



2<sup>nd</sup> Follow-Up Report

# Mutual Evaluation of Vanuatu

November 2017



The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 41 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units.

APG members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism, in particular the Forty Recommendations of the Financial Action Task Force on Money Laundering (FATF).

For more information about the APG, please visit the website: [www.apgml.org](http://www.apgml.org)

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APG Secretariat  
Locked Bag A3000  
Sydney South  
New South Wales 1232  
AUSTRALIA  
Tel: +61 2 9277 0600  
E Mail: [mail@apgml.org](mailto:mail@apgml.org)  
Web: [www.apgml.org](http://www.apgml.org)



Asia/Pacific Group  
on Money Laundering

## VANUATU 2<sup>ND</sup> FOLLOW-UP REPORT 2017

1. In accordance with the APG Third Round Mutual Evaluation Procedures, attached are updates to Vanuatu's *Technical Compliance Annex* and *Compliance with FATF Recommendations* table, adopted by the APG plenary in July 2017.
2. Vanuatu submitted its second follow-up report on 13 February 2017 and requested re-ratings for the following three Recommendations:
  - R.26 – Regulation and supervision of FIs
  - R.28 – Regulation and supervision of DNFBPs
  - R.29 – Financial intelligence unit (*Vanuatu sought an upgrade from largely compliant (LC) to compliant (C) for this Recommendation*)
3. As required under the APG Third Round Mutual Evaluation procedures, an APG review team was formed, consisting of the following former assessor and secretariat member, to undertake the analysis:
  - Ms. Heather Moyer, FINCEN, United States
  - Ms. Michelle Harwood, APG Secretariat
4. The review team found that Vanuatu had made considerable progress on technical compliance with the passage of 12 Amendment Acts and one new Act (The United Nations Financial Sanctions Act). This progress particularly strengthened the requirements under R.26 and R.28 on market entry fit and proper requirements. The review team concluded that progress to LC had been made on R.26 and R.28, and that the rating for R.29 remained at LC.

Recommendation	MER rating	Progress made to LC or C
R.26 – Regulation and supervision of FIs	PC	Yes
R.28 – Regulation & supervision of DNFBPs	PC	Yes
R.29 – FIU	LC	No (remains at LC)

APG Secretariat  
November 2017

## VANUATU

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**TECHNICAL COMPLIANCE ANNEX (UPDATED JULY 2017)****3. LEGAL SYSTEM AND OPERATIONAL ISSUES*****Recommendation 29 - Financial intelligence units***

1. In the 2006 MER, Vanuatu was rated partially compliant with former R.26. The factors underlying that rating were: guidelines issued to financial institutions were out of date; no guidelines issued to or examinations conducted of non-traditional financial businesses; VFIU had not issued public reports on its activities and ML/TF typologies and trends; substantial weaknesses in the administrative structure responsible for overseeing the VFIU; and no evidence that the work of the VFIU had resulted in the successful investigation, prosecution or conviction for money laundering or terrorist financing activities.

2. *Criterion 29.1* - The Vanuatu FIU (VFIU) operates under the State Law Office, headed by the Attorney General. As an administrative FIU, VFIU is responsible for the receipt, analysis and dissemination of STRs and is the main AML regulator in Vanuatu. In its intelligence role, the VFIU plays a central role in the collection and development of financial intelligence, providing analytical support to the financial investigations of law enforcement agencies and providing financial intelligence to overseas counterparts (Part 2, s.4 AML/CTF Act refers).

3. *Criterion 29.2* - The VFIU serves as the central agency for the receipt of STRs and other relevant information. Reporting entities have an obligation to file reports related to suspicious transactions, suspicious activity, large cash transactions, international currency transfers, cash courier reports and border currency declarations to the VFIU. (Part 2, s.5 and Part 6, ss.20 to 30 AML/CTF Act; ss.10, 12 to 13, AML/CTF Regulation No.122 refer).

4. *Criterion 29.3* - The VFIU is empowered, through the AML/CTF Act, to seek or receive additional information related to any reported financial transaction filed by any financial institution. The VFIU can obtain additional information from reporting entities, public or private, as provided for in Part 2, s.5 (c), (e), and (g) of AML/CTF Act (as amended). Although the VFIU does not have direct access to law enforcement databases, it can collect information from law enforcement agencies on request. Part 10 s.45 of AML/CTF Act (as amended), provides the Director of the FIU with the power to collect necessary information from any person, for the purpose of its analysis process or performing its functions.

5. *Criterion 29.4 - Sub-criterion 29.4(a)* - Part 2, s.5 (1)(1) of the AML/CTF Act provides the legal basis for VFIU to conduct research into ML and TF trends and developments and recommend on detecting and deterring measures against ML and TF activities in order to conduct operational and strategic analysis of reports and information received. Part 2 s. 5(1)(b) empowers the FIU to conduct operational analysis as it relates to specific targets, transactions, and offences. Sub-section (b) refers specifically to the FIU's power to "analyse and assess any report or information referred to under this Act," which enables the FIU to conduct analysis regarding any report filed under the Act. Sub-section (c) allows the FIU to gather information, whether or not it has been requested by the Director from a domestic regulatory authority, a LEA or a foreign government agency for the purposes of this Act. Sub-section (d) also covers the FIU's ability to "disclose information in accordance with the Act," which also refers to analysis conducted by the FIU under, for example, sub-section (b). Additionally, sub-section (e) discusses the FIU's power to collect information in accordance with the Act including government and commercial databases, which seems to be referring to the compiling of information from different sources to conduct analysis. Section 5(1)(ea) also confirms the FIUs ability to receive, analyse and disseminate reports made under section 16 of the

UN Financial Sanctions Act. Information may be requested from a domestic regulatory authority, a LEA or a foreign government agency to assist any analysis or assessment outlined in 5(1)(b).

6. *Sub-criterion 29.4(b)* - Part 2, Section 5(1)(l) of the AML/CTF Act provides the power for the VFIU “to conduct research into money laundering and terrorism financing trends and developments and recommend on detecting and deterring measures against money laundering and terrorism financing activities”. Whilst the VFIU’s operational capability is undermined by a lack of resources, it does carry out operational analysis and disseminates financial intelligence reports based on STRs and other related financial information received from reporting entities. The VFIU disseminated its first strategic analysis assessment in January 2017; however, further work is required to ensure that reports in the future remain truly strategic in nature. Further typologies reports are underway and are due to be disseminated in the future. The VFIU did cite an instance, in 2011, where information available through analysis of STRs, CTRs, IFTRs and BCRs and information submitted to it by agencies (overseas and domestic LEAs), was used to identify a possible ML channel using the remittance/exchange sector. In response, the VFIU created and issued a declaration requirement (CCR) for cash couriered overseas by the remittance/exchange sector and proposed a legislative amendment for the registration of money remitters/exchangers).

7. *Criterion 29.5* - The VFIU is authorised via s.5 (d) and s.6 of the AML/CTF Act to share spontaneously and upon request, information and the results of its analyses, to an assisting entity. In particular, s.6 provides for the agreement and arrangement which the FIU may undertake to share information. The main channel for dissemination of information from the FIU to domestic law enforcement agencies (LEAs) is either by hand-delivery directly to the recipient or via e-mail. Information disseminated via e-mail transmission is encrypted and the password is passed on to the recipient via telephone.

8. *Criterion 29.6* - The VFIU Standard Operating Procedures Manual is currently under review and in the process of being updated. In the interim, the VFIU has set out security procedures in a series of written Standard Operating Procedures (SOP) that include provisions such as password protection for computerized files, a clear desk policy, access to the VFIU facility by visitors, and removal of data from VFIU premises. Information held in computer databases is secured through the use of a password-enabled log-in process. Paper files maintained by the VFIU are kept in locked cabinets accessible only by VFIU staff. All VFIU staff are subject to police clearance during the recruitment phase and are required to sign an official secrecy declaration with the Attorney General. VFIU staff employment contracts contain provisions of secrecy and information confidentiality which if breached would result in instant termination. The building housing VFIU offices is within a government compound housing the offices of the Prime Minister, the State Law Office and other government components. Doors to the VFIU offices are locked at the close of business.

9. *Criterion 29.7 - Sub-criterion 29.7(a)* – The VFIU is under the State Law Office, but acts with operational independence as per Part 2 s.7 (2)(3) of the AML/CTF Act. The VFIU Director is authorized to perform the functions and exercise the powers of the Unit as stated in the AML/CTF Act, as well as to authorize a senior officer to carry out any functions or powers of the Director under the AML/CTF Act. *Sub-criterion 29.7(b)* - The VFIU is able to enter into agreements or arrangements with assisting entities independently (section 6(1) and (2) AML/CTF Act as amended in October 2015). *Sub-criterion 29.7(c)* – As noted above, the VFIU is under the State Law Office, but has legally established core functions under Part 2 s.5 of the AML/CTF Act. The VFIU SOP manual sets out the VFIU’s procedures for receiving, assessing, analysing and disseminating intelligence to law enforcement agencies. The SOP further sets guidelines regarding the incoming/outgoing assistance provided to, and received from, domestic authorities and foreign counterparts. *Sub-criterion 29.7(d)* - VFIU is responsible for their operational budget and has correspondence procedures/processes independent of the State Law Office.

10. *Criterion 29.8* - Vanuatu FIU has been a member of the Egmont Group of FIUs since 2002.

*Weighting and conclusion*

11. Vanuatu has adequate legal provisions governing the power, functions and operations of the FIU, however shortcomings remain in relation to the FIU's strategic analysis. **Vanuatu is largely compliant with R.29.**

## 6. SUPERVISION

### *Recommendation 26 – Regulation and supervision of financial institutions*

12. Vanuatu was rated partially compliant with former R.23. Banks were being adequately regulated by the RBV, but the insurance industry was not being adequately regulated by the VFSC, and money changers/remitters were not under any supervision. Recommendation 26 now has additional requirements and Vanuatu has also introduced new legislation. R.26 contains requirements relating to shell banks which was previously covered by former R.18.

13. *Criterion 26.1* - The RBV has the responsibility for regulating and supervising the banking and insurance industry. Supervision of the insurance industry was transferred to RBV in 2010. The VFIU has, with the passing of the AML/CTF Act, taken over responsibility for monitoring compliance with the AML/CTF Act for all designated reporting entities, which includes the financial institutions although it may delegate this power under the Act under section 8B (as amended).

*Market entry*

14. *Criterion 26.2* – Banks, credit unions and insurance entities are required to be licensed by the RBV. The VFSC licenses all other offshore service providers, except for dealers in securities who are licensed by the Minister on advice of the VFSC. The Dealers in Securities Act and the International Banking Act now provide them with regulatory power to conduct market entry fit and proper checks. All other reporting entities as defined in the AML/CTF Act, including those providing a money or value transfer service or a money or currency changing service, must register with the VFIU. Shell banks are prohibited in Vanuatu by action of s.20 of the International Banking Act, which requires a physical presence, the maintaining of records and the operation of staff from Vanuatu premises as an obligation on all licensees under that Act.

15. *Criterion 26.3* - As part of the licensing requirements and ongoing supervision for banks and insurance business the RBV has powers to prevent criminals from holding an interest or management position in the licensees. The VFSC is able to apply the fit and proper standards issued by the VFIU in their market entry requirements and amendments to the CTSP Act provide further fit and proper requirements for the VFSC to apply. The AML/CTF Act at s.48 empowers the VFIU to remove a director, manager, secretary or other officer of a reporting entity if certain conditions are met. One of which is the failure to meet criteria for fitness and suitability as may be prescribed. The AML and CTF Amendment Regulation No 153 of 2015 sets of fit and proper requirements in clause 15B. The AML/CTF Regulations as amended require market entrants to disclose their source of wealth/capital/funds and disclose close associate or immediate family members who are PEPs or adversely implicated in the media. Amendments to the Dealers in Securities Act and the International Banking Act allow the VFSC and the RBV respectively to conduct fit and proper checks on market entrants in those sectors.

16. Reporting entities are widely defined in section 2 of the AML/CTF Act and includes DNFBPs. REs are prohibited from carrying out customer relationships unless they are registered (s9). As part of the

registration requirements, the RE must meet the fit and proper criteria prescribed by the AML/CTF Regulations and the AML/CTF Act.

17. Under the AML/CTF Amendment Act, the term beneficial owner has been expanded in Section 1 to include circumstances where ownership or control is exercised through a chain of ownership or by means of indirect control that may not have legal or equitable force or be based on legal or equitable rights.

*Risk-based approach to supervision and monitoring*

18. *Criterion 26.4* - There is no direct reference in the legislation or regulations to adherence to the Core Principles, but the requirements imposed by legislation on the banking and insurance sector go some way to meet them. Vanuatu's AML/CTF legislation and regulations are silent on the application of consolidated group supervision however VFIU, VFSC and RBV coordinate on consolidated group supervision for AML/CFT, under the framework of the NCC working group. Other financial institutions come under the new AML/CTF Act. The Act develops the necessary AML/CFT requirements and gives the VFIU power to intervene if some of its measures are not met. It provides at s.46 the power for the VFIU to examine the records and affairs of a relevant entity, including that of financial institutions providing money or value transfer services, or a currency changing service. S8A of the AML/CTF Act as amended expands on supervision for REs and confirms the requirement of the VFIU to monitor and assess the level of AML/CFT risk across REs and to implement a risk based supervisory programme.

19. *Criterion 26.5* - Since 2010 the RBV has conducted 10 supervisory visits on banks, although three were of limited scope, and 21 supervisory visits on insurance entities. Since its MER, the VFIU has concentrated its resources on the high risk sectors identified in Vanuatu's NRA. Entities posing a higher level of ML/TF risk are subject to enhanced scrutiny and breaches are promptly dealt with.

20. *Criterion 26.6* - While there are no documented procedures for supervisors to review the assessment of the ML/TF risk profile of individual financial institutions either periodically or when a major event occurs, this is occurring in practice. In 2016 the RBV required all international banks to provide their updated AML/CFT risk assessments and the VFIU has instituted a program to obtain enterprise risk assessments from other high risk sectors, Section 35 of the AML/CTF Act provides that the VFIU may require a reporting entity to carry out a money laundering and terrorism financing risk assessment and produce a written report on their findings.

*Weighting and conclusion*

21. The RBV and VFIU have begun to implement risk-based supervision and have amended its legislation to strengthen market entry controls and the RBV, VFSC and Finance Ministry's associated powers. VFIU's supervisory function has been strengthened, by becoming the central point for sanctioning on AML/CFT breaches. Further supervision of MVTS is warranted in light of the risk and context of Vanuatu. **Vanuatu is largely compliant with Recommendation 26.**

***Recommendation 28 – Regulation and supervision of DNFBPs***

22. Vanuatu was rated non-compliant with former R.24 in the 2006 MER. The factors underlying that rating were: there were no clear procedures to process the application to open casinos; there was no system in place to monitor and ensure DNFBPs' compliance with AML/CFT requirements; and there was no assessment of the risk of money laundering and terrorist financing in the DNFBP sector.

23. *Criterion 28.1 - Sub-criterion 28.1(a)* - Casinos operating in Vanuatu are required to be licensed under the Casino (Control) Act which was amended in June 2017 to strengthen market entry requirements.

Online gambling is licensed under the Vanuatu Interactive Gaming Act 2000. Domestic gaming operators are licensed under the Gaming Control Act 1983. Instant lottery, pool betting schemes, and overseas lottery promoters are licensed under the Lotteries Act 1989.

24. Licences are issued by the Minister of Finance with application forms available from the Customs and Inland Revenue Department. *Sub-criterion 28.1(b)* - In considering a casino licence application, the Director of Customs and Inland Revenue (Director) must be satisfied that the proposed licensee is a suitable person to be a licensee under the Act, including that the licensee is of good repute, having regard to character, honesty and integrity; is of sound and stable financial background; and in the case of the proposed licensee not being a natural person, that it has a satisfactory ownership, trust or corporate structure suitability criteria; and that the person has no business association with any person, body or association who or that, in the opinion of the Minister after investigation made or caused to be made by the Minister, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources. The amended Casino (Control) Act includes requirements for applicants for a licence to provide details of each associate of the applicant and details as required by the Director on whether a beneficial owner of the applicant is a beneficial owner, owner or controller of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction. They must also explain the source of funds to pay the capital. In assessing fit and proper criteria, the Director takes into account criminal convictions and whether an associate is listed on the UN Sanctions list or another financial sanctions list.

25. The due diligence process for a casino application is conducted by the Department of Customs and Revenue (or third party consultants) on behalf of the Minister. Licensees must provide notice to the Director of changes, including changes in an associate of the licensee, the circumstances of an associate of the licensee which may affect fit and proper and the source of funds used to pay the capital.

26. Onsite inspections are provided for in the amended section 23B allowing the Director to conduct on-site inspections at the casino operated by a licensee and any other business premise during normal casino hours. Penalties are provided for obstructing the Director or providing false or misleading information or documents, covering both natural and legal persons.

27. The Director has the power to issue a direction to a casino, or to suspend or cancel its licence, in the public interest. Section 10(1) of the Casino (Control) Act (as amended) empowers the Director to suspend or cancel a licence under certain circumstances including no longer meeting the fit and proper criteria prescribed by regulations. 2017 amendments to the AML/CTF Act further empower the VFIU to remove directors or management including suspension of a reporting entity from the register if the Director is satisfied that the reporting entity has failed to comply with a provision in the AML/CTF Act. Section 50 addresses the removal of directors, managers, secretary or other officers. However, the amendments to section 50 do not allow for the disqualification of a beneficial owner or controller.

28. *Sub-criterion 28.1(c)* - The VFIU is responsible for AML/CFT supervision of casinos, online betting and domestic gaming and businesses licensed under the Lotteries Act, under the AML/CTF Act (as per the functions of the VFIU under s.5 of the Act). Sections 45 to 47 of the AML/CTF Act provide adequate powers for information collection, examination and enforcement of casinos' compliance with the AML/CFT requirements under the Act, including to issue directions, and power to obtain court orders to enforce compliance. The VFIU has held meetings with, and received copies of the AML/CFT procedures of the five (5) casino operators. Whilst Vanuatu advise that they have conducted AML/CTF onsite inspections on three of the casino operators in 2015, they have had less engagement with the online betting, gaming and lottery licensees to date.

*DNFBPs other than casinos*

29. *Criterion 28.2* - The VFIU is responsible for ensuring compliance of reporting entities including DNFBPs (as defined by FATF) with AML/CFT requirements (s.5, AML/CTF Act).

30. *Criterion 28.3* - The general powers in s.5 and the specific powers in s. 45, 46 & s.50 of the AML/CTF Act provide adequate powers for information collection, examination and enforcement of other DNFBPs' compliance with the AML/CFT requirements under the Act.

31. *Criterion 28.4 - Sub-criterion 28.4(a)* - The general powers in s.5 and the specific powers in s.45 to 46, AML/CTF Act are adequate for information collection, examination and enforcement, including issuing of directions and the power to obtain court orders to enforce compliance. *Sub-criterion 28.4(b)* - The VFIU has powers under s.48, AML/CTF Act to remove directors, managers or other officers who are disqualified persons in DNFBPs for: being convicted of an offence under the Act; being involved as a director or manager of a reporting entity in Vanuatu or elsewhere whose license has been revoked or it has been wound up; for being convicted for an offence involving dishonesty; becoming bankrupt; or having compounded debts with their creditors. Section 50I of the AML/CTF Act (as amended in June 2017) allow for the power to remove directors, managers, secretary or other officers. However, there is no power to allow for the disqualification of the beneficial owner or controller. Fit and proper requirements for TCSPs are set out in the 2017 amendments to the TCSP Act. This includes the requirement for applicants for a licence to disclose details of persons who own or control the applicant, details of beneficial owners of the applicant and information on whether such persons are beneficial owners, or owners or controllers of an entity licensed or registered under a regulatory law of Vanuatu or a foreign jurisdiction (section 13(ii)(d)(ii)). There are no requirements to check criminal records with foreign jurisdictions where appropriate. *Sub-criterion 28.4(c)* - The AML/CTF Act imposes criminal sanctions (conviction-based) on DNFBPs (as reporting entities under the Act) for breaches of each of the provisions imposing obligations. Section 50A of the AML/CTF Act allows the Director to exercise a wide range of penalties, including penalty notices, formal warnings, enforceable undertakings and the publication of notices of non-compliance, as well as directing a reporting entity to remove a director, manager, secretary or other officer (section 50I).

32. *Criterion 28.5* - The VFIU endeavours to adopt a risk-sensitive approach in determining the frequency and intensity of AML/CTF supervision of DNFBPs under the AML/CTF Act on the basis of their understanding of Vanuatu's ML/TF risks. Section 8A of the amended AML/CTF act provides for the VFIU to monitor and assess the level of AML/CFT risk across reporting entities and to develop and implement a risk-based supervisory programme. Annual reviews of compliance assessments and other available information on entity risks determines the high and medium-high risk entities to be subject to more intensive monitoring or examination during the year. The VFIU will have regard for whether the reporting entity's risk-based systems and controls are appropriate to the nature, size and complexity of the business and type of ML and TF risk it might reasonably face when assessing the adequacy of the AML/CTF internal controls, policies and procedures of DNFBPs.

#### *Weighting and conclusion*

33. Vanuatu has strengthened its market entry requirements with amendments in 2017 to the Casino Control Act, the AML/CTF Act and the TCSP Act, amongst others. Suitable requirements are now in place to prevent criminals or their associates becoming beneficial owners or controllers of casinos and similar entities, including after licenses have been granted, and likewise in respect of owners or controllers of most other categories of DNFBP. The VFIU has adequate powers with respect to risk-based AML/CTF supervision, almost no AML/CTF compliance monitoring or supervision of casinos and similar entities has been carried out to date. Sanctions powers are wide ranging and include a range of administrative and criminal penalties. **Vanuatu is largely compliant with R.28.**

## VANUATU

**Table 2: Compliance with FATF Recommendations (Updated July 2017)**

<b>Compliance with FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> <li>Regulatory supervision and monitoring is increasingly being undertaken with regards to identified sector risks but at an early stage.</li> <li>Further supervision of MVTs is warranted in light of the risk and context of Vanuatu.</li> </ul>
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> <li>Inadequate demonstration of actual AML/CFT onsite monitoring and supervision of casinos and most other categories of DNFBP.</li> </ul>
29. Financial intelligence units	LC	<ul style="list-style-type: none"> <li>VFIU conducts some strategic analysis and has published one report. Whilst acknowledging the continued progress towards strategic analysis, deeper and continued strategic analysis needs to continue.</li> </ul>