonymous accounts or accounts in fictitious names. Furthermore, there are no explicit requirements to deal with existing numbered accounts, nor are there specific identification requirements that would effectively prohibit such accounts. The MMA AML Circular does provide that a minimum set of information needs to be collected before a bank account can be opened or a transaction conducted, but, as mentioned above, in a non-mandatory way.

434. Private sector representatives informed the assessment team that they do not open or maintain any anonymous or fictitious accounts, nor do they allow the existence of numbered accounts in their systems. The authorities confirmed that based on information obtained in the course of their supervision processes, no accounts are held in anonymous or fictitious names.

Securities sector

435. Sections 10 and 11 of the Regulation on the Conduct of Securities Business contain requirements for a written agreement between the client and the licensee before any services relating to securities trading are provided by the licensee to the client. As per Section 11 of the Regulation, where a licensee provides securities services to a client, the agreement must set out in adequate detail the basis on which those services are provided, the details of the licensee and the client, and the fees charged in regards the service provided. The authorities have stated that, under these provisions and as per the internal procedural manual of licensees (approved by the CMDA), licensees are under the obligation to identify their customer and are, consequently, prohibited from opening anonymous and fictitious accounts. The recent CMDA 2010 AML Regulations on AML prescribes more detailed

identification requirements. They also contain an explicit prohibition on dealing “with anonymous persons or persons with fictitious names” (Section 4(3) of the Regulations).

When is CDD required (c. 5.2):

Banks

436. With the December 2010 entry in force of the 2010 Banking Act banks are required to identify their customers, the customers’ beneficial owners, and the ultimate principals in transactions. They are also required to verify their identities. The law does not, however, specify a specific timing, or under what specific circumstances identification should take place, and the regulation called for under Section 38(a) of the law to clarify the details of the AML/CFT obligations has not yet been issued.

437. As per the MMA AML Circular, there are certain types of information that should be considered for determining the true identity of customers wishing to open accounts and or to make transactions including money transfers. This information must be gathered regardless of the amounts involved in a specific transaction. Representatives of the private sector confirmed that information about the potential clients is obtained at the time when they wish to open accounts or make any transactions irrespective of any threshold. However, the Circular does not guide banks and other transfer services as to what to do in case of: (a) transactions involving suspicions of money laundering or terrorist financing; and (b) instances where there are doubts about the veracity or adequacy of previously obtained customer identification data, except to say that such instances but may be treated as an indicator of suspicious activity and may justify a report to the FIU.

Securities sector

438. Sections 10 and 11 of the CMDA Regulation on the Conduct of Securities Business contain mandatory provisions relating to the written agreement that must be signed by the licensee and the client. They notably mention that the agreement should contain “details” of the clients but do not specify in exact terms what those details are. Section 4 of the CMDA 2010 AML Regulations provides that licensees must not open an account for the customer except after verifying his identity, permanent address, national identity card number or passport for non-Maldivians, nature and place of work, present and permanent address and the purpose of the transaction along with any other information that the licensee deems necessary. Section 9.3 of the CMDA 2010 AML Regulations provides that information must be updated regularly and continuously or whenever any suspicion regarding them arises at any stage of dealing, though without specifying exactly what information needs to be updated. Considering that neither these CMDA regulations constitute primary or secondary legislation, they fail to meet requirements of the standard.

Money Changers

439. Regulation 5 of the MMA Regulations for money changers calls for basic customer identification (outlined under criterion 5.3 below) when dealing with travelers’ checks, but does not establish a precise timing for its completion. There are no identification requirements in other cases of currency exchange, namely where traveler’s checks are not involved and one currency is simply

exchanged for another. The authorities do not hold any information which would enable them to establish how frequently travelers' checks are used in the Maldives.

Identification measures and verification sources (c. 5.3):

Banks

440. The 2010 Banking Act requires banks to develop and implement measures for the identification of their customers, of the beneficial owners and of the ultimate principals in transactions, as well as for the verification of their identities. It does not, however, specifically require verification of the customer's identity using reliable, independent source documents, data or information, and the implementing regulation under the Act is yet to be issued.

441. Guidance is provided in Section 6 of the MMA AML Circular which enumerates the "types of information [that] will be considered as the minimum acceptable for determining the true identity of customers wishing to open accounts and or to make transactions including money transfers through the [banks or money transfer businesses] whether directly or by proxy:

- For Individual Personal Accounts and or Transactions (authorities stated that transactions are included here to address cases of money transfer transactions carried out by businesses. However, interestingly the Circular does not specifically mention name of the person in the list):
 - Nationality, and date of birth evidenced by photo ID (national passport or national identity document or certified copy thereof);
 - Verified address of current residence;
 - Verified employment and/or source of income; and
 - Where applicable, written confirmation from customer's prior bank attesting to customer's identity and history of account relationship.
- For Corporate, Partnership, Trust, Associations and Other Entity Accounts and or Transactions:
 - Certified copy of Certificate of Incorporation, Partnership Agreement, Memorandum and Sections of Association or other similar documentation evidencing legal status;
 - Certified copy of board resolution stating authority to open accounts, transact business, borrow funds and designating persons having signatory authority thereof for the transactions through the financial institutions;
 - Verified identity and address of the Chairman of the Board of Directors, the Managing Director, and all Shareholders for a corporation (other than a publicly

listed corporation), or the Managing Partner and at least one Partner for Partnerships, or the Principal owner for Sole Traders;

- Where shareholders are not individuals, but entities such as Trusts, Partnerships etc, identification details of Directors of these entities must be obtained and verified;
 - Audited financial statements (last full year at minimum, last three years preferred) for corporation; for partnerships, and sole traders (unaudited statements may be substituted upon prior written approval of a senior management official of bank); and
 - Where applicable, written confirmation from customer’s prior bank attesting to customer’s identity and history of account relationship.
- For Minors:
 - Nationality and date of birth evidenced by photo ID (national passport or national identity document or certified copy thereof); or written confirmation thereof certified as true and correct by legal parent or guardian; and
 - Verified address of current residence of minor and also of legal parent or guardian.”

442. Despite the somewhat unclear wording of the text, the authorities’ intention was to impose a requirement on banks and other money transfer services to identify the customer on the basis of the documents and information listed above. In practice, the representatives of banks who met with the assessment team stated that they had their own procedures and requirements, which exceeded the ones enumerated in the AML/CFT Circular. As already mentioned, the Circular does not impose mandatory requirements but only provides guidance and is therefore insufficient to bring the framework into compliance with the standard.

Securities sector

443. Sections 10 and 11 of the Regulation on the Conduct of Securities Business contained requirements for written agreements between the client and the licensee before any services relating to securities trading is provided by the licensee to the clients. As per Section 11 of the Regulation, where a licensee provides securities services to a client, the agreement must set out in adequate detail the basis on which those services are provided, the details of the licensee and the client, and the fees charged in regards the service provided. Section 4 of the CMDA 2010 AML Regulations contains more elaborate and descriptive CDD requirements by the licensees for different classes of customers. As per this Section, licensees have been directed to take due diligence measures regarding the “customer and/or the original beneficiary” (“prior to and during dealing with the customer.”) Due diligence measures as prescribed under the Regulations include *inter alia* verifying the identity and activities of the customer and/or the original beneficiary;

444. Section 4 of the Regulation further lists detailed requirements to verify the identity of different classes of customers:

- For natural person, the procedures for verifying the identity of a customer would be as follows:
 - Verification of the identity, permanent address, national identity card number or passport for the non Maldivians, nature and place of work, present and permanent address and the purpose of the transaction along with any other information that the licensee deems necessary;
 - If a licensee is dealing with an agent of a customer, a notarized power of attorney indicating the appointment of such agent and the obligation to verify the identity of the agent; and
 - In case the customer is of limited capacity or incompetent, the information and relevant documents of the customer's representative.
- For legal person, the following information must be gathered:
 - Name of the legal person, its legal form, capital, address, tax number if any, nature of activity, names of authorized signatories, telephone numbers, date and number of incorporation and any other information that the licensee considers necessary;
 - Verification of the existence of legal person and its legal status through the necessary documents and the information contained therein such as certificates issued under laws of Maldives;
 - Acquiring the documents identifying the natural persons authorized to deal in the name of the legal person and the verification of the identity of the agent;
 - Acquiring the names and addresses of partners and shareholders whose shares amount to more than 5% of the company's capital;
 - Acquiring an official certificate issued by the competent authorities duly notarized if the company is incorporated abroad; and
 - Necessary safeguards to be exercised to ensure the validity and accuracy of information provided by customers.

445. The intention behind this provision is to lay down documentary requirements for identification of customers. Representatives of the private sector stated that as per their own procedures and systems, they are obtaining these details from customers in order to establish their identity.

446. As mentioned above, the CMDA 2010 AML Regulations do not qualify as law or regulation, and therefore do not meet the standard.

Money changers

447. As mentioned above, there are no enforceable CDD requirements for money changers in place, but there is nevertheless some encouragement for them to identify the client in certain circumstances. Section 5 of the Regulations outlining arrangements for money changers states that the money changers should give a receipt to the customer after concluding any exchange transaction. Such a receipt shall contain *inter alia* the customer's name, passport number and nationality (required for purchase of traveler's checks). There are no requirements to obtain and verify the identity the customers in other cases where currency is exchanged, namely where traveller's cheques are not involved.

448. There are no further CDD measures for money changers, which is why money changers are not addressed under the following criteria.

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

Banks

449. While Section 38 (a) of the 2010 Banking Act requires banks to develop measures including identification of their customers, of the customer's beneficial owners, of the ultimate principals in transactions and the verification of their identities, the exact obligations are yet to be specified by way of the regulation.

450. Some guidance is provided in the MMA AML Circular on the type of information to gather to identify corporate clients: This includes obtaining a certified copy of the Certificate of Incorporation, the Partnership Agreement, the Memorandum and Sections of Association or other similar documentation evidencing legal status; verified identity and address of the Chairman of the Board of Directors, the Managing Director, and all shareholders for a corporation (other than a publicly listed corporation), or the managing partner and at least one partner for partnerships, or the principal owner for sole traders. The Circular does not, however, address the requirement relating to the identification and verification of the identity of a person purporting to act on behalf of a legal person, nor does it encourage obtaining details of all directors of corporate clients.

Securities sector

451. The CMDA 2010 AML Regulations (which, as mentioned above, are considered as other enforceable means) require gathering documents identifying the natural persons authorized to deal in the name of the legal person and the verification of the identity of the agent (Section 4.2). Under the standard, however, this requirement should be laid out in law or regulation, rather than in other enforceable means. Consequently, the Maldives framework is not in line with the standard on this point.

452. Procedures for verifying the identity of a legal person are further elaborated in Section 4.2 of CMDA 2010 AML Regulations. These procedures *inter alia* include gathering information about name of the legal person, its address, verification of the existence of the legal person and its legal status through the necessary documents and the information such as certificates issued by the Ministry of Economic Development or the relevant Authority under Laws of Maldives. The

identification of legal persons requirements set out in the CMDA 2010 AML Regulations do not require details of all directors of a legal person to be obtained and verified by the licensee.

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

Banks

453. Since the December 2010 entry into force of the Banking Act, banks are required to identify their customers, the customers' beneficial owners, the ultimate principals in transactions. However, the regulation called for under Section 38(a) of the Act to clarify the details of such obligations has not yet been issued.

454. The MMA AML Circular fails to provide adequate guidance as to the definition of beneficial owner, or how banks should make efforts to identify the beneficial owner in case of multi-layered transactions or ownership structure by adopting a "drill-down approach." While the Circular does contain very limited guidance in terms of prescribing minimum acceptable levels of information to be obtained for determining the true identity of customers wishing to open accounts or make transactions whether directly or by "proxy," no further elaboration of the term "proxy" has been provided. Hence there is no certainty as to whether the banks are aware of their exact obligations when dealing with customers.

455. There are no legally binding obligations for banks to proactively determine for all customers whether the customer is acting on behalf of another person, and, if so, to take reasonable steps to obtain sufficient identification data to verify the identity of that other person. In the absence of specific and enforceable requirements with respect to beneficial ownership, no common practice or procedure prevails across the financial sector.

456. With respect to customers that are legal persons or legal arrangements, banks are not legally under an obligation to take reasonable measures to understand the ownership and control structure of the customer, but some guidance is provided on that matter by the MMA AML Circular. There is however no clarification as to how banks should determine and identify the natural persons who ultimately control the customer, especially with respect to corporate clients. No guidance exists in terms of any threshold limit of substantial shareholding (held individually or acting in concert) which banks should take into account while determining the beneficial owner.

Securities sector

457. The CMDA 2010 AML Regulations require the identification of the customer and/or of the "original beneficiary" which it defines as "the natural person having the original intention or real interest in the relationship between the licensee and the customer" (Sections 4.1 and 3.3). The formulation of this requirement is problematic because it offers the licensees the option of taking due diligence measures with respect to either the customer, or the beneficial owner rather than both in all cases. The regulations further direct that when dealing with an agent of a customer (who is a natural person) licensees must obtain a notarized power of attorney indicating the appointment of such agent and verify the identity of the agent. Further, in case of legal persons, licensees have been directed to obtain the names and addresses of partners and shareholders whose shares amount to more than 5 percent of the company's capital. There is however no requirement to identify the natural persons

who comprise the mind and management of the company, nor to proactively determine if a customer is acting on behalf of another and then to verify the identity of that other person in all cases. There is also a lack of guidance as to how licensees should determine and verify the ownership and control structure especially in cases where a multi layered corporate structure owns a client. Thus, while there has been some attempt in the securities sector to address the identification of the beneficial owner, there still exist gaps in terms of making this a requirement in all cases.

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

Banks

458. There are no legally binding obligations for banks to obtain information about the purpose and the intended nature of the business relationship.

Securities sector

459. Section 4.1.1 of the CMDA 2010 AML Regulations requires licensees to obtain information from customers who are natural persons about the purpose of transactions (though not about the business relationship). These requirements do not extend to other classes of customers such as legal persons/arrangements. There is no obligation to obtain information about the intended nature of the business relationship with respect to any class of customers.

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

Banks

460. There are no explicit and legally binding obligations for banks to conduct ongoing due diligence on the business relationship. Similarly, there are no requirements to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, not even for higher risk categories of customers or business relationships.

Securities sector

461. Section 4 of the CMDA 2010 AML Regulations contains an explicit requirement for licensees to take due diligence measures “prior to and during dealing with the customer.” Ongoing due diligence measures include verifying “the activities of the customer” (Section 4.1) and ensuring that the identification information is “updated regularly and continuously or whenever any suspicion regarding arises at any stage of dealing” (Section 9.3). There is, however, no additional guidance as to what verifying the activities of the customer entails in practice; in particular, there is no specific requirement to exercise scrutiny of transactions being conducted in order to ensure that they are consistent with the customer’s business and risk profile and, where necessary, source of funds.

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

Banks

462. There are no legally binding obligations for banks to perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. Further no guidance has been provided by the authorities as to which categories of customer may constitute higher risk.

Securities sector

463. Section 5 of the CMDA 2010 AML Regulations contains specific requirements to exercise enhanced due diligence for certain categories of customers. The category includes PEPs (discussed in detail under Recommendation 6), customers from countries that do not have anti-money laundering legislation, customers dealing indirectly with licensees using modern technology such as the internet, charities and private organizations and customers whose transactions represent a high risk of money laundering according to the licensee's discretion. While the regulations contain obligations for the licensees in respect of high risk customers, they do not exactly state what enhanced due diligence measures would involve.

Risk—Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9); Simplification/Reduction of CDD Measures relating to overseas residents (c. 5.10); Simplified/Reduced CDD Measures Not to Apply when Suspicions of Money Laundering or Terrorist Financing or other high-risk scenarios exist (c. 5.11); and Risk-Based Application of CDD to be Consistent with Guidelines (c. 5.12):

464. The notion of an approach to AML/CFT based on risk is not prevalent in Maldives: No risk assessment has been conducted and, with the limited exception of some enhanced due diligence requirements under the 2010 CMDA Regulations, no distinction is made in the measures imposed or recommended according to the level of ML/TF risk. There are, in particular, no provisions that allow for the implementation of reduced or simplified CDD in any of the various segments of the Maldivian financial sector, and, consequently, no guidelines to assist financial institutions in this respect. Criteria 5.9 to 5.12 of the Methodology are therefore not applicable for the purposes of this assessment.

Timing of Verification of Identity—General Rule (c. 5.13) and Treatment of Exceptional Circumstances (c. 5.14 and 5.14.1):

Banks

465. The 2010 Banking Act does not address timing of verification.

466. MMA AML Circular provides the types of information acceptable for the identification of “customers wishing to open accounts and or make transactions” (Section 6). The authorities consider that this means that verification should occur before establishing a business relationship or conducting transactions for customers including occasional transactions. According to representatives of the private sector, customer identification procedures are conducted prior to opening the customer's account.

Securities sector

467. The CMDA 2010 AML Regulations require conducting CDD prior to dealing with the customer. However, no specific guidance relating to occasional transactions is contained therein.

According to the representatives of the private sector, identification of customers is carried out for all clients before establishing business relationship.

Failure to Complete CDD before commencing the Business Relationship (c. 5.15) and Failure to Complete CDD after commencing the Business Relationship (c. 5.16):

Banks

468. The 2010 Banking Act does not indicate what banks should do if they are unable to complete their CDD obligations, and the MMA AML Circular only mentions that a customer’s reluctance to provide reasonable information and documentation when opening an account or in connection with a requested transaction would be considered suspicious and may be reported to the FIU (Section 8(2)). Further, no requirements or guidance exist for banks to consider terminating the business relationship in cases where the banks and money transfer businesses have already commenced the business relationship and the institutions have doubts about the veracity or adequacy of previously obtained information.

469. The authorities indicated, and representatives from the private sector confirmed, that it is industry practice to refuse to conduct a transaction or to establish a business relationship if the customer fails to provide the required CDD information in a timely manner.

Securities sector

470. No provisions address situations where the licensee is unable to satisfactorily complete the CDD process. Further, no requirements exist for securities market licensees to consider terminating the business relationship in such cases where the securities market licensee has already commenced the business relationship and licensees have doubts about the veracity or adequacy of previously obtained information.

Existing Customers—CDD Requirements (c. 5.17) and Existing Anonymous-account Customers—CDD Requirements (c. 5.18):

471. There are no obligations (either for banks, securities sector licensees or other financial institutions) to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times, or to customers who hold anonymous or numbered accounts.

Securities sector

472. The CMDA 2010 AML Regulations are silent on the issue of existing customers. The authorities mentioned however that the issue of identity is addressed in clauses 10 and 11 of the Regulation on the conduct of securities business, which has been in place since 2006. They mention that “though not expressly prohibited, these clauses would prevent any dealing company having a fictitious customer account as any account should be supported by a valid “national identity card” or a “company registration certificate.”

Recommendation 6

Foreign PEPs—Requirement to Identify (c. 6.1); Risk Management (c. 6.2; 6.2.1):

473. There is no requirement in law, regulation or other enforceable means for any financial institution other than intermediaries in the securities sector to establish whether a potential customer, a customer or beneficial owner is a politically exposed person (PEP), foreign or domestic, and to take any of the measures listed in Recommendation 6.

Securities sector

474. The CMDA 2010 AML Regulations require licensees to exercise enhanced due diligence to identify whether the customer is a PEP (a high risk person), which it defines as “persons who occupy or have occupied prominent public positions in any country, such as heads of states or governments, prominent politicians, judges, military officers, senior government officials or prominent political party officials. This shall include their second degree family members” (Sections 5 and 3.6).

475. It does not specifically mention how security dealers should establish whether a customer (existing or potential) is a PEP, but provides that, when a customer is identified as a PEP, licensees must “consider the compatibility of his transactions with the nature of his activities. [Licensees must] also consider the degree of divergence and interrelationship among the customer’s accounts” (Section 5.1 of the regulation). However there is no requirement to put in place an effective risk management system to determine if the beneficial owner of a customer is a PEP. As per Sections 5.1 and 7.4 of the CMDA Regulations, there is a requirement to obtain authorization of the CEO or the highest executive authority before establishing a business relationship with a PEP. The same authorization is also necessary if it is discovered that subsequently a customer becomes a PEP. However, there is no requirement to proactively determine if an existing client becomes a PEP and then to seek senior management authorization. Further the obligations do not extend to cases where the beneficial owner of a customer subsequently becomes or is found to be a PEP.

Foreign PEPs—Requirement to Determine Source of Wealth and Funds (c. 6.3), Foreign PEPs—Ongoing Monitoring (c. 6.4) and Domestic PEPs—Requirements (Additional Element c. 6.5):

Securities sector

476. There is no requirement for securities market licensees to establish the source of wealth and funds of customers and beneficial owners who are identified as PEPs. The CMDA 2010 AML Regulations direct licensees to exercise enhanced due diligence with respect to PEPs, but do not explain what additional measures should be taken under enhanced due diligence.

477. The definition of PEPs does not differentiate foreign from domestic PEPs. The requirements of the CMDA 2010 AML Regulations therefore apply, regardless of the PEP’s nationality.

Recommendation 7

Requirement to Obtain Information on Respondent Institution; Assessment of AML/CFT Controls in Respondent Institutions; Approval of Establishing Correspondent Relationships; and Documentation of AML/CFT responsibilities for each Institution (c. 7.1-7.5):

478. In the Maldives, the current laws, regulations and procedures do not deal with cross-border correspondent banking and other similar relationships. There are therefore no obligations for banks to gather sufficient information about a respondent institution, nor to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. Similarly, there are no obligations on banks to obtain approval from senior management before establishing new correspondent relationships, let alone document the respective AML/CFT responsibilities of each institution.

479. It would seem that in practice, Maldivian banks, as per their own internal risk management system, carry out a risk assessment of the respondent bank before entering into correspondent relationship with them. This includes an internal approval process while establishing such relationships and obtaining information about the respondent institution.

Payable-Through Accounts (c. 7.5):

480. Maldivian authorities have stated that payable-through accounts are not used or likely to be used in the Maldivian financial systems and the same view is shared by the private sector representatives with whom the assessment team met during the on-site visit.

Recommendation 8

Misuse of New Technology for Money Laundering or Terrorist Financing (c. 8.1):

Banks

481. There are no specific legal or regulatory requirements for banks to have policies in place to address the potential abuse of new technological developments and advancements for money laundering or terrorist financing.

Securities sector

482. Section 5.2 of the CMDA 2010 AML Regulations require licensees to exercise enhanced due diligence with respect to customers who deal indirectly with licensees, particularly those who use modern technology such as internet trading. However, no guidance is provided to licensees as to what the term "enhanced due diligence" would involve and, consequently, what measures they should take to be considered in compliance with the regulation.

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

Banks

483. There are no legally binding obligations for banks to have policies and procedures in place in order to address any specific risks associated with non face-to-face business relationships or transactions when establishing customer relationships and when conducting ongoing due diligence.

484. The MMA issued Electronic Funds Transfer Guidelines that are intended to assist the customers and the banks (and other institutions involved in money transfer) to deal with certain issues that may surround using debit and credit cards. However, internet banking is not covered under these guidelines. Moreover these guidelines mainly deal with issues of customer care rather than specific and effective measures to manage and address risks of money laundering and terrorist financing associated with technological developments and dealing with non face-to-face clients.

Securities sector

485. Section 5.2 of the CMDA 2010 AML Regulations require licensees to exercise enhanced due diligence with respect to customers who deal indirectly with licensees, particularly those who use modern technology such as internet trading. However, no guidance is provided to licensees as to what the term “enhanced due diligence” would involve and, consequently, what measures they should take to be considered in compliance with the regulation.

Effectiveness

486. So far, only banks and licensees in the securities sector are subject to CDD obligations. Other institutions dealing with any of the other types of financial activities covered by the standard operate outside of the scope of the AML/CFT regime.

487. The 2010 Banking Act requires banks to develop and implement measures to prevent money laundering and terrorist financing. The Act has only recently come into force and, while the law now requires the identification of customers, the source and destination of funds and other such measures, the relevant obligations are broadly drafted and the implementing regulations are still to be issued. In the absence of comprehensive legislation governing AML/CFT preventive measures, the existing guidance as contained in the MMA AML Circular is inadequate to effectively deal with the requirement for a comprehensive CDD regime. Representatives of the banking sector maintained that they have, in practice, implemented some CDD measures even prior to the entry in force of the new law or MMA AML Circular and, consequently, have some experience in CDD, it remains to be seen how the new requirements will be implemented in practice.

488. The CMDA 2010 AML Regulations address some of the essential criteria of the standard, but considering that they came into existence only recently (October 10, 2010) and that licensees have been given a timeframe of up to six months to start complying with the requirements, it is too early to judge the effectiveness of their implementation.

489. Maldives is yet to lay down appropriate measures to deal with correspondent banking relationships, technological developments and their impact on the risk of money laundering and terrorist financing, and non face-to-face relationships (with the partial exception of the securities sector which has addressed issues of technological developments and customers indirectly when dealing with securities dealers). In the absence of legal provisions in this regard, the existing

implementation is not uniform across sectors and institutions, which raises concerns about the effectiveness of the regime.

490. There are no comprehensive provisions in law, regulation or elsewhere to suitably address the issue of beneficial ownership across the financial sector. While the 2010 Banking Act now requires banks to identify their customers, the customers' beneficial owners and the ultimate principals in transactions, no implementing regulation or guidance has been issued to further clarify the issue. The provisions applicable in securities sector are more detailed but they also fail to provide a clear definition of the beneficial ownership and shortcomings remain with respect to customers that are legal persons or legal arrangements. Moreover, since the securities sector regulations have also come into force recently, it is too early to judge the effectiveness of implementation. No requirements or guidelines exist for other sectors. There clearly is a need for further clarification on the whole issue of beneficial ownership in the entire financial sector.

491. The Maldives is yet to prescribe comprehensive provisions to deal with the issue of PEPs (with the partial exception of the securities sector) and the effectiveness of the current implementation regime is difficult to assess due to the lack of legal provisions applicable to PEPs. While a few banks, insurance companies and other money transfer businesses have put in place their own risk management procedures to address the risk of dealing with PEPs, there clearly is a need to prescribe comprehensive requirements across the entire range of financial sector and, if considered appropriate, to extend the requirements to deal with domestic PEPs.

3.3.2. Recommendations and Comments

492. Considering the early stage of implementation of the AML/CFT regime in Maldives, where most of the detailed requirements are yet to be prescribed for financial institutions, the Maldivian authorities may wish to consider adopting a risk-based approach while developing and implementing the AML/CFT preventive measures regime. Indeed, a blanket approach to the implementation of AML/CFT preventive measures may overburden the financial institutions as well as the authorities in charge of enforcing these measures, which may, in turn, prove detrimental to the effectiveness of the AML/CFT regime. Adopting a risk-based approach would enable both the institutions and the authorities to target their resources on the basis of money laundering and terrorist financing risk. This would, however, require a comprehensive assessment of the risks in the Maldives, in order to establish an approach which adequately mitigates these risks. This assessment should establish the threats, vulnerabilities and risks as applicable in different parts of the financial sector, as well as per customer or financial product.

493. In order to comply with Recommendations 5, 6, 7 and 8, the authorities are recommended to:

- Bring all financial institutions within the scope of the AML/CFT regime.
- Issue implementing regulations associated with CDD requirements under the 2010 Banking Act.
- Prohibit financial institutions from opening or maintaining anonymous or fictitious accounts by providing for an explicit prohibition of such accounts or by laying down clear positive identification requirements for all clients.

- Require in law or regulation all financial institutions to:
 - undertake CDD measures when establishing business relationships or when there are doubts about the veracity or adequacy of previously obtained customer identification data and to identify and verify their customers using reliable, independent source documents, data or information;
 - verify that any person acting on behalf of the customer is so authorized and identify and verify the identity of that person;
 - identify and verify the beneficial owner;
 - determine whether the customer is acting on behalf of another person and then to take reasonable steps to obtain sufficient identification data to verify the identity of that other person;
 - conduct ongoing due diligence on the business relationship and transactions.
- Require in law or regulation or other enforceable means financial institutions to:
 - verify the legal status of legal persons or legal arrangements by obtaining details of all directors;
 - understand the ownership and control structure of legal persons;
 - obtain information on the purpose and intended nature of the business relationship;
 - consider filing an STR and terminating the business relationship when a financial institution can no longer be satisfied that it knows the true identity of a customer;
 - undertake enhanced due diligence measures for higher risk categories of customers and provide guidance as to what these measures constitute;
 - verify the identity of the customer and beneficial owner before or during the course of establishing business relationships; and
 - not to open accounts, commence business relations or perform the transactions on failure to conduct CDD and consider making a suspicious transaction report. In case the financial institution has already commenced the business relationship, failure to conduct CDD should result in termination of the business relationship and the financial institution should consider making a suspicious transaction report.
- Financial institutions should be obligated to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.
- Provide comprehensive guidance to all financial institutions on the procedures required to identify the ultimate natural person who owns or controls the customer;

- Put in place and implement comprehensive preventative measures in keeping with the requirements of Recommendation 6 on PEPs with appropriate and ongoing risk management procedures for identifying (and applying enhanced CDD to) PEPs, customers who are close relatives of PEPs, and accounts of which a PEP is the ultimate beneficial owner;
- Implement comprehensive preventative measures with respect to cross border correspondent banking and other similar relationships. Such measures would include:
 - Gathering sufficient information about the respondent institution to understand fully the nature of respondent’s business and to determine its reputation and quality of supervision;
 - Assessing the respondent institution’s AML and CFT controls;
 - Obtaining approvals from senior management before establishing correspondent relationships; and
 - Documenting the respective obligations of each institution.
- Implement comprehensive preventative measures in keeping with the requirements of Recommendation 8 on technological developments and non face-to-face transactions.

3.3.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • Only banks and securities sector licensees are required to undertake CDD measures. Other sectors are outside the purview of requirements. Norms for securities sector are specified only in other enforceable means and not in law or regulation. • No measures in law or regulation to prevent opening of accounts under fictitious names. • No requirement in law or regulation for financial institutions as to the timing when CDD is required to be conducted. • No requirement in law or regulation for financial institutions to identify and verify the identity of their customers using reliable, independent source documents, data or information. Broad requirements stated in the 2010 Banking Act yet to be implemented by issuing the implementing regulation. • No requirement in law or regulation for financial institutions to verify that any person acting on behalf of a customer is so authorized and identify and verify the identity of that person. • No requirement for financial institutions to understand the ownership and

		<p>control structure of legal persons.</p> <ul style="list-style-type: none"> • No requirement in law, regulation or other enforceable means for financial institutions other than those in securities sector to verify the legal status of the legal person or legal arrangement. No requirement to obtain details of all directors in case of securities sector. • No requirements in law or regulations for financial institutions other than banks (no definition of the term “beneficial owner” applicable to banks) to identify the beneficial owner. No guidance on detailed procedures to be adopted to identify beneficial owner. • No obligations for financial institutions to proactively determine for all customers whether the customer is acting on behalf of another person, and then to take reasonable steps to obtain sufficient identification data to verify the identity of that other person. • No obligation for financial institutions to obtain information on the purpose of the business relationship. Obligation to obtain information only from customers who are natural persons on the purpose of transaction (and not of business relationship) exists in the securities sector. No obligation for financial institutions to obtain information on intended nature of such relationship. • No obligation in law or regulations for financial institutions to conduct ongoing due diligence on the business relationship and transactions. • No requirement for financial institutions (other than those in the securities sector) to perform enhanced due diligence of higher risk categories of customers/relationships/transactions. No guidance to financial institutions on enhanced due diligence. • No requirement that a financial institution should consider filing a STR and terminate the business relationship when an institution can no longer be satisfied that it knows the true identity of a customer. • No requirement for financial institutions (other than those in the securities sector) as to the timing of verification of the identity of customer and beneficial owner. • No requirement for financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk.
R.6	NC	<p>There are no obligations for financial institutions to:</p> <ul style="list-style-type: none"> • Put in place appropriate risk management systems to determine whether a

		<p>potential customer, a customer or the beneficial owner is a PEP.</p> <ul style="list-style-type: none"> • Obtain senior management approval for establishing and continuing business relationships with a PEP or where the beneficial owner is a PEP. • Take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. • There are no requirements for banks, other money transfer businesses and institutions licensed by the MMA to conduct enhanced ongoing monitoring on PEPs.
R.7	NC	<ul style="list-style-type: none"> • There are no obligations on banks in the Maldives to govern the establishment and operation of correspondent banking relationships.
R.8	NC	<p>There are no obligations for financial institutions to:</p> <ul style="list-style-type: none"> • Have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • Have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions. • Implement measures for managing the risks including specific and effective CDD procedures that apply to non face-to-face customers.

3.4. Third Parties and Introduced Business (R.9)

3.4.1. Description and Analysis

494. The current Maldivian framework does not regulate the reliance on third parties to perform elements of the CDD process or to introduce business. According to the authorities, such reliance is not prevalent in any part of the financial sector and this view was shared by the private sector representatives with whom the assessment team met. Nevertheless, it is not prohibited in the Maldives for financial institutions to rely on third parties, and it cannot be excluded that some institutions do rely on third parties in practice without following the measures envisaged under the standard.

3.4.2. Recommendations and Comments

495. In order to comply fully with Recommendation 9, the authorities are recommended to:

- Regulate reliance on third parties to perform elements of the CDD process and introduce business to financial institutions, notably by ensuring that: The elements that may be performed by third parties are those listed under Criteria 5.3 to 5.6 of the Methodology; the information collected by the third parties may be immediately available to financial institutions; the financial institutions are required to satisfy themselves that the third parties

are regulated and supervised; and that the ultimate responsibility for customer identification and verification remains with the financial institutions relying on the third party.

3.4.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NC	<ul style="list-style-type: none"> No provisions to deal with reliance on third parties to perform elements of the CDD process or introduce business.

3.5. Financial Institution Secrecy or Confidentiality (R.4)

3.5.1. Description and Analysis

Legal Framework:

496. Article 24 of the Constitution of the Maldives contains provisions relating to the right to privacy of every person. As per Article 24, “[e]veryone has the right to respect for his private and family life, his home and his private communications. Every person must respect these rights with respect to others.” Additional confidentiality requirements only exist for banks (since December 2010) and players in the securities markets (since 2006). In all other cases, confidentiality requirements are based on contract.

Inhibition of Implementation of FATF Recommendations (c. 4.1):

497. Section 42 of the 2010 Banking Act establishes a legal obligation for banks to maintain confidentiality regarding all accounts, deposits, trusts and safe deposit boxes of customers, and a clear prohibition to provide any information on the aforesaid. It also provides that the bank’s obligation may be lifted, notably with the customer’s written consent, or a written request from a law enforcement agency or the public prosecutor. Several Sections of the 2010 Banking Act go further:

- Section 39 mentions that banking secrecy and professional privilege must not be invoked as a ground for non compliance with Section 38 (which deals with broad measures relating to prevention of money laundering, corruption and terrorist financing) and any regulation issued there-under, whenever information is requested, the production of a related document is required or ordered in accordance with Section 38 of the Act and related regulations.
- Section 44 provides for exception to provisions relating to banking confidentiality and confidentiality obligations of individuals relating to a bank in cases where “[a]ctions have been taken in good faith in the course of the implementation of measures dealing with prevention of corruption and countering money laundering and terrorist financing pursuant to laws or regulations dealing with such matters.”
- Section 53 provides for timely access to bank examiner of all necessary books, accounts and records.

498. Since the Act has come into force very recently, it is too early to assess the effectiveness of implementation. It is nevertheless worth mentioning that previous regulations (namely the

Regulations for Banks and Financial Institutions which was repealed with the enactment of the 2010 Banking Act) also ensured the authorities' access to information otherwise covered by the (then contractual) confidentiality obligation. Banks should therefore have some familiarity with authorities accessing banking records or other confidential information, but the authorities did not indicate with which frequency they use their powers to request access to banking information.

499. According to Section 39 of the Securities Act 2006, licensees are required to keep their clients' information confidential, as per the code of conduct of business. Information obtained from their books should not be disclosed except for law enforcement purposes.

500. According to Section 25 of the Prevention and Prohibition of Corruption Act, investigative agencies such as the ACC may obtain, through the MMA, account details and details of transactions carried out through banks including money received, money transmitted through banks of persons under suspicion of having committed offenses stated in this Act and also copies of documents which are required for investigation or to send the case to court.

501. The Maldivian authorities stated that in investigations of corruption cases, the ACC resorts to this Section of the Act to obtain information related to bank accounts of the suspects as well as those of his associates and related entities. While the ACC is able to seek information, the other investigative agency, namely the MPS, has to request a court order to gain access to information and records if the MMA does not want to require a bank to pass on information pertaining to associates of the suspect. It was also stated by the authorities that obtaining court orders is generally a cumbersome process in the sense that significant amount of evidence is required to be provided to justify the need for the court order, which often leads to delays in the investigations.

502. Representatives of the private sector mentioned that unless there is a clear instruction from the MMA to share the information, they generally insist on seeing a court order before sharing client level information with authorities such as the MPS. The ACC's position is much better as it can access information through MMA but only in respect of suspects and their associates. In other cases, the ACC is also required to obtain the court order. The MMA and CMDA also stated that in most cases, unless in possession of a court order, it is up to the financial institutions to decide whether they share the information with other authorities (such as the MPS) or not.

Effectiveness

503. Provisions relating to right to privacy contained in Article 24 of the Constitution are often interpreted by the financial institutions to deny access to information to the competent authorities unless there is a court order. Authorities conceded that in many cases, obtaining a court order in itself is a difficult process, leading often to delay in the investigations. Prior to the entry in force of the new 2010 Banking Act, while there were provisions contained in the Banking regulations to provide access to information to bank examiners, there were no provisions overriding the banking secrecy and confidentiality clauses in order to facilitate sharing of information with other competent authorities except in the case of the ACC, which, under Section 25 of the Prevention and Prohibition of Corruption Act, can obtain information about suspects and their associates through the MMA. For cases other than investigation into corruption cases, the discretion is with financial institutions to determine whether or not to share information in the absence of a court order. This raises concerns

about the ability of law enforcement authorities to have timely access to information in the performance of their functions.

504. The new 2010 Banking Act now contains a specific section 39 detailing that banking secrecy and professional privilege including banking confidentiality clauses shall not be invoked when information is requested or production of the related document is required or ordered in accordance with Section 38 of this Act and related regulations. However, since the Act has come into force recently and the implementing regulation is yet to be issued, it is too early to assess the effectiveness of its implementation.

3.5.2. Recommendations and Comments

505. In order to comply fully with Recommendation 4, the authorities are recommended to:

- Ensure that the law enforcement authorities have timely and effective access to information in the course of money laundering and terrorist financing investigations.

3.5.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	<ul style="list-style-type: none"> • Strict interpretation of the existing privacy provisions in the law prevents law enforcement authorities from accessing information in the course of investigations.

3.6. Record-keeping and Wire Transfer Rules (R.10 & SR.VII)

3.6.1. Description and Analysis

Legal Framework:

506. Section 38 (a)(3) of the 2010 Banking Act contains provisions relating to keeping and maintaining identification and transaction records for the purpose of AML/CFT, but the details of the new requirements have not yet been prescribed. Other provisions may be found in the Companies Act. All banks are registered as companies under the Companies Act. According to Section 64(b), private limited companies are required to keep all records for three years and according to Section 64(c) public companies are required to keep all the records for six years. Records include day to day sums of money received and expended by the company and record of assets, liabilities and obligations of the company.

Record Keeping and Reconstruction of Transaction Records (c. 10.1 and 10.1.1) and Record Keeping for Identification Data, Files and Correspondence (c. 10.2):

Banks

507. The 2010 Banking Act now requires banks to “keep and maintain records relating to the identity of their customers and the transactions carried out by them” (Section 38(a)(3)). Under the Companies Act, banks are required to maintain records for 3 years if they have been constituted as

private limited companies, and 6 years if they have been established as public companies (Section 64(b) and (c)). The starting point of the required retention time, however, is unclear and the requirement under the 2010 Banking Act is so general that it will not necessarily ensure that the records will be useful to law enforcement authorities to reconstruct individual transactions.

508. There are no wire transfer rules for other money transfer businesses.

Securities sector

509. Record keeping requirements for securities market licensees are contained in Section 49 of the Securities Act, 2006, Section 9 of the CMDA 2010 AML Regulations and Section 22 of the Regulation on Conduct of Securities Business. Under Section 49(a) of the Securities Act 2006, dealers are required to maintain such accounting records as will correctly explain the transactions. Section 49(b)(3) further requires that records are to be maintained and kept in sufficient detail to show separate particulars of every transaction entered by the dealer. The law does not specify for how long records should be maintained.

510. Section 9 of the CMDA 2010 AML Regulations require licensees to keep special files of suspicious transactions containing copies of reports, data and documents related thereto. Section 22 of the Regulation on the Conduct of Securities Business requires licensees to take reasonable steps including the establishment and maintenance of procedures to ensure that sufficient information is recorded and retained about his securities business and his compliance with the regulatory system. The Section also provides for maintenance of records for a period of not less than six years by the licensee for inspection by any person duly authorized by the authority. This record keeping timeframe is useful guidance but does not meet the standard which requires that all the record keeping requirements be set out in law or regulation.

511. As per the CMDA 2010 AML Regulations, licensees have been directed to keep the CDD documents for a period of no less than five years from the end of the relationship with the client or from the date of the last transaction conducted by the client.

512. The timeframe for customer identification records as stipulated in the CMDA 2010 AML Regulations does not fully meet the standard as it does not describe the trigger point for the start of the retention period. Recommendation 10 specifically requires the record retention period for customer identification records to be five years following the termination of an account or business relationship, not the date of the last transactions of the client. CMDA Regulation's language of "from the end of the relationship with the client or from the date of the last transaction conducted by the client" could be interpreted to mean that the retention period for customer identification records runs from the date of the last transaction with the customer. As a theoretical matter, this could allow in certain circumstances (where an account has been dormant for over five years but has not been closed) for a shorter record retention period than the standard contemplates. Moreover, no specific requirements for maintaining records of account files and business correspondence have been prescribed in regulations.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3):

Banks

513. Section 53(d) of the 2010 Banking Act requires bank or its subsidiaries or affiliates and their officers/agents to provide the examiners access to all necessary books, accounts, documents, and records. It is also stated that the bank shall furnish the requested information deemed necessary by the bank examiner in a timely manner during the course of the examination. These are again general record-keeping requirements. However no explicit obligations have been specified in law or regulations to ensure that all customer and transactions records information are made available by banks and money transfer businesses on a timely basis to domestic competent authorities.

Securities sector

514. Section 22 of the Regulation on the Conduct of Securities Business contains general provisions for licensees to take reasonable steps, including the establishment and maintenance of procedures, to ensure that sufficient information is recorded and retained about their securities business and compliance with the regulatory system. This Section also provides for maintenance by the licensee of records for a period of no less than six years for inspection by any person duly authorized by the authority. However no explicit obligations have been specified in law or regulations to ensure that all customer and transaction records information is made available by the securities sector licenses on a timely basis to domestic competent authorities.

Cross border correspondent relationship (Special Recommendation VII)

515. There are no explicit requirements for banks to obtain and maintain the name of the originator, his or her account number and address in order to verify the identity of the originator. However the authorities have stated that the general provisions as contained in the MMA AML Circular (KYC and record maintenance) apply to all transactions including wire transfer. Apart from this guidance, no requirements relating to cross border correspondent relationship as required under the standards has been prescribed by the MMA.

Effectiveness

516. While the 2010 Banking Act and the Companies Act impose some record keeping requirements, these requirements are not sufficiently specific to meet the standard because they are not sufficiently comprehensive and specific to allow a useful reconstruction of transactions. The implementing regulation under the 2010 Banking Act is yet to be issued.

517. Although the MMA AML Circular does contain some guidance with regard to obtaining and maintenance of KYC documents, the period for which such documents are recommended to be maintained has not been specified, leading to concerns about the effectiveness of the record keeping regime in the Maldives. No requirements have been specified for maintenance of account files and business correspondence for at least five years after the business relationship is ended either in law, regulation or circular, nor is it mandatory to make the identification data and transactions records available to domestic competent authorities.

518. In respect of securities market licensees, while the provisions contained in Section 49 of the Securities Act, 2006 mandate the maintenance of necessary records of transactions which allow for reconstruction of such transactions, the period of retention of records is not specified in the Act. The retention period has only been mentioned in the Regulation on the Conduct of Securities Business.

This does not meet the requirements of the standard as it has to be specified in law or regulation. Neither the Securities Act, 2006, nor the Regulations (Regulation on the conduct of securities business or the CMDA 2010 AML Regulations) contain specific requirements to maintain customer identification data, account files and business correspondence for a period of five years from the termination of business relationship as required under the standard.

519. The new CMDA 2010 AML Regulations were issued on October 10, 2010 and licensees have been given a timeframe of six months to comply with its requirements. As the implementation of these regulations is yet to come into force, the effectiveness of the record keeping requirements in the securities sector cannot be assessed.

520. In the absence of legally binding requirements, the effectiveness of implementation of requirements applicable with regard to SR.VII is a matter of concern; though it is the authorities' view that the MMA AML Circular, being applicable to money transfer activities, would indirectly lead to maintenance of the necessary records as mandated under SR.VII. That said, the requirements specified under standards require mandatory direct obligations on countries to take measures so as to require banks and money remitters to include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent, and that the information should remain with the transfer or related message through the payment chain. Further, there can be no comfort, in the absence of legal provisions, as to whether the financial institutions are conducting ongoing due diligence and enhanced scrutiny and monitoring of suspicious activity funds transfers which do not contain complete originator information.

521. During the on-site visit, the evaluation team was told by both regulators and private sector representatives across all financial sectors that, as a matter of common practice, financial institutions retain essentially all business records for an indefinite period of time. Thus while there are no specific legal obligations for record keeping, there appears to be a voluntary record keeping culture and practice in the Maldives Regulatory authorities also stated that they have issued verbal administrative direction to institutions which requested the clarification with respect to the record retention period.

3.6.2. Recommendations and Comments

522. In order to comply fully with Recommendation 10, the authorities are recommended to:

- Impose record keeping requirements on all financial institutions.
- Specify in law or regulation that it is mandatory for financial institutions to maintain all necessary records on transactions for at least five years or longer following the completion of transaction.
- Require in law or regulation the maintenance of transaction records in such a way as to allow reconstruction of individual transactions.
- Require in law or regulation that records of identification data, account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship.

- Require in law or regulation that financial institutions make customer and identification data available on a timely basis to domestic competent authorities.

523. In order to comply fully with Special Recommendation VII, the authorities are recommended to:

- Require financial institutions conducting wire transfers to include accurate originator information (name, address and account number) on funds transfers and related messages, as well as to conduct enhanced scrutiny of and monitor for suspicious fund transfers which do not contain complete originator information and comply with obligations with regard to their wire transfer obligations.

3.6.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	NC	<ul style="list-style-type: none"> • Only banks and securities sector licensees are subject to record keeping requirements and other sectors are outside of the purview of these requirements. Record keeping requirements for the banking sector are too general. • No requirements in law or regulation for financial institutions to maintain all necessary records on transactions for at least five years or longer following the completion of the transaction. • No obligations in law or regulation for financial institutions other than securities sector licensees to keep transaction records in such a manner so as to allow reconstruction of individual transaction, with a view to provide evidence for prosecution of criminal activity. • No obligations in law or regulation for financial institutions to provide for maintenance of records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship. • No explicit requirements in law or regulation for financial institution to make customer and identification data available on a timely basis to domestic competent authorities.
SR.VII	NC	<ul style="list-style-type: none"> • No requirements for financial institutions to implement provisions relating to wire transfers.

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

3.7.1. Description and Analysis

Legal Framework:

Recommendation 11

Special Attention to Complex, Unusual Large Transactions (c. 11.1), Examination of Complex and Unusual Transactions (c. 11.2), and Record Keeping of Findings of Examination (c. 11.3):

Banks

524. There is no explicit obligation to pay special attention to complex, unusually large or unusual patterns of transactions. Guidelines have been prescribed under the MMA AML Circular to identify any large, frequent or unusual transactions, and report them to the FIU. However, the guidance deals only with obtaining a written statement from customers confirming the nature of their business activity and does not include the examination of the possible background and purpose of such transactions. The Circular also provides an illustrative list of certain types of activities and transactions which may indicate possible suspicious transactions. This list includes large, frequent or unusual deposits, withdrawals, payments or exchanges of cash, foreign currency or negotiable instruments, which is not consistent with or reasonable related to the customer's normal business activities or financial standing.

Securities sector

525. Section 5.3 of the CMDA 2010 AML Regulations require licensees to exercise special due diligence regarding extraordinary complex and large transactions that do not have a clear investment purpose, that appear suspicious or that represent an unusual investment policy.

526. However, the Regulations do not specify what type of special due diligence measures should be implemented. Further the Regulation also does not contain an explicit requirement for licensees to examine the background and purpose of such transactions, set forth their findings in writing and keep such findings available for competent authorities and auditors for at least five years.

Effectiveness

527. While there is no requirement for the MMA licensees with respect to essential criteria under Recommendation 11, all the banks and money/value transfer service businesses with whom the assessment team met informed that they had devised their own systems and procedures to pay special attention to all complex and unusual large transactions and such transactions are monitored on a day-to-day basis. A similar view was expressed by the representatives of the private sector in the securities market. Notwithstanding this practice, a voluntary putting in place of procedures by the private sector is not sufficient to compensate for the fact that there are no legally enforceable norms to address the standard.

Recommendation 21

Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 and 21.1.1), Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2) and Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):

Banks

528. There are no express requirements for banks to give special attention to business relationships and transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations. There are no laid down systems to advise the banks of concerns about weaknesses in the AML/CFT systems of other countries. There is no requirement for banks to put in place an effective system of ensuring that, if those transactions have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined and written findings be made available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors. Furthermore there are no provisions for the application of a range of counter-measures with regard to countries not applying or insufficiently applying FATF Recommendations.

Securities sector

529. While Section 5.2 of the CMDA 2010 AML Regulation requires licensees to exercise enhanced due diligence regarding customers from countries that do not have anti-money laundering legislation, no further obligation or guidance has been provided to the licensees in this regard. No clarification exists of the term “enhanced due diligence” nor is there a system to advise securities market licensees of concerns about the weaknesses of AML/CFT systems of other countries.

530. There is no requirement for licensees to put in place an effective system of ensuring that if those transactions have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined and written findings be made available to assist competent authorities (e.g. supervisors, law enforcement agencies and the FIU) and auditors. As in case of banking sector, no provisions exist for applying counter-measures in case of countries not applying or insufficiently applying FATF recommendations.

Effectiveness

531. The Maldivian authorities have not issued any binding obligations to banks to give special attention to business relationships and transactions with persons from or in countries that do not or insufficiently apply the FATF Recommendations. Nor is any guidance provided to make them aware of the weaknesses of the AML/CFT regime of other countries which fail to implement or insufficiently implement the FATF standards. There is no requirement to examine the background and purpose of transactions which have no apparent or visible economic or lawful purpose and to make such written findings available to assist competent authorities. This raises concerns about the misuse of the Maldives financial system for the purpose of money laundering or terrorist financing through the financial institutions operating in Maldives. In the absence of effective counter-measures, concerns also exist about the ability of authorities to restrict business relationships and/or prescribe other measures for financial institutions to follow with regard to countries that fail to implement and insufficiently apply FATF standards.

3.7.2. Recommendations and Comments

532. In order to comply fully with Recommendation 11, the authorities are recommended to:

- Require all financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.
- Require all financial institutions to examine as far as possible the background and purpose of such transactions, set forth their findings in writing and to keep such findings available for competent authorities and auditors for at least five years.

533. In order to comply fully with Recommendation 21, the authorities are recommended to:

- Require all financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.
- Require all financial institutions that in case of such transactions having no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be kept.
- Develop adequate legal authorities to enable Maldives to apply a range of appropriate counter-measures across all financial sectors where a country continues not to apply or insufficiently applies the FATF Recommendations.

3.7.3. Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	NC	<ul style="list-style-type: none"> • No obligations for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • No obligations for financial institutions to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. • No obligations for financial institutions to keep such findings available for competent authorities and auditors for at least five years.
R.21	NC	<ul style="list-style-type: none"> • No enforceable obligations for financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. • No obligations for financial institutions that in case of transactions with no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings kept. • No effective measures in place to ensure that financial institutions are

		<p>advised of concerns about weaknesses in the AML/CFT system of other countries.</p> <ul style="list-style-type: none"> • No clear legal authority to enable the Maldives to apply a range of appropriate counter-measures across all financial sectors where a country continues not to apply or insufficiently applies the FATF Recommendations.
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3.8. Suspicious Transaction Reports and Other Reporting (R.13-14, 19, 25 and SR.IV)

3.8.1. Description and Analysis⁷²

Legal Framework:

534. Under the current legal framework, only banks are required to file STRs: The 2010 Banking Act requires the reporting of suspicions of both proceeds of crime and funds related to terrorist financing.

Requirement to Make STRs on Money Laundering and Terrorist Financing to FIU (c. 13.1 and IV.1):

Banks

535. Pursuant to Section 33 of the 2010 Banking Act, “if a bank or any of its administrators, officers or employees becomes suspicious that the execution of any banking transaction or the receipt or a payment of any sum pertains or may pertain to any crime and illegal act, the bank shall immediately notify the MMA to this effect”. Section 38(a)(4) further provides that “[b]anks shall develop and implement measures to prevent money laundering and the financing of terrorism including where they suspect or have grounds to suspect that funds or property, regardless of the amounts, are the proceeds of crime, or are related or linked to the financing of terrorism, they shall submit a report setting forth their suspicions to the Financial Intelligence Unit of the MMA promptly after forming a suspicion or receiving the information, but not more than 2 (two) working days later.”

536. Funds or property suspected of being the proceeds of any crime under the Maldivian legislation must be reported. The terms *funds* and *property*, however, are not further defined under the 2010 Banking Act or other statutes.

537. Due to the recent enactment of the 2010 Banking Act, no STRs have been submitted so far.

538. The MMA AML Circular which, until December 2010, was the only text that addressed AML in the banking and other financial sectors, called on financial institutions to report their

⁷² The description of the system for reporting suspicious transactions in Section 3.7 is integrally linked with the description of the FIU in Section 2.5 and the two texts need not be duplicative. Ideally, the topic should be comprehensively described and analyzed in one of the two Sections, and referenced or summarized in the other.

suspicious of money laundering to the FIU. However, as also mentioned above, the Circular was not enforceable and only contained guidance. Nevertheless, four suspicious transaction reports were filed on this basis by banks and money transfer businesses. Two were filed on suspicions of drug related activities (one was forwarded by the FIU to the MPS for further investigation but not the other). The other two reports pertained to unusually large transactions and, according to the FIU, were not suspicions and therefore did not warrant further investigation.

Other financial institutions:

539. The CMDA 2010 AML Regulations impose obligations on all dealers, custodians, investment advisors, asset managers, mutual funds, and other entities that are licensed by the CMDA. Sections 5.3 and 11 of the Regulations require the licensees to “promptly report any suspicious transactions to the CMDA.” “Suspicious transactions” are defined as any transaction believed, for justified reasons, to involve the proceeds of any of the crimes stipulated for under the relevant laws of Maldives (Section 3, para. 3.5 of the Regulation). The regulation does not however require the reporting of such suspicions to the FIU. The authorities indicated that the purpose of the reporting to the CMDA was to enable the latter to initiate investigations into criminal activity listed in the CMDA Act (i.e. insider trading). They also indicated that, should such investigations reveal suspicions of money laundering or terrorist financing activities, the CMDA would inform the FIU on a voluntary basis. No such case had, however, arisen at the time of the assessment.

540. There are no reporting requirements for other financial institutions.

STRs Related to Terrorism and its Financing (c. 13.2):

541. Under the 2010 Banking Act, banks are also required to report to the FIU where they suspect or have grounds to suspect that funds or property are related or linked to the terrorist financing. As indicated under Special Recommendation II above, however, the current terrorist financing offense suffers from a number of shortcomings; this notably entails that the scope of the reporting requirement with respect to terrorist financing is too narrow.

542. The FIU has not received any STR in relation to terrorism and its financing.

No Reporting Threshold for STRs (c. 13.3):

543. There is no reporting threshold for STRs. Neither the 2010 Banking Act, nor the MMA AML Circular, nor the CMDA AML Regulation contain requirements in relation to attempted transactions or give guidance on how the banks and money transfer businesses or CMDA licensees should deal with attempted transactions.

Making of Money Laundering and Terrorist Financing STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):

544. There is no rule restricting the reporting of matters which could involve tax matters.

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

545. Banks are required to report to the FIU when they suspect or have reasonable grounds to suspect that funds are the “proceeds of crime, or are related or linked to the financing of terrorism” (Section 38(a)(4) 2010 Banking Act).

Protection for Making STRs (c. 14.1):

546. Section 41 of the 2010 Banking Act sets out that “no criminal, civil, any other proceedings for breach of banking confidentiality, professional secrecy or breach of contract may be instituted against banks or their directors, officers or employees, who in good faith submit reports or provide information in accordance with the provisions of this Act.”

Prohibition Against Tipping Off (c. 14.2):

547. Section 40 of the 2010 Banking Act sets out that “A bank, its directors, officers or employees, shall not disclose to its customer or to a third party that information is being, was or will be provided to the FIU or that a report concerning money laundering, corruption or the financing of terrorism is being or has been or will be submitted to the FIU or that a money laundering or financing of terrorism investigation is being carried on, or will be or has been carried out.”

548. The 2010 Banking Act provides at Section 56 for a number of administrative sanctions that the MMA could take in the event that provisions of the Act including Section 40 have been violated.

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

549. There is no legal provision that ensures that the names and personal details of staff of FIs that make a STR are kept confidential by the FIU. According to the authorities, the FIU keeps the persons and institutions that report suspicions confidential. The FIU's information is held on the main server for the MMA, but it is accessible only by FIU staff, one member of the MMA's management team and the IT staff.

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

550. The authorities are in the process of establishing a reporting requirement for currency transactions above a certain threshold. To this effect, a new transaction reporting regulation as well as a template for a weekly cash reporting form have been prepared and copies of both drafts have been provided to the assessment team. The authorities are considering instructing the reporting entities to submit the forms electronically on a weekly basis. The exact threshold is under ongoing consideration by the Board of the MMA. During the deliberations by the Board, considerations are also given to the exchange rate fluctuations. The instructions are planned to be given once the threshold has been met and the financial transaction reporting regulation has been published in the Government Gazette. The anticipated that the FIU will be the recipient of the reports.

551. The reception and analysis of these reports will severely impact the FIU's limited resources. The FIU is therefore developing a mechanism to store the data in those reports for analysis and dissemination in a way which would be less cumbersome than a manual treatment of the reports.

Additional Elements—Computerized Database for Currency Transactions above a Threshold and Access by Competent Authorities (c. 19.2), and Proper Use of Reports of Currency Transactions above a Threshold (c. 19.3):

552. The Maldives does not currently have a computerized database in place for currency transactions above a threshold, but the FIU is developing such a database system in view of the future adoption and implementation of a threshold-based reporting obligation. It is too early in the process to establish the type of safeguards that will be considered to ensure proper use of the information reported.

Guidelines (c. 25.1):

Banks

553. The MMA AML Circular sets out at Section 8 a list of ten activities that may indicate money laundering. It does not set out any activity that may indicate terrorist financing. The MMA AML Circular also sets out some KYC measures that banks and money transfer businesses should take to ensure effective AML/CFT measures. While this guidance is useful, adequate guidance cannot be given in the absence of a legal framework that criminalizes money laundering.

554. There is no relevant guidance in any other the other sectors.

Feedback and Guidelines to Financial Institutions with respect to STR and other reporting (c. 25.2):

555. The FIU has given feedback to banks on the four STRs it received pursuant to the MMA AML Circular. This included whether to allow the transaction to be executed and how the STR was dealt with. For example when an STR was found to have enough information to support a suspicion relating to drug offenses, the bank was told that the STR was disseminated to the MPS. As mentioned under the write-up for Recommendation 26, only limited guidance was provided to banks on their reporting obligations in the context of the AML Circular.

Statistics (R.32)

556. FIU maintains statistics on the STRs it receives.

Table 21: STRs Received

STR statistics 2007 - July 2010				
	2007	2008	2009	2010
STRs received	0	0	4	0
STRs analyzed	0	0	4	0
STRs disseminated	0	0	1	0

Effectiveness

557. As far as the banking sector is concerned, the current reporting requirement is relatively broad and in line with the standard, except that it does not apply to attempted suspicious transactions. However, the fact that the current reporting requirement applies only to banks constitutes a major shortcoming of the Maldivian reporting framework.

558. As mentioned above, the level of reporting is low. While this may be explained by the fact that, prior to the 2010 entry in force of the Banking Act, there was no obligation on any of the entities listed in the standard to report their suspicions to the FIU, some, notably banks, nevertheless filed STRs on the assumption that the MMA AML Circular was mandatory. Even amongst banks, however, the assessment team found that the level of awareness of AML/CFT issues and the FIU's role was relatively low.

3.8.2. Recommendations and Comments

559. In order to comply fully with Recommendation 13, the authorities are recommended to:

- Require in law or regulation all financial institutions (not only banks) and alternative remitters (or money or value transfer service providers) in the Maldives to report suspicious transactions in keeping with R.13; this notably entails criminalizing money laundering and terrorist financing in line with Recommendations 1 and 2 and Special Recommendation II.
- Undertake comprehensive education and awareness-raising with reporting parties to encourage greater quantity and quality of suspicious transaction reporting across all sectors.
- Require in law or regulation all reporting parties to report attempts of suspicious transactions.
- Specifically include a provision in law or regulation that provides that suspicious transactions should apply regardless of whether or not they involve tax matters.

560. In order to comply fully with Special Recommendation IV, the authorities are recommended to:

- Require in law or regulation all financial institutions (not only banks) and alternative remitters (or money or value transfer service providers) to report transactions when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism; this notably entails criminalizing terrorist financing in line with Special Recommendation II. Undertake comprehensive education and awareness-raising with reporting parties related to STRs on terrorist financing.

561. In order to comply fully with Recommendation 14, the authorities should:

- Extend safe harbor provisions and prohibition from tipping off to all financial institutions beyond banks.

562. In order to comply fully with Recommendation 25, the authorities are recommended to:

- Issue STR guidelines for financial institutions, including guidance in identifying suspicious transactions.
- Issue guidelines to money changers and money remitters to include all aspects of CDD, STR reporting, and other preventative measures.
- Require the FIU to regularly provide feedback relating to STRs to financial institutions.

3.8.3. Compliance with Recommendations 13, 14, 19 and 25 (c. 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"> • No suspicious transaction reporting requirements applicable to non-bank financial institutions. • Reporting requirement only applies in the case of suspicions of laundering the proceeds of offenses listed under the Drugs Act; none of the other FATF-designated categories of offenses are predicates to money laundering, which considerably narrows the scope of the reporting requirement. Attempted transactions are not subject to reporting. • It is not clear that banks are required to report suspicious transactions that may involve tax matters. • Extremely low number of STRs with doubts about the quality of reports (evidenced by the lack of dissemination to law enforcement agencies).
R.14	PC	<ul style="list-style-type: none"> • Relevant protection for STR and prohibition against tipping off legal regime only applies to banks (under the 2010 Banking Act) and does not apply to other financial institutions.
R.19	C	<ul style="list-style-type: none"> • This recommendation is fully met.
R.25	PC	<ul style="list-style-type: none"> • No STR guidelines for financial institutions or DNFBPs either relating to terrorist financing or money laundering. • Limited guidance provided by the MMA with respect to the reporting of suspected money laundering activities, but no guidance with respect to terrorist financing. • Feedback has been given on the four STRs reported so far on an ad hoc basis – there is no policy relating to feedback and its possible implementation, such as the use of acknowledgement letters.
SR.IV	NC	<ul style="list-style-type: none"> • No reporting requirements for financial institutions other than banks.

Internal controls and other measures

3.9. Internal Controls, Compliance, Audit, and Foreign Branches (R.15 and 22)

3.9.1. Description and Analysis

Recommendation 15

Legal Framework:

Establish and Maintain Internal Controls to Prevent Money Laundering and Terrorist Financing (c. 15.1, 15.1.1 and 15.1.2):

Banks

563. Prior to the enactment of the 2010 Banking Act, there were no legally binding obligations relating to internal controls, training, compliance and audit for financial institutions other than those active in the securities sector. Section 38(a) of the 2010 Banking Act now requires banks to develop and implement measures to prevent money laundering and terrorist financing. Such measures should include *inter alia* the development and implementation of internal programs for the prevention of money laundering and the financing of terrorism as provided under Section 38(a)(6) of the Act. Further, Section 50 of the Act provides that the banks shall appoint an external auditor who will be qualified and experienced in the audit of banks and who will prepare an audit report stating whether the bank maintains *inter alia* internal controls designed to provide reasonable assurance regarding the reliability of the systems for prevention of money laundering and terrorist financing. As in case of other measures specified under Section 38(a) of the Act, provisions dealing with the issue of internal procedures, policies and controls are also broad provisions, and exact requirements are yet to be spelt out in regulation.

564. Section 5 of the MMA AML Circular provides for reporting institutions to establish and maintain internal procedures and policies for AML and CFT, though it is silent on what needs to be included in such policies and procedures. According to the authorities, on-site inspections revealed that, generally, the matters included in the policies of the individual reporting institutions contain measures related to customer acceptance policy, know your customer requirements, record retention procedures and reporting of suspicious transactions.

565. Section 5 of the Circular also provides for the appointment of a compliance officer responsible for checking the compliance of the Circular; however the level of such officer is not specified. According to the authorities on-site inspections have revealed that the compliance officer is generally a senior staff member (at management level) of the institution and has access to customer identification information data and other CDD information, transaction records and any relevant information. Nevertheless, there is no requirement to explicitly provide the compliance officer and other appropriate staff with access to relevant information.

Securities sector

566. Section 8 of the CMDA 2010 AML Regulations requires the licensees to create adequate internal systems that include policies, procedures and internal safeguard to prevent money laundering. It also provides that these systems should include the following provisions relating to internal policies and controls:

- An anti-money laundering policy adopted by the board of directors or management as the case may be;
- Detailed written anti-money laundering procedures that accurately define duties and responsibilities that are compliant with the adopted policy and relevant regulations as issued by the CMDA;
- An adequate mechanism for verifying compliance with AML regulations, policies and procedures;
- Training programs needed by staff at different levels and a commitment to attend training courses organized by the CMDA or any other relevant organization;
- Obligations to provide the reporting officer with means to perform his duties in an independent manner to ensure the confidentiality of the information coming to him and the measures taken by him. To achieve this objective, the reporting officer must have the right to access records and data needed to investigate and review AML systems and measures. The reporting officer may also propose additional steps to redress any shortcoming or the need for updating or development to raise effectiveness and efficiency.

Independent Audit of Internal Controls to Prevent Money Laundering and Terrorist Financing (c. 15.2):***Banks***

567. Section 50 of the 2010 Banking Act requires banks to appoint a qualified and experienced external auditor (though not an internal auditor) who is required to submit an audit report stating whether or not the bank maintains internal controls designed to provide reasonable assurance regarding the reliability of systems for the prevention of money laundering and terrorist financing. However, the exact obligations for banks are yet to be specified in the regulation and there is no obligation to maintain an adequately resourced audit function.

Securities sector

568. The CMDA 2010 AML Regulations do not contain any requirements relating to an adequately resourced and independent audit function.

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

569. Section 5(2) of the MMA AML Circular calls for adequate training of the staff for effective prevention, detection and control of possible money laundering or terrorist financing.

Securities sector

570. The CMDA 2010 AML Regulations provide for the internal system of licensees to include training programs needed by staff at different levels and a commitment to attend training courses organized by the CMDA or any other relevant organization.

Employee Screening Procedures (c. 15.4):

Banks

571. There are no requirements for banks to put in place screening procedures in order to ensure high standards when hiring employees.

Securities sector

572. There are no provisions relating to screening procedures in order to ensure high standards before hiring new staff other than reporting officer.

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

Banks

573. According to the authorities, on-site inspections have revealed that compliance officers can act independently when implementing AML/CFT measures once approved by the senior management or the board of directors and also can directly report to the senior management, even though such obligations have not been explicitly specified.

Securities sector

574. As per the CMDA 2010 AML Regulations, the reporting officer should be a member of senior management. However, the regulations do not contain specific provisions relating to his independence or his reporting to the board of directors.

Recommendation 22

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

575. Currently the Maldives has six commercial banks. Five of them are branches of foreign banks and one is a local commercial bank (Bank of Maldives Plc.). One more bank was recently given a license but has not yet begun its operations. The local bank does not have any branches or subsidiaries abroad. Similarly, there are no foreign branches or subsidiaries of the licensees in securities market. The authorities stated that, as reporting entities (including those in the banking, securities and other financial sectors) do not have any foreign branches, the requirements relating to

the application of AML/CFT requirements to foreign branches and subsidiaries located abroad are not applicable in Maldives.

Effectiveness

576. The 2010 Banking Act addresses the requirements relating to the internal programs in a broad and general way and the exact obligations for banks are yet to be specified by a regulation, as provided under Section 38(b) of the Act. Furthermore, since the Act has come into force recently, it is too early to assess the effectiveness of its implementation.

577. While the provisions of the CMDA 2010 AML Regulations applicable to the securities sector with respect to internal controls, programs and policies are more detailed and elaborate, the requirements that they introduce are quite new. Licensees have up to six months to comply with them. In these circumstances, the effectiveness of implementation is to yet to be established and verified. There are no further provisions relating to adequately resourced and independent audit processes for the entire financial sector. Thus the gaps in the requirements are cause for concern about the effectiveness of the measures across sectors and institutions.

3.9.2. Recommendations and Comments

578. In order to comply fully with Recommendations 15 and 22, the authorities are recommended to:

- Require financial institutions to have adequately resourced and independent audits to test compliance with AML/CFT procedures.
- Lay down provisions relating to the overall role of compliance officer in financial institutions (other than in the securities sector) and his access to relevant data and records so as to enable him to effectively perform his functions.
- Require financial institutions to establish employee screening procedures when hiring new employees.
- Require financial institutions other than those active in the securities sector to provide training to their staff tailored to their specific job profile and the risk of money laundering and terrorist financing faced by the financial institution or the products it offers.
- Support effective implementation of internal controls through comprehensive AML/CFT supervision of all relevant sectors.

579. In order to comply fully with Recommendation 22, the authorities are recommended to:

- Extend the requirements of the essential criteria of Recommendation 22 to foreign branches and subsidiaries of financial institutions. This is because, even though at present financial institutions in the Maldives do not have any branches or subsidiaries overseas, the situation may change in the future.

3.9.3. Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	NC	<ul style="list-style-type: none"> • No obligations on financial institutions other than banks and securities sector licensees. • While banks and players in the securities sector have some requirements on internal controls, these requirements are fairly recent and the effectiveness of implementation in these sectors is therefore considered limited. • No legally binding requirements for financial institutions for adequately resourced and independent audits to test compliance with AML/CFT procedures. • No explicit provisions relating to the overall role of compliance officer in financial institutions. • No provisions for allowing the compliance/reporting officer to access relevant data and records so as to enable him to effectively perform his functions. • No effective provisions requiring financial institutions to establish employee screening procedures when hiring new employees.
R.22	N/A	No Maldivian financial institutions have overseas branches or subsidiaries.

3.10. Shell Banks (R.18)

3.10.1. Description and Analysis

Legal Framework:

580. The Maldivian law does not prohibit shell banks explicitly. Nevertheless, the 2010 Banking Act provides detailed licensing conditions for banking businesses in the country, some of which mitigate, but do not eliminate, the risk of shell banks being established in the Maldives.

Prohibition of Establishment of Shell Banks (c. 18.1)

581. Under the banking licensing procedures, the applicant must notably provide the MMA with information on the premises and the address from which it proposes to do business, and the names, places of permanent residence, business and biographical and financial background of each proposed major shareholder and administrator of the applicant (Section 5(3) of the 2010 Banking Act). In addition, the applicant must, at all times during the license period, maintain a physical presence and have an office in the Maldives at which all of its business activities are conducted with at least two full-time employees (Section 8(8) of the 2010 Banking Act). None of these provisions constitute a

requirement for physical presence in terms of meaningful mind and management as defined by the FATF. A foreign applicant⁷³ must provide the MMA with a statement from its home country supervisory authority to the effect that the latter has no objection to the applicant's proposed establishment of operations in the Maldives, and it will exercise consolidated supervision over the applicant (Section 5(7) of the 2010 Banking Act).

582. According to the authorities, all banks were either domestic banks with physical presence in the country or branches affiliated with foreign banks. Nevertheless, considering the above, the current Maldivian law is insufficient to ensure physical presence of meaningful mind and management of any future applicant for a banking license in the Maldives. In the case of foreign institutions applying for a license to operate affiliates in the Maldives, in light of the recent introduction of the 2010 Banking Act, the authorities have not checked whether the existing branches of foreign banks comply with the requirement to provide the necessary statement from their home supervisor.

Prohibition of Correspondent Banking with Shell Banks (c. 18.2); and Requirement to Satisfy Respondent Financial Institution Prohibition of Use of Accounts by Shell Banks

583. There is no prohibition to enter into or maintain correspondent relationships with shell banks, and no requirement on financial institutions to satisfy themselves that their respondent financial institutions in another country do not permit their accounts to be used by shell banks.

3.10.2. Recommendations and Comments

584. In order to comply fully with Recommendation 18, the authorities are recommended to:

- Explicitly prohibit the establishment of shell banks, or explicitly require locally incorporated banks to have physical presence (i.e. meaningful mind and management) in the Maldives, and foreign branches to be affiliated with foreign banks or financial groups.
- Prohibit financial institutions from engaging in or maintaining correspondent relationships with foreign shell banks.
- Oblige financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.10.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	NC	<ul style="list-style-type: none"> • Current legislation does not prohibit shell banks in a comprehensive way; • There is no prohibition to engage in or maintain a correspondent relationship

⁷³ Namely a foreign bank or bank holding company, or the subsidiary of such foreign bank or bank holding company.

		<p>with shell banks.</p> <ul style="list-style-type: none"> • There is no requirement in the legislation obliging financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
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3.11. The Supervisory and Oversight System—Competent Authorities and SROs’ Role, Functions, Duties, and Powers (R.23, 29, 17 and 25)

3.11.1. Description and Analysis

Legal Framework:

585. There are currently three main Acts that govern the financial sector in the Maldives, namely the MMA Act, the 2010 Banking Act and the Securities Act. The two supervisors for the financial sector, the MMA and the CMDA, were created under these Acts to act as regulator and supervisor of “banking businesses” and the capital market, respectively.

586. The introduction of the new Constitution in 2008 brought several changes to the legal framework of Maldives, notably for financial supervision. In particular, Presidential Decrees are no longer considered to be a source of law. As a consequence, regulations that had previously been issued notably by the MMA, under Presidential Decrees are now deprived of a legal basis. As a temporary arrangement, the Law for the General Regulations 2008 (Law No. 6/2008) was passed in order to give legal powers to some of these regulations while the specific “parent acts” are being drafted. The authorities mentioned that new laws are currently being developed, notably an Insurance Law.

MMA (Maldives Monetary Authority)

587. The MMA is the competent authority for licensing and regulation/supervision of banks, and conducts supervision over some other sectors although it does not have the legal basis to do so.

588. The Banking Act was issued on December 18, 2010, and came into force shortly thereafter. This Act is designed to govern the banking business and designates the MMA as the competent authority to implement and enforce this Act. For the first time in the Maldives, it explicitly imposes fundamental AML/CFT obligations on the banking industry. The Act also authorizes the MMA to prescribe in regulation detailed AML/CFT provisions and penalties that are applicable not only to banks but also to “other financial institutions” and “DNFBPs” (Section 38) even though they are not banks, and are not addressed elsewhere in the text. More importantly, the Act does not define “financial institution,” which creates considerable ambiguity with respect to the type of financial institutions that actually fall under this Section. Furthermore, the MMA is not authorized by the MMA Act or by any other Act to license and regulate financial institutions other than banks. Therefore, and despite the wording of Section 38, it is doubtful that the MMA could issue and enforce regulation governing industries which it is not authorized by law to regulate and supervise. In addition, Section 38 could create an overlap of MMA and CMDA AML/CFT supervisory powers in

the securities industry, especially when taking into account the recently introduced CMDA AML Regulation. More details are provided below.

589. Within the MMA, the Financial Sector Division (FSD) is responsible for regulation, supervision and monitoring of the financial sector within the MMA's jurisdiction. As determined by the Governor and the Deputy Governor of the MMA, to fulfill its function two of its sections are specifically dedicated to supervision: the Credit and Bank Supervision Section (CBSS) which is responsible for the licensing and supervision of banks, and the Non-Bank Financial Institution Supervision Section (NBFIS) which "licenses" and "supervises" other financial sectors including MVT service operators, insurance companies and intermediaries, finance leasing companies and credit card operators (other than banks).

590. The MMA AML Circular was issued in 2006 to provide some AML measures for banks and "other institutions engaged in deposit taking and money transfers." Since its issuance, the MMA has been reviewing the banks' and MVT operators' implementation of the Circular, even though the MMA is aware of the fact that the provisions of the Circular are not mandatory.

Capital Market Development Authorities (CMDA)

591. Pursuant to the Securities Act, the CMDA is the competent authority for the licensing, regulation and supervision of the capital market players. The internal structure of the CMDA was established by an official letter from the President's office, while the mandate of each Department of the CMDA was established by a resolution of the Board of Directors so as to fulfill its function as set out in the Securities Act. The Licensing and Market Regulation Department (LMRD) is one of five departments under the CMDA, and is responsible for issuing licenses under Securities Act and monitoring and regulating the licensees.

592. In October 2010, the CMDA issued a Regulation on Anti-Money Laundering in Securities Related Transactions (CMDA 2010 AML Regulations).

Competent authorities—powers and resources: *Designation of Competent Authority (c. 23.2); Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 and 29.3.1); Adequacy of Resources—Supervisory Authorities (R.30):*

Designation of Competent Authority (c. 23.2)

MMA

593. The MMA is the designated authority authorized to license, supervise and regulate "banking" (Section 4 of the MMA Act) and the "banking activities" (Section 1(a) and 3(d) of the 2010 Banking Act) in the Maldives.

594. The amendment of the MMA Act in 2007 extends the definition of "financial institutions" that are subject to the Act to cover other financial institutions engaging in insurance, investment advice, finance leasing, asset management or other similar businesses which the MMA deems

necessary to regulate and supervise (Section 2, as amended in 2007). However, neither the MMA Act nor the new 2010 Banking Act authorizes the MMA to license and regulate financial activities other than “banking business.”

595. “Banking business” is defined as “the business of receiving deposits of money or other repayable funds from the public for the purpose of making credits or investments for its own account” (Section 115 of the 2010 Banking Act). A “bank” is defined as “a person holding a license or permit under [the] Act to engage in the banking business, all or one or part of” the overall twelve types of financial activities including money transfer and currency exchange (Section 115 read in conjunction with Section 25 of the 2010 Banking Act). While some other financial activities conducted by financial institutions other than banks, such as MVT service operators for instance, could in theory be regarded as some types of “banking activities,” they are not captured by the definition of “banking business,” and are not required under the 2010 Banking Act to “hold a license or permit”.

596. One of the primary objectives of the new 2010 Banking Act is to “reduce financial crime, including fraud, money laundering and the financing of terrorism” (Section 2 of the Act). In this respect, Section 38 of the same Act imposes fundamental AML/CFT obligations on “banks,” and, at the same time, authorizes the MMA to prescribe by regulation the manner and form by which “banks, other financial institutions and DNFBP” must comply with these obligations. It further enables the MMA to sanction non-compliance with the AML/CFT obligations. However, as mentioned above, the Act does not define “financial institution” thus leaving it unclear what types of FIs are covered by this Section. Furthermore, neither the 2010 Banking Act nor any other piece of legislation grant the MMA the power to carry out inspections, compel production of records or information and impose penalties to implement and enforce any future AML/CFT provision on financial industries other than banks. Therefore, while the MMA is clearly designated as the supervisor for banks, the Maldivian legislation does not designate a licensing authority nor an AML/CFT supervisor or regulator for the insurance, finance leasing, MVT service operators and money changing industries.

597. Although the MMA has not been designated as the competent authority for supervision of other financial institutions, it nevertheless carries out some supervision over the insurance industry, finance leasing companies and money changers under the authorization of some other texts, but not for AML/CFT purposes.

Banks

598. The MMA has a wide range of supervisory powers under the MMA Act and the 2010 Banking Act. More specifically, it may:

- Regulate and supervise “banking” (Section 4 of the MMA Act) and “banking business” (Section 1 of the 2010 Banking Act);
- Supervise banks on a consolidated basis, including conducting on-site examination on all banks at any time at its discretion and at intervals not exceeding 18 months, and requesting any additional information, documents, clarifications of proof as necessary (Section 53 of the 2010 Banking Act);

- Require information of any type at its discretion from banks in the form and details and at the intervals specified by the MMA (Section 47(a) of the 2010 Banking Act);
- Require corrective measures taken by and impose administrative penalties on banks that violate the provisions of the 2010 Banking Act or any regulation, condition of licensing, instruction or order issued by the MMA, engaging in unsafe or unsound banking operation (Section 56 of the 2010 Banking Act); and
- Revoke a license (Section 56 of the 2010 Banking Act).

599. All the MMA powers can be exercised to ensure compliance by banks with their AML/CFT obligations under Section 38 of the 2010 Banking Act.

600. The MMA is also empowered to develop regulations to specify the manner and form by which banks shall comply with those obligations, and a range of sanctions that could be imposed for violations (Section 38 and Section 65(c)(3)). However, no such regulation has been developed so far due to the very recent enactment of the 2010 Banking Act. The MMA can also issue other instruments such as Circulars (generally applicable) and rulings and orders (applicable to particular financial institutions) (Section 65(a)).

CMDA

Securities sector

601. Section 9 of the Securities Act grants the CMDA the following duties and responsibilities:

- Maintain surveillance over the securities market and the Stock Exchange and to ensure orderly, open, fair and equitable dealings in securities in compliance with this Act and regulations made thereunder;
- Take measures to suppress improper practices and violations of the law in relation to dealings in securities;
- Regulate dealers, dealer's representatives, investment advisers and any other persons holding a license under this Act with a view to maintaining acceptable professional standards; and
- Give directions to the Stock Exchange Company on matters relating to the operation of the securities market.

602. The Securities Act authorizes the CMDA and the MFT to make regulations for the proper execution of the Act (Sections 9 and 60). Under such authorization, the CMDA issued the following Regulations:

- The Securities (General) Regulations (issued in 2007 and amended in 2009 by the MFT under Section 60(c) of the Securities Act);
- The Regulation on Conduct of Securities Business (issued by the CMDA in 2006); and

- The Dealers and Dealers’ Representatives Licensing Regulation (issued by the CMDA in 2006).

603. The Securities (General) Regulations and the Regulation on Conduct of Securities Business) specify that the CMDA can exercise its power by:

- Carrying out investigations under certain circumstances (Section 12 of the Securities (General) Regulations);
- Revoking a license in case the licensed person or entity fails to comply with any provision of the Securities Act or regulations made thereunder or condition(s) applicable in respect of the license (Section 34(b) of the Securities Act);
- Imposing an administrative fine on securities dealers, dealer’s representatives or investment advisors for non-compliance with the Act or relevant Regulations (Section 16 of the Securities (General) Regulations);
- Compelling production and searches of books and records (Sections 3,4 and 5 of the Securities (General) Regulations, and Sections 36 and 37 of the Regulations on Conduct of Securities Business); and
- Where it appears to be in the public interest, the CMDA has the power to issue directions to the Stock Exchange companies as specified in the regulations (Section 26 of the Securities Act).

604. No provision explicitly provides for the CMDA’s power to conduct inspections in the securities industry. However, according to the Securities Act, one of CMDA’s objectives is to “take measures to prevent unconscionable conduct in relation to dealings in securities and loss of confidence in the securities market” (Section 4(d)), which is the basis used by the CMDA to carry out inspections in the securities industry. As indicated by the CMDA, it nevertheless conducts on-site inspections on all dealing companies every quarter, and their power to inspect has never been challenged by the dealing companies. The authorities also indicated that, though the CMDA might have a wide range of powers according to their interpretation of the legislation, many of those powers have never been tested given the early stage of the market’s development.

Adequacy of Resources—Supervisory Authorities (R.30)

MMA

605. The MMA has an independent budget generated from its own business such as dealing of gold, foreign exchange and other financial instruments (Sections 22 and 26 of the MMA Act). Currently the MMA has 130 staff in total; 10 are allocated to the CBSS which is responsible for supervision of banks and credit institutions, and 4 to the NBFIS which is responsible for the supervision of non-bank financial institutions.

606. All MMA staff is appointed by the Governor and is required to have a good educational background in the field of banking, accounting, business or law with working experience and their

criminal records are checked to make sure the prospective employees are of high integrity. All MMA staff is prohibited from disclosing information relating to the MMA's affairs except for legal purposes, and any violation of this prohibition is subject to criminal sanctions (Section 11 of the MMA Act).

607. Currently the MMA itself has not provided any AML/CFT training to the staff, but most staff of the CBSS and the NBFIS has received AML/CFT training provided by the APG and other foreign donors. More regular training may nevertheless be useful in particular in light of future AML/CFT responsibility. The MMA indicated that it has plans to organize in-house AML/CFT training program for its staff in the near future.

608. As indicated by the MMA, staff of the CBSS and the NBFIS is relatively new to supervisory work, and currently lacks experience and expertise in the area.

CMDA

609. The CMDA's budget is proposed by its Board of Directors to and approved by the Minister of Finance and Treasury. As indicated by the CMDA, the budget proposed by the Board is usually approved.

610. At present, the CMDA has 23 staff in total; the LMRD, which is responsible for licensing and supervision, currently has 4 staff, 2 of which are inspectors. When needed staff from other sections provide support during inspections.

611. Staff of the CMDA is appointed by the President on advice of its Board (Section 13 of the Securities Act). As indicated by the CMDA, its policy on recruitment is to hire persons of high professional standard and integrity. All employees are required to complete a criminal records clearance form and submit it for endorsement the MPS, AGO, and various courts.

612. All CMDA staffs are prohibited from disclosing to anybody unpublicized information relating to the CMDA's affairs except for legal purposes, and any contravention to this prohibition is subject to criminal sanctions (Section 15 of the Securities Act).

613. AML/CFT training was provided by the APG to the CMDA several years ago, and the CMDA indicated that it has plans to provide joint training with the MMA in the future.

614. As indicated during the on-site visit, due to the attractiveness of the private sector, one of the CMDA's challenges is to recruit and maintain staff.

Sanctions: Powers of Enforcement & Sanction (c. 29.4); Availability of Effective, Proportionate & Deterrent Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2); Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3); Range of Sanctions—Scope and Proportionality (c. 17.4):

Banks

615. The 2010 Banking Act lists a series of administrative sanctions applicable to banks. Pursuant to Section 56, the MMA can:

- send a written warning;
- enter into an informal agreement with the bank regarding measures to be taken to correct violations with a timetable for accomplishing such action;
- give orders to the bank to cease and desist from particular actions, or requiring the bank to take affirmative action to correct the violations;
- require that the bank submit a detailed description of remedial measures that it intends to take or that it has taken to eliminate the violations;
- require that the bank cease some of its operations;
- bar the bank from declaring or paying any cash dividends or distributing profits;
- impose any restriction or prescribe conditions on the granting of credit;
- attend the Board of Directors meeting and require that the chairman convene the board of directors to review and examine the violations;
- require the bank to hire an advisor that has authority to disapprove actions proposed;
- require that the bank remove the chairman or any of the members of the bank's board of directors or executive officer or manager;
- dissolve the bank's board of directors and appoint a conservator to assume responsibility for managing the bank;
- impose on the bank an administrative penalty with a sum of up to five percent of the bank's paid-up capital;
- impose on one or more administrators of the bank an administrative penalty in the event that the MMA determines that such administrators are responsible for the existence of the violations; and
- revoke the bank's license.

616. As prescribed in Section 56 of the 2010 Banking Act, if any of the following occurs, have occurred, or the MMA has reason to believe that they will occur, the MMA may take one or more of the measures or impose one or more of the administrative penalties described:

- violation of any provisions of the 2010 Banking Act or any regulation, condition of licensing, instruction or order issued by the MMA; and

- engaging in unsafe or unsound banking operations.

617. Consequently, all of the sanctions listed above can be imposed on banks for non-compliance with the following requirements as prescribed by Section 38 (a) of the 2010 Banking Act:

- identifying and verifying customers and beneficial owners;
- identifying the source of funds;
- keeping and maintaining records of customers and transactions;
- reporting suspicious transactions; and
- developing and implementing AML/CFT internal control programs.

618. The MMA is authorized to develop regulations to implement the AML/CFT provisions of the 2010 Banking Act (Sections 38 and 65), the violations to which are also subject to the penalties listed above. Due to the very recent introduction of the Act, no such regulation had been developed at the end of 2010.

619. It is worth mentioning that all these powers are new. Prior to the December 2010 entry into force of the 2010 Banking Act, there were only very limited criminal and administrative sanctions applicable to banks. Due to the very recent introduction of the Act, no sanction has been imposed as of the end of 2010 for violation of the AML/CFT requirements.

620. No sanction has been issued for non-compliance with the Circular because it is deemed unenforceable. Instead, the MMA has recommended improvements to those institutions with poor AML/CFT policies and procedures.

Securities Industry

621. Criminal sanctions are available for certain violations as prescribed by the Securities Act, including market manipulation, making false statements and transactions, and providing misleading information.

622. In addition to sanctions for specific violations, the Securities Act provides for the following general sanctions (Section 59):

- “Person with any breach of provisions of the Act without specific penalty provided in the Act is upon conviction subject to a fine between 25,000 and 100,000 Rufiyaa or imprisonment for a term between 3 months and 1 year with a fine of 75,000 Rufiyaa”;
- “Unless the Regulation specifies a penalty, person who fails to comply with Regulations made under this Act shall commit an offense and punishable on conviction by a fine not exceeding 15,000 Rufiyaa;” and

- “Person who, without reasonable cause, fails to comply with any directions given by the CMDA under the Act is upon conviction subject to a fine less than 15,000 Rufiyaa”.

623. As prescribed in the Securities Act, a licensee must be a company registered in accordance with the Companies Act (Section 28), while a licensee’s representative must be a natural person (Section 29). A licensed dealer cannot operate in practice unless a licensed representative acts on its behalf. According to the CMDA, usually dealers’ representatives act as directors or managers in the dealing companies. Judging from various sections of the Securities Act, the word “person”, although not explicitly defined, can mean natural person or legal person.

624. In practice, the CMDA would investigate any suspected violation. As indicated by the authorities, they will seek conviction under Section 59 for a serious violation of provisions of the Securities Act and Regulations under the Act. If it is decided by the Board of the CMDA to seek criminal sanctions in a certain case, the case will be forwarded to the PGO, along with the evidence. The PGO would then decide whether to prosecute or not, based on the evidence presented. The CMDA indicated that only one case had been forwarded to the PGO so far and that a judgment had not yet been pronounced.

625. Section 34 of the Securities Act also authorizes the CMDA to revoke or suspend a license.

626. The Securities (General) Regulations issued by the Ministry of Finance under Section 60 of the Securities Act provides for fines of up to Rf 150,000 (approximately US\$11,000) upon conviction of persons who fail to comply with requirements concerning production of books and searches of premises (Sections 3-5 and 7). In addition, the Regulations authorizes the CMDA to impose administrative fines not exceeding Rf 10,000 (approximately US\$700) on any person who fails to comply with the Act or other relevant regulations or rules (Section 16). According to the CMDA, the amount of the fine is relatively low because under the general principles of Maldivian law, administrative fines should not be higher than criminal monetary sanctions (which, under the Act, are of Rf 10,000 (approximately US\$700) at a minimum). In addition, these administrative sanctions can also be imposed in parallel with criminal sanctions prescribed in Section 59 (b) and (c).

627. In the last four years, the CMDA suspended the license of one dealing company for having manipulated its accounting records, and imposed administrative fines of Rf 10,000 (approximately US\$700) on two dealing companies for failure to comply with the Regulations on Conduct of Securities Business.

628. As mentioned above, although mandatory, the CMDA 2010 AML Regulations, with a limited exemption, will not be enforceable until April 2011. After that, non-compliance with the Regulation will be punishable by either criminal or administrative sanctions. As the Regulations does not provide any specific penalty, non-compliance with the Regulations is only subject to:

- a fine not exceeding Rf 15,000 (approximately US\$1,000) on conviction (Section 59(b) of the Securities Act); or
- an administrative fine up to Rf 10,000 (approximately US\$700) (Section 16 of the Securities (General) Regulations).

Criminal sanctions applicable to Financial Institutions registered as companies

629. In addition to the sanctions mentioned above, financial institutions that are registered as companies may also be subject to criminal sanctions, for example for money laundering under the Drugs Act.

630. However, these sanctions have never been imposed.

Market entry: Fit and Proper Criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1); Licensing or Registration of Value Transfer/Exchange Services (c. 23.5); Licensing of other Financial Institutions (c. 23.7):

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

Banks

631. Pursuant to Section 8(9) of the 2010 Banking Act, one of the conditions to obtain a license is that “each person who will be a major shareholder or administrator of the licensee will at all times be fit and proper for the intended position.”

632. The notion of “fit and proper” means a person who is regarded as honest and trustworthy, and whose professional qualification, background and experience, financial position or business interest qualify that person, in the judgment of the MMA, to be an owner, administrator, conservator or receiver of a bank (Section 115 of the Banking Act and Section III-2 of Regulation on Fit and Proper Requirements). This legislation also provides that a person may not qualify as fit and proper if he/she:

- Has been convicted by a criminal court of an offense that could have resulted in imprisonment, unless such conviction was motivated by his/her political views or activities (as indicated by the authorities, acts of terrorism or terrorist financing will not be exempted on the basis of political motivation);
- Has been declared bankrupt by a court of law within the previous two years;
- Has been disqualified or suspended by a competent authority from practicing a profession on grounds of personal misconduct unrelated to his political views or activities;
- Has been declared unfit to manage a company (Section 115 of the 2010 Banking Act); or
- Has been or is now subject to an investigation in the Maldives or elsewhere by or at the investigation of any governmental department or agency, professional association, or other regulatory body (Section III-2 of the Regulation on Fit and Proper Requirements).

633. A “major shareholder” is defined as “a person who, directly or indirectly, holds 10% or more of the capital or the voting rights of a legal entity, or who through other means, in the opinion of the MMA, is able to control the legal entity of which he is deemed to be a major shareholder” (Section 115).

634. The notion of “control” is also defined in the law and is deemed to exist if a person: “(a) directly or indirectly, or acting through one or more persons, owns, controls, or holds with the power to vote 25% or more of the voting share of the company; (b) has the power to elect more than 50% of the directors of the company; or (c) exercises a controlling influence over the company, as defined by the MMA” (Section 115).

635. However, due to inconsistency between the law and the regulation, it is unclear what “major shareholder” exactly covers. Judging from the wording of some provisions⁷⁴ in the Act dealing with “major shareholders”, this notion seems to mean natural persons only. However, the Act defines “person” as covering both natural and legal persons (Section 115). Furthermore, the Regulation on Fit and Proper Requirements provides specific requirements on corporate major shareholders. This Regulation was issued by the MMA in 2009 (i.e. prior to the entry in force of the 2010 Banking Act) and then “deemed to be authorized under the [Banking] Act” (Section 113(a)(3) of the Banking Act). According to Appendix B of this Regulation, a corporate major shareholder must submit a series of documents demonstrating it is “fit and proper”, including information of its own “major shareholders”, which are not, however, required to be fit and proper.

636. An “administrator” is “a person who is a director, executive officer, or member of the audit committee of a bank, including, in case of a foreign bank, a designated branch manager” (Section 115).

637. The application for a banking license must contain an affidavit for each major shareholder and administrator, duly signed by the proposed shareholder or administrator stating any (if any) convictions for crimes or no conviction past or present, involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings or personal bankruptcy filings (Section 5(b)(5)). False statements might result in the rejection of the application or the revocation of a valid license (Section 6(b) and Section 8(c)). Though the standard form for such affidavit may be determined by the MMA as per Section 5(b)(5) of the 2010 Banking Act, no such form has been published by the MMA.

638. Any person, acting directly or indirectly or in concert with other persons, who propose to become a major shareholder of a bank is subject to the same requirement of filing an affidavit regarding his/her criminal records as described above and obtain the MMA’s approval prior to acquiring the shares that will make the person a major shareholder (Section 20). However, as analyzed above, the notion of fit and proper “major shareholders” is not sufficiently precise to ensure that it applies to all the beneficial owners as defined by the FATF. In case of a change of administrator, the bank must give written notice to the MMA at least 30 days prior to appointment or election of the new administrator with information to support that the person is fit and proper as defined by the Act (Section 17). The MMA will then assess the proposed candidate under the fit and proper criteria and determine whether to approve the candidate to act as an administrator (Section 17).

⁷⁴ Such as Sections 5(b)(5) and 8(a)(9).

639. In the case of an application by a bank holding company or bank to organize a domestic bank, the MMA will obtain detailed financial and operational information regarding the applicant, including its major shareholders and administrators of such bank or bank holding company (Section 5(c)). As indicated above, the fit and proper requirement regarding “major shareholders,” does not cover the beneficial owners in a comprehensive way.

640. In light of the above, the current legislation is insufficiently precise to prohibit effectively criminals from holding significant or controlling interests of a bank (i.e. from being the beneficial owner - as defined by the FATF- of a bank).

641. As indicated by the MMA, the application of incoming administrators that occurred after the introduction of the 2009 Regulation were checked by the MMA against the criteria listed in the Regulation (which were similar to those that now appear in the 2010 Banking Act) before being approved. As of shareholders and administrators that already had been appointed at the time of issuance of the Regulation, the MMA’s expectation is that banks have carried out a diligent assessment of the existing administrators and major shareholders. However, the MMA has not conducted any check to ensure that the existing major shareholders and administrators meet the requirements of being fit and proper “at all times” as prescribed by Section 8(a)(9) of the Act. The MMA rejected one application in 2009.

Insurance Companies⁷⁵

642. Under the temporary legal power granted by the Law for the General Regulations, the Insurance Industry Regulations (2002) issued by the MMA set out licensing requirements of insurance undertakings.

643. Pursuant to the Insurance Industry Regulations, an insurance undertaking must obtain a license before operation (Section 9(1)), and any application for a license must contain information regarding, *inter alia*, the scheme of operations, the major shareholders, and the proposed management team (Section 10). However, what the notion of “major shareholder” exactly means, and whether it covers natural persons of significant or controlling interest (beneficial owners as defined by the FATF), is not clear in the Regulations.

644. The MMA must reject an application if any member of the board of directors of the applicant entity is not a fit or proper person to serve on the board of an insurance undertaking (Section 13(1)). A “fit and proper” person is defined under the Preliminary of the Insurance Industry Regulations as “a person of good standing, without a criminal record with certain technical, professional qualifications and experience, as determined by the MMA to be appropriate to the position they are proposing to fill in an insurance undertaking or act as a market intermediary on behalf of an insurance undertaking.” This provision does not, however, apply to major shareholders who are not members of the board of directors or senior management. Consequently, the current legislation is insufficient to prohibit

⁷⁵ The notion of “insurance company” is equivalent to “insurance undertaking” in the Maldives. “Insurance company” is used in the subtitles to be consistent with the table of financial institutions in Section 1, while “insurance undertaking” is used in the text because this is the terminology used in the relevant legislation.

criminals from being beneficial owners or holding significant or controlling interest of an insurance undertaking.

645. In addition, the licensed insurance undertaking must inform the MMA within seven days of any changes to the shareholding structure of the undertaking, and it must seek and obtain the approval of the MMA prior to making any changes to the directors and senior management of the undertaking (Section 16 of the Insurance Industry Regulations).

646. At the time of issuance (2004), the Insurance Industry Regulations allowed existing insurance companies a transitional period of up to one year to bring themselves into compliance with the licensing conditions set out, and obtain a permanent license. However, as indicated by the MMA, the transitional period had been extended several times, and will be further extended until proper licensing arrangements are finalized. The decision on granting or rejecting a permanent license is made by the MMA Board of Directors based on the MMA's evaluation. The evaluation process does not, however, entail a check of the criminal record of the proposed management and shareholders, though a self-declaration of criminal record is requested from those individuals, according to the MMA. At the time of the assessment, there was only one local insurance company operating in the Maldives, and three other insurance undertakings were branches of foreign companies.⁷⁶ As indicated by the MMA, when it evaluates applications from foreign insurance companies to open branches in the Maldives, it contacts its foreign counterparts to obtain information regarding the applicant.

Insurance Intermediaries

647. Insurance intermediaries are composed of two types of entities, namely insurance agents that act on behalf of the insurer, and insurance brokers that act on behalf of the insured. Though the Insurance Industry Regulations apply to insurance intermediaries as well as insurance undertakings (Section 3), the provisions regarding licenses (Sections 9, 10 and 12) actually address insurance undertakings only. According to the MMA, the Guidelines for the Administration of Insurance Agents were then developed in order to close this gap and set out detailed licensing criteria and procedures for insurance intermediaries. However, no regulation can be issued under another regulation, so this document has to take the form of "Guidelines," which are not legally mandatory by nature.

648. Under the Guidelines for the Administration of Insurance Agents, an insurance agent and its "Responsible Officer" who acts on behalf of the insurance agent must obtain "authorization" from the MMA before doing business (Sections 6 and 7). As the "licensing" condition, each agent must be linked to only one insurance undertaking (Principal) (Section 23), and each Responsible Officer must act on behalf one agent exclusively (Section 11). All applicants of an insurance agent and a responsible officer, including directors and major shareholders of an agent should comply with the series of fit and proper criteria as prescribed in Appendix A, none of which are however mandatory.

649. All applicants must submit a form for application to the MMA containing the fit and proper information. In addition, insurance undertakings are responsible for ensuring that its agent and the agent's responsible officer are fit and proper (Sections 35 and 45).

⁷⁶ Of these four insurance companies, one was still in the process of being licensed.

650. An insurance undertaking must notify the MMA in writing, within seven days, whenever there is any change in the agent's name or address or particulars provided to the Authority, or when the Agent ceases to represent the insurance undertaking (Section 28). Similarly, an agent must notify the MMA in writing, within seven days, whenever there is any change in the address or particulars of the responsible officer provided to the Authority, or when the Responsible Officer terminates its employment with the agent (Section 29).

651. Since the Guidelines for the Administration of Insurance Agents was introduced very recently, no "authorization" has been granted so far.

652. Insurance brokers are not subject to any licensing requirement or guideline.

Securities Dealers, Dealer's Representatives and Investment Advisers

653. Pursuant to the Securities Act, all securities dealers, dealer's representatives, investment advisers and underwriters must obtain a license from the CMDA before doing business (Sections 28, 29, 30 and 36). A license or an application for the renewal of a license must be rejected if the applicant or a director of the applicant has been convicted in the last 10 years (Section 31(2)).

654. As prescribed in the CMDA Dealer's/Dealer's Representative License Regulation, any director or secretary of a dealer's license applicant, and any applicant for a dealer's representative license must declare whether he/she has, within the past 10 years, been convicted of any offense other than a traffic offense in the Maldives or elsewhere, or whether any proceedings now pending may lead to such a conviction (Forms 1 and 3). For an application for biennial renewal of the license, the same declaration has to be made for the last 2 years (Forms 2 and 4). For this purpose, all applicants are required to complete a criminal records clearance form, submit it for endorsement to the MPS, AGO, and various courts, and attach it to the application form. As per Section 12(ii) of the Regulation, all dealing companies holding a license are required to give forthwith written notice to the CMDA when:

- changes of the management staff and the directors of the company occur;
- director(s) of the company have been convicted of theft or fraud or any other crime involving misappropriation of property belonging to another; and
- a court order for dissolution of the company has been issued, or a receivership arrangement has been entered into.

655. However, these provisions do not apply to natural persons who are not directors or secretaries of a securities dealing company, but have a significant or controlling interest in the company or hold a management function.

656. In addition, the CMDA Stock Exchange Company Licensing Regulation (Section 6) and Regulation on Licensing and Conduct of Central Depository (Section 7) prohibit persons who do not

meet the fit and proper criteria from acting as director of the Stock Exchange or the Central Depository.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5) & Licensing of other Financial Institutions (c. 23.7)

MVT Service Operators

657. The MVT service operators are not subject to any registration or licensing requirement. According to the MMA, a regulation for MVT service operators was being drafted at the time of the on-site visit. The MMA provided the team with a draft standardized form (supposed to be part of the regulation) for applicants to fill out.

658. Despite the absence of a legal basis, all entities wishing to become MVT service operators are supposed to obtain a “license” from the MMA. The MMA has developed an informal procedure to grant this kind of “license” and a draft application form, according to which the application should be accompanied with the applicant’s general information, Memorandum, Certificate of Incorporation, audit reports for the last 2 years and business plan, and include documents (usually a declaration of the applicant signed by the MPS) proving that the directors and substantial shareholders of the company have not been convicted either in the Maldives or elsewhere, of an offense involving fraud or dishonesty, or any conviction for which involved a finding that he/she has acted fraudulently or dishonestly. The assessment team was also provided with a sample of responding letter from the MMA to an applicant for operating MVT service operators, stating the “licensing” conditions and circumstances under which the MMA may revoke the “license.” According to the MMA, applications for a license to conduct MVT service operators are very rare. Only three applications were received over the past three years, two licenses had been issued and one application is still pending. So far no applicant had been found to have a criminal record.

Money Changers

659. The Regulations Outlining Arrangements for Money Changers provides that money changers need to obtain a license issued by the MMA before doing business (Section 1). As mentioned above, however, the Regulations have no sound legal basis and are therefore not enforceable. According to the MMA, in most cases, the applicant will nevertheless be granted a license to carry out their proposed business, and no application has been rejected so far. In practice, almost all licensed money changers are hotels and small shops, exchanging only small sums.

Finance Leasing Companies

660. Under the temporary legal power granted by the Law for the General Regulations, the Regulations for Finance Leasing Companies and Finance Leasing Transactions require that, any person engaged in finance leasing business has to obtain a license issued by the MMA (Section 10), and an application must contain the following documents and information, such as a founding agreement or shareholder agreement, the Memorandum of Association and Articles of Association of the company or the Partnership Agreement, and the names and addresses of directors and

administrators. As indicated by the MMA, no application has been made in addition to the only operating finance leasing company.

Ongoing supervision: Regulation and Supervision of Financial Institutions (c. 23.1); Application of Prudential Regulations to AML/CFT (c. 23.4); Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6); AML/CFT Supervision of other Financial Institutions (c. 23.7); Guidelines for Financial Institutions (c. 25.1):

Banks

661. As mentioned above, until December 2010, there were no AML/CFT requirements in place in Maldives, but over the last years, the MMA, when it inspected banks (and MVTs), nevertheless monitored implementation of its AML Circular. This “monitoring” was conducted by the FIU staff which assisted the CBSS and NBFIS staff for AML/CFT purposes, and the expectation is that the FIU will continue to do so in the future.

662. With respect to on-site inspections of banks for prudential purposes conducted by the CBSS, apart from one bank that commenced operations in May 2008, all other banks have been inspected at least once over the past 5 years. In the past 3 years, one bank was examined every year. The expectation is that on-site inspections of banks will be conducted more frequently in the following year to meet the requirement of the 2010 Banking Act. For the last 2 years, the NBFIS conducted annual inspections of each MVT service. Please see the tables below:

Table 22: General overview of on-site inspection of banks conducted by CBSS for prudential purposes

Year	Number of On-site Inspections Conducted
2005	4
2006	0
2007	1
2008	1
2009	1
2010	1 (ongoing as of August 2010)

Table 23: General overview of on-site inspections conducted by the NBFIS

Year	Type of Financial Institution	Number of On-site Inspections Conducted
2006	-	0
2007	-	0

2008	MVT service operators	3
2009	MVT service operators	3

663. Since 2008, the inspection of AML/CFT elements has become a part of the overall inspection scheme performed by the MMA. The FIU staff will be invited to join the team and will exclusively be responsible for checking the AML/CFT aspects of the inspected institution. When inspecting banks, it is generally up to the CBSS to decide which one of the six banks should be inspected during a specific year. By the end of 2009, 1 out of 6 operational banks and all operational MVT service operators had been inspected regarding their implementation of the MMA AML Circular.

Table 24: MMA on-site inspections of financial institutions on implementation of the MMA AML Circular

	2006	2007	2008	2009
Banks	0	0	0	1
MVT service operators	0	0	3	3

664. For each inspection, the AML/CFT inspector checks the implementation of all the elements set out in the MMA AML Circular, and conducts sample testing where necessary. “AML/CFT On-site Inspection Guidelines” have been developed by the FIU in an effort to structure the AML/CFT part of the on-site inspections. At the end of an inspection, two reports are produced, one for the inspected institution and the other for the FIU inspector. The report for the inspected institution is designed to identify deficiencies in AML/CFT policy and procedures and to recommend specific measures to address those deficiencies. The report for the FIU forms a basis for the FIU follow-up on the improvement made by the inspected institution. The latter report is also shared with the prudential supervisors, i.e. the CBSS and the NBFIS.

665. Considering that the MMA AML Circular is neither mandatory nor enforceable, no sanction has been imposed on banks or MVT service operators for failure to comply with the MMA AML Circular. As indicated by the FIU, the inspected institutions are given instructions on what corrective measures they are encouraged to take to address the deficiencies identified. These instructions are, in most cases, followed by the MVT service operators, but not necessarily by banks. Upon completion of an inspection, the FIU sometimes follows up (usually informally, through a phone call) with the inspected institutions in order to establish whether they have taken the recommended measures to address the deficiencies and what improvement has been made.

666. So far, there has been little off-site surveillance undertaken by the authorities other than follow-up of on-site inspections. As indicated by the FIU, they have started working to develop off-site tools such as a self-assessment questionnaire, which might be introduced in the future.

Effectiveness

667. The AML/CFT measures set out the 2010 Banking Act and the CMDA 2010 AML Regulations are recent (the 2010 Banking Act, in particular, came into force after the on-site visit). Consequently, their effectiveness could not be established. In the securities sector, the relatively light sanctions for non-compliance, and lack of sanctions applicable to directors and senior management of the dealing companies might inhibit the effectiveness of the AML/CFT supervision conducted by the CMDA in the future. In addition, both the MMA and CMDA face significant shortages of expertise and experienced staff, which is holding back the supervisors, notably in the insurance sector.

668. The licensing and fit and proper requirements in place for banks and insurance undertakings are still to be implemented on existing operators that started their business before establishment of the requirements so as to ensure effective prohibition of criminals from controlling financial institutions. In addition, fit and proper requirements applicable in the banking and securities sectors are not sufficiently precise to fully prohibit criminals and their associates from holding or being the beneficial owner of a significant or controlling interest, or from holding a management function in a bank or an insurance company.

669. In practice, interactions between the MMA and the private sectors tend to take an informal approach rather than rely on legal provisions and formal arrangements. The authorities notably explained the lack of formality by the fact that the Maldives is a small community, where personal communications seemed more effective. Such informality on the exercise of the MMA's supervision functions is nevertheless insufficient to ensure compliance, including with regard to the AML/CFT requirements.

3.11.2. Recommendations and Comments

670. While the 2010 Banking Act sets out a comprehensive legal framework for the MMA to govern the banking industry, there is no sound legal basis for the MMA to conduct its supervisory functions with respect to non-bank financial institutions such as MVT service providers, insurance undertakings and intermediaries, financial leasing companies and money changers. Looking ahead, it is imperative that a solid and comprehensive framework for supervision of these industries is put in place.

671. In order to comply fully with Recommendations 17, 23, 25 and 29, the authorities are recommended to:

Recommendation 17:

- Introduce a wide range of effective, proportionate and dissuasive criminal and administrative sanctions, including on their directors and senior management, for non-compliance with AML/CFT requirements when such requirements are established in sectors other than banks and securities.
- Introduce more effective and dissuasive criminal and administrative sanctions that generally applied to violation of Regulations in the securities sector.

- Introduce effective, proportionate and dissuasive criminal and administrative sanctions specifically applicable to directors and senior management of the securities dealing companies.

Recommendation 23:

- Designate by law the competent authority for AML/CFT regulation and supervision of the insurance industry, finance leasing companies and money changers.
- Designate by law the competent authority for licensing/registration and AML/CFT regulation/supervision of MVT service operators.
- Require insurance intermediaries to be licensed and designate by law the competent licensing authority.
- Ensure that beneficial owners of financial institutions are “fit and proper.”
- Implement the market entry and “fit and proper” requirements to existing banks and insurance companies.
- Conduct AML/CFT supervision of banks and the securities sector.

Recommendation 29:

- Grant the competent authorities designated for the supervision of insurance undertakings and intermediaries, MVT service operators, finance leasing companies and money changers with adequate powers by law or regulation to inspect, compel production of, or get access to all records and books, sanction institutions and their directors and senior management, including for AML/CFT purposes and exercise these powers effectively.

Recommendation 25:

- Provide adequate guidance to all types of financial institutions, including information on current money laundering and terrorist financing trends and techniques.

3.11.3. Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors underlying rating
R.17	NC	<p>Banks:</p> <ul style="list-style-type: none"> • Effectiveness of sanctions applicable to AML/CFT non-compliance has not been established. <p>Securities sector:</p> <ul style="list-style-type: none"> • No sanction available for non-compliance with the CMDA 2010 AML

		<p>Regulations until April 2011.</p> <ul style="list-style-type: none"> • The criminal sanctions for non-compliance with Regulations (including the CMDA 2010 AML Regulations after April 2011) and administrative sanctions available are not effective, proportionate and dissuasive. • No sanction for directors or senior management of the securities dealing companies. <p>Financial sectors other than banking and securities:</p> <ul style="list-style-type: none"> • No sanctions for non-compliance with AML/CFT requirements since there are no such requirements in place.
R.23	NC	<ul style="list-style-type: none"> • With the exception of banks, none of the financial institutions active in the Maldives are subject to AML/CFT supervision and monitoring, since there are no enforceable AML/CFT requirements. • No AML/CFT supervision conducted over banks due to the very recent introduction of the AML/CFT obligations: effectiveness of the supervision could therefore not be established. • No legal framework for licensing/registration and regulation/supervision of insurance intermediaries and money changers. • Insufficient fit and proper requirements for beneficial owners of financial institutions. • No requirement for MVT service operators to be licensed or registered. • No legal framework for the supervision of MVT service operators. • Effectiveness was not established: The market entry and “fit and proper” requirements on banks and insurance undertakings have not been implemented sufficiently on existing operators; lack of experience and expertise of the MMA and the CMDA staff undermines effectiveness of their supervision.
R.25	NC	<ul style="list-style-type: none"> • No guidelines provided to financial institutions other than banks and MVT service operators. • Guidelines provided to banks and MVT service operators do not include current money laundering and terrorist financing trends and techniques and are not sufficient.
R.29	NC	Banks:

		<ul style="list-style-type: none"> • The effectiveness of the MMA’s powers under the 2010 Banking Act has not been established; <p>Financial sectors other than banking and securities businesses:</p> <ul style="list-style-type: none"> • Competent authorities have no supervisory power to ensure financial institutions’ compliance with the AML/CFT requirements due to the absence of such requirements and/or competent authorities designated to supervise/regulate these sectors.
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3.12. Money or Value-Transfer Services (SR.VI)

3.12.1. Description and Analysis (summary)

Legal framework:

672. As required by SR.VI, countries should designate competent authorities to register and/or license natural and legal persons that perform money or value transfer services (MVT service operators), maintain a current list of the names and addresses of licensed and/or registered MVT service operators, and be responsible for ensuring compliance with licensing and/or registration requirements.

673. As described above, neither the MMA Act, nor the 2010 Banking Act authorizes the MMA to license and regulate/supervise the MVT service operators. Nevertheless, the MMA issues informal “licenses” to applicants for operating MVT services, and conducts “supervision” (on-site and off-site) on the “licensees” despite this lack of legal basis. The MVT service met by the assessor confirmed that it did apply to the MMA for the “license,” and was subject to MMA on-site inspections. The MMA indicated that a regulation governing the MVT industry was being drafted to close this gap.

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

674. At the time of the assessment, the MVT service providers in the Maldives were not subject to AML/CFT requirements. The MMA AML Circular provides guidance and notably suggests that reporting entities, including MVT service providers, formulate and adopt written AML/CFT policies and procedures, provide adequate training to its staff on AML/CFT, carry out CDD measures to identify customer, identify and report unusual and suspicious transactions, maintain customer information, appoint a compliance officer responsible for ensuring compliance with the Circular; and do not disclose information on suspicions to anybody other than the FIU.

675. As mentioned in the introduction to this section of the report, the Circular is not enforceable. The MVT service provider met by the assessors nevertheless believed that it must comply with Circular, and that non-compliance might lead to sanctions. This opinion was notably based on the MMA’s letter granting a quasi-license for operating MVT service operators, which indicates that the quasi-license may be revoked if the “licensee” fails to comply with laws and regulations, including circulars issued by the MMA.

676. This MVT service provider has adopted standardized forms to be filled out by its customers as senders and receivers respectively. It identifies every customer (senders and receivers, except when the amount received is below US\$1,000) by asking for original ID documents (national ID cards in the case of Maldivians and passports in the case of foreigners). If the provider suspects that a sender is acting on behalf of others, it will ask for information of the person on whose behalf the money is transferred, and make a phone call to that person to understand the purpose of transaction. Receivers are asked for their ID documents, except if value of money transferred is below US\$1,000. The payment will be made as long as the information provided by the receiver in his/her filled form matches that provided by the sender. There is no identification of the beneficial owner of the funds received. All the identification information collected, including copies of ID documents, is kept by the MVT service for more than 3 years in accordance with its internal procedure.

677. This MVT service operator has not filed STRs with the FIU.

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

678. The MMA conducts a yearly on-site inspection of every MVT service. In the last 2 years, it conducted 6 on-site inspections and has, on some occasions, provided the MVTs with guidance and specific recommendation as to how to improve their AML/CFT policies. Routine off-site monitoring is also performed: every month the MVT service operators send the MMA a standardized set of forms, in the format prescribed by the MMA, indicating the sums of money transferred with breakdowns in terms of customers' nationality (Maldivians and foreigners), direction of money flow (in and out), destination or origin country of money flows, and purpose of the transaction (for which there are 8 categories as defined by the MMA). The MMA incorporates this information into its database to develop statistics in support of its analysis of the MVT sector. As indicated by the MMA, the MVT service operators have been submitting monthly forms for 9 years, and the most recent update of the monthly forms' format took place in early 2010.

679. The authorities indicated that they have not observed any notable unlicensed cross-border money remittance activities, but recognized the existence of a domestic informal money transfer system serving people who live on the various atolls.

List of Agents (c. VI.4)

680. MVT service operators are not required to keep a current list of their agents, but the MMA indicated that it nevertheless is common practice for them to keep all the relevant information, including transaction details and list of agents, and to make this information available to the MMA.

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

681. Considering that there are no AML/CFT obligations in place for MVT service operators, there are no sanctions for noncompliance.

Adequacy of Resources—MVT Registration, Licensing and Supervisory Authority (R.30)

682. The NBF, which is responsible for supervision of non-banking financial institutions deemed within the purview of the MMA, has 4 staff members, and lack experience and expertise due to their new coming to supervisory work (see more details above).

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

683. The Best Practices have not been taken into account by the authorities.

3.12.2. Recommendations and Comments

684. In order to comply with Special Recommendation VI, the authorities are recommended to:

- Designate competent authorities responsible for licensing/registration and regulation/supervision of the MVT service operators.
- Require in law or regulation that MVT service operators comply with AML/CFT measures, including conducting customer due diligence, keeping records, identifying and reporting suspicious and unusual transactions, and monitoring cross-border wire transfers.
- Require MVT service operators to keep current lists of their agents and make them available to the designated competent authority.
- Introduce sanctions for MVT service operators' breaches of their AML/CFT obligations.
- Assess the potential informal MVT system operating in the country and take measures to address the risks, if any.

3.12.3. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	<ul style="list-style-type: none"> • No competent authority has been designated for licensing/registration and regulation/supervision of MVT service operators. • MVT service operators are not subject to AML/CFT obligations, including customer due diligence, record keeping and suspicious transaction reporting. • MVT service operators are not required to maintain a list of their agents and make that list available to the competent authorities. • No sanctions available for non-compliance of MVT service operators with AML/CFT requirements (due to the absence of such requirements). • The Maldives authorities have not taken sufficient action to make the operators of potential informal MVT system subject to AML/CFT requirements.

4. PREVENTIVE MEASURES—DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

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

Scope of application of the AML requirements to the DNFBP sectors

685. The DNFBPs that are active in the Maldives are lawyers, accountants, and dealers in precious metals and stones (namely jewelers).

686. At present there is no AML/CFT framework, legal or otherwise, applicable to either of the Maldivian DNFBPs (but the authorities mentioned that they are considering including all of them in the future AML/CFT framework which is currently being prepared).

687. Gambling, including casinos and internet casinos, is outlawed in Maldives on the basis of the Constitution which provides that anything contrary to the tenets of Islam (such as gambling) is prohibited. According to the authorities, there are no real estate agents and TCSPs: the selling and buying of real estate is conducted either by the sellers and buyers themselves or by lawyers, and there is no governing body for the sale or lease of real estate; legal person formation activities and other services to legal entities are provided by lawyers. Lawyers may also act as “notaries” (without the need for a separate license). According to the authorities, there is no trust business (domestic or otherwise) in Maldives, but anecdotal evidence suggests that there are trust operations conducted by lawyers.

Lawyers

688. There is no bar association or equivalent regulating body for lawyers in the Maldives. To practice in the Maldives, lawyers must have a law degree and register with the AGO. The AGO was unable to provide any estimate on the numbers of legal professional engaged in commercial activities on behalf of clients including buying and selling of real estate, managing client money, management of bank, organization of contribution for the creation, operation or management of companies and creation, operation or management of legal person or arrangements.

Accountants

689. There is no accountant’s association or equivalent regulating body for accountants in the Maldives, and no framework that regulates accounting. The on-site team met with accountants who said that the market self-regulated in the sense that those who were not properly qualified would have a very limited market for their work.

Jewelers

690. According to the authorities, the jewelry trade in Maldives is not well developed and generally does not extend to high value transactions.

Customer due diligence and record-keeping (R.12) (Applying R.5, 6, 8 to 11, & 17)

4.1.1. Description and Analysis

691. DNFBPS are not subject to customer due diligence and record keeping obligations, and there is no guidance of any kind on those matters.

4.1.2. Recommendations and Comments

692. The fact that none of the DNFBPs currently active in Maldives are required to comply with AML/CFT requirements is a shortcoming that the authorities should promptly seek to address. Although real estate agents and TCSPs are not separate professions and businesses, considering that there are no explicit prohibitions in place, it cannot be excluded that such businesses may become active in future. It may therefore be useful for the authorities to consider including them in their draft AML/CFT legislation.

693. In order to comply fully with Recommendation 12, the authorities are recommended to:

- Take steps to put into place a regulatory framework for DNFBPs active in the Maldives.
- Require DNFBPs active in the Maldives to comply with CDD and record keeping requirements in line with Recommendations 5, 6, 8, 9, 10 and 11.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	NC	<ul style="list-style-type: none"> • There are no regulating bodies for DNFBPs in the Maldives. • There are no AML/CFT requirements for DNFBPs in the Maldives.

4.2. Suspicious Transaction Reporting (R.16)

4.2.1. Description and Analysis

Legal Framework:

694. As DNFBPs are not yet included in the Maldives' AML/CFT regime, STR obligations do not extend to any of the DNFBP sectors.

4.2.2. Recommendations and Comments

695. In order to comply fully with Recommendation 16, the authorities are recommended to:

- Impose suspicious transaction reporting requirements on DNFBPs active in Maldives in line with Recommendation 16.
- Implement the AML/CFT regulatory framework for DNFBPs.

- Ensure protection from criminal and civil liability for DNFBPs, their directors, officers and employees reporting in good faith.
- Prohibit DNFBPs, their directors, officers and employees from disclosing the fact that an STR or related information is being or has been reported to the FIU.
- Require DNFBPs to establish internal controls, training and audit programs in line with Recommendation 15.
- Require DNFBPs to give special attention to transactions and relationships with persons from or in countries that do not or insufficiently apply the FATF Recommendations in line with Recommendation 21.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors
R.16	NC	<ul style="list-style-type: none"> • No STR requirements for DNFBPs. • No provisions in line with Recommendations 14, 15 and 21.

4.3. Regulation, Supervision, and Monitoring (R.24-25)

4.3.1. Description and Analysis

Legal Framework:

696. There are no existing laws, guidelines or mechanisms for monitoring and ensuring compliance of DNFBPs with AML/CFT requirements. At such time that DNFBPs will be included in the AML/CFT regime, it is not clear which agency (given the absence of regulating bodies) would monitor compliance with AML/CFT obligations.

697. At present, awareness amongst DNFBPs of money laundering and terrorist financing risks and possible future AML/CFT preventative measures is low.

4.3.2. Recommendations and Comments

698. In order to comply fully with Recommendations 24 and 25, the authorities are recommended to:

- Subject DNFBPs to AML/CFT requirements as mentioned under R.12 and R.16.
- Designate competent authorities responsible for AML/CFT supervision for DNFBPs.
- Issue AML/CFT guidance for each industry in the DNFBP sector to reflect specific money laundering and terrorist financing risks in each sector.

- Examine the resources that would be required to monitor compliance of the DNFBP sectors that present the highest risk and allocate resources accordingly.

4.3.3. Compliance with Recommendations 24 and 25 (c. 25.1, DNFBP)

	Rating	Summary of factors underlying rating
R.24	NC	<ul style="list-style-type: none"> • There is no regime for AML/CFT regulation and supervision of designated non-financial business and professions considering that DNFBPs are not subject to AML/CFT requirements.
R.25	NC	<ul style="list-style-type: none"> • There are no existing guidelines for DNFBPs on AML/CFT.

4.4. Other Non-Financial Businesses and Professions—Modern, Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Other Vulnerable DNFBPs (applying R.5, 6, 8-11, 13-15, 17 & 21 c. 20.1):

699. The Methodology provides the following examples of businesses or professions to which countries “should consider” applying the FATF Recommendations: Dealers in high value and luxury goods, pawnshops, gambling, auction houses, and investment advisers. The Maldives has not assessed the risk of money laundering and terrorist financing in the non-financial sector and, consequently, has not identified businesses and professions that may be at risk of being misused for money laundering or terrorist financing purposes. In its draft AML/CFT legislation, however, it is considering applying AML/CFT measures to these businesses and professions.

700. The Maldives economy is largely cash-based. The highest denomination banknote is Rf 500 (approximately US\$39). So far, no measures have been taken to reduce the reliance on cash.

Modernization of Conduct of Financial Transactions (c. 20.2):

701. The banks operating in the Maldives provide credit and debit card services and two other companies provide credit card services. The Bank of Maldives also provides internet banking for its customers in Dhivehi, the local language, and in English. There are no specific laws on electronic payment systems and internet banking in the Maldives. The country is currently drafting legislation that will enable the introduction of a mobile phone banking system with regulations on payment systems and a separate regulation on financial transaction reporting.

4.4.2. Recommendations and Comments

702. Considering that no risk-assessment had been conducted, the authorities are not in a position to identify whether non-financial businesses and professions other than the DNFBPs are at risk of being misused for money laundering or terrorist financing purposes and would require being subjected to the AML/CFT framework. Although measures are in place to ensure the security of financial transactions they are not widely used or encouraged.

703. In order to comply fully with Recommendation 20, the authorities are recommended to:

- Undertake a risk assessment of money laundering and terrorist financing in non-financial businesses and professions (other than DNFBPs) and consider applying AML/CFT preventive measures to those that are found to be at risk of being misused for money laundering or terrorist financing purposes.
- Continue to develop effective measures to develop and use modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
- Introduce measures to reduce the reliance on cash and to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering and terrorist financing.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	NC	<ul style="list-style-type: none"> • There are gaps with effective measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. • The Maldives has not yet undertaken a formal risk assessment of the vulnerabilities of other non-financial businesses and professions.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1. Legal Persons—Access to Beneficial Ownership and Control Information (R.33)

5.1.1. Description and Analysis

Legal Framework:

704. The types of legal entities that may be established under Maldivian legislation are companies, partnerships, co-operative societies and non-profit associations and they are subject to relevant laws and regulations. They are respectively regulated by the Companies Act 1996, the Partnerships Act 1996, the Co-operative Societies Act 2007 and the Association Act 2003. There are approximately 7,000 companies in the Maldives, almost half of which are inactive and in the process of being wound down by the Registrar of Companies.

Table 25: Numbers of legal entities registered in 2009:

Entity Type	Companies	Partnerships	Co-Operative Societies	Non-profit Organizations
Number of legal Entities for the year 2009	7,539	3	7	1,108

705. No additional information (such as a breakdown per domestic and foreign companies, or private vs. public companies) was provided.

Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):

706. Various information on legal entities is collected and available to law enforcement agencies and other authorities as described below. There are no obligations however to make sure that the information is up-to-date.

Companies:

707. Under the Companies Act 1996, no company may conduct business without being first registered as a private limited company or a public limited company with the Registrar of Companies. Companies should submit their Memorandum and Articles of Association to the Registrar. The Memorandum and Articles of association which should include the names of the persons forming the company and, in case of a private limited company, clearly identify the shareholders (Section 4 of the Companies Act).

708. Public limited liability companies can issue shares to the public and are in that regard subject to the Securities Act 2006 and other related regulations, including a Corporate Governance Code issued by the CMDA. According to Section 94 of the Companies Act, any foreign company willing to conduct business in the Maldives shall register with the Registrar of Companies as a foreign company. Any foreign investment shall be registered as a foreign investment in the Maldives pursuant to the provisions of the Law on Foreign Investments in the Republic of Maldives 1979.

709. Pursuant to Sections 16 and 17 of the Companies Act, every company must keep a register of its members and enter the following particulars: name and address of the members; number of shares held by each member; and the amount paid on the shares of each member.

710. Companies must submit to the MHA an annual report which should notably contain the names of the directors of the company and the details of the company's members of the past year (more information is provided below).

711. Section 74(a) of the Companies Act 1996 stipulates that if any of the company's directors misuses the legal entity in furtherance of criminal activity, the law allows the corporate veil to be lifted and the directors can be held liable severally and individually, both under civil and criminal law. The authorities have never used 74(a) to lift the corporate veil. The on-site team met with a law firm specializing in company and commercial law who confirmed they had never heard of the corporate veil being lifted in any criminal or civil case.

Partnerships:

712. Under the Partnerships Act 1996, 2 or more persons can form a partnership when they submit the partnership agreement (signed by the partners with two persons as witnesses) to the MED to register as a partnership. The partnership agreement must notably include the name and address of the partners and the name of the managing partner (Section 9). Partnerships can be wound up by the courts as per Section 23 but only when a partner applies to the court for the winding up. Partners can be held jointly liable for the partnership's actions. Under the Partnership Act, the MED collects a copy of the partnership agreement as well as information on the identity of the partners.

Cooperative Societies:

713. According to the Co-operative Societies Act 2007, those entities other than non-profit organizations must register with the Registrar of Co-operative Societies if they wish to conduct business as a co-operative society. According to Section 6 of the Act, co-operative societies are only authorized to conduct business or activities for the benefit of a society as a whole or a part of a society. The members of a co-operative society are the owners of that society. Section 12 sets out that a minimum of 10 persons must be registered as members of the co-operative society. To register a cooperative society, a statement of purpose together with the registration documents must submit. Under Section 11(c) of the Co-operative Societies Act 2007, the registrar has the authority to take various actions against the society including freezing its accounts and "stopping" its activities, if the registrar finds that the society is engaged in an activity that is against its founding objectives. In addition, under Section 60, the registrar has the power to wind up the society if it engages in any act that is not specified in the founding objectives. Under the Co-operative Societies Act, identification information of the directors and the members of the co-operative society must be submitted to the registrar. This information can be shared with the government authorities upon request.

Non-profit associations:

714. Non-profit associations (non-profit organizations) are addressed below under Section 5.3 of this report.

715. The MED is responsible for monitoring and enforcing the obligations under the Companies Act, Partnerships Act and the Co-operative Societies Act. Its records contain notably the Memorandum and Articles of Association for companies under the Companies Act 1996 and Partnership Agreements under the Partnerships Act 1996.

716. None of the legal entities mentioned above are required to provide the registrar with updates in case of changes to the information provided.

Access to Information on Beneficial Owners of Legal Persons (c. 33.2):

717. The MED maintains information on companies, partnerships and co-operations registered and the law enforcement and investigative authorities as well as any other agencies have access to the information upon filing a formal application in the manner prescribed by the MED, but that information is not sufficient to establish a clear picture of a legal entity's beneficial ownership. Currently the MED maintains this information manually which can lead to some delay in accessing the records.

718. The MED stated that if a shareholder was a company, the shareholders of that company would have to be provided. However they would not look beyond the first layer of ownership (in other words, if the shares of the company that owned the company in the Maldives were held by other companies, the shareholders of those other companies would not be examined).

719. The Companies Act does not prohibit nominee shareholders or nominee directors. No information was provided in this respect and it is therefore unclear they are current practice in the Maldives.

Prevention of Misuse of Bearer Shares (c. 33.3):

720. Pursuant to Section 29 of the Companies Act, shares must be issued in nominative form. There are therefore no bearer shares in the Maldives.

Additional Element—Access to Information on Beneficial Owners of Legal Persons by Financial Institutions) (c. 33.4):

721. Some representatives of the private sector stated that they were able to request records from the MED, and receive those records in one to two weeks from the date of their request. They reported that the information on directors and shareholders was normally complete, but the information received, particularly in relation to annual accounts of companies, was often not up-to-date.

5.1.2. Recommendations and Comments

722. The Maldives has a national system for recording and making available information on companies. There are however no obligations to request and record beneficial ownership information for legal persons formed or operating in the Maldives. The effectiveness of the MED in making information available on those who own and control legal persons in order to combat money laundering is inhibited by:

- The rate of compliance with the obligation to provide the MED with updated information.

- The MED’s lack of capacity to enforce compliance with the above obligation.
- The fact that the company records are currently held manually (the MED has acknowledged this as a drawback and is moving towards computerizing its records).

723. The availability of beneficial ownership information is also inhibited by the lack of a requirement that legal persons themselves maintain information as to whether their shares are held beneficially and, if so, the details of the beneficial owner.

724. Investigative agencies have a reasonable range of powers to obtain information about companies. However the effectiveness of their powers in this area is much reduced by the fact that the MED or the companies themselves do not maintain information about beneficial ownership. In addition, due to the low rate of compliance and enforcement there can be little confidence that the records that do exist are accurate and up-to-date.

725. In order to comply with Recommendation 33, the authorities are recommended to:

- Ensure that adequate, accurate and current information on the beneficial ownership and control of legal entities is readily accessible to relevant authorities.
- Require the MED to maintain information as to whether shares of registered entities are held beneficially and, if so, to maintain details of the beneficial owner.

5.1.3. Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	<ul style="list-style-type: none"> • Current measures in place do not ensure adequate transparency concerning the beneficial ownership and control of legal persons. • Records are held manually by the MED and are not updated in a consistent manner, particularly in relation to company accounts. Records held by the MED do not include adequate, accurate and current information about beneficial ownership. • Above factors inhibit effectiveness of law enforcement powers to obtain information about beneficial ownership and more generally to obtain information in a timely fashion.

5.2. Legal Arrangements—Access to Beneficial Ownership and Control Information (R.34)

5.2.1. Description and Analysis

Legal Framework:

726. Current Maldivian law does not address the establishment of legal arrangements such as the common law trust. A draft Trust Act was however prepared in 2008. The authorities met were not aware of this draft and could not provide more information on the subject.

727. According to the authorities and the representatives of the private sector met during the assessment, there is no trust business in the Maldives, although the website of some lawyers' firms in Malé suggest that they provide services in relation with trusts established under other jurisdictions' legal system.

728. The private sector reported that they had seen cases where foreigners would informally and silently partner with locals to get around foreign investment rules. The private sector reported that, while this was not a form of trust, and no foreign ownership would be recognized in these cases (either over the asset, the enterprise or any profits from the enterprise) foreigners were able to seek to recover their investment through the courts which would treat it as a non-interest earning loan.

729. The Islamic concept of *Waqf* is recognized in Maldivian Law but according to the authorities it is not really used. *Waqf* is a form of charitable endowment which means that once given, the property cannot be dealt with by the owner or his heirs, except for the benefit of beneficiaries (who are generally broadly defined, for example, "the poor"). In the Maldives this concept is known as *hiba* and any land or property given as gifts would only be legally recognized if it were registered in a Court of Law (which, as set out above, has not happened in Maldives in practice).

Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):

730. There are currently no measures in place for the prevention of the misuse of legal arrangements such as trusts.

Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):

731. Information relating to *hiba* and guardianship of property will be kept by the court. Law enforcement agencies can have access to this information once the formal application procedure to access the required information is fulfilled by the requesting agency.

Additional Element—Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions) (c. 34.3):

732. No information was provided in this respect.

5.2.2. Recommendations and Comments

733. Although the authorities and private sector representative met did not seem to be familiar with the concept of trusts and maintained that *Awqaf* is not really used, the government is clearly paving the way to future trust business in Maldives and there are indications that lawyers provide services to trusts established abroad. It is therefore recommended that the authorities:

- Take measures to prevent the unlawful use of legal arrangements for money laundering and terrorist financing purposes and ensure adequate transparency concerning the beneficial ownership and control of trusts and *Awqaf*.

5.2.3. Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NC	<ul style="list-style-type: none"> No measures in place to ensure adequate transparency of <i>Awqaf</i> and trusts.

5.3. Non-Profit Organizations (SR.VIII)

5.3.1. Description and Analysis

734. NPOs in Maldives are generally community based. All inhabited islands except two has at least one NPO specifically dedicated to the community development of the respective island or area of the island. Other NPOs promote social values and the religion of Islam in the communities of Maldives. There are approximately 1,108 NPOs registered as associations in Maldives. No breakdown was provided per number of domestic vs. foreign NPOs established in the Maldives.

735. There are currently no mechanisms in Maldives that would allow the authorities to track the NPOs' finances and estimate the amounts involved in the NPO sector. Pursuant to Associations act (2003), NPOs should report all international funds, but this is not consistently followed by all NPOs. The current legislation does not penalize failure to report donations. In addition to private donations, several ministries directly fund certain NPOs, and the MOHA is currently working with these ministries to establish a mechanism by which NPO funds could be monitored.

736. The authorities suspect some associations of providing financial support to terrorists abroad, but this is mostly based on unsubstantiated information and has not led to any charges being brought under the Terrorism Act.

Legal Framework:

737. NPOs and their activities are governed under the Association Act 2003. The Act is administered by the Registrar of Associations situated within the MHA. It requires every NPO to be registered with the Registrar of Associations before starting any activity as an NPO. Any NPO properly registered with the Registrar can buy property and raise funds for its activities. Members or founders cannot claim ownership of the funds or properties held by the NPO.

738. Under Section 5 of the Association Act 2003, each NPO must submit a Governing Regulation to the Registrar. The Governing Regulation must set out that, in the event the NPO is wound up or cancelled, those funds or property accumulated (after all the debts and dues are paid) shall be donated to another NPO or any other social fund recognized by the government. Social fund are welfare or charity funds sustained by NPOs or government offices such as the Zakath fund.

739. Under Section 34 of the Act foreign NPOs are also subject to the Act and shall be registered with the Registrar of Associations before starting their activities in the Maldives. The only exception is the Maldives Red Crescent which is governed by the Maldives Red Crescent Act 2009.

740. Under Section 19(b) of the Associations Act 2003, an NPO cannot be formed to do anything that is not allowed by the constitution or other laws of the Maldives. Section 25 provides that “where a person or a group of people who carried out the illegal acts using the distinct entity of the association as a veil, [they] shall be held liable for the doings.”

741. Information about NPOs is maintained by the Registrar of Associations. The Maldivian authorities stated that law enforcement and any other agencies have access to the information upon filing a formal application in the manner prescribed by the Registrar. There is a limited electronic database, in the sense that the registrar keeps the names of associations registered in electronic format (Excel worksheets).

Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):

742. There has been no review of the NPO sector in the Maldives. The authorities mentioned that an NGO scoping exercise is currently in process, and is conducted by the MHA conducted by MHA with the support of UNDP. A redrafting of the Associations Act is scheduled to be completed by end of 2011. It is unclear however if, and to what extent, the scoping exercise includes an assessment of the risk of terrorist financing in the NPO sector.

Outreach to the NPO Sector to Protect it from Terrorist Financing Abuse (c. VIII.2):

743. There has been no outreach to the NPO sector to protect it from terrorist financing abuse.

Supervision or Monitoring of NPOs that Account for Significant Share of the Sector’s Resources or International Activities (c. VIII.3):

744. As mentioned above, all NPOs registered with the MHA are required to produce an annual report regarding their activities/finances before March of every year. The annual report template that was established by MHA requires NGOs to provide: a) a summary of the NGO’s objective; b) changes in the executive committee; c) the main conclusions reached by the general meetings; and e) the activity calendar for the next year. The annual report should be endorsed by the annual general meeting, and signed by Executive Committee members and must then be submitted to the MHA within 30 days of its endorsement.

745. Under Section 27 of the Associations Act 2003, NPOs are also required to keep records of income and expenditure of the NPO for 5 years, and to conduct annual audits (Sections 28-30). The MHA stated however that all NPOs do not, in practice, submit these reports.

746. Under Section 19, no NPO can be formed to do anything that is not allowed by the Constitution and other laws of the Maldives. Further, Section 25 prohibits misuse of the NPO for illegal purposes and when it is proven in court that the NPO has engaged in any illegal activity the court has the discretion to wind up the NPO.

747. There is no supervision of the NPO sector beyond the monitoring of the obligations mentioned above.

Information maintained by NPOs and availability to the public thereof (c. VIII.3.1):

748. Under Sections 4 and 5 of the Associations Act 2003, each NPO must submit its Regulation the Registrar during registration. The regulation should clearly state the purpose and objectives of the NPO's activities and the governing body and founding members of the NPO should be clearly identified. According to the authorities, NPOs should also provide any relevant update of the information on the object, operations and management of the NPO on an ongoing basis.

749. This information is available from the Registrar once a formal application requesting that information is submitted to the Registrar of Associations. The MHA confirmed that the general public could request and receive this information.

Measures in place to sanction violations of oversight rules by NPOs (c. VIII.3.2):

750. Section 25 of the Associations Act 2003 states that any person or group that misuses an NPO to conduct illegal activities shall be personally liable for the illegal acts committed. The application of this provision has yet to be tested in Maldives.

751. Under Section 32, the Registrar of Association has the discretion to cancel registration of any NPO that breaches the provisions of the Act. Such breaches include late submittal (i.e. more than two years) of the annual report. Section 33 gives the court the power to cancel registration if it is proven that the NPO has engaged in an activity that contravenes the laws of the Maldives.

752. Section 37 sets out that if an association contravenes “the Act or regulations formed under this Act, or fails to act within the allocated period for which a period has been allocated for action, or disobeys order(s) given by the Registrar of Associations in accordance with discretions placed on him under this Act and regulations made under this Act, the Registrar of Associations has the right to penalize such an association for a fine not exceeding 500 (five hundred) Rufiyaa.”

753. Section 27(b) sets out that if a person incorporates or operates an association “without registering in accordance with or in contradiction to this Act such a person shall be given a penalty of two to five years sentence in jail or banishment to another island or be placed under house arrest.”

754. Section 32 sets out that the Registrar of Association may cancel registration of the NPO if the NPO breaches Section 19, which includes a prohibition on the Association breaching the laws and Constitution of the Maldives. Under Section 33 a court can wind up a NPO when it is managed for illegal purposes.

755. NGOs are fined by Rf 500 (approx. US\$39) for late submission of the annual reports. If they consecutively fail to submit annual and financial report for two years, the registrar has the discretion to cancel their registration. So far, no registration has been cancelled for failure to comply with the reporting and other obligations of for conducting illegal activities. According to the authorities' past experience, if the members of the community suspect illegal activities, they are likely to report the cases to the law enforcement authorities. Considering however that no case has ever been brought before the court, the MHA has not been informed of any illegal conduct that would warrant the cancellation of an NPO's registration.

Licensing or registration of NPOs and availability of this information (c. VIII.3.3):

756. According to Section 2 of the Associations Act 2003, every association, including an NPO, must be registered with the Registrar of Associations before starting its activities in the Maldives.

757. All information about NPOs maintained by the Registrar is available to the competent authorities once a formal request for information is submitted to the Registrar. The MHA set out that there have been instances when requests for information were made and available information was provided.

Maintenance of records by NPOs and availability to appropriate authorities (c. VIII. 3.4):

758. Under Section 27 of the Associations Act, NPOs are required to keep financial records at the registered office of the association for 5 years in such a way that is open for inspection by members of that association. NPOs are required to prepare and submit annual reports (including an annual audit) to the Registrar (Sections 28-30). NPOs are allowed to conduct fund raising activities as long as such funds will be used to achieve the objectives of the NPO (Section 21).

Measures to ensure effective investigation and gathering of information (c. VIII.4):

759. The Maldives has not implemented any additional measures beyond what is available at the Registrar to ensure that it can effectively investigate and gather information on NPOs.

Domestic cooperation, coordination, and information sharing on NPOs (c. VIII.4.1):

760. The Maldives has not taken measures that hold relevant information on NPOs of potential terrorist financing concern to ensure that effective domestic cooperation, coordination and information sharing. It is worth noting that the efficacy of the system is compromised if not all annual reports are submitted and if their submission is not actively pursued or enforced by the Registrar.

Access to information on administration and management of NPOs during investigations (c. VIII.4.2):

761. There are no specific provisions to allow for access to this information during investigations. However, as set out above, law enforcement agencies are able to access information on NPOs held by the MHA through a request to that Ministry.

Sharing of information, preventative actions, and investigative expertise and capability, with respect to NPOs suspected of being exploited for terrorist financing purposes (c. VIII.4.3):

762. There has been no specific sharing of information, preventative action, or investigative expertise and capability built relating to suspicion about possible NPO exploitation for terrorist financing purposes. As set out above, there are penalties for illegal use of an NPO and provisions for revoking the legal entity status of an NPO, and prosecuting individuals responsible for an NPO's actions. While terrorism and aiding and abetting to the commission of a terrorist act are criminalized as set out in SR.II, no cases of terrorist financing have ever been prosecuted in the Maldives and no NPOs have ever been investigated for possible links to terrorist financing. According to the authorities, if the ROA suspects a case of terrorist financing, it must inform the MPS.

Responding to international requests regarding NPOs—points of contact and procedures (c. VIII.5):

763. There is no specific point of contact for international requests regarding NPOs but information could be shared through normal diplomatic channels or through existing channels between law enforcement authorities.

5.3.2. Recommendations and Comments

764. Maldives has a system of registration for NPOs. As a result, a certain amount of information is available on the purposes and objectives of registered NPOs, and the identity of their executive committees is available. No information was provided on the level of compliance with the registration system and on the usefulness of the information registered to authorities such as law enforcement agencies. There is no active or adequate system to promote effective supervision and monitoring of the NPOs, and no true understanding of risks of terrorist financing in the sector. The scoping exercise that the authorities are currently undertaking is a welcome step, and it should include an assessment of the overall terrorist financing risk in the NPO sector. In addition there is a lack of coordinated national strategy to aim at further protecting NPOs from abuse for terrorist financing. Maldives should take steps to significantly boost the capacity of the MHA to fulfill their oversight function.

765. In order to comply fully with Special Recommendation VIII, the authorities are recommended to:

- Review existing laws and regulations with a view to identifying gaps in coverage.
- Review the NPO sector for the purpose of identifying those NPOs which are at risk of abuse by terrorist financiers.
- Work with the NPO sector and the public to raise awareness among regulators and NPOs of the vulnerability of NPOs to abuse for terrorist financing.
- Increase the financial, personnel and technical resources available to MHA to allow them to develop and implement more effective supervision programs.
- Implement more effective supervision programs.
- Enhance domestic coordination between MHA and various other competent authorities involved in AML/CFT; and
- Ensure clear mechanisms of international cooperation to respond to international requests.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> • No overall strategy to identify and address AML/CFT risks within the NPO sector and no review of the domestic NPO sector. • No outreach to the NPO sector or raising awareness on FT risks or

		<p>promotion of overall healthy NPO governance.</p> <ul style="list-style-type: none">• Supervision of NPOs is inadequate and compliance with registration and financial reporting obligations is low.• Insufficient transparency of NPOs because the information maintained is insufficient.• No ongoing updating and recording of information about those who control NPOs and the operation of these NPOs.• No clear mechanisms to respond to international requests.
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6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1. National Co-Operation and Coordination (R.31 & R.32)

6.1.1. Description and Analysis

Legal Framework:

766. The Maldivian authorities have established a domestic coordination mechanism specifically dedicated to AML/CFT issues. Some have also concluded bilateral MoUs to exchange views and information in the course of their broader functions.

Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):

767. An AML/CFT Steering Committee was created under the lead of the FIU to ensure coordination and cooperation amongst the relevant authorities. Work procedures were issued to formalize and structure the Committee's efforts and aim. These procedures indicate that the Committee's purpose is to "coordinate implementation of national anti-money laundering and combating terrorist financing (AML/CFT) policies and for the participating members of this Committee to share information."

768. The Committee consists of representatives from governmental agencies and State-owned entities that have enforcement responsibilities and whose functions and information is considered as a major contribution towards implementation of national AML/CFT policies. The Committee is chaired by the Governor of the MMA and comprises the following agencies: ACC; AGO; DIE; MMA FIU; CMDA; MCS; MPS; MFT; PGO; and DJA.

769. The MNDF is not a formal member of the Committee but the authorities mentioned that they consider that its presence would be useful and that they will therefore invite the MNDF to their next meetings.

770. Logistical support for the Committee is provided by the staff of the MMA.

771. Pursuant to the Committee work procedures, the Committee members meet once a month, or more frequently if necessary, to discuss the "direction national AML/CFT policies are heading to." The procedures also establish that the discussions must be based on how effective these policies are, and specifically call on all members to comment and contribute by providing feedback and suggesting improvements. The MMA is responsible for issuing meeting minutes to all the participating members and each the minutes of each previous meeting must be adopted officially during the next meeting.

772. So far, the Committee has been useful in providing a platform for dialogue between the key authorities on various AML/CFT issues (such as the preparation for the current assessment) but it has not yet reached decisions on policy matters.

773. Bilateral dialogue is also ensured between the MNDF and the MCS through the conclusion of a Memorandum of Understanding (MoU), and another MoU is in the process of being signed between the ACC and the MPS. Coordination and cooperation also takes place in the absence of MoUs, on a less formal basis, notably between the MCS and the DIE, as well as MPS, MMA and MNDF.

Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):

774. There is no formal mechanism in place to ensure a dialogue with representatives from the private sector and the authorities.

Statistics (applying R.32):

775. Not available.

6.1.2. Recommendations and Comments

776. The Steering Committee constitutes a useful platform for discussion on AML/CFT issues amongst most of the relevant stakeholders, and overall the level of communication and cooperation between the authorities is good. It has not however been used to its full potential considering that it has not yet delivered tangible outcomes.

777. In order to comply fully with Recommendation 31, the authorities are recommended to:

- Make better use of the AML/CFT Steering Committee.
- The authorities are also encouraged to take the planned steps to invite the MNDF.

6.1.3. Compliance with Recommendation 31 & 32 (c. 32.1 only)

	Rating	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> • Coordination committee is in place but has not delivered tangible outcomes.
R.32	NC	<ul style="list-style-type: none"> • No statistics maintained.

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

6.2.1. Description and Analysis

Legal Framework:

778. Maldives is a UN member and signatory to various UN conventions.

Ratification of AML Related UN Conventions (c. 35.1) and Ratification of CFT Related UN Conventions:

779. The Maldives signed and ratified (respectively on December 5, 1989 and September 7, 2000) the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention). It passed the Law on Narcotic Drugs and Psychotropic Substances Act 1977

(Law No. 17/77) with a view to implement the Convention. The Law contains provisions on criminalization of various drug offenses as well as of the laundering of the proceeds of these offenses.

780. The Maldives acceded to the International Convention for the Suppression of the Financing of Terrorism (the ICSFT) on April 20, 2004 but, as mentioned under SR.II above, has not implemented the convention and the relevant UNSC resolutions in a comprehensive way. There is, in particular, no separate, autonomous terrorist financing offense, and no formal mechanism that would comply with the detailed requirements of the convention and resolution.

781. The Maldives is not party to the Palermo Convention but the authorities mentioned that the accession process is currently underway and will hopefully be concluded by end of 2011.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1):

782. As mentioned under Recommendations 1 and 2 above, the implementation of the provisions of the Convention relating to the criminalization of money laundering is far from comprehensive.

783. No specific measures have been taken to implement Articles 15, 17 and 19 of the Convention.

Implementation of International Convention for the Suppression of the Financing of Terrorism (Articles 2-18, c. 35.1 & c. I.1):

784. Implementation of the convention is weak and additional legal measures need to be taken to address the main obligations under the Convention.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. 35.1):

785. Maldives is not yet a signatory party to the Palermo Convention and has not taken steps to implement its provisions.

Implementation of UNSCRs relating to Prevention and Suppression of FT (c. I.2):

786. The MFA communicates the designations made under UNSCR 1267 to the supervisory authorities (MMA, CMDA) as well as law enforcement agencies (MPS, MCS). The MMA and CMDA then forward the designations to their respective licensees, as described under SR.III above. According to the authorities, these communications are made as soon as they are forwarded, by the Maldives' representatives in the UN to the MFA in Malé. However, as mentioned under SR.III above, there is no sound and comprehensive framework that would ensure the effective and prompt freezing and, where necessary, seizing of assets related to persons designated under UNSCR 1267.

787. Similarly, there is no mechanism in place for the implementation of UNSCR 1373.

Additional Element—Ratification or Implementation of other Relevant International Conventions (c. 35.2):

788. Maldives is party to the SAARC Convention on Mutual Assistance in Criminal Matters.

6.2.2. Recommendations and Comments

789. In order to comply with Recommendation 35, the authorities are recommended to:

- Fully implement the Vienna Convention.
- Become a party to and fully implement the Palermo Convention.

790. In order to comply with Special Recommendation I, the authorities are recommended to:

- Fully implement the International Convention for the Suppression of the Financing of Terrorism and relevant UNSCRs as prescribed under Special Recommendations I and II.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	NC	<ul style="list-style-type: none"> • Vienna convention has not been fully implemented. • ICSFT has not been fully implemented. • The Maldives is not party to the Palermo Convention, nor has it implemented its provisions.
SR.I	NC	<ul style="list-style-type: none"> • Terrorist financing has not been criminalized in a way that is fully consistent with the ICSFT. • No comprehensive mechanism in place to ensure full implementation of obligations under UNSCR 1267, 1373 and their successor resolutions.

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

6.3.1. Description and Analysis

Legal Framework:

791. There is no legislative framework regulating MLA in Maldives. Some MoUs have been concluded between Maldivian law enforcement authorities (the MCS in particular) and their foreign counterparts, but their number is relatively low and their implementation scarce. Copies of these MoUs were not provided to the assessment team.

792. Maldives is a signatory party to the Vienna Convention and the ICSFT, as well as to the SAARC 2008 Convention on Mutual Legal Assistance in Criminal Matters.

Widest Possible Range of Mutual Assistance (c. 36.1):

793. In the absence of a domestic legal framework for mutual legal assistance, the type of measures that the Maldivian authorities may take on behalf of a requesting State are mainly defined in

the MoUs concluded with foreign authorities. As mentioned above, the MoUs were not shared with the assessment team and their content could therefore not be reviewed.

794. According to the authorities, the powers they have been granted under domestic legislation may be used for the benefit of another country, but, as mentioned above, there are instances where these powers do not lie on a sound legal basis.

795. The production, search and seizure of information, documents, or evidence from financial institutions, or other natural or legal person on behalf of a requesting State are possible. For information detained by financial institutions or lawyers, a court order would be needed.

796. According to the authorities, other forms of assistance (in particular the taking of evidence or statements from persons; effecting service of judicial documents; facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country and identification, freezing, seizure, or confiscation of assets linked to a money laundering or terrorist financing offense) have not been requested. The authorities assume that these measures could be taken despite the absence of a legal framework for mutual legal assistance, following the procedures described under Section 2 above.

797. The authorities mentioned that, overall, few requests for MLA have been received, and all of them dealt with exchange of information (financial and non-financial) only (see write-up under Recommendation 40 for more information).

Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):

798. No information was provided on the timeliness of the authorities' responses to requests for mutual legal assistance, and no information was received from APG member countries that would enable an assessment of how constructive and effective the current practice is.

No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):

799. The authorities could not recall ever having rejected a request for assistance and were not aware of any circumstances under which they would have to refuse a request for assistance. As mentioned above, most requests received pertained to the sharing of information, and the authorities expressed their willingness to assist other jurisdictions in this respect. The fact that none of the requests called for more intrusive measures may explain why the authorities have not faced a situation where a negative response may have been warranted. Similarly, the few requests for information in the course of an investigation into money laundering seemed to have pertained to cases where the predicates were drug offenses. It was unclear to the authorities whether the fact that the domestic money laundering offense only applies to proceeds of drug offenses would limit their ability to assist other jurisdictions in cases of money laundering for a different predicate. In sum, the assessors found no indication of unreasonable or unduly restrictive conditions to mutual legal assistance.

Efficiency of Processes (c. 36.3):

800. As mentioned above, there is no formal process for the execution of MLA requests, and it has not been established that assistance could be provided in a timely and effective way.

Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):

801. The authorities were not aware of any laws, regulations or even practice that would indicate that the potential link with fiscal matters is an impediment to the provision of mutual legal assistance. It is worth mentioning in this respect that the current fiscal regime is very limited in the sense that there is no income tax, and that tax or other duties' laws are not usually invoked to refuse providing information to the authorities.

Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):

802. There is no banking secrecy as such under Maldivian law, but there are contractual confidentiality agreements. According to the authorities, this notably entails that the authorities need to apply for a court order before being able to request the production of information held by banks and lawyers, but no indication was given as to the legal basis for this request.

Availability of Powers of Competent Authorities (applying R.28, c. 36.6):

803. The authorities mentioned that, although this is not provided in any legislation, they considered themselves entitled to use their "normal" powers to the benefit of a requesting State, and do so in practice.

Avoiding Conflicts of Jurisdiction (c. 36.7):

804. So far, due mainly to lack of experience in MLA and the low number of requests made, no consideration has been given to devising mechanism aimed at avoiding conflicts of jurisdictions and determining the best venue for prosecution when prosecution may be initiated in Maldives as well as in one or several other jurisdictions.

Additional Element—Availability of Powers of Competent Authorities Required under R.28 (c. 36.8):

805. According to the authorities, the powers that they have been granted may also be used on behalf of another State, but this hasn't been tested. The authorities' experience is limited to exchanges of information outside the mutual legal assistance context (see under Recommendation 40).

International Cooperation under SR.V (applying c. 36.1-36.6 in R.36, c. V.1):

806. There are neither general nor specific legal provisions that would govern MLA in relation to terrorism and FT investigations and prosecutions. In particular, the 1990 Terrorism Prevention Act, which notably criminalizes (albeit in a limited way) terrorist financing, does not address international cooperation.

807. The authorities indicated that the Intelligence Department of the MPS nevertheless collaborates with other foreign agencies to deal with transnational crimes such as terrorism, on the basis of the MPS's general powers to investigate crime. The assistance that may be provided includes sharing intelligence, notably on terrorism offenses, with various intelligence agencies from the United States, the United Kingdom, and India. The statistics provided below indicate that all the requests received so far dealt with terrorism, rather than FT cases. The sharing of information (or,

should there be such a request, other forms of assistance) is conducted in the same way as described above with respect to the money laundering offense.

Additional Element under SR.V (applying c. 36.7 & 36.8 in R.36, c. V.6):

808. There are no mechanisms in place for avoid potential conflict of jurisdiction.

809. According to the authorities, the powers they have been granted under domestic law could be used on behalf of another jurisdiction, but there is no legal basis for this.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

810. The authorities were unable to establish whether the absence of dual criminality could be an obstacle to assistance. They were however of the opinion that this would not be the case and that assistance, in particular when dealing with exchange of information, would be provided.

International Cooperation under SR.V (applying c. 37.1-37.2 in R.37, c. V.2):

811. As for money laundering, the authorities have no experience in MLA in terrorist financing cases. The description above applies under SR.V as well.

Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1); Property of Corresponding Value (c. 38.2); Coordination of Seizure and Confiscation Actions (c. 38.3); Asset Forfeiture Fund (c. 38.4); Sharing of Confiscated Assets (c. 38.5) International Cooperation under SR.V (applying c. 38.1-38.3 in R.38, c. V.3):

812. There are currently no legal provisions that address the conditions and procedures under which the Maldives may assist other jurisdictions in identifying, freezing, seizing or confiscation assets located in its territory that may be linked to money laundering offense, terrorist financing, or any other type of crime.

813. According to the authorities, no request for identification, freezing, seizing or confiscation of assets has been received from (or made to) another country and they, therefore, have no experience in the matter. They expressed the opinion that, should a request be received, the measures requested would be taken under the same procedures as those described under Section 2 of this report. They were unable to provide an opinion as to the procedures that would be followed to deal with a request. Similarly, they could not tell whether they could take any measure with respect to property of corresponding value.

814. No arrangements have been concluded with other states with a view to coordinate seizing or confiscation actions.

815. The authorities have neither contemplated the establishment of an asset forfeiture fund, nor the conclusion of sharing of confiscated assets.

Additional Element (R.38 – SR.V) – Recognition of Foreign Orders for: a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6, V.7):

816. The authorities have no domestic experience with non-criminal confiscation orders and were unable to establish whether and to what extent they would respond to a request from another jurisdiction for assistance in that matter.

Statistics (applying R.32):

817. No statistics were provided.

Effectiveness:

818. The authorities appear willing to provide assistance to foreign authorities and have done so in practice but they have limited experience in cooperating with other states in forms other than through the exchange of information. Furthermore, they have little experience in seizing, freezing and confiscating assets regardless of whether the measures are taken at the authorities' initiative or on request of another jurisdiction. In these circumstances, should a request for such measures be made, it is unlikely that the authorities could respond in a timely fashion. Overall, the current arrangements do not appear to be effective.

819. It is imperative to establish a comprehensive framework to enable the Maldivian authorities to cooperate with investigative and prosecutorial authorities in other countries in the fight against money laundering and terrorist financing. While this could be done through the conclusion of bilateral MoUs and treaties, this approach would be both lengthy and resource intensive. It is therefore recommended that Maldives issue a comprehensive MLA law.

6.3.2. Recommendations and Comments

820. In order to comply with Recommendation 36 and Special Recommendation V, the authorities are recommended to:

- Criminalize money laundering and terrorist financing in line with the standard to ensure that current deficiencies noted with respect to both offenses do not limit the scope of mutual legal assistance that the Maldives may offer.
- Establish a comprehensive framework to allow for the widest possible range of MLA in money laundering and/or terrorist financing investigations, prosecutions and related proceedings. In doing so, ensure that MLA can be rendered in a timely, constructive and effective manner.
- Ensure that MLA is not subject to unreasonable, disproportionate or unduly restrictive conditions.
- Establish clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays.
- Ensure that, where legal professional privilege does not apply, mutual legal assistance is not refused on the grounds of secrecy or confidentiality laws for financial institutions and DNFBPs.

- Ensure that the powers of competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance.
- Consider establishing mechanisms to avoid conflicts of jurisdictions.

821. Although this does not currently appear to constitute an impediment to mutual legal assistance, for the sake of clarity, it is recommended that the authorities:

- Ensure that requests for MLA cannot be refused on the sole ground that the offense may also be considered to involve fiscal matters.

822. In order to comply with Recommendation 37 and Special Recommendation V, the authorities are recommended to:

- Ensure that, to the greatest extent possible, mutual legal assistance may be rendered in the absence of dual criminality, in particular for less intrusive and non compulsory measures, and that, where dual criminality is requested, technical differences between the Maldivian laws and those of the requesting State do not pose an impediment to the provision of mutual legal assistance.

823. In order to comply with Recommendation 38 and Special Recommendation V, the authorities are recommended to:

- Establish a legal framework for effective and timely responses to requests for freezing, seizing and confiscating assets (i.e. laundered property from, proceeds from, instrumentalities used in or intended to be used in the commission of any money laundering, terrorist financing or predicate offenses, and property of corresponding value) at the request of foreign authorities in line with Recommendation 38.
- Consider establishing an asset forfeiture fund into which all or part of confiscated property could be deposited.
- Consider authorizing the sharing of confiscated assets with foreign authorities when confiscation is the result of coordinated law enforcement actions.

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	NC	<ul style="list-style-type: none"> • Lack of framework that would: <ul style="list-style-type: none"> • Enable the provision of the widest range of mutual legal assistance; • Ensure that MLA is not prohibited or subject to unreasonable, disproportionate or unduly restrictive conditions. • No consideration given to mechanisms for determining the best venue for

		<p>prosecution when prosecution may be initiated in more than one country.</p> <ul style="list-style-type: none"> • Lack of comprehensive criminalization of money laundering and terrorist financing undermines ability to provide MLA. • Effectiveness was not established.
R.37	PC	<ul style="list-style-type: none"> • Lack of clarity as to whether MLA can be rendered in the absence of dual criminality in particular for less intrusive and non compulsory measures.
R.38	NC	<ul style="list-style-type: none"> • No laws and procedures for the provision of effective and timely response to requests for identification, freezing, seizing or confiscation of assets related to the money laundering, terrorist financing or other predicate offenses. • No arrangements for coordination of seizure and confiscation actions with other countries. • Lack of comprehensive criminalization of money laundering and terrorist financing undermines ability to provide MLA. • Effectiveness was not established.
SR.V	NC	<ul style="list-style-type: none"> • Lack of framework that would: <ul style="list-style-type: none"> • Enable the provision of the widest range of mutual legal assistance; • Ensure that MLA is not prohibited or subject to unreasonable, disproportionate or unduly restrictive conditions. • No consideration given to mechanisms for determining the best venue for prosecution. • Lack of clarity as to whether MLA can be rendered in the absence of dual criminality in particular for less intrusive and on compulsory measures or when prosecution may be initiated in more than one country. • No laws and procedures for the provision of effective and timely response to requests for identification, freezing, seizing or confiscation of assets related to FT. • No arrangements for coordination of seizure and confiscation actions with other countries. • Lack of comprehensive criminalization of terrorist financing undermines ability to provide MLA.

		<ul style="list-style-type: none"> Effectiveness was not established.
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6.4. Extradition (R.37, 39, SR.V)

6.4.1. Description and Analysis

Legal Framework:

824. There is currently no legal framework for extradition, but the Maldives has entered into two extradition treaties, namely with Sri Lanka and Pakistan, and is a party to the SAARC Convention on MLA in Criminal Matters. Under the provision of these agreements, foreign nationals of the signatories can be extradited. Copies of these treaties were not provided to the assessment team.

Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):

825. In theory, money laundering is an extraditable offense, but given the narrow criminalization of money laundering and in the absence of an extradition framework, it is unclear how a request for extradition would be implemented. The authorities do not know whether the absence of dual criminality would be an impediment to cooperation.

Money Laundering as Extraditable Offense (c. 39.1):

826. In the absence of a legal framework, extradition may only be granted within the circumstances and under the conditions proscribed in the treaties.

Extradition of Nationals (c. 39.2); Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):

827. According to the authorities, nothing prevents the extradition of Maldivian nationals, but they have not come across such a case in practice.

Efficiency of Extradition Process (c. 39.4):

828. In the absence of clear procedures for extradition as well as of practical experience in that matter, it was not established that Maldives could handle requests for extradition without delay.

Additional Element (R.39)—Existence of Simplified Procedures relating to Extradition (c. 39.5):

829. There are no simplified procedures for extradition in place.

Additional Element under SR.V (applying c. 39.5 in R.39, c. V.8)

Statistics (R.32):

830. Not available.

Effectiveness

831. As is the case for other forms of mutual legal assistance, the authorities have little experience in extradition (in money laundering, terrorist cases, or otherwise). The effectiveness of the current arrangements could not be established.

6.4.2. Recommendations and Comments

832. In order to comply with Recommendation 39 (and 37) and Special Recommendation V, the authorities are recommended to:

- Criminalize money laundering and terrorist financing in line with the standard and ensure that both are extraditable offenses.
- Establish a legal framework to enable the extradition of individuals charged with a money laundering offense and/or terrorist financing. In doing so, ensure that extradition requests and proceedings relating to money laundering and terrorist financing are handled without undue delay.

6.4.3. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors underlying rating
R.39	NC	<ul style="list-style-type: none"> • No legal framework for extradition. • Lack of comprehensive criminalization of money laundering undermines ability to extradite. • Effectiveness of current system based on treaties was not established.
R.37	PC	<ul style="list-style-type: none"> • Absence of comprehensive framework for extradition entails lack of clarity as to whether dual criminality is required. <p>(Composite rating of PC: PC under MLA; NC under extradition)</p>
SR.V	NC	<ul style="list-style-type: none"> • No legal framework for extradition. • Lack of comprehensive criminalization of financing of terrorism undermines ability to provide extradition. • Effectiveness of current system was not established.

6.5. Other Forms of International Co-Operation (R.40 & SR.V)

6.5.1. Description and Analysis

Legal Framework:

833. Cooperation between the Maldivian authorities and their foreign counterparts is addressed in a few domestic provisions, namely the Banking Act and the CMDA Securities (General) Regulations, and in various international agreements to which the Maldives is party, mainly through the South Asian Association for Regional Cooperation (SAARC).

Law enforcement agencies:

834. Maldives is a member of the SAARC which notably promotes international cooperation in criminal matters. Various law enforcement and investigative authorities have memberships with other international and regional organizations, such as Interpol, but no information was provided as to which specific authorities, other than the MPS, are part to these arrangements.

835. While assistance through the formal mutual legal assistance channels is rare, cooperation between the Maldivian law enforcement authorities and their foreign counterparts is more frequent. The statistics provided below indicate the number of requests received and sent by the MPS, as well as the type of crime that the request pertained to. There were only two instances where the information exchanged related to a money laundering case, one in 2006, the other in 2007. In both cases, the information was exchanged through the Interpol National Central Bureaus (NCBs).

Table 26: Exchanged between NCB Malé' (MPS) and Other Interpol NCBs.

Year	Type of Crime	Received Mail from other NCBs	Sent and Replied Mail to other NCBs
2006	Drug Trafficking	0	1
	Request For Information ⁷⁷	2	1
	Counterfeit Currency	0	1
	Request for Investigation	0	4
	Missing Person	0	1
	Criminal Records Check	2	0
	Child Abuse	1	0
	Money Laundering	1	0
2007	Terrorism	0	3
	Criminal Records Check	1	7
	Cyber Crime	0	1
	Fraud	0	2
	Request For Information	2	2
	Request For Arrest of Maldives National	0	1
	Money Laundering	0	1
	Drug Related Offenses	0	5
	Prostitution	0	1
	Request for Documents	0	1
	Counterfeit Currency	1	2
	Past Movements Check	1	0
	Credit Card Fraud	1	0

⁷⁷ I.e. general inquiries which are not related to a specific crime.

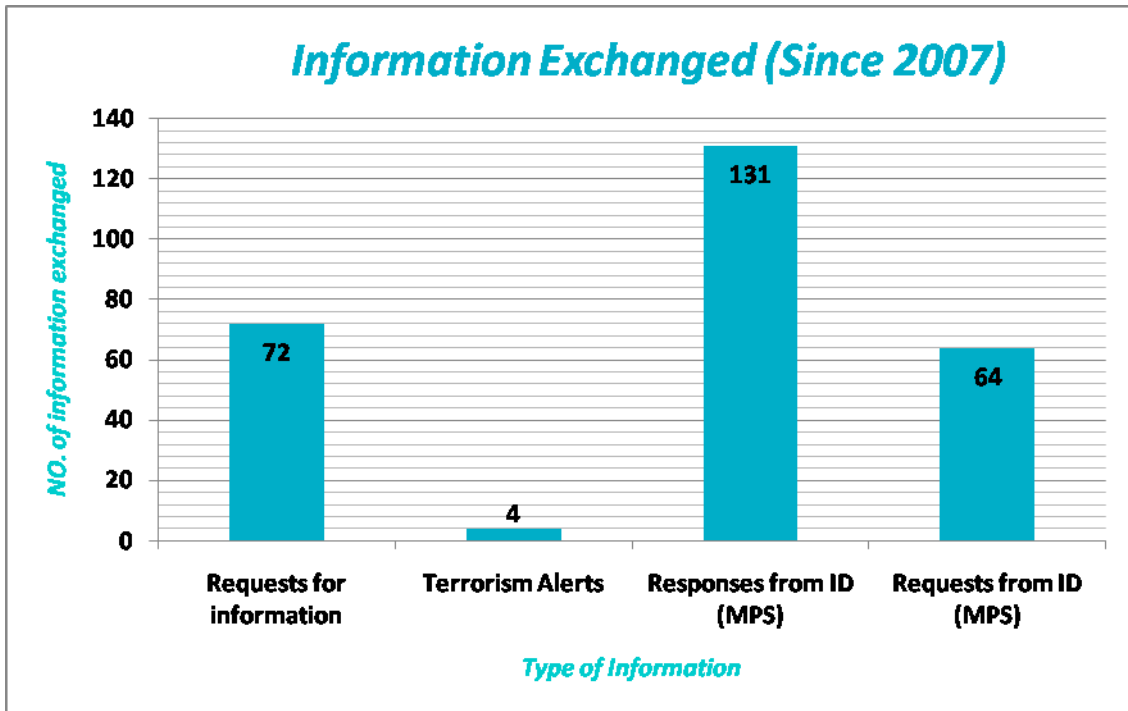
2008	Request For Information	0	6
	Criminal Records Check	0	1
	Kidnapping	0	1
	Credit Card Fraud	0	1
	Drug Related Offenses	0	1
	Weapons Smuggling	0	1
	Missing Fishing Vessel	0	1
	Fraud	0	1
	Request For Freezing Bank Accounts	0	1
	Missing Person Check	1	0
	Illegal Transfer of Funds	1	0
2009	Request For Information	4	3
	Criminal Records Check	0	2
	Illegal Fishing in Maldives EEZ	0	1
	Cyber Crime	1	0
2010	Request for Investigation	0	1
	Criminal Records Check	1	2
	Illegal Fishing in Maldives EEZ	0	1
	Request For Information	4	3
	Cyber Crime	4	0
	Fraud	1	0

Statistics on information exchange by MPS

836. The following table shows statistics on intelligence information (pertaining to extremism and terrorism issues both domestic and international) exchanged between the Intelligence Department of the MPS and its partner agencies between January 2007 and August 2010.

Table 27: Information Exchange by MPS

Types of Information/ Statistics	Request for information (Assistance)	Terrorism Alerts	Responses from ID (MPS)	Requests from ID (MPS)	Total
No. of Information	72	4	131	64	271

Table 28: Intelligence information exchange statistics since

837. Information may be provided either spontaneously or upon request. As the tables above show, information is provided on a variety of crimes and is not limited to money laundering, its predicate offenses under the Drugs Act, or terrorist financing. This indicates the authorities' willingness to conduct inquiries on behalf of their foreign counterparts, but, outside the SAARC framework and the Interpol channel, there is no legal basis for them to do so.

838. Information exchange does not seem limited by disproportionate or restrictive conditions (on the contrary, as mentioned above, the Maldivian authorities seem willing to cooperate despite the absence of a clear legal framework), and the fact that some requests may involve fiscal matters (in jurisdictions other than Maldives, considering that, at the time of the assessment, the Maldives did not have a fiscal regime in place) is not, in the authorities' view, an obstacle.

839. A strict interpretation of the confidentiality and privacy provisions, however, prevents law enforcement authorities from having access to all relevant information.

840. No precise information was provided on the timeliness of the responses provided by the Maldivian authorities.

MMA

841. With the December 2010 entry in force of the 2010 Banking Act and its Section 54 in particular, the MMA has the authority to share information with its foreign counterparts. To this effect, on December 19, 2010, the MMA has signed a MoU with the United Arab Emirates Central Bank to facilitate cooperation and exchange of information on banking supervision, technical assistance and training, as well as for combating money laundering and terrorist financing purposes.

Prior to December 2010, the MMA did not have the legal authority to cooperate, but it nevertheless shared information for supervision purposes with its counterparts in countries in which parent companies of financial institutions operating in Maldives were located.

CMDA

842. The CMDA is authorized by the Securities (General) Regulations to investigate on behalf of foreign regulatory authorities, or otherwise assist in investigations in securities transactions (Section 13(d)). So far this provision has not been put to use.

843. The CMDA is a member of International Organization of Securities Commission (IOSCO) and a signatory to its multilateral MoU, under which the CMDA is required to provide assistance and cooperation to foreign regulatory authorities in investigation of securities related transactions.

844. So far, no bilateral MoUs have been signed between the CMDA and a foreign counterpart, but according to the CMDA a couple may be concluded in the near future.

Customs

845. Maldives is a member of the World Customs Organization (WCO) and shares information in accordance with WCO rules. As a SAARC member, it is party to the SAARC Agreement on Mutual Administrative Assistance in Customs Matters (2005). Maldives has entered into a number of bilateral agreements and MoUs with other countries' Customs services including with China, Malaysia, Thailand, Australia and India.

FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):

846. As mentioned under Recommendation 26, the FIU may share information with its foreign counterparts only as far as STRs received from the banking sector are concerned. In other sectors, FIU to FIU informal sharing of information is limited because counterpart FIUs are reluctant to share information in the absence of a legal framework to protect how that information would be dealt with in the Maldives.

6.5.2. Recommendations and Comments

847. In other to comply fully with Recommendation 40, the authorities are recommended to:

- Introduce legal authority for the MMA to cooperate with its foreign counterparts (including outside the banking sector).
- Establish the FIU on a sound legal basis and authorize it to exchange information with its foreign counterparts.

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.40	PC	<ul style="list-style-type: none"> • The MMA may only cooperate with its foreign counterparts on banking sector issues. • The CMDA has not signed MoUs with its foreign counterparts and the MMA has signed only one MoU. • Lack of sound basis for the establishment of the FIU and lack of authorization to exchange information other than related to the banking sector with foreign counterparts.
SR.V	NC	<ul style="list-style-type: none"> • The MMA may only cooperate with its foreign counterparts on banking sector issues. • The CMDA has not signed MoUs with their foreign counterparts and the MMA has signed only one MoU. • Lack of sound basis for the establishment of the FIU and lack of authorization to exchange information other than related to the banking sector with foreign counterparts.

7. OTHER ISSUES

7.1. Resources and Statistics (R.30 and R.32)

7.1.1. Description and Analysis:

848. Overall, the Maldivian authorities are subject to adequate standards of confidentiality and integrity. As explained in more detail in Section 1.1 (under *A reasonably efficient court system*) and Section 2.6, while the MPS seems sufficiently resourced, other authorities, such as the ACC, MCS, DIE and PGO are understaffed. The supervisory authorities (MMA and CMDA) also required additional staff in order to be able to undertake their functions in an effective way, in particular, as far as the MAM is concerned, in light of the introduction of mandatory AML/CFT requirements for banks.

849. With the exception of the FIU, all the relevant authorities lack sufficient AML/CFT expertise and knowledge.

850. The Maldivian authorities are currently working on a new AML/CFT law; it is not clear however to what extent they are reviewing the effectiveness of current measures in mitigating the money laundering and terrorist financing risks in the country.

851. Overall, outside the MPS and FIU, statistics are scarce.

7.1.2. Recommendations and Comments

852. In order to comply fully with Recommendation 30, the authorities are recommended to:

- Increase the MMA and the CMDA's human resources as well as expertise in support of their supervisory function.
- Increase the PGO, and the judiciary's resources and training in AML/CFT matters.
- Provide training on AML/CFT matters to all relevant authorities.

7.1.3. Compliance with Recommendations 30 and 32

	Rating	Summary of factors underlying rating
R.30	PC	<ul style="list-style-type: none"> • Most of the relevant agencies need additional staff. • Insufficient AML/CFT training for all the authorities except the FIU.
R.32	NC	<ul style="list-style-type: none"> • No evidence that (in the course of drafting the new AML/CFT law, or elsewhere) the authorities are reviewing the effectiveness of the current AML/CFT framework, notably by assessing money laundering and terrorist financing risks in the Maldives.

		<ul style="list-style-type: none"> • No comprehensive statistics available at the AGO, MMA and CMDA.
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7.2. Other relevant AML/CFT Measures or Issues

7.3. General Framework for AML/CFT System (see also Section 1.1)

853. One of the most critical challenges that the authorities face is the adoption of a comprehensive legal framework: several key areas (such as criminal procedure and mutual legal assistance) are not covered by comprehensive legislation and addressed on a case-by-case basis, and some existing pieces of legislation (such as the Penal Code) are in urgent need of update. The authorities have started working on an AML/CFT law some five years ago, but the draft had not been finalized at the time of the assessment and was yet to be submitted to Parliament. These elements significantly impair and inhibit the effectiveness of the AML/CFT system. It is therefore recommended that the authorities ensure that the necessary laws (such as the revised Penal Code and a criminal procedure law) are passed.

Table 1. Ratings of Compliance with FATF Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating ⁷⁸
Legal systems		
1. Money laundering offense	NC	<ul style="list-style-type: none"> • Money laundering is only criminalized in relation to offenses under the Drugs Act; none of the other designated categories of offenses are predicate offenses to money laundering. • Money laundering is not comprehensively criminalized in keeping with the international standards. The money laundering offense under the Drugs Act does not extend to “conversion” of criminal property, and the concealment or disguise of the true nature, location, disposition, movement, or rights with respect to property. The Maldives requires proof of intent in relation to concealment or disguise. • A money laundering conviction can only be obtained if there is a conviction for the predicate offense. • Ancillary offenses to money laundering have not all been criminalized. • Effectiveness of the money laundering offense is not established.
2. Money laundering offense—mental element and corporate liability	NC	<ul style="list-style-type: none"> • The intentional element of the offense of money laundering cannot be inferred from objective factual circumstances, apart from instances where there are eyewitnesses, perhaps corroborated with strong documentary evidence. • No criminal liability for legal persons other than companies. • No effective and proportionate sanctions for legal persons other than companies.
3. Confiscation and provisional measures	NC	<ul style="list-style-type: none"> • Limitations on the kinds of property to which confiscation provisions can be applied. Currently, confiscation appears to be limited to

⁷⁸ These factors are only required to be set out when the rating is less than Compliant.

		<p>tangible, corporeal assets with a very direct link to the predicate offense.</p> <ul style="list-style-type: none"> • No possibility to confiscate instrumentalities in for offenses other than those contained in the Drugs Act, the Corruption Act, and the Fisheries Act. • No possibility to confiscate property of corresponding value. • No possibility to confiscate all property derived directly or indirectly from the proceeds of crime. • Confiscation when property is held by a third party is most often not possible. When it does exist, it has never been applied. • Laws limit the use of freezing and seizing of property to four Acts. • No laws or measures in place to allow the initial application to freeze or seize to be made <i>ex parte</i> or without prior notice. • Law enforcement agencies and the FIU do not sufficiently utilize their powers to identify and trace property. • No protection for the rights of <i>bona fide</i> third parties. • No ability for the authorities to prevent or void actions aimed at prejudicing their ability to recover property subject to confiscation, other than the voiding of contracts with an illegal purpose. • The effectiveness of the confiscation framework was not established because existing legal provisions do not always allow the courts to confiscate proceeds and instrumentalities in the context of a money laundering or terrorist financing offense, and for every predicate offense.
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Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • Strict interpretation of the existing privacy provisions in the law prevents law enforcement authorities from accessing information in the course of investigations.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • Only banks and securities sector licensees are required to undertake CDD measures. Other sectors are outside the purview of requirements. Norms for securities sector are specified only in other enforceable means and not in law or regulation. • No measures in law or regulation to prevent opening of accounts under fictitious names. • No requirement in law or regulation for financial institutions as to the timing when CDD is required to be conducted. • No requirement in law or regulation for financial institutions to identify and verify the identity of their customers using reliable, independent source documents, data or information. Broad requirements stated in the 2010 Banking Act yet to be implemented by issuing the implementing regulation. • No requirement in law or regulation for financial institutions to verify that any person acting on behalf of a customer is so authorized and identify and verify the identity of that person. • No requirement for financial institutions to understand the ownership and control structure of legal persons. • No requirement in law, regulation or other enforceable means for financial institutions other than those in securities sector to verify the legal status of the legal person or legal arrangement. No requirement to obtain details of all directors in case of securities sector. • No requirements in law or regulations for financial institutions other than banks (no

		<p>definition of the term “beneficial owner” applicable to banks) to identify the beneficial owner. No guidance on detailed procedures to be adopted to identify beneficial owner.</p> <ul style="list-style-type: none"> • No obligations for financial institutions to proactively determine for all customers whether the customer is acting on behalf of another person, and then to take reasonable steps to obtain sufficient identification data to verify the identity of that other person. • No obligation for financial institutions to obtain information on the purpose of the business relationship. Obligation to obtain information only from customers who are natural persons on the purpose of transaction (and not of business relationship) exists in the securities sector. No obligation for financial institutions to obtain information on intended nature of such relationship. • No obligation in law or regulations for financial institutions to conduct ongoing due diligence on the business relationship and transactions. • No requirement for financial institutions (other than those in the securities sector) to perform enhanced due diligence of higher risk categories of customers/relationships/transactions. No guidance to financial institutions on enhanced due diligence. • No requirement that a financial institution should consider filing a STR and terminate the business relationship when an institution can no longer be satisfied that it knows the true identity of a customer. • No requirement for financial institutions (other than those in the securities sector) as to the timing of verification of the identity of customer and beneficial owner. • No requirement for financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk.
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6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There are no obligations for financial institutions to: <ul style="list-style-type: none"> • Put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP. • Obtain senior management approval for establishing and continuing business relationships with a PEP or where the beneficial owner is a PEP. • Take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs. • There are no requirements for banks, other money transfer businesses and institutions licensed by the MMA to conduct enhanced ongoing monitoring on PEPs.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There are no obligations on banks in the Maldives to govern the establishment and operation of correspondent banking relationships.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There are no obligations for financial institutions to: <ul style="list-style-type: none"> • Have policies in place or take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes. • Have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions. • Implement measures for managing the risks including specific and effective CDD procedures that apply to non face-to-face customers.
9. Third parties and introducers	NC	<ul style="list-style-type: none"> • No provisions to deal with reliance on third parties to perform elements of the CDD process or introduce business.
10. Record-keeping	NC	<ul style="list-style-type: none"> • Only banks and securities sector licensees are

		<p>subject to record keeping requirements and other sectors are outside of the purview of these requirements. Record keeping requirements for the banking sector are too general.</p> <ul style="list-style-type: none"> • No requirements in law or regulation for financial institutions to maintain all necessary records on transactions for at least five years or longer following the completion of the transaction. • No obligations in law or regulation for financial institutions other than securities sector licensees to keep transaction records in such a manner so as to allow reconstruction of individual transaction, with a view to provide evidence for prosecution of criminal activity. • No obligations in law or regulation for financial institutions to provide for maintenance of records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship. • No explicit requirements in law or regulation for financial institution to make customer and identification data available on a timely basis to domestic competent authorities.
11. Unusual transactions	NC	<ul style="list-style-type: none"> • No obligations for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • No obligations for financial institutions to examine as far as possible the background and purpose of such transactions and to set forth their findings in writing. • No obligations for financial institutions to keep such findings available for competent authorities and auditors for at least five years.
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> • There are no regulating bodies for DNFBPs in the Maldives. • There are no AML/CFT requirements for

		DNFBPs in the Maldives.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • No suspicious transaction reporting requirements applicable to non-bank financial institutions. • Reporting requirement only applies in the case of suspicions of laundering the proceeds of offenses listed under the Drugs Act; none of the other FATF-designated categories of offenses are predicates to money laundering, which considerably narrows the scope of the reporting requirement. • Attempted transactions are not subject to reporting. • It is not clear that banks are required to report suspicious transactions that may involve tax matters. • Extremely low number of STRs with doubts about the quality of reports (evidenced by the lack of dissemination to law enforcement agencies).
14. Protection & no tipping-off	PC	<ul style="list-style-type: none"> • Relevant protection for STR and prohibition against tipping off legal regime only applies to banks (under the 2010 Banking Act) and does not apply to other financial institutions.
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> • No obligations on financial institutions other than banks and securities sector licensees. • While banks and players in the securities sector have some requirements on internal controls, these requirements are fairly recent and the effectiveness of implementation in these sectors is therefore considered limited. • No legally binding requirements for financial institutions for adequately resourced and independent audits to test compliance with AML/CFT procedures. • No explicit provisions relating to the overall role of compliance officer in financial institutions. • No provisions for allowing the compliance/reporting officer to access relevant data and records so as to enable him to

		<p>effectively perform his functions.</p> <ul style="list-style-type: none"> • No effective provisions requiring financial institutions to establish employee screening procedures when hiring new employees.
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> • As DNFBPs are not yet included in the AML/CFT regime in Maldives, STR requirements do not extend to DNFBPs. • No provisions in line with Recommendations 14, 15 and 21. • No STR requirements for DNFBPs. • No provisions in line with Recommendations 14, 15 and 21.
17. Sanctions	NC	<p>Banks:</p> <ul style="list-style-type: none"> • Effectiveness of sanctions applicable to AML/CFT non-compliance has not been established. <p>Securities sector:</p> <ul style="list-style-type: none"> • No sanction available for non-compliance with the CMDA 2010 AML Regulations until April 2011. • The criminal sanctions for non-compliance with Regulations (including the CMDA 2010 AML Regulations after April 2011) and administrative sanctions available are not effective, proportionate and dissuasive. • No sanction for directors or senior management of the securities dealing companies. <p>Financial sectors other than banking and securities:</p> <ul style="list-style-type: none"> • No sanctions for non-compliance with AML/CFT requirements since there are no such requirements in place.

18. Shell banks	PC	<ul style="list-style-type: none"> • Current legislation does not prohibit shell banks in a comprehensive way. • There is no prohibition to engage in or maintain a correspondent relationship with shell banks. • There is no requirement in the legislation obliging financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	This recommendation is fully met.
20. Other NFBP & secure transaction techniques	NC	<ul style="list-style-type: none"> • There are gaps with effective measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. • The Maldives has not yet undertaken a formal risk assessment of the vulnerabilities of other non-financial businesses and professions.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> • No enforceable obligations for financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. • No obligations for financial institutions that in case of transactions with no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings kept. • No effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT system of other countries. • No clear legal authority to enable the Maldives to apply a range of appropriate counter-measures across all financial sectors where a country continues not to apply or insufficiently applies the FATF Recommendations.
22. Foreign branches & subsidiaries	N/A	<ul style="list-style-type: none"> • No Maldivian financial institutions have overseas branches or subsidiaries.

23. Regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • With the exception of banks, none of the financial institutions active in the Maldives are subject to AML/CFT supervision and monitoring, since there are no enforceable AML/CFT requirements. • No AML/CFT supervision conducted over banks due to the very recent introduction of the AML/CFT obligations: effectiveness of the supervision could therefore not be established. • No legal framework for licensing/registration and regulation/supervision of insurance intermediaries and money changers. • Insufficient fit and proper requirements for beneficial owners of financial institutions. • No requirement for MVT service operators to be licensed or registered. • No legal framework for the supervision of MVT service operators. • Effectiveness was not established: The market entry and “fit and proper” requirements on banks and insurance undertakings have not been implemented sufficiently on existing operators; lack of experience and expertise of the MMA and the CMDA staff undermines effectiveness of their supervision.
24. DNFBP—regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • There is no regime for AML/CFT regulation and supervision of designated non-financial business and professions considering that DNFBPs are not subject to AML/CFT requirements.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • No guidelines provided to financial institutions other than banks and MVT service operators. • Guidelines provided to banks and MVT service operators do not include current money laundering and terrorist financing trends and techniques and are not sufficient. • There are no existing guidelines for DNFBPs on AML/CFT. • No STR guidelines for financial institutions or

		<p>DNFBPs either relating to terrorist financing or money laundering.</p> <ul style="list-style-type: none"> • Limited guidance provided by the MMA with respect to the reporting of suspected money laundering activities, but no guidance with respect to terrorist financing. • Feedback has been given on the four STRs reported so far on an ad hoc basis – there is no policy relating to feedback and its possible implementation, such as the use of acknowledgement letters.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> • The FIU has no clear legal authority to receive STRs related to money laundering or terrorist financing from non-bank financial institutions and DNFBPs. • The FIU does not have specific authority to analyse and disseminate money laundering or terrorist financing related STRs. • The FIU does not have sufficient and timely direct or indirect access to financial, administrative and law enforcement information. • The FIU does not provide guidance to financial institutions and DNFBPs on the specifications of reporting forms or the procedures that should be followed when reporting. • The FIU does not have sufficient operational independence and autonomy to ensure that it is free from undue influence or interference. • The information held by the FIU is not securely protected. • The FIU does not publicly release periodic reports.
27. Law enforcement authorities	NC	<ul style="list-style-type: none"> • No money laundering or terrorist financing investigations, prosecutions and convictions. • No clear legal basis for the MPS on which to postpone or waive arrest of persons or seizure of money.

		<ul style="list-style-type: none"> Effectiveness was not established because the MPS has never used its powers for money laundering or terrorist financing investigations.
28. Powers of competent authorities	PC	<ul style="list-style-type: none"> The MPS cannot always effectively compel documents. Effectiveness has not been established because the MPS has never used its powers for money laundering or terrorist financing investigations.
29. Supervisors	NC	<p>Banks:</p> <ul style="list-style-type: none"> The effectiveness of the MMA's powers under the 2010 Banking Act has not been established; <p>Financial sectors other than banking and securities businesses:</p> <ul style="list-style-type: none"> Competent authorities have no supervisory power to ensure financial institutions' compliance with the AML/CFT requirements due to the absence of such requirements and/or competent authorities designated to supervise/regulate these sectors.
30. Resources, integrity, and training	PC	<ul style="list-style-type: none"> Most of the relevant agencies need additional staff. Insufficient AML/CFT training for all the authorities except the FIU.
31. National co-operation	PC	<ul style="list-style-type: none"> Coordination committee is in place but has not delivered tangible outcomes.
32. Statistics	NC	<ul style="list-style-type: none"> No evidence that (in the course of drafting the new AML/CFT law, or elsewhere) the authorities are reviewing the effectiveness of the current AML/CFT framework, notably by assessing money laundering and terrorist financing risks in the Maldives. No comprehensive statistics available at the AGO, MMA and CMDA .
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> Current measures in place do not ensure adequate transparency concerning the beneficial ownership and control of legal persons. Records are held manually by the MED and are not updated in a consistent manner, particularly in relation to company accounts. Records held by the MED do not include adequate, accurate

		<p>and current information about beneficial ownership.</p> <ul style="list-style-type: none"> • Above factors inhibit effectiveness of law enforcement powers to obtain information about beneficial ownership and more generally to obtain information in a timely fashion.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • No measures in place to ensure adequate transparency of <i>Awqaf</i> and trusts.
International Cooperation		
35. Conventions	PC	<ul style="list-style-type: none"> • Vienna convention has not been fully implemented. • ICSFT has not been fully implemented. • The Maldives is not party to the Palermo Convention nor has it implemented its provisions.
36. Mutual legal assistance (MLA)	NC	<ul style="list-style-type: none"> • Lack of framework that would: <ul style="list-style-type: none"> • Enable the provision of the widest range of mutual legal assistance; • Ensure that MLA is not prohibited or subject to unreasonable, disproportionate or unduly restrictive conditions. • No consideration given to mechanisms for determining the best venue for prosecution when prosecution may be initiated in more than one country. • Lack of comprehensive criminalization of money laundering and terrorist financing undermines ability to provide MLA. • Effectiveness was not established.
37. Dual criminality	PC	<ul style="list-style-type: none"> • Lack of clarity as to whether MLA can be rendered in the absence of dual criminality in particular for less intrusive and non compulsory measures.
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> • No laws and procedures for the provision of effective and timely response to requests for identification, freezing, seizing or confiscation of assets related to the money laundering, terrorist financing or other predicate offenses.

		<ul style="list-style-type: none"> • No arrangements for coordination of seizure and confiscation actions with other countries. • Lack of comprehensive criminalization of money laundering and terrorist financing undermines ability to provide MLA. • Effectiveness was not established.
39. Extradition	NC	<ul style="list-style-type: none"> • No legal framework for extradition. • Lack of comprehensive criminalization of money laundering undermines ability to extradite. • Effectiveness of current system based on treaties was not established.
40. Other forms of co-operation	PC	<ul style="list-style-type: none"> • The MMA may only cooperate with its foreign counterparts on banking sector issues. • The CMDA has not signed MoUs with its foreign counterparts and the MMA has signed only one MoU. • Lack of sound basis for the establishment of the FIU and lack of authorization to exchange information other than related to the banking sector with foreign counterparts.
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • Terrorist financing has not been criminalized in a way that is fully consistent with the ICSFT. • No comprehensive mechanism in place to ensure full implementation of obligations under UNSCR 1267, 1373 and their successor resolutions.
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> • No separate, autonomous terrorist financing offense; only partially criminalized by the aiding and abetting provision. • The collection of funds for terrorist purposes has not been criminalized. • No evidence that the use “in full or in part” is covered. • No evidence was provided to show that all the acts in the nine anti-terrorism instruments have

		<p>been criminalized.</p> <ul style="list-style-type: none"> • No evidence was provided showing the financing of terrorist acts meant to compel governments or international organizations is criminalized. • The financing of individual terrorists and of terrorist organizations is not criminalized. • The definition of “finance and property” is not clear enough to ascertain that all of the elements of the definition of “funds” in the ICSFT are included. • A link to a specific terrorist act must be established in order to successfully bring charges under Section 3. • The attempt to commit the offense under Section 3 is not criminalized. • Terrorist financing offenses are not predicate offenses for money laundering. • It is not possible to prosecute persons abroad who are alleged to have engaged in terrorist financing for acts committed or intended to be committed in the Maldives. • It is not possible to infer the intentional element from objective factual circumstances. • Very limited sanctions for legal persons are only applicable to those registered with the Government and active in the Maldives.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • No laws and procedures in place to freeze terrorist funds or other assets of persons designated under S/RES/1267(1999). • No laws and procedures in place to freeze terrorist funds or other assets of persons under S/RES/1373(2001). • No laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other

		<p>jurisdictions.</p> <ul style="list-style-type: none"> • No laws and procedures to apply freezing actions to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, terrorist financiers, or terrorist organizations. Idem for funds or other assets derived or generated from funds or other assets owned or controlled by such persons. • No effective systems for communicating actions taken under S/RES/1373(2001), and actions initiated under the freezing mechanisms of other jurisdictions to financial institutions and other persons or entities that may hold targeted funds or assets. • No clear guidance to FIs and other persons or entities that may hold targeted funds or assets regarding their obligations in respect of freezing mechanisms. • No effective and publicly-known procedures for considering de-listing and for unfreezing funds or other assets of de-listed persons or entities. • No effective and publicly-known procedures for unfreezing, in a timely manner, funds or assets of persons or entities inadvertently affected by a freezing mechanism upon verification that they are not designated persons. • No appropriate procedures for authorizing access to funds or other assets frozen pursuant to S/RES/1267(1999), and in accordance with S/RES/1452(2002), necessary for basic expenses, payment of certain types of fees, expenses and service charges, or extraordinary expenses. • No provisional measures/confiscation regarding freezing, seizing, and confiscation of terrorist-related funds in other contexts than that of the United Nations Security Council Resolutions and freezing actions initiated in other countries.
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		<ul style="list-style-type: none"> • No protection for the rights of <i>bona fide</i> third parties. • No appropriate measures to effectively monitor compliance with relevant legislation, rules or regulations. • No possibility to impose civil, administrative or criminal sanctions for failure to comply with such rules.
SR.IV	Suspicious transaction reporting	<p>NC</p> <ul style="list-style-type: none"> • No reporting requirements for financial institutions other than banks.
SR.V	International cooperation	<p>NC</p> <ul style="list-style-type: none"> • Lack of framework that would: <ul style="list-style-type: none"> • Enable the provision of the widest range of mutual legal assistance; • Ensure that MLA is not prohibited or subject to unreasonable, disproportionate or unduly restrictive conditions. • No consideration given to mechanisms for determining the best venue for prosecution. • Lack of clarity as to whether MLA can be rendered in the absence of dual criminality in particular for less intrusive and on compulsory measures or when prosecution may be initiated in more than one country. • No laws and procedures for the provision of effective and timely response to requests for identification, freezing, seizing or confiscation of assets related to terrorist financing. • No arrangements for coordination of seizure and confiscation actions with other countries. • Lack of comprehensive criminalization of terrorist financing undermines ability to provide MLA. • Effectiveness of MLA was not established. • No legal framework for extradition. • Lack of comprehensive criminalization of

		<p>financing of terrorism undermines ability to provide extradition.</p> <ul style="list-style-type: none"> Effectiveness of extradition was not established.
SR.VI AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> No competent authority has been designated for licensing/registration and regulation/supervision of MVT service operators. MVT service operators are not subject to AML/CFT obligations, including customer due diligence, record keeping and suspicious transaction reporting. MVT service operators are not required to maintain a list of their agents and make that list available to the competent authorities. No sanctions available for non-compliance of MVT service operators with AML/CFT requirements (due to the absence of such requirements). The Maldives authorities have not taken sufficient action to make the operators of potential informal MVT system subject to AML/CFT requirements.
SR.VII Wire transfer rules	NC	<ul style="list-style-type: none"> No requirements for financial institutions to implement provisions relating to wire transfers.
SR.VIII Non-profit organizations	NC	<ul style="list-style-type: none"> No overall strategy to identify and address AML/CFT risks within the NPO sector and no review of the domestic NPO sector. No outreach to the NPO sector or raising awareness on terrorist financing risks or promotion of overall healthy NPO governance. Supervision of NPOs is inadequate and compliance with registration and financial reporting obligations is low. Insufficient transparency of NPOs because the information maintained is insufficient. No ongoing updating and recording of information about those who control NPOs and the operation of these NPOs. No clear mechanisms to respond to international

		requests.
SR.IX Cross-Border Declaration & Disclosure	NC	<ul style="list-style-type: none">• There is no declaration or disclosure system in place in the Maldives.

Table 2. Recommended Action Plan to Improve the AML/CFT System

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	<p>Recommendation 1:</p> <ul style="list-style-type: none"> • Ensure that the predicate offenses for money laundering cover all serious offenses and not only offenses under the Drugs Act. • Comprehensively criminalize money laundering in keeping with the international standards. Bring the money laundering offense of the Drugs Act in line with Vienna and Palermo by criminalizing the “conversion” of criminal property, and the concealment or disguise of the true nature, location, disposition, movement, or rights with respect to property. Remove the requirement that intent be proven in relation to concealment or disguise. • Ensure money laundering charges may also be brought in the absence of a conviction for the predicate offense. • Ensure that in all instances the criminalization of the categories of offenses is in line with the relevant international conventions and standards. • Ensure that the ancillary offenses to money laundering, including conspiracy to commit and aiding and abetting, are criminalized. • Show effective use of the money laundering provisions. <p>Recommendation 2:</p> <ul style="list-style-type: none"> • Allow for the intentional element of the offense of money laundering to be inferred from objective factual circumstances other than eyewitnesses, perhaps corroborated by strong documentary evidence. • Extend criminal liability for money laundering offenses to legal persons other than companies.

	<ul style="list-style-type: none"> • Ensure effective and proportionate sanctions are available for legal persons beyond companies.
<p>2.2 Criminalization of Terrorist Financing (SR.II)</p>	<ul style="list-style-type: none"> • Criminalize the offense of terrorist financing separately and autonomously in keeping with SR.II, instead of relying on the ancillary offense of aiding and abetting; and in doing so to ensure the following elements are all taken into account: <ul style="list-style-type: none"> • Ensure that the collection of funds for terrorist purposes is criminalized. • Ensure that the use in full or in part of funds for terrorist financing purposes is criminalized. • Ensure that all acts in the nine anti-terrorism instruments are criminalized. • Ensure that the terrorist financing offense applies to terrorist acts meant to compel governments and international organizations to act, or to abstain from acting. • Criminalize financing of individual terrorists and terrorist organizations. • Ensure that “finance and property” includes all the elements of the definition of “funds” as used in the ICSFT. • Ensure that it is not necessary to have to prove an actual use of the funds or a link to a specific terrorist act. • Criminalize the attempt to commit a terrorist financing offense. • Make terrorist financing offenses predicate offenses for money laundering. • Make sure that the terrorist financing offense applies to persons abroad who finance terrorist acts in the Maldives. • Permit the inference of the intentional element of the offense from objective factual circumstances. • For legal entities, allow for sanctions other than deregistration, e.g. fines, ensuring that they are effective, proportionate and dissuasive, and make them applicable also to those entities not registered in the Maldives.

<p>2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)</p>	<ul style="list-style-type: none"> • Ensure that the confiscation provisions can be applied to “property” as defined by the Standard: Assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets, regardless of whether these assets are held or owned by the defendant or a third party. • Provide for the confiscation of instrumentalities for offenses other than those of the Drugs Act and the Fisheries Act. • Allow for the confiscation of property of corresponding value. • Allow for the confiscation of property derived directly or indirectly from the proceeds of crime. • Provide for confiscation even if the property is held by a third party. • Expand the use of freezing and seizing of property subject to confiscation to offenses other than those under the Drugs Act, the Corruption Act, the Gang Related Crimes Act, and the Fisheries Act. • Allow in laws or other measures for the initial application to freeze or seize to be made <i>ex parte</i> or without prior notice. • Authorities should utilize the confiscation provisions that do exist more often. • Provide protection for the rights of <i>bona fide</i> third parties, consistent with the Palermo Convention standards. • Ensure that it is possible to prevent or void any action aimed at prejudicing the ability of authorities to recover property subject to confiscation. • Make effective use of the confiscation framework by putting in place comprehensive legal provisions allowing the courts to confiscate proceeds and instrumentalities in the context of any money laundering, terrorist financing or other predicate offense.
<p>2.4 Freezing of funds used for terrorist financing (SR.III)</p>	<ul style="list-style-type: none"> • Enact laws and procedures to freeze terrorist funds or other assets of persons designated by the U.N. Al-Qaida and Taliban Sanction Committee in accordance with S/RES/1267.

- Enact laws and procedures to freeze terrorist funds or other assets of persons under S/RES/1373(2001).
- Enact laws and procedures to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.
- Enact laws and procedures to apply freezing actions to funds or other assets wholly or jointly owned or controlled, directly or indirectly, by designated persons, terrorists, terrorist financiers, or terrorist organizations, as well as to funds or other assets derived or generated from funds or other assets owned or controlled by such persons.
- Establish effective systems for communicating actions taken under S/RES/1373(2001), and actions initiated under the freezing mechanisms of other jurisdictions to financial institutions and other persons or entities that may hold targeted funds or assets.
- Provide clear guidance to financial institutions and other persons or entities that may hold targeted funds or assets regarding their obligations in respect of freezing mechanisms.
- Establish effective and publicly-known procedures for considering de-listing and for unfreezing funds or other assets of de-listed persons or entities.
- Establish effective and publicly-known procedures for unfreezing, in a timely manner, funds or assets of persons or entities inadvertently affected by a freezing mechanism upon verification that they are not designated persons.
- Establish appropriate procedures for authorizing access to funds or other assets frozen pursuant to S/RES/1267(1999), and in accordance with S/RES/1452(2002), necessary for basic expenses, payment of certain types of fees, expenses and service charges, or extraordinary expenses.
- Enable the use of provisional measures/confiscation regarding freezing, seizing, and confiscation of terrorist-related funds in other contexts than that of the United Nations Security Council Resolutions and freezing actions initiated in other countries.
- Provide protection for the rights of *bona fide* third parties.

	<ul style="list-style-type: none"> • Establish appropriate measures to monitor effectively compliance with relevant legislation, rules or regulations. • Establish civil, administrative or criminal sanctions for failure to comply with such rules.
<p>2.5 The Financial Intelligence Unit and its functions (R.26)</p>	<ul style="list-style-type: none"> • Establish on a sound legal basis the FIU as the center for receipt, analysis and dissemination of suspicious transactions reports from all reporting entities covered by the standard. • Empower the FIU to have access, directly or indirectly and on a timely basis, to financial, administrative and law enforcement information. • Enhance the overall quality and depth of analysis through better collection of information, improved analytical tools and further staff training. • Require the FIU to provide guidance to financial institutions and DNFBPs regarding the manner of reporting, including the specification of reporting forms and the procedures that should be followed when reporting. • Ensure that the information held by the FIU is securely protected and disseminated only in accordance with the law. • Grant the FIU sufficient operational independence and autonomy by: <ul style="list-style-type: none"> • ensuring budgetary independence; • ensuring that the management of the FIU has autonomy in staff selection and retention within the FIU; • determining the conditions for the appointment and dismissal of the FIU head; • securing premises that allow for the protection of the information; and • allowing the FIU management to have an independent decision making process for the receipt, analysis and dissemination of STRs. • Require the FIU to publicly release periodic reports including statistics, typologies and trends as well as information regarding its activities. • Consider applying for Egmont membership once

	comprehensive AML/CFT legislation is passed and the FIU formally established.
<p>2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)</p>	<p>Recommendation 27:</p> <ul style="list-style-type: none"> • Ensure that money laundering and terrorist financing offenses are investigated. • Ensure that money laundering and terrorist financing offenses are prosecuted. • Provide a legislative basis for the MPS to postpone or waive the arrest of suspected persons or the seizure of money. <p>Although not directly required by the Recommendation, the authorities could also consider:</p> <ul style="list-style-type: none"> • Creating a legal basis in order to use special investigative techniques. • Applying special investigative techniques in money laundering and terrorist financing investigations. • Creating permanent groups to investigate proceeds of crime. Consideration could also be given to cooperation with foreign authorities, including using special investigative techniques, given proper safeguards. <p>Recommendation 28:</p> <ul style="list-style-type: none"> • Enable its investigative agency to compel production of documents and records that also pertain to associates, or to have a reasonable expectation of obtaining a court order. • Effectively use the power to compel documents and take witness testimony in money laundering and terrorist financing investigations.
<p>2.7 Cross-Border Declaration & Disclosure (SR IX)</p>	<ul style="list-style-type: none"> • Introduce a compulsory cross-border currency declaration system or a disclosure system responding to the characteristics laid out in Special Recommendation IX in order to detect cross-border transportation of currency and bearer negotiable instruments that are related to money laundering or terrorist financing, and draft policies and procedures to support that system. • Take legislative steps to ensure that a designated agency (such as the MCS, for example) has the authority to collect information from the carrier of currency or bearer negotiable

	<p>instruments on the origin of the currency or bearer negotiable instruments and their intended use in cases of suspicion of money laundering or terrorist financing.</p> <ul style="list-style-type: none"> • Provide the designated agency with the authority to stop or restrain cash or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found, where there is a suspicion of money laundering or terrorist financing; or where there is a false declaration. • Establish in law effective, proportionate and dissuasive sanctions for false cross-border currency declarations/disclosure or failure to declare/disclose. • Establish in law effective, proportionate and dissuasive sanctions for the physical transportation of currency or bearer negotiable instruments that are related to money laundering or terrorist financing. • Ensure that the prescribed threshold for declaration should not exceed US\$/EUR 15,000. • Seek closer cooperation with other neighboring countries, such as establishing mechanisms for regular information exchange on cash seizures and cross-border transportation reports. • Ensure that the designated agency reports unusual movements of precious metals and stones to the countries of origination or destination.
<p>3. Preventive Measures– Financial Institutions</p>	
<p>3.1 Risk of money laundering or terrorist financing</p>	
<p>3.2 Customer due diligence, including enhanced or reduced measures (R.5–8)</p>	<ul style="list-style-type: none"> • Bring all financial institutions within the scope of the AML/CFT regime. • Issue implementing regulations associated with CDD requirements under the 2010 Banking Act. • Prohibit financial institutions from opening or maintaining anonymous or fictitious accounts by providing for an explicit prohibition of such accounts or by laying down clear positive

	<p>identification requirements for all clients.</p> <ul style="list-style-type: none"> • Require in law or regulation all financial institutions to: <ul style="list-style-type: none"> • undertake CDD measures when establishing business relationships or when there are doubts about the veracity or adequacy of previously obtained customer identification data and to identify and verify their customers using reliable, independent source documents, data or information; • verify that any person acting on behalf of the customer is so authorized and identify and verify the identity of that person; • identify and verify the beneficial owner; • determine whether the customer is acting on behalf of another person and then to take reasonable steps to obtain sufficient identification data to verify the identity of that other person; • conduct ongoing due diligence on the business relationship and transactions. • Require in law or regulation or other enforceable means financial institutions to: <ul style="list-style-type: none"> • verify the legal status of legal persons or legal arrangements by obtaining details of all directors; • understand the ownership and control structure of legal persons; • obtain information on the purpose and intended nature of the business relationship; • consider filing an STR and terminating the business relationship when a financial institution can no longer be satisfied that it knows the true identity of a customer; • undertake enhanced due diligence measures for higher risk categories of customers and provide guidance as to what these measures constitute; • verify the identity of the customer and beneficial owner before or during the course of establishing business
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	<p>relationships; and</p> <ul style="list-style-type: none"> • not to open accounts, commence business relations or perform the transactions on failure to conduct CDD and consider making a suspicious transaction report. In case the financial institution has already commenced the business relationship, failure to conduct CDD should result in termination of the business relationship and the financial institution should consider making a suspicious transaction report. • Financial institutions should be obligated to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • Provide comprehensive guidance to all financial institutions on the procedures required to identify the ultimate natural person who owns or controls the customer; • Put in place and implement comprehensive preventative measures in keeping with the requirements of Recommendation 6 on PEPs with appropriate and ongoing risk management procedures for identifying (and applying enhanced CDD to) PEPs, customers who are close relatives of PEPs, and accounts of which a PEP is the ultimate beneficial owner; • Implement comprehensive preventative measures with respect to cross border correspondent banking and other similar relationships. Such measures would include: <ul style="list-style-type: none"> • Gathering sufficient information about the respondent institution to understand fully the nature of respondent's business and to determine its reputation and quality of supervision; • Assessing the respondent institution's AML and CFT controls; • Obtaining approvals from senior management before establishing correspondent relationships; and • Documenting the respective obligations of each institution. • Implement comprehensive preventative measures in keeping
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	with the requirements of Recommendation 8 on technological developments and non face-to-face transactions.
3.3 Third parties and introduced business (R.9)	<ul style="list-style-type: none"> Regulate reliance on third parties to perform elements of the CDD process and introduce business to financial institutions, notably by ensuring that: The elements that may be performed by third parties are those listed under Criteria 5.3 to 5.6 of the Methodology; the information collected by the third parties may be immediately available to financial institutions; the financial institutions are required to satisfy themselves that the third parties are regulated and supervised; and that the ultimate responsibility for customer identification and verification remains with the financial institutions relying on the third party.
3.4 Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> Ensure that the law enforcement authorities have timely and effective access to information in the course of money laundering and terrorist financing investigations.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Recommendation 10:</p> <ul style="list-style-type: none"> Impose record keeping requirements on all financial institutions. Specify in law or regulation that it is mandatory for financial institutions to maintain all necessary records on transactions for at least five years or longer following the completion of transaction. Require in law or regulation the maintenance of transaction records in such a way as to allow reconstruction of individual transactions. Require in law or regulation that records of identification data, account files and business correspondence to be maintained for at least five years following the termination of an account or business relationship. Require in law or regulation that financial institutions make customer and identification data available on a timely basis to domestic competent authorities. <p>Special Recommendation VII:</p> <ul style="list-style-type: none"> Require financial institutions conducting wire transfers to include accurate originator information (name, address and account number) on funds transfers and related messages, as well as to conduct enhanced scrutiny of and monitor for suspicious fund transfers which do not contain complete

	<p>originator information and comply with obligations with regard to their wire transfer obligations.</p>
<p>3.6 Monitoring of transactions and relationships (R.11 & 21)</p>	<p>Recommendation 11:</p> <ul style="list-style-type: none"> • Require all financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • Require all financial institutions to examine as far as possible the background and purpose of such transactions, set forth their findings in writing and to keep such findings available for competent authorities and auditors for at least five years. <p>Recommendation 21:</p> <ul style="list-style-type: none"> • Require all financial institutions to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. • Require all financial institutions that in case of such transactions having no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be kept. • Develop adequate legal authorities to enable Maldives to apply a range of appropriate counter-measures across all financial sectors where a country continues not to apply or insufficiently applies the FATF Recommendations.
<p>3.7 Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)</p>	<p>Recommendation 13:</p> <ul style="list-style-type: none"> • Require in law or regulation all financial institutions (not only banks) and alternative remitters (or money or value transfer service providers) in the Maldives to report suspicious transactions in keeping with R.13; this notably entails criminalizing money laundering and terrorist financing in line with Recommendations 1 and 2 and Special Recommendation II. • Undertake comprehensive education and awareness raising with reporting parties to encourage greater quantity and quality of suspicious transaction reporting across all sectors. • Require in law or regulation all reporting parties to report

	<p>attempts of suspicious transactions.</p> <ul style="list-style-type: none"> Specifically include a provision in law or regulation that provides that suspicious transactions should apply regardless of whether or not they involve tax matters. <p>Special Recommendation IV:</p> <ul style="list-style-type: none"> Require in law or regulation all financial institutions (not only banks) and alternative remitters (or money or value transfer service providers) to report transactions when they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism; this notably entails criminalizing terrorist financing in line with Special Recommendation II. Undertake comprehensive education and awareness raising with reporting parties related to STRs on terrorist financing. <p>Recommendation 14:</p> <ul style="list-style-type: none"> Extend safe harbor provisions and prohibition from tipping off to all financial institutions beyond banks. <p>Recommendation 25:</p> <ul style="list-style-type: none"> Issue STR guidelines for financial institutions, including guidance in identifying suspicious transactions. Issue guidelines to money changers and money remitters to include all aspects of CDD, STR reporting, and other preventative measures. Require the FIU to regularly provide feedback relating to STRs to financial institutions.
<p>3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<p>Recommendations 15:</p> <ul style="list-style-type: none"> Require financial institutions to have adequately resourced and independent audits to test compliance with AML/CFT procedures. Lay down provisions relating to the overall role of compliance officer in financial institutions (other than in the securities sector) and his access to relevant data and records so as to enable him to effectively perform his functions. Require financial institutions to establish employee screening procedures when hiring new employees.

	<ul style="list-style-type: none"> • Require financial institutions other than those active in the securities sector to provide training to their staff tailored to their specific job profile and the risk of money laundering and terrorist financing faced by the financial institution or the products it offers. • Support effective implementation of internal controls through comprehensive AML/CFT supervision of all relevant sectors. <p>Recommendation 22:</p> <ul style="list-style-type: none"> • Extend the requirements of the essential criteria of Recommendation 22 to foreign branches and subsidiaries of financial institutions. This is because, even though at present financial institutions in the Maldives do not have any branches or subsidiaries overseas, the situation may change in the future.
<p>3.9 Shell banks (R.18)</p>	<ul style="list-style-type: none"> • Explicitly prohibit the establishment of shell banks, or explicitly require locally incorporated banks to have physical presence (i.e. meaningful mind and management) in the Maldives, and foreign branches to be affiliated with foreign banks or financial groups. • Prohibit financial institutions from engaging in or maintaining correspondent relationships with foreign shell banks. • Oblige financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
<p>3.10 The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)</p>	<p>Recommendation 17:</p> <ul style="list-style-type: none"> • Introduce a wide range of effective, proportionate and dissuasive criminal and administrative sanctions, including on their directors and senior management, for non-compliance with AML/CFT requirements when such requirements are established in sectors other than banks and securities. • Introduce more effective and dissuasive criminal and administrative sanctions that generally applied to violation of Regulations in the securities sector. • Introduce effective, proportionate and dissuasive criminal and administrative sanctions specifically applicable to directors and senior management of the securities dealing companies. <p>Recommendation 23:</p>

	<ul style="list-style-type: none"> • Designate by law the competent authority for AML/CFT regulation and supervision of the insurance industry, finance leasing companies and money changers. • Designate by law the competent authority for licensing/registration and AML/CFT regulation/supervision of MVT service operators. • Require insurance intermediaries to be licensed and designate by law the competent licensing authority. • Ensure that beneficial owners of financial institutions are “fit and proper.” • Implement the market entry and “fit and proper” requirements to existing banks and insurance companies. • Conduct AML/CFT supervision of banks and the securities sector. <p>Recommendation 29:</p> <ul style="list-style-type: none"> • Grant the competent authorities designated for the supervision of insurance undertakings and intermediaries, MVT service operators, finance leasing companies and money changers with adequate powers by law or regulation to inspect, compel production of, or get access to all records and books, sanction institutions and their directors and senior management, including for AML/CFT purposes and exercise these powers effectively. <p>Recommendation 25:</p> <ul style="list-style-type: none"> • Provide adequate guidance to all types of financial institutions, including information on current money laundering and terrorist financing trends and techniques.
<p>3.11 Money value transfer services (SR.VI)</p>	<ul style="list-style-type: none"> • Designate competent authorities responsible for licensing/registration and regulation/supervision of the MVT service operators. • Require in law or regulation that MVT service operators comply with AML/CFT measures, including conducting customer due diligence, keeping records, identifying and reporting suspicious and unusual transactions, and monitoring cross-border wire transfers.

	<ul style="list-style-type: none"> • Require MVT service operators to keep current lists of their agents and make them available to the designated competent authority. • Introduce sanctions for MVT service operators' breaches of their AML/CFT obligations. • Assess the potential informal MVT system operating in the country and take measures to address the risks, if any.
4. Preventive Measures– Nonfinancial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • Take steps to put into place a regulatory framework for DNFBPs active in the Maldives. • Require DNFBPs active in the Maldives to comply with CDD and record keeping requirements in line with Recommendations 5, 6, 8, 9, 10 and 11.
4.2 Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • Impose suspicious transaction reporting requirements on DNFBPs active in Maldives in line with Recommendation 16. • Implement the AML/CFT regulatory framework for DNFBPs. • Ensure protection from criminal and civil liability for DNFBPs, their directors, officers and employees reporting in good faith. • Prohibit DNFBPs, their directors, officers and employees from disclosing the fact that an STR or related information is being or has been reported to the FIU. • Require DNFBPs to establish internal controls, training and audit programs in line with Recommendation 15. • Require DNFBPs to give special attention to transactions and relationships with persons from or in countries that do not or insufficiently apply the FATF Recommendations in line with Recommendation 21.
4.3 Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • Subject DNFBPs to AML/CFT requirements as mentioned under R.12 and R.16. • Designate competent authorities responsible for AML/CFT supervision for DNFBPs. • Issue AML/CFT guidance for each industry in the DNFBP

	<p>sector to reflect specific money laundering and terrorist financing risks in each sector.</p> <ul style="list-style-type: none"> • Examine the resources that would be required to monitor compliance of the DNFBP sectors that present the highest risk and allocate resources accordingly.
4.4 Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • Undertake a risk assessment of money laundering and terrorist financing in non-financial businesses and professions (other than DNFBPs) and consider applying AML/CFT preventive measures to those that are found to be at risk of being misused for money laundering or terrorist financing purposes. • Continue to develop effective measures to develop and use modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. • Introduce measures to reduce the reliance on cash and to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering and terrorist financing.
5. Legal Persons and Arrangements & Non-profit Organizations	
5.1 Legal Persons–Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> • Ensure that adequate, accurate and current information on the beneficial ownership and control of legal entities is readily accessible to relevant authorities. • Require the MED to maintain information as to whether shares of registered entities are held beneficially and, if so, to maintain details of the beneficial owner.
5.2 Legal Arrangements–Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> • Take measures to prevent the unlawful use of legal arrangements for money laundering and terrorist financing purposes and ensure adequate transparency concerning the beneficial ownership and control of trusts and <i>Awqaf</i>.
5.3 Non-profit organizations (SR.VIII)	<ul style="list-style-type: none"> • Review existing laws and regulations with a view to identifying gaps in coverage; • Review the NPO sector for the purpose of identifying those NPOs which are at risk of abuse by terrorist financiers. • Work with the NPO sector and the public to raise awareness among regulators and NPOs of the vulnerability of NPOs to abuse for terrorist financing. • Increase the financial, personnel and technical resources

	<p>available to MHA to allow them to develop and implement more effective supervision programs.</p> <ul style="list-style-type: none"> • Implement more effective supervision programs. • Enhance domestic coordination between MHA and various other competent authorities involved in AML/CFT; and • Ensure clear mechanisms of international cooperation to respond to international requests.
6. National and International Cooperation	
6.1 National cooperation and coordination (R.31)	<ul style="list-style-type: none"> • Make better use of the AML/CFT Steering Committee. • The authorities are also encouraged to take the planned steps to invite the MNDF.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>Recommendation 35:</p> <ul style="list-style-type: none"> • Fully implement the Vienna Convention. • Become party and fully implement the Palermo Convention. <p>Special Recommendation I:</p> <ul style="list-style-type: none"> • Fully implement the International Convention for the Suppression of the Financing of Terrorism and relevant UNSCRs as prescribed under Special Recommendations I and II.
6.3 Mutual Legal Assistance (R.36, 37, 38 & SR.V)	<p>Recommendation 36 and Special Recommendation V:</p> <ul style="list-style-type: none"> • Criminalize money laundering and terrorist financing in line with the standard to ensure that current deficiencies noted with respect to both offenses to not limit the scope of mutual legal assistance that the Maldives may offer. • Establish a comprehensive framework to allow for the widest possible range of MLA in money laundering and/or terrorist financing investigations, prosecutions and related proceedings. In doing so, ensure that MLA can be rendered in a timely, constructive and effective manner. • Ensure that MLA is not subject to unreasonable, disproportionate or unduly restrictive conditions. • Establish clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without

undue delays.

- Ensure that, where legal professional privilege does not apply, mutual legal assistance is not refused on the grounds of secrecy or confidentiality laws for financial institutions and DNFBPs.
- Ensure that the powers of competent authorities required under Recommendation 28 are also available for use in response to requests for mutual legal assistance.
- Consider establishing mechanisms to avoid conflicts of jurisdictions.
- Although this does not currently appear to constitute an impediment to mutual legal assistance, for the sake of clarity, it is recommended that the authorities:
 - Ensure that requests for MLA cannot be refused on the sole ground that the offense may also be considered to involve fiscal matters.

Recommendation 37 and Special Recommendation V:

- Ensure that, to the greatest extent possible, mutual legal assistance may be rendered in the absence of dual criminality, in particular for less intrusive and non compulsory measures, and that, where dual criminality is requested, technical differences between the Maldivian laws and those of the requesting State do not pose an impediment to the provision of mutual legal assistance.

Recommendation 38 and Special Recommendation V:

- Establish a legal framework for effective and timely responses to requests for freezing, seizing and confiscating assets (i.e. laundered property from, proceeds from, instrumentalities used in or intended to be used in the commission of any money laundering, terrorist financing or predicate offenses, and property of corresponding value) at the request of foreign authorities in line with Recommendation 38.
- Consider establishing an asset forfeiture fund into which all or part of confiscated property could be deposited.
- Consider authorizing the sharing of confiscated assets with

	foreign authorities when confiscation is the result of coordinated law enforcement actions.
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> • Criminalize money laundering and terrorist financing in line with the standard and ensure that both are extraditable offenses. • Establish a legal framework to enable the extradition of individuals charged with a money laundering offense and/or terrorist financing. In doing so, ensure that extradition requests and proceedings relating to money laundering and terrorist financing are handled without undue delay.
6.5 Other Forms of Cooperation (R.40 & SR.V)	<p>Recommendation 40 and Special Recommendation V:</p> <ul style="list-style-type: none"> • Introduce legal authority for the MMA to cooperate with its foreign counterparts (including outside the banking sector). • Establish the FIU on a sound legal basis and authorize it to exchange information with its foreign counterparts.
7. Other Issues	
7.1 Resources and statistics (R.30 & 32)	<ul style="list-style-type: none"> • Increase the MMA and the CMDA's human resources as well as expertise in support of their supervisory function. • Increase the PGO, and the judiciary's resources and training in AML/CFT matters. • Provide training on AML/CFT matters to all relevant authorities.
7.2 Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> • Ensure that revised Penal Code is adopted and that criminal procedure rules are set out in law in order to enable the authorities to fight against ML and TF in an effective way.
7.3 General framework – structural issues	

Annex 1. Authorities' Response to the Assessment

Annex 2. Details of All Bodies Met During the On-Site Visit

Accountants and auditors

Anti-Corruption Commission (ACC)

Attorney General's Office (AGO)

Banks

Capital Market Development Authority (CMDA)

Department of Immigration and Emigration (DIE)

Department of Judicial Administration (DJA)

Insurance company

Law firm

Maldives Customs Service (MCS)

Maldives Monetary Authority (MMA)

- Credit and Bank Supervision Section (CBSS)
- Financial Intelligence Unit (FIU)
- Non-Bank Financial Institutions Supervision Section (NBFIS)

Maldives National Defence Force (MNDF)

Maldives Police Service (MPS)

Maldives Securities Depository

Maldives Stock Exchange (MSE)

Ministry of Economic Development (MED)

Ministry of Foreign Affairs (MFA)

Ministry of Home Affairs (MHA)

Money services business

Precious metals & stones dealer

Prosecutor General's Office (PGO)

Annex 3. List of All Laws, Regulations, and Other Material Received

Constitution of 2008 of the Republic of Maldives.

AML/CFT and other relevant laws:

Anti-Corruption Commission Act (Act No. 13/2008).
 Associations Act (Act No. 1/2003).
 Banking Act (Act No. 24/2010).
 Companies Act 1996 (Act No. 10/96).
 Co-operative Societies Act (Act No. 2/2007).
 Environmental Protection and Preservation Act of Maldives (Act No. 4/1993).
 Export Import Act 1979 [*excerpts*]
 Fisheries Act of Maldives (Act No. 5/87).
 Judicial Service Commission Act (Act No. 10/2008).
 Law for the General Regulations (Act No. 6/2008).
 Law on Foreign Investments in the Republic of Maldives (Act No. 25/79).
 Maldives Monetary Authority (MMA) Act 1981.
 Maldivian Land Act.
 Narcotic Drugs and Psychotropic Substances Act (Act No. 17/77).
 Partnership Act (Act No. 9/96).
 Penal Code (Act No. 1/81).
 Police Act (Act No. 5/2008).
 Securities Act 2006.
 Prevention and Prohibition of Corruption Act 2000 (Act No. 2/2000).
 Prevention of Terrorism Act (Act No. 10/1990).
 Prohibition of Gang Related Offenses Act 2010 (Act No. 18/2010) [*excerpts*]
 Prosecutor General's Act (Act No. 9/2008).

AML/CFT and other relevant Regulations:

CMDA Regulation on Anti-Money Laundering in Securities Related Transactions (2010).
 CMDA Regulation on the Conduct of Securities Business (Regulation No. 03/2006).
 CMDA Securities (General) regulations (2007, as amended in 2009).
 Dealers and Dealers' Representatives Licensing Regulation (2006).
 MMA Guidelines for the Administration of Insurance Agents (2010) issued under the Insurance Industry Regulations of 2004.
 MMA Insurance Industry Regulation.

MMA Regulation for Finance Leasing Companies and Finance Leasing Transactions.
MMA Regulation on Fit and Property Requirements.
MMA Regulations for Banks and Financial Institutions of 1988.
MMA Regulations Outlining Arrangements for Money Changers (March 1, 1987).
Regulation on Licensing and Conduct of Central Depository.
Stock Exchange Company Licensing Regulation.

Other relevant material

Code of Conduct for Judges (Judicial Service Commission).
MMA Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)
Circular (No. CN-CBS/2006/05, February 22, 2006).
MMA Electronic Funds Transfer Guidelines.