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MUTUAL EVALUATION / DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

REPUBLIC OF HAITI

June 23, 2008

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ABBREVIATIONS AND ACRONYMS

BAFE	Bureau des Affaires Financières et Economiques – Financial and Economic Investigation Bureau
BEL	Banque d'Epargne et de Logement – Savings and Housing Bank
BLTS	Bureau de Lutte contre le Trafic de Stupéfiants – Drug Trafficking Investigation Bureau
WB	World Bank
BRH	Banque de la République d'Haïti –Central Bank of Haiti
CEC	Caisse d'Epargne et de Crédit – Savings and Credit Union
CIC	Code d'Instruction Criminelle – Criminal Investigation Code
CIN	Carte d'Identité Nationale – National Identity Card
CIP	Carte d'Identité Professionnelle – Professional Identity Card
CNLBA	Comité National de Lutte contre le Blanchiment des Avoirs – National Anti-Money Laundering Committee
CONALD	Commission Nationale de Lutte contre la Drogue – National Anti-Drug Commission
CP	Code Pénal – Criminal Code
CSCCA	Cour Supérieure des Comptes et du Contentieux Administratif – Superior Audit and Administrative Court
DCASG	Direction Centrale de l'Administration et des Services Généraux – Department of Administration and General Services
DCPJ	Direction Centrale de la Police Judiciaire – Criminal Investigation Department
DEA	Drug Enforcement Administration
DGI	Direction Générale des Impôts – Tax Department
DGPN	Direction Générale de la Police Nationale – National Police Department
IMF	International Monetary Fund
FATF	Financial Action Task Force
CFATF	Caribbean Financial Action Task Force
GRH	Government of the Republic of Haiti
IGPN	Inspection Générale de la Police Nationale – National Police Inspectorate
JO	Journal Officiel – Official Gazette
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
MINUSTAH	United Nations Stabilization Mission in Haiti
NGO	Non-Governmental Organization
GNP	Gross National Product
PNH	Police Nationale d'Haïti –National Police of Haiti
PEP	Politically Exposed Person
TI	Transparency International
UCAONG	Unité de Coordination des Activités des ONG – NGO Coordination Unit
UCREF	Unité Centrale de Renseignements Financiers – Central Financial Intelligence Unit
ULCC	Unité de Lutte Contre la Corruption – Anti-Corruption Unit
UNPOL	United Nations Police

PREFACE

Information and methodology used for the evaluation of the Republic of Haiti

1. The evaluation of the anti-money laundering and combating the financing of terrorism (AML/CFT) regime of the Republic of Haiti1 was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 20042. The evaluation was based on the laws, regulations and other materials supplied by Haiti, and information obtained by the evaluation team during its on-site visit to Haiti from 24 September to 5 October 2007, and throughout the evaluation process. During the on-site visit, the evaluation team met with officials and representatives from all relevant Haitian Government agencies and the private sector. A list of the bodies met is provided in Annex 2 to the Mutual Evaluation Report.

2. The evaluation was carried out by an evaluation team made up of criminal law experts from the World Bank and criminal prosecution and regulatory specialists. The evaluation team consisted of Marianne Mathias (legal expert, consultant), André Cuisset (law enforcement expert, consultant) and Jean Pesme (financial sector, World Bank, team leader). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems

3. This report provides a summary of the AML/CFT measures in place in Haiti as of the date of the on-site visit or immediately thereafter (before December 1, 2007). It describes and analyzes those measures. It also rates Haiti's compliance with the FATF 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be improved (see Table 2).

[1] In this report, Haiti denotes the Republic of Haiti.

[2] As amended in June 2007.

EXECUTIVE SUMMARY

4. This summary of the AML/CFT measures in force in the Republic of Haiti as of the date of the on-site visit, from 24 September to 5 October 2007 and immediately thereafter, describes and analyzes those measures and provides recommendations on how certain aspects of the system could be strengthened. It also rates Haiti's compliance with the FATF 40 + 9 Recommendations (see Table 1: Ratings of Compliance with FATF Recommendations),

5. This evaluation was prepared using the AML/CFT Methodology 2004, as amended in June 2007. The evaluation was based on the laws, regulations and other materials supplied by the Haitian authorities.

Key Findings

6. **In 2001, Haiti enacted an AML Law encompassing the fundamental elements of the fight against money laundering, but has not yet adopted a legal framework to counter the financing of terrorism**. The AML framework sets out a money laundering offence, seizure and confiscation mechanisms, prevention and detection requirements and the basis for international cooperation (limited to mutual legal assistance and the Financial Intelligence Unit). It presents however several significant weaknesses with regard to the international standard (dealing inter alia with the scope of the predicate offences, the coverage of designated non financial businesses and professions, the transparency of legal entities and of non-profit organizations, the restrictions to the lifting of banking secrecy).

7. **The implementation of the existing regime is insufficient, ineffective and weakly coordinated, and is not up to the money laundering and terrorism financing risks facing the country**. The key institutions necessary to the well-functioning of the legislative framework are in place, but have not yet sufficiently used the tools provided for by the 2001 AML Law. No money laundering prosecution has been completed thus far; the number of suspicious transactions reports, which were filed only by the banking sector, remains very small; the compliance by the financial sector with its AML obligations is not properly supervised.

8. **Haiti should adopt a more strategic approach and clarify the roles and objectives of each of the actors of the AML regime, by focusing first on the implementation of the AML regime currently in place**. The efforts should deal, from now on, with the strengthening of the capacity of these various players, their refocusing on their core missions (notably the financial intelligence unit), and the deepening of the cooperation and coordination between these. Haiti should adopt a Law on countering the financing of terrorism, defining a terrorism financing offence and setting up a terrorist asset freezing regime, and should launch a substantial training effort, tailored to the specific mandates of each institution of the AML framework.

1. General information

9. The political reconciliation process and the Government's economic policies have led to a resumption of growth in Haiti. The country's economic and social development indicators are all low; poverty is very high, and the unemployment rate is extremely high. Haiti's economy is dominated by the informal sector. It is a cash economy, with a high degree of dollarization. The financial sector is relatively underdeveloped, with a small proportion of the population holding bank accounts and concentration in the banking sector.

10. Haitian authorities' efforts in recent months (with the backing of MINUSTAH[3] in particular) to step up the fight against insecurity have produced positive results, even though the gains are still fragile. Before 2004, political instability fostered crime and insecurity. The commitment at the highest levels of Government to fight corruption, drug trafficking and financial crime (including money laundering) has been reaffirmed in the strongest terms in recent months and provides a critical foundation for stepping up the fight against organized crime.

11. Geographical, economic and social factors mean that Haiti must cope with a high level of criminal activity. Its location means that the country is generally considered to be a transit hub for drug traffic between South American countries and North America; the level of corruption is described as high; smuggling, illegal immigration and other types of trafficking, such as illegal arms, are widespread. The scale of the laundering of the proceeds of these crimes in Haiti is hard to determine, however, it seems that the money-laundering techniques used in Haiti are fairly simple, and involve real estate and trade.

12. The dominant role of the informal sector in the economy, the prevalence of cash, institutional weaknesses, and corruption are challenges for the effectiveness of any anti-money laundering system. It is a delicate matter to distinguish between the proceeds of crime and the proceeds of informal economic activity. Enhancing transparency for the purposes of combating money laundering could have the unintended effect of shifting certain economic activities into the informal sector. Providing a lasting solution to cope with these special structural features must not rely solely on combating money laundering; a strategic approach, taking a long view and building on other structural reforms, is now needed more than ever.

2. Legal system and related institutional measures

13. **The Law of February 21, 2001 defines the offence of laundering the proceeds of illegal drug trafficking and other serious offences**. The definition of money laundering in Haiti is broadly in line with the Vienna Convention and the Palermo Convention. Haiti has ratified the Vienna Convention and signed the Palermo Convention, but neither has been transposed into Haitian law. The scope of the predicate offences is too narrow. Many categories of offences that are especially relevant in the local context, such as corruption or smuggling, are not crimes carrying prison sentences of more than three years and, therefore, they do not constitute predicate offences. The Law of February 2001 establishes the liability of legal persons in cases of money laundering, albeit too restrictively. A number of prosecutions are currently in the investigation stage and, to date, no convictions have been obtained, even from the lower courts. Prosecutions still seem to focus on predicate offences and deal with money laundering in connection with drug trafficking only. A more determined policy to prosecute money laundering is critical. It would help establish practices and build up a body of case law dealing with financial crimes.

14. **Haiti has not ratified the United Nations Convention for the Suppression of the Financing of Terrorism and it has not criminalized the financing of terrorism.** The

[3] MINUSTAH: United Nations Stabilization Mission in Haiti

authorities must criminalize the financing of terrorism as soon as possible, in keeping with their international commitments.

15. **The Law of February 2001 establishes a comprehensive and satisfactory system for confiscating property related to money laundering, which can even be used to confiscate funds in cases where no conviction for money laundering has been obtained.** The Law also introduces additional instruments for freezing or seizing assets. The authorities have started using these instruments, to offset the absence of prosecution of money laundering in some cases, but there is still too much confusion about the responsibilities and powers of the various players involved. One source of concern is the number of court decisions releasing seized assets. We encourage the authorities to continue using these instruments, but in a more strategic approach that is more in line with the letter and the spirit of the law, particularly with regard to respecting the powers of the institutions concerned (courts, Financial Intelligence Unit, law enforcement agencies).

16. **Haiti does not have a legal framework for implementing United Nations Security Council Resolutions 1267 and 1373, which means it cannot freeze terrorist assets.** The authorities have distributed lists to credit institutions, but without making any distinction between the lists related to Resolution 1267 and the lists related to Resolution 1373. To date, no matching names have been found. The authorities must adopt a legal framework that complies with the respective requirements of the two Resolutions soon.

17. **The Law of February 2001 created a Financial Intelligence Unit in Haiti, the Unité Centrale de Renseignements Financiers (UCREF).** UCREF has been in operation since 2004 and has adequate resources overall. UCREF is an administrative unit and its tasks are to receive, analyze, and disseminate Suspicious Transaction Reports and automatically-filed reports on transactions that exceed a given threshold (reports of origin). To date, fewer than ten Suspicious Transaction Reports have been sent to UCREF, and the very high number of reports of origin apparently exceeds its management and analysis capacities. In the meantime, UCREF plays an increasingly important role in freezing accounts, seizing assets, and managing seized assets. It carries out investigations that are not the result of Suspicious Transaction Reports, but cases referred to various administrative and legal authorities. Consequently, UCREF is turning into a de facto investigation agency. The authorities must refocus UCREF on its core tasks and push for an increase in the number of Suspicious Transaction Reports filed in order to strengthen law enforcement authorities and their action to fight money laundering.

18. **The powers to investigate and prosecute money laundering are vested in the National Police of Haiti and the Public Prosecutor's office.** The investigative authorities can use the instruments available under ordinary law, such as interrogations and searches. The Law of February 2001 creates some more sophisticated investigation techniques, such as telephone taps and undercover operations, which require a court warrant. The integrity of the police and the courts is often described as inadequate and the Haitian authorities have recently undertaken an ambitious program of reform and renewal. The police and the courts are also suffering from a lack of capacity that has not yet been remedied by sporadic training in fighting money laundering. The authorities have experimented with specialized law enforcement action to fight money laundering and other financial crimes, and have started discussions on reorganizing investigation and enforcement tasks with regard to money laundering. We encourage the authorities to promote the professionalization of prosecutors dealing with financial crimes and to ensure a more coherent enforcement policy. This could result in giving unique jurisdiction to the Port-au-Prince prosecutor's office. The authorities should also expand their efforts to have specialized judges and to enhance coordination between the prosecutor's office, investigative magistrates and

investigation authorities. We encourage the authorities to clarify responsibilities for investigations and to set up a strong specialized structure within the National Police to help prosecutors in money-laundering cases.

19. **The Anti-Money Laundering Law prohibits cash transfers of more than two hundred thousand Gourdes (approximately five thousand dollars).** Enforcement of this prohibition is a major challenge, except at the Port-au-Prince airport. The customs administration regularly seizes funds subject to this prohibition, but several of these seizures have been overturned by the courts, to the detriment of the legitimacy of the legal framework. At the same time, the courts have never applied the seemingly disproportionate penalties for violations of the provisions dealing with international funds transfers. We encourage the authorities review these provisions, which do not seem to be suited to the structure of the Haitian economy, and to move towards a system for declaring cross-border transfers with more proportionate penalties for violators.

3. Preventive measures – Financial institutions

20. **The Anti-Money Laundering Law of 2001 defines the due diligence and preventive measures for the financial sector**. This definition covers the financial activities mentioned by the FATF that are relevant in the Haitian context. However, the very broad definition of the activities covered by the anti-money laundering statute is not operational and the lack of communication about the Law means that it is, in practice, applied essentially by banks. The structure of Haiti's financial sector and the lower risks incurred in the insurance and micro-finance sector mean that the main measures to strengthen the system should focus on banks, money transfer companies, foreign exchange dealers, and credit unions.

21. **The due diligence measures date back to before 2003 and do not reflect the stricter requirements of the revised standard.** The fundamental due diligence principles are in place, (customer identification, record keeping, Suspicious Transaction Reports). There are no specific provisions dealing with anonymous accounts and accounts in fictitious names, even though a circular from the Central Bank of Haiti has covered deposit accounts since 1994. The Law does not require identification of the beneficial owners, the gathering of information about the purpose and the nature of the business relationships, constant due diligence in business relationships, periodic updates of identification data, identification of customers with whom business relationships took place before the Law became effective, enhanced due diligence for vulnerable customers and Politically Exposed Persons, risk management in business relationships conducted at a distance, a lower identification threshold for wire transfers, or identification of correspondent banking relationships. The authorities should strengthen laws and regulations to remedy these weaknesses of the 2001 Law. The authorities should also change due diligence requirements for a more subtle and risk-based approach, given the unreliability of identity documents for natural and legal persons, weaknesses in company registers (see below), and the unsuitability of certain current requirements in the Haitian context (address information). Most banks seem to have adopted stricter due diligence systems than required by law, but the lack of in-depth verification by the banking supervisor makes it impossible to ascertain the effectiveness of the system.

22. **Banking secrecy is usually lifted in the fight against money laundering, especially for UCREF and prosecutors**. However, legal restrictions on lifting banking secrecy for the banking supervisor may constrain the effectiveness of the Haitian system to fight money laundering. The authorities mention that they have not encountered any problems with banking

secrecy in practice, and the new Banking Law should provide a sound legal basis for this practice in the future.

23. **The February 2001 Law institutes the requirement to file Suspicious Transaction Reports**, and a requirement to provide a report of origin for any transaction over five thousand US dollars. Fewer than ten Suspicious Transaction Reports have been transmitted to UCREF. On the other hand, several tens of thousands of reports of origin have been sent in, but they have not been analyzed. Under these circumstances, the attention that the banking supervisor and UCREF have focused solely on requiring reports of origin seems misplaced. Efforts to mobilize the financial sector should be quickly redirected to ensuring the effectiveness of Suspicious Transaction Reports.

24. **The ban on tipping off customers when a Suspicious Transaction Report is filed and the protection of reporting entities or individuals from criminal or civil liability are satisfactory.** However, the lack of Suspicious Transaction Reports seems to be explained by grave concerns about the confidentiality of the reports, the protection of the identity of the reporting person, and the personal risks that the reporting individual might incur. Under such circumstances, it is critical for the authorities to agree on mechanisms that unambiguously ensure compliance with these requirements and create a climate of greater confidence for financial institutions; otherwise the whole system will be pointless.

25. **There is no feedback mechanism for reporting entities**, and no information has yet been provided about typologies or guidelines.

26. **The Anti-Money Laundering Law and a Central Bank circular (for banks) require financial institutions to have anti-money laundering programs and internal control systems**. These requirements include naming a compliance officer, providing training for financial institutions' personnel, and, in the case of banks, periodic internal and external audits. There are no provisions regarding foreign branches and subsidiaries, even though one money transfer company has locations outside of Haiti.

27. **There are no shell banks in Haiti.** There are no provisions governing Haitian financial institutions' correspondent banking relationships with shell banks.

28. **At present, there is no regulation or supervision of insurance companies or micro-finance institutions.** The Central Bank of Haiti is the supervisory authority for banks, money transfer companies, foreign exchange dealers, and credit unions. The Anti-Money Laundering Law makes the supervisory authorities for the financial sector responsible for enforcing the anti-money laundering requirements for financial institutions.

29. **The laws and regulations governing supervision of banks, foreign exchange dealers, and money transfer companies are old and do not provide a sound and clear legal foundation for the Central Bank of Haiti to perform its supervisory tasks effectively.** In practice, these concerns do not seem to place excessive constraints on the Central Bank of Haiti, and the ongoing and planned reviews of most of these laws and regulations should enhance the Central Bank of Haiti's capacity for action. The main weaknesses of the current laws and regulations relate to the communication of relevant documents and the ability to impose dissuasive fines. The authorities should take advantage of the ongoing review of financial sector supervision to enhance their supervisory capacities, particularly with regard to sanctions. The requirements for market entry are outdated on the whole. They include the basic elements regarding expertise and integrity, but without identifying the beneficial owners.

30. **Off-site and on-site supervision by the banking supervisor focuses on formal aspects and reports of origin, and is limited to banks at this time.** No sanctions for money laundering-related offences had been handed down as of the date of the evaluation team's visit. Supervisory

authorities must redirect their efforts to supervising the substance and effectiveness of financial institutions' anti-money laundering programs, with special emphasis on customer due diligence and Suspicious Transaction Reports.

31. **The main sanctions for financial institutions that fail to meet the due diligence requirements are criminal penalties; administrative sanctions are either inexistent or very limited and restrictive.** The lack of a graduated scale of sanctions means that the system is not proportionate, dissuasive or effective.

32. **The manpower and capacity of financial sector supervisors must be increased.** A comprehensive supervisory system for preventing money laundering in the insurance and micro-finance sectors does not seem to be a priority at this point, in light of the low risk levels. However, the authorities should set requirements (licensing or registration, fit and proper) to ensure that criminals cannot take over insurance companies or micro-finance institutions.

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

33. **The Anti-Money Laundering Law gives a very broad definition of the activities covered by the anti-money laundering system, but it sets explicit requirements only for casinos and real-estate transactions.** This approach, which could be seen as covering virtually all economic players in Haiti, could not reasonably be interpreted as requiring other Designated Non-Financial Businesses and Professions to exercise due diligence and file Suspicious Transaction Reports. The authorities must include the other Designated Non-Financial Businesses and Professions in the anti-money laundering system, along with real-estate agencies and casinos. The authorities also must conduct an analysis of the risk of other businesses and professions, such as private lotteries ("*borlettes*") and other games of chance, being misused for the purposes of money laundering.

5. Legal Persons, Legal Arrangements, and Non-Profit Organizations

34. **Legal arrangements, such as trusts, are not recognized under Haitian law.** Therefore, Recommendation 34 does not apply.

35. **Mandatory registration of different types of corporations (partnerships, joint-stock companies) with the Ministry of Trade provides minimal transparency about the shareholders and directors of legal persons, but information about the beneficial owners is usually unavailable or out of date.** Data updates are inadequate and there is a risk of falsification of identification information relating to legal persons. Company registry information is public and accessible to investigators and prosecutors, but it has not been computerized.

36. **Lawyers, notaries and chartered accountants are under no obligation to identify beneficial owners when they are involved in forming partnerships or joint-stock companies**.

37. **The lack of rules and a coherent status for non-profit organizations means that supervision of charitable organizations is very fragmented and incomplete.** There is no legal provision for non-profit organizations, which have no legal personality and are de facto bodies that can engage in business relationships with financial institutions. Foundations that manage property for philanthropic purposes must register with municipalities, but there is no central oversight, and such foundations are not supervised after they have been formed. Non-Governmental Organizations for development are supervised by the Ministry of Planning and

External Cooperation and their exposure to the risk of terrorist financing has never been reviewed. We encourage the authorities to conduct a review of the risk of misuse of charitable organizations for the purposes of terrorist financing.

6. National and International Cooperation

38. **Current legislation provides for a body to coordinate and lead the fight against money laundering, the National Anti-Money Laundering Committee (CNLBA).** The Committee is made up of Government authorities and representatives of the financial sector. Its task is to play an active role in cooperation between various players at the national level. However, it does not seem to have performed is assigned tasks, apparently for structural reasons. Consequently, a cross-sector group has recently been set up to promote successful cooperation between the various Government authorities responsible for fighting financial crime.

39. **At the international level, the Law of February 21, 2001 introduces measures for cooperation on mutual legal assistance and extraditions.** These provisions seem to be in line with international standards in these matters. However, inadequate criminalization of money laundering is a constraint because of the dual criminality principle, as well as because treating acts committed in other countries as crimes requires that the same acts be crimes under Haitian law. International legal assistance cannot be provided for terrorist financing since it is not a crime in Haiti. In practice, Haiti has yet to engage in international legal assistance.

40. **International cooperation by the National Police of Haiti is based primarily on Interpol and on operational relations with foreign authorities.** The fact that the National Police has not been mobilized to fight money laundering to date makes it impossible to assess the effectiveness of these mechanisms.

41. **The laws and regulations in force do not provide a legal basis for the Central Bank of Haiti's international cooperation in its capacity as the banking supervisor.** The revision of the Banking Law should provide an opportunity for remedying this situation. This weakness must also be remedied with regard to the Central Bank of Haiti's other supervisory tasks.

42. **The Financial Intelligence Unit is empowered to engage in international cooperation with its counterparts.** UCREF has used this power and has also signed information-sharing agreements with certain foreign counterparts. UCREF has also exchanged information with foreign institutions that are not Financial Intelligence Units.

7. Other issues

43. **Haiti must analyze the risk of money laundering to develop a more strategic approach and to clarify the roles and objectives of the players in the system.** Such an approach would make more efficient use of the limited resources and capacities available. Haiti's objective should be to strengthen the legitimacy, credibility, and effectiveness of the anti-money laundering system by obtaining convictions.

44. **The current anti-money laundering framework has its weaknesses, but it constitutes a sound foundation.** The main institutions are already in place, and efforts should now focus on capacity-building, refocusing these institutions on their core tasks, and enhancing coordination and cooperation between them. Haiti will not be able to adopt all of the reinforcing measures identified during the evaluation at once. Real results and greater effectiveness could be achieved over the next two years by adopting the following measures:

- ❖ Adopting legislation on terrorist financing, criminalizing such acts and establishing a system for freezing terrorist assets
- ❖ Increasing criminal sanctions for the categories of predicate offences to make them crimes (including corruption, embezzlement of Government funds, smuggling, and trafficking in human beings)
- ❖ Adopting a new Banking Law to give greater supervisory powers to the Central Bank of Haiti and to strengthen supervision of compliance with the substance of anti-money laundering requirements
- ❖ Mobilizing financial institutions to file Suspicious Transaction Reports by communicating about this obligation, by disseminating guidelines on money laundering typologies, and by taking measures to make the confidentiality of Suspicious Transaction Reports more credible
- ❖ Refocusing and strengthening the institutions responsible for the system in their respective tasks:
  - o refocusing UCREF on its task of receiving, analyzing, and disseminating Suspicious Transaction Reports;
  - o setting up a special section of the National Police of Haiti with expertise in financial investigations, assigning officers to it on a multidisciplinary basis, and providing them with specialized training;
  - o specializing prosecutors for money laundering cases and considering the advisability of giving unique jurisdiction to the Port-au-Prince prosecutor's office;
  - o training investigative magistrates and trial judges for money laundering cases;
  - o enhancing coordination between prosecutors, investigative magistrates, and investigation agencies.
- ❖ Undertaking a major anti-money laundering training effort that is adapted to specific tasks of each institution in the system.

Table 1: Ratings of Compliance with FATF Recommendations and Main Recommendations
Table 2: Authorities' Response to the Evaluation (if necessary)

MUTUAL EVALUATION REPORT

1 GENERAL INFORMATION

1.1 General Information on Haiti

45. Haiti is located on the Caribbean island of Hispaniola, which it shares with the Dominican Republic. The country's surface area is 28,000 square kilometers and its population is 8.8 million, of which more than 2 million live in the capital, Port-au-Prince. An estimated 2 million Haitians live abroad, primarily in the United States and Canada. Haiti has a 360-kilometer land border with the Dominican Republic and its coastline is 1,770 kilometers in length.

46. The Haitian currency is the Gourde and the exchange rate was 38 Gourdes for US$1 on the date of evaluation team's visit to Haiti. There is a relatively high degree of dollarization of the economy. Haiti's GDP grew by 1.8% in 2005 to US$4.3 billion. Per capita GDP stood at US$ 450. The net flow of ODA funds was US$243 million, and the main donors were the United States, Canada, and France. Poverty is very high in Haiti, with 54% of the population living on less than a dollar a day and 78% on less than two dollars a day.

47. The main economic activities in Haiti are agriculture and fishing, which account for approximately 27% of GDP, trade and hotels and catering (approximately 28% of GDP) and public services (11% of GDP).

48. The informal sector, which is difficult to quantify by definition, plays a predominant role in Haiti's economy. It is estimated to account for nearly 80% of the country's total economic activity. Some of the estimates show less than 10% of the labor force working in the formal sector, with one in four employed in the civil service (see below).

49. An Inter-American Development Bank survey (*Haiti Remittance Survey*) published in March 2007 shows that 55% of Haitians have at least one member of their family living abroad and remittances from expatriates to their families in Haiti were estimated at US$1.65 billion in 2006, of which US$1.17 billion was sent from the United States. Canada ranked second as a source of remittances with US$230 million (14%), followed by France (8%). However, none of these statistics are deemed to be definitive, although the orders of magnitude are generally accepted. Of the countries in the Latin American region, Haiti ranks second behind the Dominican Republic in terms of the proportion of its population receiving periodic remittances. In 2006, 31% of Haitians living in Haiti, which represents 1.1 million people, received periodic remittances from abroad. The information provided to the evaluation team, the IADB survey, and an internal analysis by the Central Bank of Haiti show that most of the funds are transferred through formal channels, such as money transfer companies. However, the high cost of money transfers, compared to other countries in the region, is a cause of concern for the authorities, primarily because this cost reduces the net value of the remittances, but also because it creates an incentive to use more informal money transfer systems. The Central Bank's analysis acknowledges the existence of these systems, but it seems impossible to quantify the share of remittances made through them. Another method that expatriates use to send money home is to have travelers carry it back to Haiti physically (despite the illegality of such transfers). Such travelers are called "mules" in Haiti. The amounts seized by customs and border police (primarily

at the Port-au-Prince airport to date) indicate that such transfers may represent large amounts, but most have not been shown to be of unlawful origin.

50. *Political System, Constitution, and Legal system*

51. Haiti's political system is governed by the 1987 Constitution, which delegates the exercise of national sovereignty to three powers: the legislative branch, the executive branch, and the judiciary. The legislative branch consists of two chambers (the Chamber of Deputies and the Senate). Executive power is exercised the President of the Republic, who is elected by universal suffrage, and the Government, led by the Prime Minister. The judiciary is made up of the Court of Cassation, the Appeal Courts, the Courts of First Instance, Courts of the Peace, and special courts.

52. The political situation in Haiti has been very unstable in recent years, resulting in intervention by the international community through the United Nations Stabilization Mission in Haiti (MINUSTAH) since 2004. The MINUSTAH's mandate was renewed in February 2007 and a decision about prolonging its mission will be made in October 2007. Presidential elections were held in February 2006, following the constitution of an interim Government in 2004 after the fall of President Aristide. The 2006 elections brought President René Préval to power for a five-year term. Legislative elections were held in February 2006 and local elections in December 2006. Preparations for Senate elections were underway during the evaluation team's visit to Haiti.

53. This political instability makes security a major issue in Haiti, especially in the capital. It is estimated that 45 "gangs" are active in Haiti and that there are 140,000 firearms in circulation in the country. On the strength of the political legitimacy stemming from the election process, the authorities and MINUSTAH took determined action at the end of 2006 and in early 2007. This included raids in Cité Soleil, the biggest slum in Port-au-Prince and a refuge for the city's leading gangs. This action led to more than 500 arrests, including gang leaders, and seizures of weapons and drugs. At the time of the evaluation team's visit to Haiti, the authorities described the situation as improving, but still very fragile. Between July and September 2007, there were 48 kidnappings, 46 murders, and 14 rapes reported in Port-au-Prince.

54. The situation of economic governance in Haiti is usually described as very poor. Haiti is ranked among the countries at the bottom of Transparency International's on perception of corruption, even though its relative ranking improved in 2007. A report published in January 2007 presented a diagnostic survey of the challenges relating to the fight against corruption in Haiti. The survey ("*Gouvernance et corruption en Haïti*") was commissioned by the Anti-Corruption Unit and produced with the support of the World Bank Institute. It shows that bribery is the main form of corruption in the country. The survey highlights "weaknesses in the justice and security sectors", and notes that the main reasons that households give for not denouncing corruption are "that there is not likely to be any investigative follow-up, that court rulings will not be enforced, and fear of retaliation". The survey shows "that the justice system, including the Ministry of Justice and Public Safety, the Judges and the Courts, is often seen as lacking in integrity. This lack of integrity in the justice system is underlined by the fact that each of the groups surveyed ranks the National Police of Haiti among the 10 most corrupt agencies".

55. The police and the courts are commonly described as having poor capacity and being prone to corruption. This has led the authorities, with the backing of the international community, to undertake sweeping reform of both institutions. MINUSTAH is carrying out this ambitious and long-winded work with the authorities. The authorities have also established a body that has been given the specific task of fighting Government corruption in recent years, the Anti-Corruption

Unit (ULCC). The authorities have undertaken a full review of their anti-corruption measures, and are preparing a national anti-corruption strategy.

56. At the same time Government agencies in Haiti are underdeveloped and have weak capacity. The Government employs less than 1% of the labor force, as opposed to 2% in Africa and 7% in developed countries. The lack of middle-management personnel is a major structural constraint on the authorities' capacity to set and monitor policies.

1.2 General Situation of Money Laundering and Financing of Terrorism

57. Haiti has not conducted an analysis of money laundering risk. The authorities and many commentators describe the country as a transit hub for drug traffic from Latin America to North America and Europe. It is hard to assess the volumes involved, but they are estimated to be to the order of several tens of tons of cocaine per year. There is still great uncertainty about Haiti's role in recycling the money flows associated with this traffic, but the evaluation team received several indications that point to large flows of cash into Haiti, by sea primarily.

58. Criminal activity in Haiti continues to focus on drug trafficking, primarily the transit of marijuana and cocaine arriving from South American countries and Jamaica and headed towards the United States, Canada and Europe. Haiti's geographical location directly in the Caribbean corridor for international drug traffic, its unique coastline and mountainous landscape, the impossibility of ensuring proper surveillance in some regions, the country's weak law enforcement resources, and the perception of a high level of corruption[4] (see paragraph below on economic governance) are all factors that combine to make Haiti a strategic staging post and a major hub for regional drug traffic[5]. Most of the traffic is carried by small aircraft, which unload their cargo on clandestine landing strips[6] throughout the country, or by speedboats[7] landing on Haiti's poorly patrolled coastline, taking advantage of weaknesses in the Haitian system and the corruption of law enforcement authorities. Drugs are then carried overland to Port-au-Prince or to the north of the country, especially Cap-Haïtien, where they then continue on their way to their final destination[8].

59. There is a local market in for consumption and trafficking of drugs, but it is small and very minor in comparison to the international drug traffic transiting through the country.

60. The volume of drug trafficking generates income that has been impossible to estimate, but it is undoubtedly very substantial, even though Haitian criminals probably act merely as

[4] According to the report published in January 2007 on the diagnostic survey on Governance and Corruption in Haiti by the Haitian anti-corruption authorities with technical assistance from the World Bank Institute, "corruption continues to be a serious challenge in Haiti, with weaknesses in the justice and security sectors" (report, page 17).

[5] According to an official North-American estimate, 15% of the cocaine entering the United States each year transits through the island of Hispaniola, which is shared by Haiti and the Dominican Republic.

[6] In 2006, some forty clandestine flights carrying drugs from Venezuela were detected. The average payload of drugs carried on such flights is between 500 and 700 kilograms. The frequency of clandestine flights carrying illicit drugs between Venezuela and the island of Hispaniola increased by 167% between 2005 and 2006, according to a report by the United States State Department published in March 2007 (International Narcotics Control Strategy Report 2006, page 208)

[7] Haiti is located some 400 miles from the north coast of Columbia and is accessible to this type of craft.

[8] From 2001 to the present, Haiti's National Police seized approximately 3,600 kilograms of marijuana and 1,750 kilograms of cocaine, which is insignificant compared to the real volumes transiting through the country.

middlemen in international drug traffic. Recent cases point to substantial traffic between Haiti and Canada that is managed directly by Haitian expatriates, and the proceeds are laundered by means of real-estate investments in Port-au-Prince.

61. Much of the criminal activity found in Haiti, such as corruption, embezzlement of Government funds, smuggling, counterfeiting, kidnappings, illegal emigration and the associated activities, as well as tax fraud, also generates flows of income. Many of these activities are not (yet) legally deemed to be predicate offences for money laundering under Haitian law, but, in the eyes of the evaluation team, the recycling of the financial flows stemming from such illicit activities places Haiti at very great risk for money laundering.

62. Since 2004, kidnapping for ransom has emerged as a lucrative criminal activity, which is apparently new in Haiti. This crime has become a real problem for Haitian society and for the authorities, even though the action of the authorities, with the backing of MINUSTAH, seems to have made some inroads recently. In the first half of 2006, the National Police of Haiti had to deal with 114 kidnapping cases, but the number of cases rose to 241 in the month of December 2006 alone.

63. There are no statistics or credible estimates relating to the financial or economic aspects of these various criminal activities. This means there is no reliable estimate of the volume of related money laundering in Haiti, but recent criminal cases brought against some leading Haitian drug traffickers[9] in the United States confirm that it is significant.

64. As the investigative authorities have not established a typology of money laundering arrangements in Haiti, and there have been no convictions in money laundering cases, or even any Suspicious Transaction Reports filed, the evaluation team was not able to form a definitive opinion about a credible estimate of the amount of money laundered or about money laundering patterns. However, the team noted the large number of cash transactions in the economy, the scale of cash seizures at the border, and, more generally, the permeability of Haiti's economy to cash. Most of the team's contacts mentioned the growth of the real estate sector, where cash transactions are common and transactions are not systematically traceable. The mission's interlocutor also mentioned to role of casinos, and, more generally, the scale of Haiti's informal economy, with a special money laundering risk that seems to exist in the trade sector. The combination of the large informal sector and the prevalence of cash transactions make it difficult to distinguish between financial flows stemming from tax evasion and flows stemming from criminal activity.

65. According to the information gathered by the team, money laundering in Haiti does not involve sophisticated typologies or methods. Apparently the proceeds of all types of criminal activity are simply used as cash payment for consumption, improving lifestyles, purchasing cars and private construction. At a higher level, money laundering may be carried out through the trade sector, by importing and distributing food products and clothing, or through gas stations, lotteries, and casinos[10]. More elaborate arrangements are only used to launder the proceeds of high-level political and administrative corruption and embezzlement. These arrangements may

[9] From 2001 to the present, the National Police of Haiti has arrested 487 people on drug trafficking charges, 15 of whom have been transferred to the United States since 2004.

[10] For more on this subject see the case in appeal as of May 11, 2007 between the United States of America and Serge Edouard, who is considered to be one of the top Haitian drug traffickers at the following website: http://www.ca11.uscourts.gov/opinions/ops/200515808.pdf

include the use of foreign dummy companies to manipulate flows of funds and direct them to the desired destination.

66. The information gathered by the evaluation team does not point to any specific terrorist risk in Haiti at this stage. However, the evaluation team feels that the complete lack of any system to combat terrorist financing and the large number of cash transactions and funds transfers make the country vulnerable with regard to international terrorist financing.

67. The possibility that international terrorists may use Haiti as an intermediate base for their financial flows cannot be ruled out. As a Caribbean hub for drug traffic, Haiti risks being used by South American organizations that some countries have named as terrorist organizations under the terms of United Nations Resolution 1373, and which finance some of their activities through international drug trafficking[11].

68. Since the end of the Duvalier (father and son) regimes and the Aristide regime, the Haitian authorities have expressed their interest in recovering the funds alleged to have been embezzled when these rulers were in power. Diplomatic-based requests to freeze funds have been sent to Switzerland and some of the funds have been frozen in the United States. Switzerland is said to have frozen the Duvaliers' accounts. The funds embezzled by Mr. Aristide were investigated by Haiti with external technical support and the involvement of UCREF. The evaluation team was told that the investigation findings had been sent to the judicial authorities in 2005. The evaluation team was also told that court proceedings had been started in the Duvalier case a few weeks before the evaluation team's visit to Haiti, but that no legal action had yet been taken in the Aristide case[12].

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions

69. The financial activities defined by the FATF are primarily carried out by financial institutions under the supervision of the Central Bank of Haiti (*Banque de la République d'Haïti* –BRH). This category includes (see table below) banks and credit institutions, money transfer companies, credit unions, and foreign exchange dealers[13]. There is no securities market in Haiti. Insurance products are provided by insurance companies, which mainly sell non-life insurance. Haiti also has an official credit union sector, which is regulated by the Central Bank of Haiti and a more informal credit union sector that includes microfinance institutions.

70. The authorities started a process to completely overhaul banking laws and the Parliament is currently debating a new banking Law. This process extends to the supervision of credit unions (new Law of 2002). The authorities are also discussing a reorganization of the insurance sector, which is not subject to any supervision in practice at this time.

Financial Institutions in Haiti According to the FATF Classification of Activities

[11] Revolutionary Armed Forces of Columbia (FARC), National Liberation Army (ELN) and the United Self-Defense Forces of Columbia (AUC)

[12] The complexity of these procedures for recovering funds could lead Haiti to seek international support under the joint initiative of the World Bank and the United Nations, "Star" (Stolen Asset Recovery).

[13] Foreign exchange dealers in Haiti are allowed to do business only as bureaux de change.

	Activities and transactions concerned	**Institutions engaging in them**	**Supervisory authority**
1.	Acceptance of deposits and other repayable funds from the public	Banks[14] – Credit Unions[15]	BRH
2.	Lending	Banks – Credit Unions	BRH
3.	Financial leasing	N/A	
4.	The transfer of money or value	Banks – Money Transfer Companies - Credit Unions	BRH
5.	Issuing and managing means of payment (e.g. credit and debit cards, checks, travelers' checks, money orders and bankers' drafts, electronic money)	Banks	BRH
6.	Financial guarantees and commitments	Banks	BRH
7.	Trading in: a) Money market instruments (checks, bills, CDs, derivatives, etc.) b) Foreign exchange; c) Exchange, interest rate and index instruments; d) Transferable securities; e) Commodities futures trading	 Banks Banks – Forex Dealers – Credit Unions Banks Banks N/A	 BRH BRH BRH BRH
8.	Participation in securities issues and the provision of financial services related to such issues.	Banks	BRH
9.	Individual and collective portfolio management	Banks	BRH
10.	Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks	BRH
11.	Otherwise investing, administering, or managing funds or money on behalf of other persons	Banks	BRH
12.	Underwriting and placement of life insurance and other investment related insurance.	Insurance Companies	MEF

[14] Including Savings and Housing Banks, where appropriate.

[15] Credit unions are deemed to take funds from their members and/or users, not from the public. Credit union users must become members 3 to 6 months after their first transaction with the credit union.

	Activities and transactions concerned	**Institutions engaging in them**	**Supervisory authority**
13.	Changing money and currency	Banks – Forex Dealers – Credit Unions	BRH

71. Banks. Banking activity is governed by the 1980 Law. There are currently 10 banks in Haiti, following the recent liquidation of Socabank. That bank's business was taken over by Banque Nationale de Crédit, a State-owned institution. Two banks are State-owned and two international banks are present in Haiti (Citibank and Scotiabank). Three banks account for 70% of bank capitalization. One bank has the status of a savings and housing bank (SOGEBEL), which is governed by a specific Law, as well as ordinary banking laws.

72. The bank penetration ratio is low on the whole, confirming the Haitian economy's very strong reliance on cash. The proportion of Haitians with bank accounts is still very low, with a total of only 1.7 million bank accounts, while in fact only an estimated 700,000 Haitians out of a total population of 8 million hold bank accounts. Aggregate bank deposits come to some 62 billion Gourdes, or the equivalent of less than US$2 billion split between 10 banks. The authorities estimate that 17% of the members of the labor force hold bank accounts. The authorities and banks indicated that most of the accounts are savings accounts and that the average balance on these accounts is very low.

73. Money transfer companies. Haiti has fourteen authorized money transfer companies. Ten are authorized directly by the Central Bank of Haiti, and three are affiliated with banks, which means that they are covered by the banks' authorizations. One agent is affiliated with an international network that uses a Haitian bank as a paying agent. Even though the agent is subject to banking supervision through that bank, the agreement between the international network and the Haitian bank in question has not been validated by the banking supervisor.

74. Foreign exchange dealers. There are 19 authorized foreign exchange dealers (bureaux de change) in Haiti. The authorities are aware that a substantial share of foreign exchange activity takes place in the informal sector, where it is sometimes combined with money transfer activities, but they deem that the informal sector is not structured and that there are no major informal operators.

75. Credit unions. The credit union sector, where institutions are officially called "coopératives d'épargne et de credit" (CEC), is undergoing a complete restructuring following the enactment in June 2002 of a Law that totally reorganized the sector and its supervision in the wake of a crisis caused by pyramid schemes. The Central Bank is now responsible for supervising credit unions and has started to establish a new regulatory and supervisory system. At the time of the evaluation team's visit, more than 200 credit unions had been recognized, with assets of 2 billion Gourdes (US$50 million), and more than 330,000 identified members. The Central Bank of Haiti is reviewing all of the authorizations and has carried out on-site inspections in the 58 credit unions that make up its original "target group". The Canadian corporation Développement International Desjardins (DID) has also provided technical assistance to a network of Haitian credit unions. DID is a key contact for the Central Bank of Haiti.

76. Insurance. The formal insurance sector in Haiti deals mostly in non-life insurance. Only two companies located in Haiti offer structured life insurance policies. Only one of the two

companies is really doing business, as an agent for a North American insurance company. The other company is a subsidiary of a Bahamian company that seems to have suspended its life insurance activity. One or two local companies offer life insurance products in very limited volumes and their policies cannot be capitalized or bought back. The leading company is American and estimates that it has between 2,000 and 2,500 life-insurance policies outstanding. On the other hand, local operators have reported that the market is completely open to foreign operators, which are mainly American, but also Canadian and European. Their agents sell life insurance in Haiti without any legal structure. In addition to the insurance companies themselves, agents and salespeople are doing business (legally) in the insurance sector.

77. Microfinance. In addition to the credit unions officially supervised by the Central Bank of Haiti, there are many institutions doing business in the informal "cooperative" sector as microfinance institutions. The authorities have indicated that they are aware of "informal credit unions", which are called "soldes". These groups are often quasi-associations that operate in a similar manner to the "tontines" of Africa. The microfinance sector has indicated that it is militating for a legal framework to be established for microfinance in Haiti, with the designation of a supervisor. The sector is structured around two associations, with a total of 25 substantial microfinance institutions doing business in Haiti, with some 130,000 customers and a loan portfolio of some 2 billion Gourdes. Some microfinance institutions also act as paying agents for money transfer companies.

Designated Non-Financial Businesses and Professions

78. Article 2.1.1 of the 2001 Anti-Money Laundering Law extends the obligations "to any natural or legal person that, as part of its business, carries out, oversees or provides advice for transactions involving deposits, exchanges, investments, conversions, or any other movement of capital". Yet, casinos and gaming establishments are the only Designated Non-Financial Businesses and Professions subject to specific obligations under the Law. Their obligations relate to the mandatory notification of the Ministry of Economy and Finance prior to commencing business and the mandatory authorization to open and operate, as well as the mandatory identification of their customers and recording of their transactions.

79. Statutory auditors. In general, statutory auditors in Haiti belong to a professional association that has not provided its members with any training relating to combating money laundering and terrorist financing. The authorities have not taken any action to promote such obligations for statutory auditors. Some statutory auditors offer advice on incorporating businesses, in addition to their conventional auditing business. Only one accounting firm, which is the local representative of an international audit firm and the auditor for nine of the ten banks in Haiti, actually audits compliance with anti-money laundering measures, as part of its certification of the financial statements and its audit of internal control processes.

80. Lawyers. Lawyers may law as business lawyers in real estate transactions, asset management, opening and managing bank accounts, organizing corporate finance, as well as setting up, buying and selling, operating and managing legal persons and legal arrangements. There are not many lawyers practicing business law. In Port-au-Prince there are said to be between 20 and 50 such lawyers. As a general rule, the bar associations do not seem to have taken action to implement their obligations under the anti-money laundering Law. The evaluation team did not feel that the authorities had made any efforts to provide training for lawyers with regard to these obligations either.

81. Casinos. There are only three official casinos in Haiti. Two of them are located in hotels. They are subject to the commercial code, company law and the usual tax provisions. The 2001 Anti-Money Laundering Law sets out special obligations for casinos. These include notification of the Ministry of the Economy and Finance before taking up their business, proving the lawful origin of their initial capital, obtaining authorization to operate, identifying their customers, recording all transactions involving the sale or exchange of chips greater than a statutory threshold of 200,000 Gourdes, as well as all funds transfers, in a special register with numbered leaves initialed by the Central Bank. In addition to the casinos, there are street lotteries called "borlettes", which are very popular with Haitians. These lotteries are run by private companies or partnerships. They handle large amounts of cash, but they are not subject to any anti-money laundering regulations. In general, neither the casinos nor the lotteries are subject to any Government supervision with regard to money laundering.

82. Notaries. Notaries are involved in real estate sales and the incorporation of partnerships or joint-stock companies. They also provide financial advice. To date, there is no professional body for notaries to oversee compliance with professional ethics, although there is an association made up of some notaries, primarily in Port-au-Prince, with the stated aims of promoting best practices and greater integrity within the profession. There is no Government supervision of notaries' activities, particularly with regard to the risk of involvement in the laundering of the proceeds of drug trafficking, which has already been mentioned in real estate transactions.

83. Business service providers. Chartered accountants, statutory auditors, lawyers, and notaries provide financial, tax, and other types of advice to businesses. More specifically, notaries and lawyers play a key role in the incorporation of legal persons and in real estate transactions. UCREF is said to have called upon some notaries in its information gathering, but the authorities have not yet taken any general action to make such professionals aware of their obligations with regard to preventing and detecting money laundering.

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

84. Commercial activity is governed by the 1926 Commercial Code, which was amended in 1949. Businesses can be incorporated as general and limited partnerships (*société en nom collectif* or *société en commandite simple*) or as joint-stock companies and limited partnerships with share capital (*société anonyme* and *société en commandite simple par actions*). In practice, the most common legal forms are general partnerships and joint-stock companies. Joint-stock companies are subject to special regulations under the terms of the Company Law of August 3, 1955, which was amended by decrees issued on August 28, 1960, October 16, 1967, November 11, 1968, October 10, 1979, March 8, 1984, and April 11, 1995. Bearer shares are legal. Companies must register with the company register and register any changes to their articles of incorporation. Haiti's commercial law does not allow incorporation of offshore companies. However, nothing prevents companies incorporated in other countries from doing business in Haiti.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

85. To date, the Haitian authorities have not drawn up an overall strategy to combat money laundering and terrorist financing. The cornerstone of the fight against money laundering is the

Anti-Money Laundering Law of February 21, 2001. The political situation in Haiti meant that this Law was not really enforced before 2004. The authorities have stepped up their action to promote good governance and to fight financial crime in recent years, especially since the Regional Summit of March 16, 2007 attended by the Dominican Republic, Columbia, Haiti, Trinidad and Tobago, and Saint Vincent, that addressed drug enforcement, taking an approach that encompassed combating drug trafficking and money laundering, and since the speech given by President Préval on May 18, 2007 in which he asserted, "We will devote this year to a ruthless fight against all forms of corruption".

86. The fight against drugs has been one of the authorities' stated priorities for several years now and there is extensive cooperation with the United States in this matter under the terms of a formal agreement signed between Haiti and the United States in 1997, under the previous Préval administration. The main results of this cooperation have been drug seizures and arrests of drug traffickers, who are subsequently tried in the United States. The commitment to fighting corruption can be seen in the creation of the Anti-Corruption Unit (ULCC) in 2004. The commitments of the main political forces in Haiti in this regard are set out in the Port-au-Prince Declaration, which can be consulted on the ULCC website. The Declaration was signed by 48 of the political parties in Haiti in April 2005.

87. Yet, little use has been made of the anti-money laundering instruments to combat predicate offences, and there have been few results in the fight against money laundering. The authorities acknowledged to the evaluation team that the lessons must be learned from the experience acquired to date and efforts to fight money laundering must be given new impetus.

b. Institutional Framework for Combating Money Laundering and Terrorist Financing

88. National Anti-Money Laundering Committee. The Anti-Money Laundering Law of February 21, 2001 instituted the National Anti-Money Laundering Committee (CNLBA). The Purpose of the Committee is to promote, coordinate, and recommend policies to prevent, detect, and fight money laundering. It works under the authority of the Ministry of Justice and Public Safety. The members are the coordinator of the National Commission to Combat Drugs, who chairs the Committee, a judge, a civil servant from the Ministry of the Economy and Finance, a civil servant from Central Bank of Haiti, a representative of the Banking Association, and a representative of a related sector, alternating between the insurance sector and the credit union sector. The Committee's tasks consist of coordinating public and private sector efforts to prevent money laundering, analyzing enforcement measures of legislative provisions, making recommendations to improve these measures, promoting public education and prevention, and, most importantly, supervising the work of the Central Financial Intelligence Unit (UCREF) with respect to its disclosure requirements, confidentiality requirements, and its operational organization (staffing levels). The Law stipulates that the Committee shall hold an ordinary meeting every three months, but it may also hold extraordinary meetings. The Managing Director of UCREF provides the secretariat for the CNLBA. However, the CNLBA has not really operated in accordance with its articles of association since it was formed.

89. Ministry of Justice. The Ministry of Justice and Public Security is the parent agency for the National Anti-Money Laundering Committee, and for UCREF. The Central Financial Intelligence Unit receives its budget from the Ministry of Justice and the Ministry of Justice is the parent agency for public prosecutors.

90. Public Prosecutors. The State is represented in court by the Government Commissioners and their deputies, who law as public prosecutors in criminal cases. In the fight against money laundering, the Government Commissioners are responsible for bringing the relevant criminal proceedings and prosecuting cases in the courts. There is a Government Commissioner for each of the 17 Courts of First Instance hearing civil and criminal cases (Criminal Court) in Haiti, as well as for each of the five Appeal Courts, and the Court of Cassation. There is no prosecutor's office specializing in money laundering and financial crime, but, in practice, the Government Commissioner for the capital, Port-au-Prince, handles money-laundering cases.

91. Courts. The Haitian court system is based on the following degrees of jurisdiction. The lowest courts are the 181[16] Courts of the Peace, with at least one such court in each municipality to hear legal, mediation, and extrajudicial disputes. The Courts of the Peace also law as police courts. Above them are the 17[17] Courts of First Instance, which law as criminal courts to hear criminal cases, 5 Appeal Courts, and one Court of Cassation.

92. UCREF. The Anti-Money Laundering Law of February 21, 2001 instituted the Central Financial Intelligence Unit (UCREF), which is supervised by the CNLBA, to receive, analyze, and disseminate Suspicious Transaction Reports filed by persons and organizations subject to the Law. This Financial Intelligence Unit is overall in line with the relevant international provisions. It is an administrative agency that reports to the Ministry of Justice and Public Safety. There are currently about 40 civil servants working for UCREF.

National Police of Haiti

BAFE

93. The Financial and Economic Investigation Bureau (BAFE) was created in 2001 as part of the Criminal Investigation Department. It has special responsibility for combating money laundering. BAFE started with 26 police officers trained in combating money laundering, the vast majority of whom were later seconded to UCREF. At present, BAFE only has 6 police officers left on staff and, consequently, its operational effectiveness in financial investigations is very limited.

BLTS

94. The Drug Trafficking Investigation Bureau (BLTS) is a specialized unit of the Criminal Investigation Department. It is made up of about fifty police officers and receives operational and material support from the United States Drug Enforcement Administration (DEA), as well as MINUSTAH, including UNPOL.

Coast Guard

95. The Haitian and American Coast Guards have developed operational cooperation, particularly in Haiti's territorial waters under the terms of an agreement that the United States and Haiti signed on October 17, 1997 on cooperation on ending drug trafficking at sea, which was ratified by the Decree of December 19, 2000. The Haitian Coast Guard has one hundred National Police officers and two bases, as well as an operational fleet of four 32-foot and 40-foot boats.

[16] As of December 31, 2006

[17] As of October 2, 2007

The Haitian Coast Guard also cooperates with MINUSTAH and combats drug trafficking. Yet, it has very limited material resources and geographical coverage, leaving much of the coastline unpatrolled, particularly in the south of the country. The authorities have indicated that they intend to expand its fleet.

Intersector Task Force on Financial Crime.

96. The Intersector Task Force on Financial Crime was set up to support the fight against corruption and, more specifically, the action of the Anti-Corruption Unit created in 2004. The Task Force is made up of the Head of Customs, the Head of the Anti-Corruption Unit, the Head of the Tax Department, the Prosecutor from the Court of First Instance in Port-au-Prince, the Senior Justice of the Superior Audit and Administrative Court, the Coordinator of Public Procurement, the Head of UCREF, and the Head of the National Police. The purpose of the Task Force is: a) to define a strategy to fight corruption in public institutions and corporations more effectively; b) to expedite the cases involving public institutions; c) to decide how to handle cases or incidents involving public institutions; d) to exchange information on offences and violations committed in public institutions and corporations; e) to evaluate the anti-corruption, anti-money laundering, and financial crime structures established in the various entities.

MINUSTAH / UNPOL

97. The United Nations Stabilization Mission in Haiti, set up under the terms of Resolution 1542 of April 30, 2004, along with the United Nations Police, provide assistance to the National Police Haiti and the court system for professional training, supervising the integrity of police officers, and a legal reform project.

Drug Enforcement Administration

98. The United States Drug Enforcement Administration (DEA) works closely with its Haitian counterparts, particularly the Drug Trafficking Investigation Bureau of the Criminal Investigation Department, carrying out joint operations in Haiti and its territorial waters, and contributing to the training and equipment of Haitian police officers. In practice, the DEA makes arrests on Haitian soil and the suspects are tried by American courts.

Ministry of the Economy and Finance

99. Beyond the role it plays through the Customs Administration, the Ministry of the Economy and Finance does not have any operational functions in the system for combating money laundering and terrorist financing. It shares supervision of the insurance sector, which has been purely notional up until now, with the Ministry of Trade and Industry, but there does seem to be a debate under way on this point.

100. Customs Administration. Its position at the borders means that the Customs Administration has a natural jurisdiction for matters relating to drug trafficking and unlawful funds transfers. However, its lack of resources, with only 180 surveillance agents to cover the whole country, makes it very ineffective. Fourteen seizures of funds were made between 2004 and March 2007, with the average amount seized standing at 15,000 dollars. The Customs Administration's jurisdiction in drug cases has been contested. It does not have any means of patrolling the sea. Most seizures of funds take place at the Port-au-Prince Airport and the other points of entry into Haiti are not patrolled.

Anti-Corruption Unit

101. A special commission with investigative powers was set up in 2004 to investigate all types of Government corruption. The Anti-Corruption Unit (ULCC) was created by the Decree of September 8, 2004, which was published in the official gazette on September 13, 2004. The Anti-Corruption Unit reports to the Ministry of the Economy and Finance. It is a Government agency incorporated as a legal person with administrative and financial independence, and nationwide jurisdiction. Its primary task is to carry out preventive and enforcement actions, and to formulate recommendations. Its enforcement tasks include using information and investigating complaints about suspected cases of corruption and similar offences referred to it, and referring the suspected corruption cases to the courts for prosecution or monitoring, as appropriate, after completing its investigations. This means that the Anti-Corruption Unit enjoys fairly broad independence. Not a single conviction has been obtained in court to date.

Central Bank of Haiti

102. The Central Bank of Haiti (Banque de la République d'Haïti) was instituted by the Law of August 17, 1979. It is a public institution incorporated as a legal person. Its tasks include "promoting the most favorable monetary, credit and foreign exchange conditions for the development of the national economy" and "adapting means of payment and credit policy to the legitimate needs of the Haitian economy and, more specifically, national output growth". Its Bank and Financial Institution Supervision Department is "responsible for monitoring compliance with the laws and regulations relating to financial institutions", including by means of on-site inspections.

c. The Approach to Risk

103. The Haitian system for combating money laundering and terrorist financing does not include a risk-based approach. At the time of the evaluation team's visit to Haiti, the authorities had not produced any risk mapping for money laundering risk in Haiti.

d. Progress since the last mutual evaluation or assessment

104. Haiti has been a member of the Caribbean Financial Action Task Force since 2001. It has not yet been subject to a Mutual Evaluation or a Detailed Assessment Report. This assessment was conducted as part of the Haitian Financial Sector Assessment Program. It has been agreed with the authorities and the Secretariat of the CFATF that the assessment shall be presented to the Plenary Session of the CFATF as a draft Mutual Evaluation of Haiti.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1 Description and Analysis

105. The Haitian Parliament adopted the Anti-Money Laundering Law on February 21, 2001. The Law came into force on April 5, 2001, when it was published in the *Moniteur*, the official gazette of the Republic of Haiti.

106. On November 4, 1990, Haiti ratified the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention). Haiti signed the 2000 United Nations Convention against Transnational Organized Crime (Palermo Convention) but it has yet to ratify it. Haiti has also signed, but not ratified, the Merida Convention against Corruption. None of these conventions has been transposed into Haitian law.

107. Article 276.2 of the Constitution of the Republic of Haiti, which was adopted on March 10, 1987, stipulates that "once international treaties and agreements have been sanctioned and ratified according to the procedures stipulated in the Constitution, they shall become part of the country's legislation and repeal any laws that are contrary to them". Despite this provision, the international conventions that Haiti has signed and ratified that bind the signatory countries to adopt legislation, to criminalize new acts, for example, require measures to transpose these provisions into domestic law, if only to set the sanctions for each of these offences.

108. Under the terms of the Law, the following acts are deemed to be money laundering (Article 1.1):

- converting or transferring assets for the purpose of dissimulating or disguising the unlawful origin of the said assets, or aiding or abetting any person involved in committing the offence giving rise to these assets to avoid the consequence of his acts;

- dissimulating or disguising the nature, the origin, the location, the use, the movement, or the ownership of assets;

- acquisition, holding, or use of assets by a person who knows or should know that the said assets are the proceeds of crime under the terms of this Law.

109. The definition of money laundering in the Haitian Law complies with Articles 3 (1) (b) and (c) of the Vienna Convention and 6 (1) of the Palermo Convention.

110. The "assets" concerned by the criminalization of money laundering are assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.

111. "Proceeds of crime" designates any property or economic benefit derived directly or indirectly from an offence carrying a prison sentence of more than 3 years (Article 1.2).

112. The threshold method adopted by Haiti means that we must look at the sanctions stipulated in the Haitian Criminal Code for the predicate offences for money laundering listed by the FATF. The threshold that Haiti has adopted is contrary to the FATF recommendations, which call for all offences carrying a maximum prison term of more than one year to be included, or for all offences carrying a minimum prison term of more than six months to be included.

113. The items in shaded boxes are offences that may be qualified as predicate offences for money laundering:

Offences	Prison term
Participation in an organized criminal group and racketeering	3 to 9 years / Hard labor for life
Terrorism, including terrorist financing	10 to 20 years for terrorism (Art.63 and 381bis CC). Terrorist financing not an offence (but preparatory action for terrorism is an offence).
Trafficking in human beings and migrant smuggling	< 3 years
Sexual exploitation	< 3 years
Drug trafficking	10 to 30 years
Arms trafficking (except exports)	Up to 15 years
Illicit trafficking in stolen goods	Fencing as the initial offence
Corruption	< 3 years
Fraud	< 3 years, except fraudulent bankruptcy
Counterfeiting currency	Hard labor for life
Counterfeiting and piracy of products	< 3 years
Environmental crime	< 3 years
Murder, grievous bodily injury	Hard labor for life
Kidnapping, illegal restraint, and hostage-taking	Hard labor for life
Robbery or theft	< 3 years, except aggravated theft
Smuggling	< 3years
Extortion	1 to 5 years, Hard labor if aggravated
Forgery (except forged passports)	Hard labor, penal internment
Piracy	Hard labor, penal internment
Insider trading and market manipulation	Not applicable

114. Predicate offences committed abroad must be criminal offences in the countries where they are committed *and* under Haitian law, unless specifically agreed otherwise (Article 1.2 of the 2001 Anti-Money Laundering Law). There are no agreements in force on this matter. Nor has Haiti stipulated that the only prerequisite is that acts committed abroad would have been qualified as predicate offences if they had been committed in Haiti.

115. Present judicial practice seems not to treat money laundering as a separate offence. A decision by the Court of Cassation on July 24, 2001 requires a prior ruling from the Superior Audit and Administrative Court (CSCCA) on the amounts owed before any prosecution of a civil servant for corruption, bribery, or embezzlement. In its fifty years of existence, the CSCCA has handed down only three such rulings.

116. There is nothing in the law to prevent a person from being convicted of both money laundering and committing the predicate offence. The judicial authorities do not dispute this possibility. However, the lack of any case law in this matter means that this interpretation cannot be validated. The evaluation team was not shown any case law relating to dealing in stolen goods that enabled it to compare the judicial thinking on the matter.

117. Haitian law provides for appropriate ancillary offences to money laundering. Attempted money laundering, and aiding and abetting money laundering are both punished in the same way as the completed offence. The same is true conspiracy to commit money laundering (Article 4.2.2.).

118. Under the terms of Article 2 of the Criminal Code, an attempted offence is inferred from the manifestation of external acts, followed by the commencement of execution, and the attempt must have been suspended or must have failed solely because of fortuitous circumstances or circumstances beyond the control of the perpetrator.

119. The knowledge or intentional elements of the offence may be inferred from objective factual circumstances. Money laundering through the acquisition, holding or use of assets arising from an offence carrying a prison term of more than 3 years must be committed knowingly. However, the courts may assess this requirement with regard to the suspect's position ("person who knows or should know") (Article 1.1. (c)). This provision, which authorizes a lower standard of proof of knowledge than in ordinary criminal cases, marks an improvement in Haitian law.

120. Legal persons, other than the State, on whose behalf subsequent offences have been committed by their structures or representatives shall be liable to a fine that is five times greater than the fines stipulated for natural persons (Article 4.2.3), which means between 10 million and 100 million Gourdes (or between US$280,000 and US$2.8 million). Legal persons may also be:

- banned from directly or indirectly engaging in certain professional activities definitively or for 5 years;
- forced to close down any of their establishments used to commit the offences permanently or for five years;
- forced to dissolve if they were created to commit the offences in question;
- forced to disseminate the ruling in the print media or by any other means of audiovisual communication.

121. In addition to the vague wording of the first part of the sentence in Article 4.2.3 ("subsequent offence"), the requirement that the offence be committed by a structure or representative of the legal person substantially reduces the chances for engaging its liability. It should be noted that that criminal liability of legal persons is a new development in Haitian law, introduced by the 2001 Anti-Money Laundering Law.

122. Article 4.2.4 of the 2001 Anti-Money Laundering Law provides for a disciplinary procedure for natural and legal persons subject to the Anti-Money Laundering Law that fail to comply with the prudential provisions, in the event of gross negligence or problems in the organization of internal procedures to prevent money laundering. This procedure is initiated by the disciplinary or supervisory authority in accordance with professional and administrative regulations. This means that it is possible to launch criminal prosecution, administrative proceedings, and disciplinary action in Haiti all at the same time.

123. Natural persons convicted of money laundering are liable to 3 to 15 years in prison and a fine of 2 million Gourdes (approximately US$56,100) to 20 million Gourdes (approximately US$561,000 at the prevailing exchange rate on September 25, 2007) (Article 4.2.1 of the 2001 Anti-Money Laundering Law).

124. The 2001 Anti-Money Laundering Law provides for increased sanctions, for natural persons only, and in the following cases: (Article 4.2.6.)

- when the original offence carries a sentence of more than 3 years
- when the offence is committed by a civil servant in the exercise of their professional activity or by an elected official in the exercise of their powers.
- when the offence is committed by a criminal organization.

In such cases, the sanctions provided for in Articles 4.2.1 and 4.2.2 may be doubled.

125. These criminal penalties appear to be proportionate and dissuasive, for both natural and legal persons. However, they have never been enforced and the evaluation team is therefore unable to assess their effectiveness.

126. To date, no one has been convicted of money laundering by a Haitian court. There are no statistics on the number of money-laundering case being prosecuted. However, the Financial Intelligence Unit is said to have forwarded about twenty cases to judicial authorities. Final charges have recently been laid in two money-laundering cases that have now been sent to trial.

127. This makes it impossible to evaluate the effectiveness of the criminal law provisions instituted by the 2001Anti-Money Laundering Law, because there have been no convictions and there are shortcomings in the statistics regarding prosecutions. However, it can be stated that the criminal sanctions instituted by the Law for both natural and legal persons convicted of money laundering are very stiff, compared to the rest of the criminal sanctions in Haiti (sentences to hard labor are no longer handed down in practice).

128. Under the current version of the Haitian Criminal Code, the 3-year threshold method prevents many offences from being qualified as predicate offences, which means that the offence of money laundering is not always fully relevant. This problem is compounded by the fact that many players in the system perceive money laundering as an offence that relates only to drug trafficking. Corruption, smuggling, migrant smuggling, and sexual exploitation are some of the offences that cannot be qualified as predicate offences for money laundering. This matter must be highlighted given the crime situation in Haiti.

129. These problems with the definition of predicate offences for money laundering are also likely to undermine the quality of the international cooperation that Haiti is able to provide.

2.1.2 Recommendations and Comments

130. The fact that the Haitian courts have not implemented the enforcement provisions of the Anti-Money Laundering Law means that its effectiveness cannot be determined. The lack of convictions at this stage in the implementation of the Law stems from a combination of factors: the inadequacy of the legislative framework with regard to the offences generating the proceeds

that may be laundered, a lack of awareness on the part of practitioners about the judicial possibilities offered by the 2001 Law, and judges' reluctance to take on cases that seem too complex when a charge of money laundering is involved (analysis of bank accounts, tracking financial flows, international cooperation, etc.).

131. The light sanctions under the Criminal Code for many offences have prevented prosecution of the laundering of the proceeds from these offences. Haiti should at least make corruption, smuggling, arms exports, counterfeiting, migrant smuggling, sexual exploitation, and terrorist financing predicate offences for money laundering.

132. Haitian authorities should also:

- Adopt a criminal law policy with regard to serious offences that takes account more systematically of the laundering of the proceeds from the offences being prosecuted, by raising the awareness of prosecutors, investigative magistrates, and the police.

- Take a census of the cases where money laundering is considered from the outset of the preliminary investigation or when criminal proceedings are started.

- Reword the sentence about the liability of legal persons and lower the threshold for invoking legal persons' liability by removing the reference to the commission of an offence by a structure or a representative of the legal person.

- In a subsidiary move, provide that, where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country, but which would have constituted an offence in Haiti, this constitutes a money laundering offence in Haiti.

2.1.3 Compliance with Recommendations 1 & 2

	Compliance Rating	Summary of Factors Underlying Rating[18]
R.1	**NC**	**The criminalization of money laundering does not cover all of the serious offences listed by the FATF, such as corruption, smuggling, arms exports, counterfeiting, migrant smuggling, sexual exploitation, and terrorist financing.** **The criminal law policy on combating money laundering and terrorist financing is current ineffective.**
R.2	**PC**	**The requirements for invoking the criminal liability of legal persons are too restrictive, notwithstanding the inherent weaknesses of the predicate offences and the offence of money laundering (see Recommendation 1).**

2.2 Criminalization of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

[18] These factors must be mentioned only when the rating is lower than "Compliant".

133. There is no provision in Haitian legislation that defines or criminalizes terrorist financing. The authorities indicated to the evaluation team that preparations are underway for a bill dealing with terrorism and terrorist financing.

134. A copy of the bill was provided to the evaluation team. It provides for the initialing of the International Convention for the Suppression of the Financing of Terrorism of January 10, 2000 (date on which the Convention was opened for signature). To date, Haiti has not signed or ratified the Convention and the evaluation team was given no indication about the timetable for Haiti's signature and ratification of the Convention.

135. At this stage, the language of the bill and the definitions of terrorist financing being considered are restrictive and full of gaps, and they do not meet international standards. The sanctions are not adequate either. They provide for a maximum prison sentence of 20 years, or a fine, for which no amount has been fixed, or both.

136. As the law now stands, and with no measures to transpose the Inter-American Convention Against Terrorism adopted by the Organization of American States on June 3, 2002, terrorism is not an offence under Haitian law. Article 63 of the Criminal Code, however, stipulates that "attacks and conspiracies for the purpose of destroying political institutions or changing the Government, and inciting citizens or residents to take arms against the authority of the Head of State shall be punished by imprisonment". The minimum prison sentence is 10 years and the maximum is 20 years. Furthermore, aircraft hijacking (Article 381b) carries a sentence of 5 to 10 years hard labor. Financing such crimes is not an offence per se, but committing acts in preparation for such crimes, such as procuring arms, instrumentalities, or "any other means used for the action" (Article 45 of the Criminal Code) is punished in the same way as the crime itself.

2.2.2 Recommendations and Comments

137. The Haitian authorities should plan to criminalize terrorist financing, in compliance with the Convention on the Financing of Terrorism. They should ensure that the future criminalization of terrorist financing and the sanctions meet the standards set by the Convention.

2.2.3 Compliance with Special Recommendation II

	Compliance Rating	Summary of Factors Underlying Rating
SR.II	**NC**	**No legislation on the financing of terrorism** **Has not signed or ratified the International Convention for the Suppression of the Financing of Terrorism**

2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1 Description and Analysis

138. The Anti-Money Laundering Law of February 21, 2001 uses the following definitions (Article 1.2):

- *proceeds of crime*: any property or economic benefit derived directly or indirectly from an offence carrying a prison sentence of more than 3 years
- *property*: assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets.
- *Instrumentality*: any object used or intended for use in any manner whatsoever, completely or partially, to commit one or more criminal offences.
- *Confiscation*: permanent deprivation of property by order of a court or any competent authority, under the supervision of the courts.

139. Under Haitian legislation (February 2001 Anti-Money Laundering Law) there are several circumstances in which the proceeds of money laundering may be confiscated. Since terrorist financing is not criminalized, the law makes no provision for the corresponding confiscation.

- in the event of a conviction:

140. The confiscation shall affect:

1. The property involved in the offence, including income and other benefits derived from it, no matter who owns them (…)
2. Property belonging directly or indirectly to a person convicted of a money laundering offence (…) (Article 4.2.9. (1)).

141. Property that is under the control of a criminal organization must also be confiscated if said property is related to an offence, unless its lawful origin can be proven (Article 4.2.11).

142. The convicted offender's property may also be confiscated up to the value the offender's enrichment since the date of the oldest offence for which he has been convicted, unless he can prove the lawful origin of said enrichment.

143. Property that has come directly or indirectly into the convicted offender's possession since the date of the earliest offence for which he has been convicted may be confiscated, "wherever it is located", unless the offender can prove the lawful origin of such property.

144. When the property to be confiscated cannot be represented, confiscation of an equivalent value may be ordered.

- in cases where there is an offence but no conviction (Article 4.2.9 (2)):

145. "If a court finds that there has been an offence and the perpetrator or perpetrators cannot be convicted, said court may still order the confiscation of the property involved in the offence".

146. According to the Haitian judicial authorities, this provision is intended for situations where the perpetrator of the offence dies before the trial. However, the vagueness of the language gives judges a great deal of discretion.

- when the offenders cannot be prosecuted (Article 4.2.10):

147. The Senior Justice of the Court of First Instance may order a confiscation:

- if it is proven that the said property constitutes the proceeds of a crime,
- if the perpetrators of the offences that produced the proceeds cannot be prosecuted, either because they are not known, or because it is legally impossible to prosecute them.

148. These two criteria are alternates according to the Haitian judicial officials. Two confiscations of funds have been ordered on the basis of the second paragraph, with a very broad interpretation of the notion of an unknown perpetrator (see below). The other cases for confiscation have never been invoked.

149. Despite the definition given for "instrumentality" in Article 1.2, there is no provision in the 2001 Law for confiscating objects used to commit a criminal offence. However, Articles 25 and 75 of the Criminal Investigation Code authorize prosecutors and investigative magistrates handling ordinary criminal cases to seize "anything that seems to have been used or seems intended for use to commit the offence, as well as anything that seems to be the proceeds from such an offence (…)". Yet, there are no Articles dealing with court-ordered confiscation of these seized objects[19].

150. The judicial authority with the power to order conservatory measures may, on its own initiative or at the prosecutor's request, or at the request of the competent Government agency, order any measures, such as freezing funds and financial transactions of any sort involving the property subject to seizure or confiscation.

151. These measures may be withdrawn at any time at the request of the prosecutor, or, after consulting with the prosecutor, at the request of the competent Government department or the owner (Article 4.1.2).

152. In practice, it seems that UCREF freezes suspicious accounts after obtaining an order from the investigative magistrate. At the same time, UCREF unfreezes accounts, without it being clear whether an account is unfrozen at the request of the holder of the seized funds, at the request of the prosecutor, or after consulting with the prosecutor when required to do so, or at the sole initiative of UCREF.

153. The evaluation team thinks that UCREF's role in the implementation of these enforcement measures is not set out in the Anti-Money Laundering Law, which gives this role to the courts alone.

154. There are also provisions that enable UCREF to freeze the execution of a financial transaction for 48 hours in serious or urgent cases (Article 3.1.6). The courts can order funds, accounts, or securities to be frozen for an additional period of up to 8 days, in cases referred to them by UCREF. No information was provided about the implementation of these provisions.

155. The competent courts, officers, civil servants with responsibility for detecting and suppressing money-laundering offences may seize property related to the offence under

[19] The only reference to confiscations in the Criminal Investigation Code comes in Article 174, which stipulates that proceedings after the judgment to collect fines and confiscations are instigated by the clerk of the court on behalf of the Prosecutor's Office.

investigation, along with any other items that may help identify them (Article 4.1.1). Therefore, this Article authorizes only competent courts, officers, and civil servants with responsibility for detecting and suppressing money-laundering offences to make seizures. The same set of persons is cited in Article 2.2.7 on access to banking documents, which is also granted to UCREF. Taken together, these two Articles lead to the deduction UCREF is not entitled to seize property on the basis of Article 4.1.1.

156. In practice, the Customs Administration seizes shipments of funds in excess of 400,000 Gourdes discovered entering or leaving the country. The funds are then handed over to UCREF, by means of a Suspicious Transaction Report filed with UCREF by Customs, even though there is no basis in law for this practice. According to Customs, the funds are often released by a court order handed down after a summary hearing. The limit of 400,000 Gourdes, which is printed on the Customs declaration forms that travelers fill out upon entering the country, has no legal basis. The limit of 200,000 Gourdes set by the 2001 Anti-Money Laundering Law has never been amended according to the procedure stipulated in Article 2.1.2, which calls for a Circular from the Central Bank of Haiti to be published in the official gazette.

157. Third parties in good faith are protected under Haitian law. Requests to have measures to seize or freeze funds lifted can be made at any time by the owner to the court that gave the order. The prosecutor must be consulted in such cases (Article 4.1.2)

158. Another article stipulates that any contract or gift made inter vivos or after death for the purpose of eluding confiscation shall be null and void (Article 4.2.12). This is meant to prevent attempts to arrange insolvency or to dissimulate unlawfully acquired property.

159. However, it is up to the court to prove that the contract or gift was made to elude confiscation, which will not be an easy task if the contract or gift was made long before the conservatory measures are taken.

160. The Haitian system allows for a partial inversion of the burden of proof when proving the origin of suspicious property (Article 4.2.9). Property may not be confiscated, even if it constitutes the object of an offence, if the owner can prove that he acquired it by paying a fair price, or in exchange for services rendered corresponding to the value of the property, or by any other lawful means, and that he was unaware of its unlawful origin.

161. UCREF provided various statistics on the freezing and confiscation of property. The evaluation team notes that these statistics are difficult to cross check and considers them to be unreliable, but that at least they have the merit of existing. About twenty of the cases handled by UCREF involved the seizure of property, primarily by Customs during inspections at the border. According to Customs, most of the seized property was rapidly released by order of the courts, but the evaluation team was not given any statistics about released property.

Year	Seized by Customs	Seized by Police	Total Number of Cases
2002	No information	US$127,511	5
2003	No information	US$601,210	7
2004	US$821,801	US$292,408	11
2005	US$87,065	US$201,779	8
2006	US$62,794	US$50,610	5
2007	US$42,064	No information	3

TOTAL	US$1,013,724	US$1,273,518	39

162. The funds seized by the Police and Customs are handed over to UCREF for "management". This role is not one attributed to UCREF under the Anti-Money Laundering Law, and the procedures for continuing the resulting litigation have not been explained (see SR IX, below). In any case, the Police and Customs may refer cases directly to the Prosecutor's Office under the terms of Article 19 of the Criminal Investigation Code.

163. Approximately US$900,000 was confiscated by court order in only 2 cases (US$801,000 seized in October 2004 and US$98,000 seized in January 2005). Both seizures were made at the airport. It is noteworthy that both confiscation orders issued by an investigative magistrate were issued on the strength of Article 4.2.10 paragraph 2 of the 2001 Anti-Money Laundering Law, on the grounds that the persons holding the funds argued that the funds did not belong to them and, consequently, prosecution of an unknown perpetrator was impossible.

164. This is a very broad reading of Article 4.2.10 paragraph 2, which mentions either an unknown perpetrator (which is not the case here, because the persons holding the funds were identified), or the legal impossibility of prosecuting the perpetrator. In both these cases, the perpetrator of the offence was the person found in possession of the funds and (in the evaluation team's opinion) there was no legal impossibility of prosecuting them.

165. In general, conservatory measures taken under the terms of the 2001 Anti-Money Laundering Law result in uncertainty with regard to practices in the legal system. UCREF transmits orders to freeze bank accounts and produce banking documents to banks on the strength of an order from the Senior Justice of the Port-au-Prince court or from an investigative magistrate, and under the terms of Article 3.1.2, or else Article 3.3.1 of the Anti-Money Laundering Law.

166. And yet, Article 3.1.2 on UCREF's right of access does not require an order from a judge, but it does require that UCREF be acting in response to a Suspicious Transaction Report. This Article makes no provision for UCREF to freeze bank accounts.

167. Meanwhile, Article 3.3.1 gives the courts, and the courts alone, the power to put accounts under surveillance, which does not mean freezing them; the accounts continue to operate.

2.3.2 Recommendations and Comments

168. The provisions relating to seizing, freezing, and confiscating property must explain the role of each of the authorities involved. The current language of Articles 4.1.1 and 4.1.2 does not assign any role to UCREF in taking conservatory measures (freezing funds) or making seizures. It would be advisable to give UCREF the ability to go to court to request such measures when it deems them necessary for an investigation or to protect the interests of the Treasury.

169. All of the courts, Government agencies, and departments concerned should be required to keep accurate statistics about the conservatory measures taken and confiscations made by each of them. One authority should be designated to centralize the statistics.

170. Funds seized by the competent authorities (Police, Customs) should be managed by those same authorities pending a final court decision on whether the funds are to be released or confiscated by the State.

2.3.3 Compliance with Recommendation 3

	Compliance Rating	Summary of Factors Underlying Rating
R.3	**PC**	**System is ineffective due to confusion in the implementation and management of conservatory measures and seizures.**

2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1 Description and Analysis

171. There is no provision under Haitian law for freezing assets used for terrorist financing, either under United Nations Security Council Resolution 1267 or under Resolution 1373.

172. In practice, the Haitian authorities have unofficially passed the lists from the United Nations Security Council or third countries (Resolutions S/RES/1267 of 1999 and S/RES/1373 of 2001 respectively) on to Haitian banking institutions only, asking them to check whether the designated persons and entities are among their customers and to freeze their assets if they are. To date, none of the names has turned up among the customers of Haitian financial institutions.

173. To date, the lists that the authorities passed on to the banking sector do not seem to make a distinction between the lists adopted by the United Nations under Resolution 1267 and the lists adopted by third countries under Resolution 1373.

2.4.2 Recommendations and Comments

174. The Haitian authorities should plan to introduce measures to provide for the freezing of assets used for terrorist financing, in accordance with the requirements of Resolutions 1267 and 1373.

2.4.3 Compliance with Special Recommendation III

	Compliance Rating	Summary of Factors Underlying Rating
SR.III	**NC**	**There is no legal framework for freezing assets used for terrorist financing**

Authorities

2.5 The Financial Intelligence Unit and its Functions (R.26)

2.5.1 Description and Analysis

175. The Central Financial Intelligence Unit (UCREF) was created by the Anti-Money Laundering Law of February 21, 2001.

176. It acts as the national center and is responsible for receiving, analyzing and processing the reports that persons and entities subject to the Law are required to file. It is housed on the premises of the Central Bank of Haiti. Even though it was created in 2001, the political turmoil between 2001 and 2004 prevented its operations until 2004.

177. UCREF receives the automatic reports filed by natural and legal persons subject to the Anti-Money Laundering Law on transactions that exceed a threshold of 200,000 Gourdes set by the Law. UCREF also receives the Suspicious Transaction Reports filed by the same persons.

178. As soon as serious evidence of a money laundering offence is uncovered, UCREF passes a report on to the competent judicial authority for further action.

179. UCREF receives all of the information that can help it perform its duties, including information provided by judicial authorities and, after a Suspicious Transaction Report has been filed, it may obtain information and documents from any public authority or any person subject to the Law.

180. UCREF has the power to freeze execution of a financial transaction for up to 48 hours, after which the Senior Justice of the Court of First Instance may order the funds to be frozen for up to 8 more days.

181. The Haitian lawmakers clearly intended to make UCREF an administrative Financial Intelligence Unit. They did not give it any powers of investigation in judicial matters, once a case has been referred to the Prosecutor's Office or an investigative magistrate, even though UCREF has exercised such powers on several occasions.

182. Similarly, UCREF is not empowered to receive preliminary information from other Government agencies, such as Customs or the Police, or even from foreign agencies that are not its counterparts, such as the United States Drug Enforcement Agency. Yet, once again, UCREF has received such information on several occasions.

183. The Law also makes a distinction with regard to UCREF's powers to deal with the information it receives:

- when dealing with Suspicious Transaction Reports, UCREF is empowered to request information from any public authority, and any natural or legal person subject to the Law (Article 3.1.2);
- when dealing with automatically-filed transaction reports (usually presented as a "report of origin"), UCREF does not have the power to solicit follow-up information, and may only receive such information, for instance from the judicial authorities (Article 3.1.1).

184. This is a very clear-cut delimitation of UCREF's powers, especially since it has received only a handful of Suspicious Transaction Reports under the Anti-Money Laundering Law. And yet, it sends demands to provide information to banks on a very regular basis, on the strength of Article 3.1.2.

185. Furthermore, when taken together, Articles 3.1.2 and 2.2.7 limit UCREF's access to the banking documents mentioned in Articles 2.2.2 to 2.2.6, despite the fact that UCREF has the power to demand that any person subject to the Law produce information, once a Suspicious Transaction Report has been filed.

186. A computerized system was installed linking UCREF to banks for the transmission of automatically-filed transaction reports. It has been in operation since 2004 and has handled the transmission of some 174,000 reports on transactions in excess of 200,000 Gourdes.

187. The sanctions for failing to have computer equipment that identifies transactions and prints out the automatically-filed transaction reports are particularly disproportionate, with prison sentences of 1 to 5 years and/or fines of 5 million to 20 million Gourdes. However, these sanctions have never been enforced, even though banks are the only persons cited in Article 2.1.1 that comply with this requirement.

188. No special advice, training, or awareness campaign was produced to help the professionals concerned compile the reports. UCREF simply drew up a form for banks to use to file Suspicious Transaction Reports. Banks do not seem to be aware of the indicators of suspicious transactions appended to the Guidelines produced by the Central Bank of Haiti.

189. *Once it has received a Suspicious Transaction Report*, UCREF may obtain information from the following persons:

- any public authority, including the Central Bank, Police Customs, Tax Department, and the Ministry of Trade,
- any natural or legal person that, as part of its regular business, supervises or provides advice on financial transactions (banks, insurance companies, etc.)
- bureaux de change
- casinos
- gambling establishments
- persons who carry out, supervise, or provide advice for real-estate transactions.

190. As pointed out earlier, UCREF may only obtain the documents cited in Articles 2.2.2 to 2.2.6 under these circumstances, which means banking documents.

191. In practice, UCREF has primarily approached banks and public authorities through purely official channels, but the evaluation team received indications that other categories of professions subject to the Law have also been approached. UCREF has made a great number of requests to banks and these requests are very broad. UCREF often asks for statements of account going back to the date the Law passed (February 21, 2001), whereas financial institutions are required to keep records for five years only, and the Law did not become law until it was published in the official gazette on April 5, 2001. At the time of the team's visit, UCREF did not provide any feedback to the professionals approached, thus leading the banks to assume that such customers involved additional risk.

192. In view of the fact that very few Suspicious Transaction Reports are filed, we can deduce that most of the requests made are not covered by UCREF's actual mandate. They are sometimes made on the strength of a request from the Ministry of Justice, the Prosecutor's office, or an order from an investigative magistrate. This procedure for using UCREF's powers in a judicial context is not provided for under the Law, in the team's opinion.

193. In general, the low level of computer use in the Haitian Government means that the transmission of the information required is neither very rapid nor very reliable. The Company Register is kept on paper and rarely updated, for example, and the Tax Department has many different sets of files.

194. Once a Suspicious Transaction Report has been filed, the filing entities are required to immediately report any information that would substantiate the suspicion or invalidate it (Article 3.1.4 of the 2001 Law).

195. UCREF employees are required to maintain the confidentiality of information received from persons subject to the 2001 Law or from public authorities. Such information may not be used for any purpose other than those provided for in the Law. UCREF staff do not have access to the Internet, except for the general manager.

196. By way of exception, UCREF is allowed to exchange information with the authorities responsible for enforcing the disciplinary sanctions on the persons subject to the Law. In practice, however, this has never happened.

197. Similarly, UCREF is allowed to exchange information with its foreign counterparts, when dealing with Suspicious Transaction Reports, and subject to reciprocity. In practice, UCREF acknowledges that it frequently exchanges information with a foreign authority that is not its counterpart.

198. The Anti-Corruption Unit also reports that it exchanges information with UCREF.

199. The evaluation team feels that this dissemination of information beyond UCREF's mandate is likely to undermine the confidence that the professionals subject to the Law must have in a Financial Intelligence Unit and that it does not foster the critical relationship of confidence between the reporting entities and the Financial Intelligence Unit.

200. The natural and primary recipient of the financial and other information received by UCREF are the judicial authorities, when there is substantial evidence of a money laundering offence (Article 3.1.7). The report passed on does not contain the Suspicious Transaction Report or the identity of the person who made the report.

201. The evaluation team feels that, in this context, the small number of cases referred to the judicial authorities (about 20 cases between November 2004 and November 2006) is not at all proportionate to the number of information requests that the UCREF makes on shaky legal grounds.

202. Article 3.1.1 of the Law of February 21, 2001, which created UCREF, places it under the authority and supervision of the National Anti-Money Laundering Committee (CNLBA). This Committee is made up of public and private sector representatives and works under the supervision of the Ministry of Justice and Public Safety.

203. The CNLBA's many functions include coordination, analysis of the legislative system, and monitoring proper enforcement of the Law. It also has the power to set UCREF's budget and staffing levels. Article 6.2.2 of the Anti-Money Laundering Law expressly stipulates that the general manager of UCREF shall abide by the directives and decisions of the CNLBA.

204. This provision raises a legal question about the operational independence of UCREF with regard to the CNLBA, particularly in terms of decisions to disseminate Suspicious Transaction Reports. There is nothing in the Law that says such decisions are the sole prerogative of the General Manager of UCREF, especially since the Law authorizes the CNLBA to request any information necessary for the purposes of its "oversight" of UCREF. In fact, the CNLBA has yet to play its oversight role, particularly with regard to UCREF's management of the reports it receives, because it has been unable to attain the quorum for making decisions set in Article 6.1.5 of the Anti-Money Laundering Law.

205. The operational independence of UCREF from the budgetary point of view is also unclear with regard to UCREF's ability to control its overall budget. The Central Bank of Haiti houses UCREF on its premises free of charge, even though UCREF is officially under the aegis of the Ministry of Justice. The Central Bank could decide to take back its premises overnight. UCREF's budget, which must be validated by the CNLBA, is made up of budget allocations voted on an annual basis and extraordinary income from international assistance and the investment income from seizures and confiscations.

206. UCREF requested from Parliament an allocation of 45 million Gourdes (US$1,125,000) for its 2007-2008 budget, whereas the allocation for the 2005-2006 budget was only 25 million Gourdes and the allocation for the 2006-2007 budget was only 27 million Gourdes. Furthermore, Article 4.2.13 of the 2001 Law provides for depositing the confiscated funds and property belonging to the State into a fund for combating organized crime or drug trafficking. In fact, these additional resources were attributed to the National Anti-Drug Commission (CONALD).

207. It should be noted that the budget proposal was prepared by UCREF, even though this task is explicitly attributed to the CNLBA. Nevertheless, the 2007-2008 budget does seem to be the first to have been officially approved by the CNLBA. The 66% increase in the budget is warranted, according to UCREF, by the need to remedy the lack of training for its staff and judges.

208. Article 6.1.2 (f) requires the CNLBA to ensure that UCREF provides strict protection of the confidentiality of the information and documents provide to it by credit institutions and financial institutions.

209. Hence, this Article rules out such protection of information in UCREF's possession for information and documents that may be provided by other persons subject to the Law. In fact, the CNLBA has not made any recommendations or made any decisions regarding the confidentiality of information in UCREF's possession.

210. The premises housing UCREF are on an upper floor of an administrative building belonging to the Central Bank of Haiti. The premises are patrolled by armed guards and secured by surveillance cameras and a fingerprint-recognition system for opening the doors to the premises themselves and the doors to certain rooms on those premises. However, the building is an old one, which means that there is a substantial risk of intrusion, even though the recent move of UCREF to its present premises already constitutes a major improvement.

211. In general, financial professionals have shown themselves to be very concerned with maintaining the confidentiality of the information that they are likely to provide to UCREF.

212. Article 6.1.2. stipulates that CNLBA shall submit to the legislature an annual activity report on UCREF. As of the date of the evaluation, no report had ever been made to Parliament or any other institution.

213. UCREF is not a member of the Egmont group and cannot become one until Haiti adopts legislation to combat terrorist financing.

214. UCREF is legally allowed to exchange information about Suspicious Transaction Reports with foreign Financial Intelligence Units, subject to reciprocity. It has signed cooperation agreements with the FIUs of the following countries: Dominican Republic, Honduras, Panama, and Guatemala. These agreements deal exclusively with the exchange of financial information.

215. However, Article 3.1.3 of the Law stipulates that, when it receives a request for information from a foreign counterpart dealing with a Suspicious Transaction Report, UCREF may respond within the framework of its powers under the Law grants for dealing with such reports.

216. The signed agreements, in as much as they do not authorize the exchange of any information other than financial, are thus more restrictive than the wording of the law.

217. The UCREF staff consists of 40 individuals, 8 to 10 of whom provide security for the Director General. The employees who process information received by UCREF are provided by the Financial and Economic Investigation Bureau of the National Police. The Administrative Director is provided by BRH, and the Deputy Director draws a pension from BRH.

218. The budget allocated to date to UCREF is consistent with its mission and its needs.

219. The issue of the integrity of Haitian Government employees is of central importance, in view of the fact that the country is regularly placed among those where the perception of corruption is the highest in the world (according to the Transparency International index). In order to guard against the risks of corruption, employees working for UCREF are better paid than other Government employees (police officers' wages are doubled). The employees were subjected to lie detector testing in 2006 and have undergone a vetting procedure. However, no information has been gathered on potential disciplinary action against employees since UCREF was established.

220. As reflected in the draft budget, staff training is not yet properly addressed. The staff has primarily a police background, supplemented by a team of computer specialists. Staff participation in training seminars abroad does not appear to be widespread. No information was provided on the professional qualifications of UCREF employees (curricula vitae, past and upcoming training, etc.).

221. UCREF has not provided fully usable statistics. Several tables were prepared, concerning the number of cases processed and sent along to the judicial authorities (20 between November 2004 and November 2006), assets hit with provisional measures (19 such cases between August 2004 and February 2007, for a total volume of seized assets of US$1,832,411, of

which US$367,413 was returned and US$899,275 confiscated), and "accounts held," with no mention of amounts.

222. It does not appear to be part of the mission of UCREF to manage the assets seized and the related statistics, nor the "accounts held." Statistics on the unit's activities are not maintained.

2.5.2 Recommendations and Comments

223. The operations of UCREF, as presented to the mission, are problematic in many respects. In particular, it appears that UCREF embraces a very broad interpretation of the legal mechanism – an interpretation which is moreover shared by the judicial authorities – which gives it investigatory functions that are not provided for under the law in the evaluators' opinion.

224. This approach inevitably poses the risk of undermining individual cases in terms of legal procedure and jeopardizes the likelihood of obtaining convictions based on money laundering crimes.

225. That being the case, the Haitian Government should:

- clearly redefine UCREF's scope of action in line with the anti-money laundering law of 2001
- build awareness on the part of professions subject to the suspicious transaction reporting requirement
- ensure that UCREF exchanges information only with persons authorized to receive same (foreign counterparts)
- reinforce UCREF's operational independence in relation to CNLBA and establish real functional autonomy in relation to BRH
- charge UCREF with publishing a periodic status report
- bring Haitian law in line with the conditions required for membership in the Egmont Group
- regularly ensure the integrity of UCREF employees and see to their training
- develop reliable statistics on UCREF activities

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to Section 2.5 underlying overall rating
R.26	**PC**	**Ambiguities (especially in practice) as regards the operational independence and autonomy of UCREF** **Lack of mobilization of all professions subject to the law** **Absence of status reports and reliable statistics** **Ambiguity in the practices followed for exchanging information with foreign authorities** **Absence of a policy on employee integrity and appropriate training** **Ineffectiveness of the Financial Intelligence Unit due to its atypical functioning, pursuant to a broad interpretation of its legal framework**

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

2.6.1 Description and Analysis

226. The Haitian judicial system is based on the Romano-Germanic model and directly on the Napoleonic Code. Judicial proceedings are undertaken through the Public Prosecutor's Office by a prosecutor called a Government Commissioner, assisted by deputies. Criminal investigations are carried out either directly by the Public Prosecutor's Office, or else by investigative magistrates who do not participate in judging the cases that they investigate, and who conduct the investigation under the responsibility of the Public Prosecutor's Office. Both the Public Prosecutor's Office and the investigative magistrates supervise criminal investigations assigned to agents of the Haitian Criminal Investigation Department, but they may also participate directly in these investigations.

227. In structural terms, the judicial apparatus is organized as follows:[20]

228. The Peace Tribunals, set up in each municipality[21] of the Republic, are composed of at least[22] one justice of the peace, or of his or her deputy in the event of his or her absence. The 181 current justices of the peace each operate within their respective jurisdiction (municipality), where they look for crimes and offences and receive reports, accusations, and complaints related to same. They must send such cases forward within three days, whenever a case is likely to require the intervention of a criminal court or a district court, to the official who performs the functions of the public prosecutor for said court.[23] Justices of the peace also handle personal and property lawsuits in commercial and civil matters where small amounts are involved. In addition, they perform simple police court functions involving the judgment of offences.[24]

229. The District Courts, of which there are 17, are located in the main cities[25] and are empowered to judge, within their jurisdiction, all civil, commercial, and criminal matters. They are also the jurisdiction of appeal for sentences imposed by justices of the peace in certain cases stipulated by law. They are composed of a senior justice and several judges, who also serve as investigative magistrates in criminal matters. Each of these 17 courts has a Public Prosecutor's Office, composed of the Government Commissioner assisted by deputies who are responsible for the prosecution and defense of all matters where the interests of the Haitian state come into play. The rulings of the investigative magistrates are issued as a written brief of the Government Commissioner and, in criminal matters, this constitutes submission of a case to the criminal court, which decides whether or not there are grounds to call a session with the assistance of a jury.[26]

[20] Decree of August 22, 1995 pertaining to the organizational structure of the judicial system.

[21] There are 133 municipalities.

[22] The Peace Tribunals are classified in four categories, and those in the first and second categories may have several justices of the peace if necessary.

[23] Articles 11 and 12 of the Criminal Investigation Code.

[24] Article 125 of the Criminal Investigation Code.

[25] Port-au-Prince, Cap-Haitien, Cayes, Gonaïves, Jacmel, Saint-Marc, Petit-Goave, Port-de-Paix, Jérémie, Anse-à-Veau, Aquin, Fort-Liberté, Hinche, Mirebalais, Grande-Rivière du Nord.

[26] See abovementioned Decree of August 22, 1995.

230. There are five Courts of Appeal,[27] each with jurisdiction over several district courts. They take cognizance of district court decisions and are each composed of a presiding judge, four associate judges, a Government Commissioner, and a deputy.[28]

231. The Supreme Court of Appeal in Port-au-Prince is composed of a presiding judge, a vice-president, and nine associate judges, and the Public Prosecutor's Office of the Supreme Court of Appeal is represented by a Government Commissioner and three deputies.

232. Magistrates of the bench and of the public prosecutor's offices of the district courts must be graduates of the School of Magistrature or have practiced the profession of lawyer for at least three years.

233. As regards cracking down on money laundering, there is no specialized jurisdiction for this purpose, neither within the bench nor within the public prosecutor's office. All judges and Government commissioners of the 17 district courts hold authority to investigate and judge this particular crime.

234. Certain Government commissioners, deputies, and judges have attended seminars on money laundering, mainly abroad. Based on the information gathered, the evaluators believe that such training remains inadequate, especially for members of the provincial district courts.

235. The information gathered from these judges by the mission indicates that all pending money laundering cases have come from UCREF. Investigative magistrates call upon this same UCREF, as an administrative unit, to perform certain steps of the judicial inquiry and, in particular, to proceed with the seizure or freezing of funds, instead of relying on specialized criminal investigation departments normally serving as representatives of the law in this area, pursuant to the Criminal Investigation Code.

236. The goal of a planned "crime-fighting chain" for the fight against money laundering, consisting of a group of magistrates specialized in money laundering within the Public Prosecutor's Office and within the ranks of investigative magistrates,[29] is to professionalize the magistrates and apparently to set in place a specialized "jurisdictional chain" to take legal action against financial crimes, including money laundering and public corruption. Under this plan, the Ministry of Justice has released a budget that provides greater resources and special monthly bonuses to the magistrates involved. The public debate concerning this appropriation of additional resources which took place while the evaluators were in Haiti is a reflection of the strong public interest in fighting financial crime, but also of the persistence of public doubts about the reality of efforts to fight corruption.

237. In general, the magistrates lack adequate resources and sufficient specialized training in money laundering.

238. The organizational structure of the police is set by the law of November 29, 1994 pertaining to the creation, organization, and operations of the National Police, published in the

[27] Port-au-Prince, Cap-Haitien, Hinche, Gonaïves, Cayes.

[28] At the Court of Appeal of Port-au-Prince, there are nine judges, and the Government Commissioner is assisted by four deputies.

[29] The money laundering "crime-fighting chain" includes district court investigative magistrates and the public prosecutor's office at the Port-au-Prince Court of Appeal and the Supreme Court of Appeal.

Official Gazette on December 28, 1994. This law organizes the Haitian National Police on the basis of three central structures: the National Police Department and the departments that fall under it; the cabinet of the National Police Department; and the National Police Inspectorate. The National Police falls under the Ministry of Justice and is placed under its authority, with jurisdiction over the entire country; its members hold civil status. In total, there are roughly 8,000 civil servants who work for the National Police.

239. The administrative and criminal investigation responsibilities of the National Police Department are divided among three major departments: the Administrative Police Department, the Criminal Investigation Department, and the Department of Administration and General Services.

240. Article 30 of the law of 1994 states that the Criminal Investigation Department (DCPJ) functions as a representative of the judicial authorities, specifically Government commissioners and their deputies at the district courts, as well as justices of the peace and investigative magistrates at these courts.[30] It has a workforce of roughly 250 civil servants.

241. The responsibilities of DCPJ are determined by the Criminal Investigation Code and other, related laws and regulations. Specifically, DCPJ is charged with the following:

- Record violations of criminal law, prepare statements of same, determine the circumstances, and gather pertinent evidence;
- Look for perpetrators of crimes and offences, and offenders in the act;
- Keep an eye on and look for criminals operating or taking refuge within the country;
- Cooperate as necessary with foreign police organizations;
- Fight against contraband and illicit trafficking in narcotic drugs;
- Provide any and all information of a nature to prevent or curb breaches of the peace and offences against social, political, and economic security under the laws of the Republic.

242. To fight against narcotic drugs and money laundering, DCPJ has two specialized departments, the Drug Trafficking Investigation Bureau (BLTS) and the Financial and Economic Investigation Bureau (BAFE), respectively assigned to corresponding investigations.

243. BLTS has some fifty investigators specializing in the fight against illicit traffic in narcotic drugs. This office cooperates closely with foreign investigatory agencies, especially corresponding North American agencies (Drug Enforcement Agency).

244. The Financial and Economic Investigation Bureau was established in 2001 and is specifically in charge of money laundering investigations. Compared to a workforce of 26 specialized investigators at the time the office was created, only six members now remain because most of its members have been assigned to the Central Financial Intelligence Unit (UCREF). This specialized bureau is in charge of the fight against financial crime, including money laundering investigations. Since 2005, BAFE has expedited nine investigations of money laundering or illicit enrichment, all stemming from submission of a case following a criminal

[30] Article 30 of the law of November 29, 1994.

investigation of the underlying crime. No judicial inquiries have been opened by the Public Prosecutor's Office as a result of these investigations.

245. All BAFE staff have received training on financial and money laundering investigation techniques. However, the investigative agencies of DCPJ suffer from a lack of resources for properly conducting their investigations.

246. With respect to money laundering investigation techniques, the law of 2001 on illicit drug traffic prevention and control authorizes – under the oversight of the judicial authorities – placement under surveillance and phone-tapping, agent infiltration, and delivery surveillance, extending these techniques to the proceeds of drug trafficking. The 2001 law on money laundering repeats some of these provisions, in particular the provision on phone-tapping, while also extending it to audio and video recordings. However, these techniques are not implemented due to a lack of technical and financial resources and related training. In addition, enforcement policy continues to focus on offenders caught in the act and is based on confessions by the accused, more than on scientific police work for which resources are very limited.

247. There is no investigatory group specialized in property investigations. Currently, there is no permanent or temporary group specialized in investigations on personal assets, or investigations carried out in cooperation with the competent authorities of other countries. There is only a coordinating unit such as CONALD (National Anti-Drug Commission) in charge of coordinating the fight against drugs,[31] but not at an operational level, plus an intersectoral task force on financial crime – cf. Section. 1.5 describing the institutional framework for the fight against money laundering – which does not yet appear to be totally operational.

248. Although the fight against corruption does not at present fall within the scope of enforcement of the provisions of the anti-money laundering law, the Anti-Corruption Unit (ULCC)[32] has been responsible since 2004 for investigating instances of corruption. This unit enjoys operational, administrative, and financial autonomy. To date, no sentence for corruption has been handed down by the Haitian courts pursuant to investigations conducted by ULCC, but judicial inquiries have been opened on the basis of investigations conducted by ULCC.

249. To date, there has not been, within law enforcement departments, any training or follow-up regarding the typologies of money laundering; no analysis exists of the methods and sectors used for this purpose in Haiti.

250. The investigative structures and their corresponding powers, generally, and in particular in the anti-money laundering area, are governed by the Criminal Investigation Code (CIC), the 2001 law on illicit drug traffic prevention and control, and the 2001 law on laundering the proceeds of illicit drug trafficking and other serious crimes. The justice of the peace, the Government Commissioner and deputies, or the investigative magistrate may themselves expedite investigations, pursuant to the powers granted under the CIC—Articles 11 and 12 in the case of the justice of the peace, Articles 19 to 37 in the case of the Government Commissioner, and Articles 46 to 123 in the case of the investigative magistrate. With regard to other police authorities competent to conduct investigations, in particular rural and urban police officers, Article 30 of the 1994 law on the organization of the police defines the police as officers of the

[31] Articles 102 and 103 of the law of 2004 on illicit drug traffic prevention and control.

[32] Decree of September 8, 2004 promulgated September 13, 2004, establishing an administrative entity called the Anti-Corruption Unit (ULCC).

court (assisting the justices of the peace, Government Commissioners, and investigative magistrates) in accordance with Article 273 of the Constitution, which states that as officers of the court, the police shall investigate misdemeanors, offences, and crimes committed in order to find and arrest the perpetrators thereof. The authorities believe that said Article, together with Article 31 of the law pertaining to the creation of the National Police, provides the legal basis for the judicial authorities to bring a case before the Criminal Investigation Department (DCPJ), except in the case of crimes *in flagrante delicto*.

251. According to the evaluators, the Criminal Investigation Code is in fact too vague with respect to the procedures for submitting a case to a court. It enables an additional referral of cases to the police criminal investigation department, in support of judicial inquiries, only in the instances stipulated in Article 41 of the CIC, which grants power to the Government Commissioner in cases of crimes *in flagrante delicto* (Article 22 et seq.) or possibly in other cases, upon the request of the head of the household [*chef de maison*] (Article 36). The evaluators acknowledge that the scope of this act of delegation appears to be at the discretion of the Government Commissioner and therefore not limited. However, with regard to the investigative magistrate referring a case to the police criminal investigation department, the CIC does not provide how such a case should be submitted, nor does it mention the conditions of police custody in the powers granted to the police criminal investigation department. On the latter point, the practice of being kept in police custody for a maximum of 48 hours, is, in fact, based on Article 26 of the Constitution, which provides that no one shall be kept in detention if within forty eight hours following his arrest, he has not been brought before a judge having jurisdiction to take a decision on the legality of the arrest, and if said judge has not confirmed the detention giving reasons for this decision. The current laws and regulations on criminal procedure do not apply to the framework for the preliminary investigation, even in cases brought by the Government Commissioner. The only legal provisions that could relate to the powers of this framework in cases that are not *in flagrante delicto* are to be found in Article 10 of the CIC granting powers to the rural and urban police to investigate crimes, offences, and misdemeanors committed against persons and property, and in Article 38 of the CIC which provides that justices of the peace and rural and urban police shall take complaints concerning crimes or offences committed in the areas in which they perform their normal duties, and that, in the event there is competition between the justices of the peace and the police, the Government Commissioner shall perform the powers granted to the police criminal investigation department; if he has been given notice, he may continue the proceedings, or authorize the officer who has commenced the proceedings to continue them (Art. 40 and 42 of the CIC). According to the evaluators, the absence of regulatory provisions in the framework for the investigation of cases other than crimes *in flagrante delicto* constitutes a significant lacuna in the law, as investigations in money laundering cases very rarely pertain to crimes *in flagrante delicto*.

252. The CIC allows for, and governs, the taking of witness evidence. With regard to the seizure of exhibits, Articles 25, 73, and 75 of the CIC empowers the Government Commissioner and the investigative magistrate to search for, and seize, documents and objects that might be the "proceeds" of crime or an offence, and that could "be" or be deemed to be "useful in establishing the truth." Article 2.2.7 of the anti-money laundering law empowers magistrates and civil servants who are charged with detecting and curbing crimes related to money laundering, as part of their "legal mandate," to request transmission of information and related records from financial institutions that are subject to the law. In the absence of money laundering investigations conducted and concluded to date by representatives of the law, the evaluators were unable to assess the effectiveness of these powers.

253. The use of delivery surveillance is governed by specific provisions of the narcotic drug traffic law in Article 91 which notes in particular that delivery surveillance "of related funds may be authorized in order to ascertain crimes covered under Articles 47 to 53 or participation in any such crime or in any association, agreement, attempt, or collusion to commit same, or in order to identify the persons involved and initiate legal action against them." The provision pertaining to deferment of seizure and surveillance of funds for the purpose of tracking their movements, which normally targets the drug traffic, can thus also be applied to identify the perpetrators of money laundering in the case of funds derived from this traffic.

254. In the fight against drug trafficking, the Haitian drug enforcement police collaborates closely with agents of the North American DEA, who conduct investigations and make arrests inside the country jointly with their Haitian counterparts. In the area of money laundering, UCREF can be induced to respond to investigatory requests from foreign agencies.

255. Customs' role in the fight against drug trafficking was reaffirmed by the Haitian President at a regional summit on drugs, security, and cooperation in March 2007. Drug seizures by Haitian customs have declined considerably since 1999. Seizures of funds are also in decline, but still result in the apprehension and confiscation of illicit funds (some US$800,000 in 2004). Customs agents are empowered to visit means of transportation and all commercial locations, but must be accompanied by a justice of the peace in the event of an owner's refusal to facilitate their access. They also have the power to perform checks on persons and request any and all accounting records from importers. If a crime is detected, they may seize contraband goods and means of transportation. In addition, real estate belonging to a person suspected of contraband cannot be involved in any transaction, since it must be used as a first priority to guarantee any fines potentially due.

256. There are no reliable, centralized statistics reflecting data on money laundering cases and investigations. The various competent agencies each provided figures that do not support each other.

2.6.2 Recommendations and Comments

257. The evaluators recommend that the Criminal Investigation Code be clarified in order to expand and strengthen the legal bases for submitting cases to the DCPJ that involve money laundering, drug trafficking, and other crimes and offences sanctioned by law. It is therefore recommended that the Criminal Investigation Code redefine and regulate more strictly, in relation to the functions of the national police officers who are officers of the court, the various frameworks for investigation, and in particular investigations of cases other than crimes *in flagrante delicto* or those providing support to the investigative magistrate.

258. In terms of how legal action is organized, the role of specialized police agencies as sole point of interface with magistrates in money laundering investigations should be reconsidered. At this level of investigation, the systematic use of an administrative unit to which the law assigns only the function of analyzing financial information transmitted by informant entities under the anti-money laundering law runs counter to the legal provisions, in the eyes of the evaluators, and is a source of possible legal disputes.

259. The Financial and Economic Investigation Bureau (BAFE) of DCPJ should be equipped with a sufficient number of investigators and receive specialized training in the fight against

money laundering. The total or partial reassignment of original BAFE investigators, attached to UCREF since its creation, should be examined.

260. The judicial system should plan to create a specialized jurisdiction of national scope to fight against money laundering and terrorist financing.

261. DCPJ should be provided with adequate financial and material resources, as well as pre-service and in-service training to implement special techniques for investigating money laundering, such as interception of telephone calls, delivery surveillance, and infiltration of criminal groups to track their management of funds from their activities.

262. A property investigation should be systematically performed for investigations of drug trafficking and other crimes falling within the scope of enforcement of the crime of money laundering.

263. Rigorous monitoring and centralization of legal actions and results of money laundering investigations should be instituted within the Ministry of Justice, along with the development of statistics. The Ministry of Justice should thereby centralize and work up reliable statistics on money laundering investigations.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to Section 2.6 underlying overall rating
R.27	**PC**	**Lack of mobilization and utilization of police services in criminal investigations of money laundering** **Lack of implementation of specific investigative techniques appropriate to the fight against money laundering, particularly delivery surveillance, undercover operations, and interception of communications** **Absence of a group devoted to investigations of personal property or assets suspected to be of criminal origin**
R.28	**PC**	**Impossibility of assessing the effectiveness of the existing legal framework because of the absence of money laundering investigations completed to date.** **Current laws relating to criminal procedure are vague with respect to procedures for submitting matters other than crimes *in flagrante delicto* to the police for investigation, and with respect to providing support to cases being investigated by the investigative magistrate.**

2.7 Reporting/communication of cross-border transactions (SR.IX)

2.7.1 Description and Analysis

264. The Haitian economy operates to a large extent on cash, and transfers of funds received from the diaspora are very substantial. In February 2001, lawmakers introduced with the AML

Law a mechanism for banning cash payments and cross-border transfers in amounts exceeding a given threshold.

265. Any payment in cash or by bearer securities totaling or exceeding the sum of 200,000 gourdes (approximately US$5,300) or the equivalent in foreign currency is prohibited. Furthermore, any transfer of funds or securities to or from a foreign country in an amount equal to or greater than 200,000 gourdes must be performed by or through a credit institution or an authorized financial institution (Articles 2.1.2 and 2.1.3 of the law of February 21, 2001).

266. The system set up by Haitian authorities to ban transfers above this threshold is neither a declaration system nor a reporting system. In practice, an item on the transfer of funds has been added to the customs declaration form which passengers entering Haiti must fill out, which makes the mechanism similar to a declaration system. However, in the event that a person declares an amount in excess of the authorized threshold, customs should proceed to seize this amount, since any transfer above the threshold is prohibited.

267. In this regard, it should be noted that the threshold indicated on the customs form is 400,000 gourdes, although it was never amended as stipulated by law, i.e. by decree of the Haitian Central Bank (BRH), published in the Monitor.

268. Agents of the customs service or the Haitian police who discover capital in an amount greater than the threshold in effect at the time of a border crossing are empowered to seize any sum constituting an offence, by virtue of Article 4.1.1 of the anti-money laundering law.

269. UCREF is authorized to receive from authorities charged with detecting and preventing money laundering all information pertaining to the seizure of undeclared capital, by virtue of Article 3.1.1, Paragraph 2.

270. However, it appears that transmission of such information to UCREF is carried out in the form of suspicious transaction reporting by customs or police authorities. Yet these entities are not designated for suspicious transaction reporting under Article 2.1.1 of the law of February 2001. The law does however stipulate that such information may be transmitted to UCREF inasmuch as UCREF is authorized to receive "all useful information" according to Article 3.1.1.

271. In general, apart from transmission to UCREF via suspicious transaction reporting, internal coordination between the agencies involved and international cooperation are both lacking.

272. Natural persons who knowingly contravene the provisions on international transfers of funds are subject to a prison term of one to five years and/or a fine ranging from five to 20 million gourdes (i.e. from US$140,000 to US$560,000). This punishment appears totally out of proportion and does not take into account the lawful or illicit origin of the funds discovered, nor the possibility of their intended use to finance terrorism. It has, in fact, never been enforced by the Haitian courts.

273. The act of submitting information to UCREF pursuant to the detection of a fraudulent transfer of funds does not place UCREF in a position to determine the origin of the funds in a satisfactory manner. In fact, since the transmission of such information does not constitute a suspicious transaction report under the terms of the 2001 law, UCREF is not entitled to exercise its right of communication toward persons subject to the law of February 2001. Thus, UCREF is unable to contribute to the investigation on the origin of funds, which should be carried out by the

distraining agency (customs or police). However, the transmission of such information by the distraining agency may, in certain cases, provide useful additional information on a person who has already been named in a separate suspicious transaction report.

274. The protection of third parties acting in good faith is not specifically covered by the 2001 law. In practice, it appears that holders of funds may dispute such seizures in court in summary proceedings. Very often, funds that are seized are then returned, for the dual reason that the distraining authorities have infringed upon their powers in this area and the guilt of the holder of funds has not been established.

275. No specific provision has been set in place concerning unusual transport of gold, precious metals, or gems.

276. Information on transported funds that is listed on the customs declaration is not archived by the authorities, and no system has been set in place to report information on cross-border transactions.

2.7.2 Recommendations and Comments

277. The system to prevent the physical transfer of capital established by the law of February 2001 appears unsuited to the reality of cross-border transfers in Haiti. The penalties incurred are clearly disproportionate and do not take into account the issue of whether the funds being transferred are of lawful or illicit origin.

278. However, the system in place authorizes apprehension of funds of illicit origin, subsequently confiscated through judicial channels, pursuant to Article 4.2.10 of the anti-money laundering law (cf. Point 158 and following), which makes it possible, based on a very broad reading by the Haitian judicial authorities, to bypass enforcement of the penalties stipulated for violations of the rules on the physical transfer of capital.

279. This being the case, the Haitian authorities should:

- establish either a declaration system or a reporting system;
- incorporate this law into the customs code so as to ensure the legal basis for seizures and subsequent investigations;
- implement reporting arrangements among and between customs, the police, and UCREF concerning information gathered after funds are seized;
- establish penalties that tie the severity of punishment to the absence or presence of evidence of an illicit origin or destination for the funds.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to Section 2.6 underlying overall rating
SR. IX	**PC**	**Ineffectiveness of the system due to its unsuitability to the Haitian context and, as a result, deficiencies in implementation** **Absence of proportionate, deterrent, and effective penalties** **Lack of coordination among authorities in charge of implementing the**

		mechanism currently in place

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering or terrorist financing

280. As indicated in the general introduction, the Haitian authorities have not to date performed any assessment of the risk of money laundering in Haiti, nor have they defined a risk management approach – including risks specific to certain activities, certain products, or certain customers.

281. The evaluators, based on their review of the Haitian financial sector and also based on the size of the insurance market and especially the products offered to customers by insurance companies (which are primarily damage insurance products), believe that this sector is sufficiently limited and the related risks are sufficiently reduced to justify deeming this sector "marginal" within the framework of this evaluation. They note, however, that it is the practice of some North American insurance companies to offer, through insurance agent visits, life insurance products in Haiti (a practice which is informal and, in the evaluators' view, illegal) and that this constitutes a risk with respect to money laundering – but that this risk cannot be properly mitigated solely by tightening the requirements placed on Haitian life insurance companies. Thus, in accordance with the evaluation methodology, the evaluators performed a more concise description of this sector, of the obligations to fight money laundering with which it must comply, and of its methods of regulation and supervision, but took insurance companies only slightly into account in rating the level of compliance with the 40+9 FATF Recommendations. However, whenever it appeared to them necessary, they did develop recommendations for strengthening the mechanism for fighting money laundering in the insurance sector, with an eye to containing residual risks or the (relatively) highest risks – particularly in view of the key issue of criminals entering the insurance market.

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

3.2.1 Description and Analysis

282. The requirements of customer due diligence are mainly set forth in the anti-money laundering law of February 2001. There are also "common law" regulatory and legal obligations that apply to all or part of the financial sector; these will be described below in reference to the specific professions affected.

283. Article 2.1.1 of the law of February 2001 states that the provisions pertaining to money laundering prevention and detection shall apply "to all natural and legal persons who, as part of their profession, perform, oversee, or advise operations involving deposits, trading, investments, conversions, or any other movement of capital, and specifically to credit institutions and financial

intermediaries." All professions performing financial transactions in Haiti as defined by FATF are thus subject to the law.

284. The Haitian Central Bank (BRH) can issue circulars aimed at professionals that it regulates and supervises, based on – according to the indications from BRH – Article 43 of the banking law. Such circulars are binding in nature and may form the basis for imposing sanctions in the event of noncompliance (cf. Recommendation 17). The evaluators considered these circulars to meet FATF requirements for being qualified as regulations, particularly because of the sanctions associated with these circulars and effective enforcement of these sanctions – while taking into account the fact that, according to the information received by the mission, these sanctions have not been appealed by the institutions involved. It should however be noted that the primary goal of Article 43 of the banking law is the prudential stability of credit institutions (security of deposits, credit policy) – and not a general authorization for regulation by circular. The law on BRH also establishes (Articles 29 to 35) the possibility for BRH to regulate the activities of banks, but these articles are also focused, in the evaluators' view, on the strictly prudential obligations of banks. For its part, BRH considers that Article 43 allows it to cover situations that were not anticipated when the law was adopted, and thereby avoid resultant legal vacuums. In brief, the evaluators deemed in their analyses that these circulars can be considered binding and can be mobilized in the fight against money laundering, but that their legal basis should be expanded and strengthened.

285. In addition, the Haitian Central Bank (BRH) has issued guidelines for entities subject to its authority (banks, money transfer companies, money changers, and savings and loan cooperatives) which lay out the expected procedures for implementing their obligations. In their preamble, these guidelines indicate that "they summarize the main obligations established by law" and "highlight the measures that […] financial institutions must absolutely take in order to improve and strengthen their organizational structure." Thus, the guidelines are not described as directly binding (their content is organized around "recommendations") and they are not issued as a Central Bank circular with binding force. Also, while the banking supervisor indicates that he uses these guidelines in his verification of compliance, he has not used the guidelines as an aid for implementation or sanction actions. The evaluators did not consider these guidelines as other enforceable means under the evaluation methodology. They also noted that these guidelines are largely unknown to credit institutions and do not appear to have been incorporated by credit institutions in their systems of internal controls.

Anonymous accounts

286. The law of February 2001 does not explicitly state that financial institutions should not keep anonymous accounts, nor accounts in fictitious names. In Article 2.2.1 (cf. below), the law requires that financial institutions ascertain the identity of their customers – but contains no provision on business relationships prior to 2001. Numbered accounts are not described by the anti-money laundering law. The information received by authorities and professionals indicates that such accounts are not used, but, under the assumption that some financial institutions might hold such accounts, common law provisions on knowledge of the customer would then apply.

287. Solely with respect to banks, BRH indicated that the circular of September 28, 1994 relative to bad checks requires that banks collect, when a *deposit account* is opened, "one official piece of photo identification" in the case of private individuals and "two official pieces of identification, an authorization to operate, a license, and a resolution by the board of directors to authorize opening the account" in the case of "any and all enterprises." The wording of this circular ("the bank shall require…," Article 2) demonstrates that it is solely aimed at banks

(commercial banks and savings and housing banks), and exclusively at deposit accounts, without specifying any connection with or without checking (and is not aimed at any other types of financial activity as defined by FATF). In addition, with respect to legal persons, it only addresses situations in which the customer is an enterprise, and not all categories of legal persons. Finally, there is no provision that describes the measures to be adopted for business relationships prior to 1994 (cf. below). No other similar provision exists for other financial institutions, nor for other types of business relationships besides deposit accounts.

288. The banking authorities noted that, to their knowledge, no credit institution keeps anonymous accounts or accounts in fictitious names – but banking supervisors appear in practice solely to have verified implementation of the circular on bad checks. The credit institution officials met by the mission indicated they do not hold such accounts. Nevertheless, the evaluators believe that the prohibition on anonymous accounts and accounts in fictitious names is not sufficiently direct and that the provisions pertaining to bad checks – which are not themselves complete – do not provide sufficient coverage for all categories of business relationships involved.

Customer identification in the case of natural persons

289. The anti-money laundering law requires of the entities to which it applies that they ascertain the identity and address of their customers before opening an account, holding securities or bonds, assigning a safe-deposit box, or establishing any other business relationship (Article 2.2.2). It should be noted that this requirement does not explicitly cover transfers of funds, wire transfers, or foreign exchange. BRH considers that the "business relationships" terminology covers these situations, whereas the evaluators consider that the term "business relationships" typically refers to lasting relationships between a financial institution and a customer, and not to occasional transactions. Foreign exchange is more directly covered by Article 2.2.9, which solely concerns the activities of manual moneychangers and which requires that they "ascertain the identity of customers for any transaction above the threshold of 200,000 gourdes (approximately US$5,300) or any transaction performed under unusually complex or unjustified conditions."

290. Article 2.2.3 calls for customer identification, in the case of occasional customers, for any transaction above 200,000 gourdes (approximately US$5,300) – which can be modified by Central Bank circular published in the Official Gazette. In the event of multiple transactions, Paragraph 4 of this article requires identification when the threshold is reached only if the transactions are in cash, regardless of the currency of payment.

291. Paragraph 3 of Article 2.2.3 institutes an identification requirement independent of the threshold (for occasional transactions) "when the lawful origin of the funds is not certain." Article 2.2.4, which concerns situations in which the credit institution has doubts about the fact that the customer is acting on his or her own behalf, states that the institution must identify the true originator – and terminate the business relationship if doubts persist after verification of identity. Because of the reference to a business relationship in this article, the evaluators are not convinced that this article covers situations of doubt concerning the identity of an occasional customer.

292. The anti-money laundering law does not contain any customer identification requirement for wire transfers ranging between US$1,000 and US$10,000. Above this threshold (or once it has been reached), Article 2.2.3 states that identification of occasional customers must be performed in accordance with Article 2.2.2.

Verification of identification

293. Article 2.2.2 defines the methods for verifying the identity of customers, whether natural or legal persons. In the case of natural persons, verification must also include the customer's address (based on "presentation of a document providing evidence of same"). Verification of identity must be based on "an original, official document that is currently valid and includes a photograph." For foreign exchange, identification also requires presentation of "an original, official document that is currently valid and includes a photograph" – which does not directly address the situation of legal persons. Recommendation 1 of the guidelines indicates that the acceptable documents are an identity card, a passport, or a driver's license – and that the address (which must not be a P.O. box) may be verified on the basis of an invoice from a service enterprise (water, telephone, etc.).

294. In the case of legal persons, the financial institution must request articles of incorporation and "any other document establishing that the legal person has been legally registered and that it really exists at the time of identification." In addition, the financial institution must require that individuals acting on behalf of the legal person produce "the delegation of powers granted to them, as well as documents attesting to the identity and address of the economic stakeholders." As indicated earlier, Article 2.2.4 also calls for identification of the true originator; furthermore, it states that if the customer is "a lawyer, a public or private accountant, a private individual holding a public delegation of authority, or a proxy, serving as a financial intermediary," then the customer may not invoke professional secrecy "to refuse to divulge the identity of the true operator." The law makes no explicit mention of a requirement to identify the management of legal persons; it refers only to identification of the "economic stakeholders," a term which it does not define.

295. Recommendation 1 of the guidelines indicates, for each category of legal person (civil society, general partnerships and limited partnerships, corporations, nongovernmental organizations, cooperatives, foundations, and other commercial enterprises), what documents must be required before entering into a business relationship. Apart from documents pertaining to the legal existence of the legal person, the required information focuses on the management and members of the board of directors (or other decision-making bodies), as well as on proxies for the legal person. There is no mention of natural persons who ultimately exercise actual control over the legal person (i.e. beneficial owners).

296. The evaluators note that the new identity card introduced in Haiti is generally hailed as progress in boosting the security of the means of identification, but that the Haitian public records mechanism and the falsification of these cards continue to raise doubts about the means of identification of Haitian natural persons. Furthermore, they received numerous indications of falsified documents for legal persons – above and beyond the weaknesses identified with respect to the reliability and updating of data in the trade register (cf. Recommendation 34). To guard against these risks, banks indicated that they cross-check documentation requests, specifically to ensure that the information provided by their customers regarding the shareholders of legal persons is satisfactory. Without dismissing the important progress represented by the new identity card for natural persons, it remains true that the scope of the falsifications described to the evaluators raises substantial doubts concerning the effectiveness of the customer identification mechanisms.

Beneficial owners

297. The law of February 2001 does not contain any requirement related to identification of the beneficial owner, nor to reasonable measures for verifying his or her identity. The evaluators believe in fact that the concept of "true originator" (Article 2.2.4) – which is not defined – does not cover the beneficial owner from the FATF perspective. Furthermore, the law does not state that entities subject to the law must understand the ownership and structure of control of the customer, nor determine the natural persons who ultimately control the customer. There are no trusts operating in Haiti, and the authorities are not aware of any cases where a trust set up under foreign law has established a business relationship with a Haitian financial institution. In the event that such a situation should arise, one step in identifying the "operator" would be completed only if the trust is represented by a lawyer, a public or private accountant, a private individual holding a public delegation of authority, or a proxy (cf. Article 2.2.4 of the anti-money laundering law described above).

298. The guidelines do contain a paragraph on the identification of "beneficiaries," but this term is not defined – and the content is focused on persons on whose behalf a transaction is performed ("if there is the slightest doubt as to whether these customers may not be acting on their own behalf"). The guidelines do not provide any indication concerning identification of the natural person ultimately exercising actual control.

299. As indicated above, Article 2.2.4 of the anti-money laundering law requires that a financial institution "ascertain by any and all means the identity of the true originator, the person on whose behalf it is acting" if the financial institution is not certain that the customer is acting on his or her own behalf.

Purpose and nature of business relationships, due diligence

300. The anti-money laundering law does not contain any provision on information to be gathered concerning the purpose and nature of the business relationship, nor any requirement to maintain due diligence regarding same. Such obligations cannot be indirectly inferred from the requirements pertaining to unusual or suspicious transactions. In fact, in the first case, Article 2.2.5 makes no reference to the "normal" profile for business relationships ("unusually complex or unjustified conditions" in the absolute and not in the relative, "lacking any economic justification or lawful purpose"). In the second case, Article 3.1.4 on suspicious transaction reporting is aimed at transactions "that involve funds which appear to be the result of committing a crime."

301. Similarly, the anti-money laundering law does not require an on-going monitoring of transactions, nor a regular updating of identification data.

Risk management approach

302. The law of February 2001 does not contain any provisions concerning a risk management approach and, in particular, does not define any requirement of enhanced diligence for higher-risk categories. As an example, in Recommendation 1, the guidelines even indicate that "nonresident natural persons shall be identified in the same manner as residents." No specific mention is made of nonresident legal persons, nor of foreign but resident natural or legal persons. In addition, the law does not call for reducing or simplifying the requirements of due diligence for situations of proven low risk.

Timing of verification

303. The anti-money laundering law states that identification of customers and verification of their identity must be performed prior to establishing the business relationship (Article 2.2.2) or, in the case of occasional customers, when the transaction takes place (Article 2.2.3 which refers to Article 2.2.2). No exception is provided, although the Central Bank indicates that it accepts in practice that additional documents may be required after the transaction has been completed or the business relationship has been established – depending on the extent to which the information submitted prior to the transaction or prior to establishment of the business relationship was adequate for identifying the customer – or that verification may be completed after establishment of the business relationship. There is no provision in this case to ensure that the risk of money laundering is then properly managed and minimized.

Unsatisfactory customer identification

304. Article 2.2.4 states that when a financial institution harbors doubts about the identity of its customer, or of the originator, it must terminate the "banking relationship, without diminishing, if applicable, the obligation to report suspicions." It should be noted that this paragraph refers solely to "banking relationships" and not to all types of business relationships – regardless of the nature of the financial institution.

Preexisting customers

305. The anti-money laundering law does not include any requirements concerning customers already existing at the time it went into effect. With respect to banks, BRH considers that the identification requirements in place ever since the circular on bad checks was issued in 1994 provide assurances that bank customers holding deposit accounts before the anti-money laundering law took effect were properly identified.

Politically exposed persons

306. The law of February 2001 contains no provisions on politically exposed persons (identification, level of decision making in establishing the business relationship, identification of the origin of wealth and funds, enhanced surveillance). The guidelines (Recommendation 1) describe "a duty of diligence […] regarding politically exposed persons," without distinguishing between Haitians and foreigners. Politically exposed persons are defined as "persons exercising (or who have exercised) important public functions, such as heads of state or Government, high ranking politicians, senior civil servants, high ranking magistrates, managers of public enterprises, or leaders of political parties." Even if this gap can be explained in the Haitian context (with the army dissolved), it is still striking that the list contains no reference to high ranking military leaders (nor, in particular, to foreign military leaders). The guidelines state that "reasonable measures should be taken to identify the origin of the wealth and the origin of the funds." They make no reference to enhanced surveillance of business relationships with politically exposed persons.

Correspondent banking

307. Correspondent banking (and other similar relationships) is not addressed separately from all other business relationships with customers in the law of February 2001. The guidelines provide only an indirect reference to this point by indicating in Recommendation 11 on internal controls that verifications should include periodic reviews of all correspondent banking relationships established with foreign banks in order to detect high-risk partners. Thus, no

specific diligence (beyond identification of the correspondent as a legal person) is required (with binding force) in such situations.

New technologies and non face-to-face contact

308. The anti-money laundering law contains no provisions pertaining to new technologies or the risks associated with business relationships conducted from a distance without the physical presence of the parties. With respect to such business relationships from a distance (accounts opened electronically), Recommendation 1 of the guidelines calls for the documents to be sent by registered letter, with acknowledgement of receipt, which must be signed in person by the account holder, and for the identification documents to be certified true by authorized persons. The law of February 2001 requires that financial institutions possess an internal controls mechanism (cf. below), but business relationships from a distance are not identified as presenting any specific risk. The authorities indicated that, as of the date of the on-site mission, few Haitian financial institutions offer electronic financial services.

Analysis

309. While the principles underlying the requirements of customer due diligence are included in the law of February 2001, the law does not reflect the new requirements of due diligence introduced when the 40 FATF Recommendations were revised in 2003. The guidelines provide useful details which, however, remain insufficient in terms of their substance – not to mention the lack of binding force of these guidelines. The difficulties specific to the Haitian context concerning the identification of natural and legal persons further weaken implementation of the existing obligations.

310. In summary, the main legal weaknesses with respect to identification obligations revolve around: anonymous accounts or accounts in fictitious names and business relationships established before the law went into effect; identification of the beneficial owners; monitoring of business relationships and identification for wire transfers in a range between US$1,000 and US$10,000.

311. The evaluators also note that some of the law's requirements, especially the obligation to provide an address at the time of identification, may prove inappropriate to the Haitian economic and social context, where many potential customers do not have an address. This situation can lead either to excluding these customers from the formal financial system or to bypassing this requirement (in substance, even if not formally) to correct this situation.

312. The indications provided by the credit institutions with which the mission met show a commitment to comply with the requirements of due diligence, as well as a level of internal controls generally greater than in the applicable laws and regulations. As indicated in the section on supervision, the evaluators note however that the banking supervisor has not performed a "thematic" review of compliance with these obligations since 2001 – and external auditors have not performed such a thematic verification either. They also note that the legal limitations on inspectors' access to confidential customer data do not allow for effective supervision of compliance with identification obligations by financial institutions – in addition to the fact that, to date, only banks have been audited regarding anti-money laundering obligations. The evaluators note moreover that the very low level of suspicious transaction reporting raises doubts about effective implementation of due diligence – even if other reasons can be offered to explain this situation. While the indications provided by the banks with which the mission met are indeed encouraging as regards their mobilization in the fight against money laundering, the evaluators

feel they cannot reach a more positive assessment in the absence of more solid data and, in particular, of a deeper examination by BRH supervisors, and in view of the many weaknesses identified above, which undermine the effectiveness of the system in place.

3.2.2 Recommendations and Comments

313. The authorities should consider revising certain customer identification requirements in view of the Haitian economic and social fabric, particularly the requirements about supplying an address. This obligation, which is not required as such by FATF, is in fact likely to block access to the formal financial system for a substantial segment of the population – to the detriment of efforts to formalize the economy. In particular, the authorities could set in place an approach that is more focused on risks (after having performed a risk analysis) and could lay out other methods for identifying this type of customer and provide, if necessary, instructions on the type of banking relationships then authorized.

314. To address the weaknesses identified above, the authorities should:

- ⇒ Strengthen the bans on anonymous accounts and accounts in fictitious names
- ⇒ Lower the customer identification threshold for wire transfers to US$1,000
- ⇒ Clarify the legal identification threshold for occasional transactions in forms consistent with the anti-money laundering law of 2001
- ⇒ Clarify the customer identification requirement in occasional transactions, independent of the threshold, when there is a suspicion of money laundering or terrorist financing
- ⇒ Institute a requirement to identify and to verify the identity of beneficial owners, based in particular on a requirement that financial institutions understand the way in which ownership and control of a legal person are organized
- ⇒ Establish a requirement to collect information on the purpose and nature of the business relationship and to update identification data on a regular basis
- ⇒ Implement a risk management approach for the highest risks
- ⇒ Based on a risk analysis, consider adopting flexible requirements for demonstrably low risks
- ⇒ Set in place a risk-based customer identification mechanism for business relationships predating 2001, in connection with a stronger and more direct requirement regarding anonymous accounts and accounts in fictitious names
- ⇒ Institute requirements of enhanced diligence toward politically exposed persons
- ⇒ Institute specific and enhanced requirements for establishing correspondent banking or equivalent relationships

⇒ Institute requirements proportional to risk for business relationships conducted at a distance and with no face-to-face contact

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**NC**	⇒ Too limited scope of the ban on anonymous accounts and accounts in fictitious names; lack of risk-based identification mechanism for customers predating 2001 (or 1994 for bank deposit accounts) ⇒ Identification threshold too high for customers performing wire transfers ⇒ Legal uncertainties about the identification threshold for occasional customers ⇒ Absence of an identification requirement, independent of the threshold, when there is a suspicion of money laundering or terrorist financing ⇒ Absence of requirements to identify and verify the identity of beneficial owners and to understand the way in which the ownership and control of a legal person are organized ⇒ Absence of a requirement to collect information on the purpose and nature of the business relationship, and to ensure due diligence (including the updating of identification data) ⇒ Absence of a requirement of enhanced diligence for high risks ⇒ Lack of objective data on the effectiveness of the requirements of due diligence
R.6	**NC**	⇒ Absence of a requirement of enhanced diligence toward foreign politically exposed persons
R.7	**NC**	⇒ Absence of requirements pertaining to the establishment of correspondent banking or equivalent relationships
R.8	**NC**	⇒ Absence of requirements pertaining to business relationships conducted at a distance or risks associated with new technologies

3.3 Third parties and introducers (introduced business -R.9)

3.3.1 Description and Analysis

315. No provisions of the anti-money laundering law specifically address situations where financial institutions might rely on intermediaries or third parties to perform certain elements of due diligence, or as business introducers. Thus, such reliance is not prohibited by law. The absence of a securities market also reduces the likelihood of cases in which, structurally, such circumstances could emerge.

316. Nevertheless, the situations covered by Article 2.2.4 of the anti-money laundering law introduce de facto recognition by the authorities that, in certain circumstances, business introducers (lawyers, public or private accountants, private individuals holding a public delegation of authority, or proxies) may in practice play a role. This article then goes on to

clearly require the lifting of all professional secrecy regarding the identity of the "true operator." In this regard, the wording of the article – "to divulge the identity of the true operator" – may suggest that financial institutions could content themselves with establishing only the identity of the "direct" customer. The article does not introduce any requirements concerning the introducer, particularly with respect to meeting obligations to combat money laundering and provide identification data and situational information in a country possessing an acceptable system to combat money laundering. BRH clearly indicated to the evaluators that, in its view, the responsibility of identification and verification of identity falls squarely on the Haitian financial institution.

3.3.2 Recommendations and Comments

317. The authorities should clarify the requirements of due diligence in situations where a financial institution provides a role to third parties or business introducers, specifically by indicating the conditions (regarding obligations to fight money laundering) that must be met by the intermediary and by affirming the principle that responsibility for the customer identification process always falls to the financial institution.

3.3.4 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**NC**	⇒ Absence of obligations on the part of intermediaries and business introducers; lack of certainty regarding the ultimate responsibility of the financial institution to meet the requirements of due diligence.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

318. In Article 2.2.7, the anti-money laundering law requires that information and documentation specified in the articles on the identification and verification of identity of customers "be divulged, at their request, to magistrates, to civil servants charged with the detection and prevention of money laundering offences acting under judicial mandate, and to the Central Financial Information Unit […], pursuant to its terms of reference." In addition, Article 3.2.1 exempts professionals subject to the law from any responsibility regarding professional or bank secrecy when they act in good faith within the framework of the anti-money laundering law, specifically with respect to reports required by law. Finally, Article 3.4.1 suspends any right to bank or professional secrecy for information required under the conditions laid out in Article 2.2.7 (cf. above) or "required in connection with an investigation focusing on the facts of money laundering, ordered by the senior justice of the district court or conducted under the authority of the investigative magistrate to whom the matter has been referred."

319. With respect to banks, Article 53 of the banking law of 1980 frames the arrangements for lifting bank secrecy on behalf of BRH agents: "When so required, a bank must provide to BRH inspectors all necessary information and give them all books and records that they deem necessary in order to ascertain with full accuracy the position of the bank undergoing inspection. However, to protect the confidential nature of demand deposit, term deposit, and savings account

transactions, BRH inspectors may only ask for those items needed to audit trial balances without reference to the depositors' names." Article 108 stipulates that bank directors and employees are bound by professional secrecy "with the exception […] of information that must be provided to monetary or judicial authorities under the law," while Article 109 states that "professional secrecy […] applies to customers' assets and all known facts, unless released from same by written authorization of the customer or the customer's heirs or legatees."

320. Article 33 of the BRH organic law states that "all financial institutions must provide to BRH all information and data which BRH may request in order to successfully perform its duties. To ascertain compliance with Articles 29, 30, 31, and 32, BRH may ask any financial institution to turn over its accounting records and all other records for the purpose of auditing same" (these articles concern credit and investment operations; commitments, resources, and liabilities; prudential ratios; and debt ceilings).

321. The banking law authorizes banks to exchange information among themselves, an exception to professional secrecy encompassing "professional information that can only be given to another bank, in accordance with bank policies and procedures."

322. The anti-money laundering law states (in Article 3.1.1) that UCREF shall "receive all useful information, especially information transmitted by judicial authorities," and that it may exchange information with authorities charged with the enforcement of disciplinary action (Article 3.1.2), which covers the authorities responsible for disciplining or overseeing credit institutions, financial institutions, and all other natural or legal persons subject to the law (Article 2.1 of the law). The evaluators note that this capacity to exchange information between supervisory authorities and UCREF does not appear to have been implemented.

323. Article 5.2.2 of the anti-money laundering law stipulates that "bank secrecy may not be invoked to refuse to execute a request" for judicial cooperation.

324. A close reading of all these different legal requirements points to a situation which is at best highly ambiguous and restrictive from the evaluators' perspective – even though most of the Haitian authorities met by the evaluators indicated that, in practice, they have access to all required information from financial institutions. Nevertheless, an analysis of the legal framework underscores the following issues:

- The judicial authorities have access to information required within the framework of judicial proceedings and may charge investigative authorities to obtain all needed banking and financial records (Articles 3.4.1 and 2.2.7 of the anti-money laundering law, Article 108 of the banking law).

- UCREF has access, as part of its mission (cf. above) and without court order, to all suspicious transaction reports, statements of origin, and information related to customer identification (Article 2.2.7, with cross reference to Articles 2.2.2 to 2.2.6, of the anti-money laundering law). Access to other information concerning accounts is based on Paragraph b) of Article 2.2.6, which states that "documents related to operations performed by customers and records specified in Article 2.2.5," pertaining to complex and unusual transactions, must be made available to UCREF. It is clearly indicated in the law that such access to information is limited to situations where UCREF acts within the framework of its mission, i.e. "to analyze and process the reports." In the evaluators' view, UCREF thus cannot use its right of access in connection with a matter that is not originally based on a suspicious transaction report (for example, if it wants to

expand upon a piece of information drawn from an automatic transaction report as discussed in Article 3.1.4, Paragraph 1).

- BRH employees are comparatively restricted in their access to banking information – at least by law, which may significantly limit their capacity to fulfill their supervisory responsibilities effectively and engage in international administrative cooperation on concrete cases. In particular, the article of the banking law on bank secrecy is very restrictive, and the other articles (of the BRH statutes or the banking law) laying out the conditions for lifting bank secrecy are primarily focused on verification of the prudential situation (and not on access to specific bank customer data). In the evaluators' view, such access is thus legally restricted to financial information needed to establish the bank's *position*, and the information must not specify names. BRH, for its part, embraces a broader reading of these provisions.

325. In summary, bank secrecy represents an impediment to implementation of the Haitian anti-money laundering mechanism, on two levels:

- In legal terms, it places constraints on the banking supervisor – even though, in practice, BRH inspectors indicate that they are able to obtain all the information they request (although this is highly subject to appeal);

- In practical terms, UCREF has used its right of access to banking information in investigatory situations that were not initiated pursuant to a suspicious transaction report. This reality is a matter of concern to the evaluators for the following reasons:

  - Such an approach circumvents the rules of law that apply to access to bank information in the context of judicial proceedings, as defined in Article 2.2.7 of the anti-money laundering law.

  - This practice jeopardizes any possible subsequent judicial proceedings, by providing an argument of defense if UCREF has obtained information beyond the scope of its mission.

326. Overall, the evaluators believe that the current practice of UCREF, no matter what its potential benefits in the short term, could ultimately result in defiance toward the entire anti-money laundering mechanism and undermine the necessary credibility and legitimacy of the institutions involved.

327. In summary, bank secrecy cannot be argued against criminal investigation entities and the financial intelligence unit, which is positive. Nevertheless, the restrictions on lifting professional secrecy for the banking supervisor fundamentally undermine the effectiveness of the anti-money laundering mechanism and proper implementation of the basic FATF Recommendations. In addition, the current practice of UCREF poses a major legal risk and is apt to endanger financial institutions' collaboration with the anti-money laundering mechanism.

3.4.2 Recommendations and Comments

328. The authorities should substantially revise the obligations pertaining to bank secrecy so that the current restrictions, which pose a potential impediment to the fight against money laundering (scope and depth of banking supervision, domestic and international cooperation), are lifted. In addition, they should ensure that UCREF's practices regarding access to banking information are performed in full compliance with the letter and spirit of the law of 2001.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**PC**	⇒ Bank secrecy too broad in scope and excessively restrictive, thus undermining the effectiveness of the anti-money laundering mechanism ⇒ Excessive access to bank information by UCREF, apt to result in defiance by informant entities and create legal risks harmful to judicial proceedings

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

329. The record keeping requirements are set forth in Article 2.2.6 of the anti-money laundering law. The following records must be kept:

- "records pertaining to customer identity must be kept for at least five years after closing an account or ending a business relationship with the customer;
- "records pertaining to transactions performed by customers and records specified in Article 2.2.5 must be kept for at least five years following execution of the transaction."

330. Article 2.2.9, Paragraph c of the same law relative to money changers states that the latter must "record, in chronological order, all transactions, their nature, and their amount, along with the full names of the customers involved and the registration numbers of the documents presented, in a register listed and initialed by the Haitian Central Bank and must keep said register for at least five years following the last recorded transaction."

331. The evaluators note that, in order to ensure with full security that the complete "audit trail" is preserved, there would need to be an additional level of specificity regarding the records to be kept (also covering business correspondence), for example by adopting regulations complementary to the law. The items covered by the record keeping requirements are, however, sufficient at this stage, in the evaluators' view, to be able to reconstruct the various transactions.

332. Recommendation 7 of the BRH guidelines restates these legal obligations and further specifies that record keeping should "make it possible to reconstruct individual transactions (including the amounts and types of currency involved, if applicable) so as to provide, if necessary, pertinent evidence in the event of proceedings involving criminal conduct."

333. The Haitian legislative mechanism contains no provisions that would enable authorities to request an extension of the record keeping requirement.

334. Article 2.2.6 requires that the records kept be made available to the competent national authorities. However, the officials with whom the mission met noted certain delays in the transmission of information requested from financial institutions.

335. Wire transfers (national or international) are not covered by any specific laws or regulations (bearing specifically on the conveyance of identification information regarding the originator), and associated transactions must therefore be analyzed as "common law" transactions for the purpose of enforcing the anti-money laundering law. The identification requirements are those described in Recommendation 5 (which is especially weak as regards the identification threshold for occasional customers). There is no requirement to provide information on the originator along with the wire transfer – regardless of whether the transfer is national or international. Here again the record keeping requirements are those of common law (cf. discussion of Recommendation 10 above). Also, there is no particular requirement when Haitian financial institutions receive international or national transfers, in the event of a lack of complete information on the originator.

336. For the reasons noted for Recommendation 5, no conclusive assessment of the effectiveness of the record keeping requirements (particularly outside the banking system) is possible.

3.5.2 Recommendations and Comments

337. The Haitian authorities should:

⇒ Ensure that it is possible for competent authorities to request an extension of the length of time that records must be held.

⇒ Implement wire transfer regulations concerning the conveyance of identification data on the originator, in accordance with Special Recommendation VII – with specific attention (in view of the pattern of wire transfers in Haiti, where virtually all transfers are received, not sent) focused on the obligations of banks receiving cross-border wire transfers.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	⇒ Lack of a legal basis for authorities to request an extension of the length of time that records must be held ⇒ Lack of objective data on the effectiveness of the system in place, and delays in transmitting records
SR.VII	**NC**	⇒ Identification threshold set too high ⇒ Absence of requirements regarding wire transfers (conveyance of identification data)

Unusual or suspicious transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

338. Article 2.2.5 requires of all parties subject to the anti-money laundering law that they ascertain the origin and destination of funds, as well as the purpose of the transaction and the identity of the economic actors in the transaction, if the amount involved exceeds 200,000 gourdes *and* the transaction is performed under unusually complex or unjustified conditions, or appears to have no economic justification or lawful purpose. It should be noted that this article contains a double condition, and only applies to transactions above 200,000 gourdes. Apart from the fact that it is contrary to the international standard, this threshold appears high in the Haitian context. This is not in line with Recommendation 11 and, moreover, appears to contradict Article 2.2.9 (for money changers only), inasmuch as the latter calls for identification regardless of the amount if the transaction presents "unusually complex or unjustified conditions." For their part, the authorities consider that Recommendation 11 of the guidelines addresses complex transactions in abnormally high amounts and all types of unusual transactions to which financial institutions should give special attention; in their view, Article 2.2.5 is not inconsistent with Recommendation 11, nor in apparent contradiction with Article 2.2.9, which requires manual moneychangers to identify customers and ties them to the threshold "for any transaction performed under unusually complex or unjustified conditions."

339. A confidential written report, held by the bank for at least five years, should reflect "all useful information on the transaction arrangements," the identity of the originator, and the identity of the economic actors involved. This report is available to supervisory authorities and external auditors.

340. Recommendation 5 of the guidelines restates these obligations and provides, as an example of such situations, extreme variations in the activity of an account. It should be noted that the recommendation contradicts the law because it stipulates that a written report examining such transactions should be prepared "if necessary,"[33] and not in the form of an obligation.

341. Article 2.2.5 also calls for parties who are subject to the law to exercise special due diligence "toward operations originating from financial institutions that are not subject to adequate requirements regarding customer identification or transaction oversight." The law does not specify that this special attention covers business relationships and transactions with all types of customers residing in countries that have inadequately implemented the FATF Recommendations. It also does not call for a systematic review of such transactions and transcription of this review – except when the transactions also meet the criteria described above (unusual transactions).

342. There are no measures in place to inform financial institutions about concerns raised by the shortcomings of other countries' mechanisms for combating money laundering and terrorist financing.

343. Haiti is not in a position to enforce appropriate countermeasures against countries that continue to inadequately implement the FATF Recommendations.

344. Banking supervisors do not appear to have exercised extensive control over compliance with the requirements concerning complex and unusual transactions (cf. analysis under Recommendation 13). The evaluators are not in a position to provide an assessment of the effectiveness of these requirements.

[33] "The institution may, if necessary, prepare a confidential written report covering all useful information as required by the law on transaction arrangements and persons involved."

3.6.2 Recommendations and Comments

345. The authorities should revise the requirements pertaining to unusual and complex transactions to eliminate the threshold of 200,000 gourdes, below which there is no requirement at present.

346. The authorities should develop mechanisms to inform financial institutions about the shortcomings of certain systems to combat money laundering and terrorist financing, as well as a legal framework that will enable them to enforce countermeasures against countries that continue to not adequately implement the FATF Recommendations.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**LC**	⇒ Existence of a (monetary) threshold that triggers requirements for unusual or complex transactions ⇒ Uncertain implementation of the requirements
R.21	**NC**	⇒ Absence of a legal framework and operational mechanism enabling Haiti to guard against countries with weak systems for combating money laundering

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

347. Natural and legal persons subject to the law of February 2001 are "required to report operations specified under Article 2.1.1 of the law to UCREF if they involve funds that appear to derive from the commission of a crime punishable by more than three years in prison." This wording ("appear to derive") leaves some latitude to the covered entities. It does not require virtual certainty about the illicit origin of the funds, but only a doubt, which may be based on objective and subjective factors. It appears however that the financial professions covered by the law feel a need to know the illicit origin of the funds before reporting any suspicions to UCREF. This interpretation represents a restrictive reading of the law and prevents UCREF from learning about a significant number of suspicious financial flows (there have been only a few suspicious transaction reports filed since 2004).

348. The three-year threshold narrows the scope of suspicious transaction reporting and excludes some offences required under the standard. In particular, it excludes suspicious transaction reports regarding offences as serious as corruption or contraband. Suspicious transaction reporting does not cover the offence of terrorist financing.

349. The regulations do not establish a minimum amount for a suspicious transaction to trigger a report. Even if the statute does not specifically say so, the existence of the possibility for UCREF to defer execution of a transaction indicates that a suspicious transaction report may come into play even if the transaction has not taken place (and thus indirectly cover situations of attempts to perform suspicious transactions).

350. There is no provision for fiscal exceptions.

351. Suspicious transaction reports are transmitted to UCREF electronically or by fax, or alternatively by any written means. Reports made over the telephone must be confirmed by fax or any other written means as quickly as possible.

352. No legal action for violating bank or professional secrecy may be undertaken against informants who have filed a suspicious transaction report in good faith. No action in civil or criminal court and no professional sanctions may be taken against them, even if the investigations or judicial rulings do not result in a conviction. Furthermore, the 2001 law states that when UCREF transmits a report to the Public Prosecutor's Office, the identity of the report's author should not be included in the report, nor the suspicious transaction report itself.

353. Alerting the customer or the perpetrator of a transaction about a suspicious transaction report made against him or her is punishable, in the case of directors or employees of entities subject to the law, by a prison sentence of three to 15 years and/or a fine of 20 to 100 million gourdes (i.e. between roughly US$560,000 and US$2,800,000). No cases of violations of this confidentiality requirement by persons subject to the law were reported to the evaluators. No civil or criminal action has ever been taken against a bank that has filed a suspicious transaction report under the 2001 law.

354. In early 2005, BRH established guidelines for banks in order to heighten their awareness and help them report their suspicions. These guidelines contain an annex that presents a variety of situations that could lead to a suspicious transaction report – which was prepared on the basis of international typologies (and with no input from UCREF). It appears that these guidelines have not been widely distributed because they are generally not well known within the banking profession.

355. An acknowledgement is sent by UCREF upon receipt of a suspicious transaction report. But no feedback has been given to date to persons subject to the reporting requirement, which would enable them to better detect and report suspicious transactions.

356. In addition to suspicious transaction reporting, the law of February 2001 provides for a mechanism of systematic transaction reports to UCREF for transactions above 200,000 gourdes (approximately US$5,000). The wording of the law (Article 3.1.4, Paragraph 1) goes beyond the standard because it covers "transactions involving a sum equal to or greater than the sum specified in Article 2.1.2, Paragraph 1." The reference to Article 2.1.2 relates to the amount above which a transaction should trigger an automatic report, and not to the nature of the transaction. All transactions, including those in cash, are thus covered.

357. A common computer system was set in place between the banks and UCREF to ensure transmission of information. By the date of the evaluation, more than 170,000 automatic reports had been transmitted to UCREF by banks. It appeared to the evaluators that technical implementation of the transmission of automatic reports has overshadowed, for the authorities and bankers, the importance of suspicious transaction reporting. Yet, as noted before, the analytic powers of UCREF are not the same in the area of automatic transmission as they are in the area of suspicious transaction reporting. Furthermore, suspicious transaction reports are by nature more relevant to the risk of money laundering. Also, the banking supervisor has focused solely on banks' compliance with the requirement to transmit automatic reports, without studying the effectiveness of internal procedures for suspicious transaction reporting.

358. Through Circular 95, BRH directed banks to provide automatic reports on cash transactions above 200,000 gourdes (approximately US$5,000) along with information on the origin of the funds. This arrangement restricts the scope of automatic reporting to *cash transactions* only and, at the same time, imposes an extra obligation on persons subject to the law, namely to obtain information on the origin of the funds.

359. These requests are perceived by banks as very onerous, especially because the system cannot be computerized from start to finish and requires manual gathering of information from customers, followed by data entry for transmission to UCREF.

360. The arrangements set forth in the 2001 law do not provide for other authorities besides UCREF to have access to the computer data collected through automatic reporting.

361. Other persons subject to the law have not yet transmitted automatic reports, nor installed the computer interface. It should be noted that the penalties for failing to implement a computer system able to identify transactions above 200,000 gourdes (US$5,000) are particularly severe (one to five years of prison, 5 to 20 million gourdes – i.e. US$140,000 to US$560,000 – in fines), and that they have never been enforced.

3.7.2 Recommendations and Comments

362. The system of suspicious transaction reporting, consistent in spirit with international standards, is weakened by the requirement that suspicious funds derive from an offence punishable by more than three years of prison. For its part, the system of automatic reporting (called "statement of origin of funds" by the banking supervisor) is incomplete in terms of its implementation, is not followed by all persons subject to the law, and can be put to only very limited use by UCREF (solely to cross-check other prior information), which substantially reduces its value with respect to anti-money laundering efforts and access to relevant information.

363. Very few suspicious transaction reports (5 or 6, no clear statistics) have been transmitted to UCREF. The system has been focused on automatic reporting of transactions above 200,000 gourdes (US$5,000) (in cash). It appears that this reporting does not cover all transactions above the threshold (particularly transfers from banks, check deposits, and international transfers) and it requires that the bank obtain information about the origin of the funds.

364. The authorities should:

- expand the scope of suspicious transaction reporting to include terrorism and its financing
- make all persons covered by the 2001 law aware of suspicious transaction reporting and automatic transaction reporting
- simplify the systematic reporting mechanism and expand it to all transactions above a threshold set by BRH, consistent with the law – even if this goes beyond the standard
- provide for access to the UCREF data base for other authorities involved in the fight against money laundering and terrorist financing

3.7.3 Compliance with Recommendations 13, 14, 19, and 25 (criterion 25.2) and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**NC**	**Absence of suspicious transaction reporting regarding terrorist financing** **Virtual absence of implementation of the system of suspicious transaction reporting by financial institutions**
R.14	**C**	
R.19	**LC**	**No access to the computerized data base by authorities other than UCREF**
R.25	**NC**	**BRH guidelines not widely distributed and not well known to the financial professions; no feedback from UCREF to the financial professions**
SR.IV	**NC**	**The scope of suspicious transaction reporting does not cover terrorist financing**

Internal controls and other measures

3.8 Internal controls, compliance, and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

365. Article 2.2.8 of the law of February 2001 requires that financial institutions have "programs for money laundering prevention," which should include, in particular, "a mechanism of internal control of the implementation and effectiveness of the measures adopted pursuant to this law" and "the appointment of officers at the headquarters, each local agency or branch." Failure to comply with this obligation is punishable by a prison sentence and a fine under Article 4.2.5.2 of the law, while Article 4.2.4 requires that supervisory authorities impose administrative sanctions for "deficiencies in organizing the internal procedures for preventing money laundering" (cf. section on sanctions). Article 2.2.8 of the anti-money laundering law calls for anti-money laundering programs to include "in-house training of civil servants or employees."

366. In addition, in May 1998 BRH issued Circular 89 on internal controls, which concerns commercial banks and savings and housing banks. This very detailed circular lays out the general framework of internal controls, the responsibilities of administrators and directors, oversight of internal controls, examination of the controls by an independent auditor (external audit), the availability of information to inspectors, compliance reports, and penalties – as well as the conditions under which a foreign bank branch may adopt the internal controls of its parent bank. It does not contain any specific provisions on the fight against money laundering and terrorist financing.

367. The circular calls for an internal audit mandate, focused on a review of controls by internal auditors (Article 5). This mandate should describe the "full cycle of inspections, which should cover all activities, operations, systems, functions, and other facets of the bank, and all its subsidiaries, without exception." It is not specified whether independent internal controls may

involve surveys to verify compliance with procedures. The inspection reports are transmitted to the board of directors and the audit committee.

368. With respect to external audits, Article 6 of the circular defines the scope of the controls in such a way as to encompass "credit, investment, foreign exchange, and deposit operations [as well as] income, expenditure, collection, and disbursement operations." Thus, the external audits do not focus on the implementation of internal controls in the broad sense, nor include anti-money laundering mechanisms. Nevertheless, the main external auditor of banks confirmed that it reviewed the anti-money laundering system as part of his review of internal controls.

369. Recommendation 11 of the guidelines[34] describes the content of the internal control mechanisms and internal audit system as follows: a mechanism to oversee internal anti-money laundering policies and procedures, a structure to guarantee confidential handling of information, measures to identify risks associated with money laundering and systems to evaluate these risks, a surveillance system able to guarantee mitigation of the risks associated with money laundering, and a centralized documentation and information system. The guidelines indicate that audits of internal controls should include "specific auditing of the money laundering component […] by internal auditors." Recommendation 13 calls for external auditors to issue an opinion "on the degree of effectiveness of the anti-money laundering structure set in place by the institution and compliance with the laws and regulations in effect."

370. Recommendation 10 of the guidelines lays out the responsibilities of the compliance officer: ensure implementation of anti-money laundering laws and regulations; ensure compliance with internal anti-money laundering methods and procedures; identify gaps and make recommendations as necessary; propose training programs on a periodic basis. The compliance officer should be a "senior official" who "answers directly to the board of directors on all matters related to money laundering and should be able to participate in all meetings of the audit committee or any other oversight committee." The recommendation also states that the existence of an official in charge of anti-money laundering efforts in branches and agencies "does not exempt the compliance officer from his or her responsibilities under the law." The compliance officer is described in Recommendation 10 as being responsible for liaising with UCREF (including following up on requests for information from UCREF), ensuring that statements of origin (systematic reporting) are properly completed, monitoring evolutions in customer accounts, and preparing suspicious transaction reports.

371. Recommendation 14 describes in-house training obligations pertaining to the fight against money laundering. All employees should receive minimum training, with regular updates (no indication of frequency). In addition, "high officials of the institution, professional staff of the internal audit department, and the compliance officer" should participate – at least annually – in anti-money laundering training. Finally, professional staff in charge of managing the accounts of foreign correspondent banks should also receive, at regular but unspecified intervals, specific training. The guidelines do not set the minimum level or minimum frequency of training for employees in direct contact with customers.

372. Neither the law, nor the circular, nor the guidelines specify the information and documents to which the compliance officer should have access – and the comment in the

[34] It bears repeating here that these guidelines are not considered by the evaluators to have binding force and are described only for informational purposes. They are not taken into account in the compliance rating.

guidelines (cf. above) that the compliance officer should "monitor changes in customer accounts" is not accompanied by any indications about the means for accomplishing this task. Nothing in the law or regulations specifies that compliance officers should have access to customer identification data or records related to transactions.

373. There is no legal obligation to verify the background of employees before hiring them.

374. The indications received from the banks visited by the mission generally suggest that the structure of their compliance controls is in line with the law and that they apparently possess the necessary means for accomplishing their purpose. The banking supervisor has monitored progress in setting compliance officers in place, but, based on the information provided to the mission, has not to date carried out a more thorough analysis of internal control procedures (including compliance officers) for the fight against money laundering.

375. As of the date of the on-site mission, only one Haitian financial institution had overseas representation – through a money transfer company that is itself a bank subsidiary. This situation does not allow the evaluators to conclude that structural conditions specific to Haiti justify rating Recommendation 22 as "not applicable."

376. With respect to the fight against money laundering, the Haitian legal system contains no provisions on the obligations of foreign branches and subsidiaries of Haitian financial institutions (compliance with anti-money laundering obligations of the country of origin, enhanced diligence in countries that do not follow FATF standards, enforcement of the most rigorous standard, information for oversight authorities of the country of origin in the event of difficulty in complying with appropriate anti-money laundering procedures). As part of their consolidated supervision, banking supervisors believe they are able to assess (in the current state of the Haitian market) whether difficulties are emerging – however, the restrictions on international cooperation by banking supervisors (cf. Recommendation 40) continue to pose an additional burden on effective action in this area.

3.8.2 Recommendations and Comments

377. The authorities should clarify internal control obligations, based on the 2001 law and the circular on internal controls, especially as regards: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to recruitment; minimum content of compulsory training.

378. The choice of criminal punishment for breaches of internal control obligations seems particularly excessive to the evaluators (cf. below on the system of sanctions as a whole). The evaluators recommend stronger administrative sanctions as a way to enhance the effectiveness of internal control obligations.

379. The authorities should establish obligations aimed at the foreign branches and subsidiaries of Haitian financial institutions, relative to their capacity to implement satisfactory anti-money laundering mechanisms in their host country.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating

R.15	**PC**	⇒ Lack of information regarding internal control obligations, both general and specific to anti-money laundering efforts, on the following points: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to recruitment; minimum content of compulsory training
R.22	**NC**	⇒ Absence of obligations aimed at foreign branches and subsidiaries of Haitian financial institutions, relative to their capacity to implement satisfactory measures to fight money laundering and terrorist financing

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

380. The Ministry of Finance is charged with issuing licences to engage in the banking profession, in accordance with the banking law of 1980, based on a review of the request for approval by BRH. The conditions for approval do not explicitly mention shell banks, and BRH has indicated that such a situation would result in a negative recommendation on its part to the Ministry of Finance. Article 2.2.1 of the anti-money laundering law of 2001 states that "the Government shall organize the legal framework so as to ensure" there is no way to set up "fake or fictitious entities."

381. Article 26 of the banking law states that an entity's authorization to operate as a bank will be revoked if it "has not commenced operations within 12 months after approval is given, unless BRH has extended this deadline by written notification."

382. Haitian authorities indicated that there are no shell banks in Haiti, and that the regulatory tools at their disposal would enable them, if necessary, to revoke the license of any shell bank set up in Haiti.

383. There are no legal or regulatory provisions banning Haitian financial institutions from establishing correspondent banking relationships with shell banks, or requiring them to ascertain that their correspondent banks do not themselves have relationships with shell banks.

3.9.2 Recommendations and Comments

384. The authorities should require Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent accounts.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	⇒ Absence of any obligation for Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent

		accounts

Regulation, supervision, monitoring, and sanctions

3.10 The supervisory and oversight system – competent authorities and self-regulatory organizations (SROs)
Role, functions, obligations, and powers (including sanctions) (R.17, 23, 25, 29, 30 & 32)

3.10.1 Description and Analysis

General framework

385. The financial sector supervisory and oversight system is organized around the Haitian Central Bank (banks, money transfer companies, money changers, savings and loan cooperatives) and the Ministry of Commerce / Ministry of Finance (insurance).

386. Various laws govern the activities of Haitian financial institutions:

- Banks: decree law of November 14, 1980

- Savings and housing banks: law of August 20, 1984, amended by the decree of August 29, 1989

- Money changers: decree of January 21, 1989 and opinion of February 5, 1993 designating BRH as the money changer oversight authority

- Money transfer companies: decree of July 6, 1989

- Savings and loan cooperatives: law of June 26, 2002

- Insurance: law of July 13, 1956 and decree of March 20, 1981

387. There is no legal framework for microfinance institutions.

388. The Haitian Central Bank (BRH) was created by the law of August 17, 1979 and designated as the monetary authority of Haiti. Article 2 of the law, which defines the mandate of BRH, calls upon BRH to "attend to the enforcement of legal and regulatory provisions pertaining to financial institutions." Article 8 designates the board of directors of BRH to "enforce the provisions of the law on financial institutions." The law calls for the existence of a "department of bank and financial institution supervision" with the following responsibilities:

- oversee enforcement of all BRH board decisions concerning exchange rate, monetary, and credit policy

- regularly inspect the financial institutions placed under its supervision

389. The 1956 law on insurance companies contains a very small number of provisions pertaining to supervision, but places insurance companies under the aegis of the Ministry of

Commerce. The 1981 decree places them (for the amended articles) under the supervision of the Department of Finance and Economic Affairs. The evaluators took note of the explanations provided by the Haitian authorities concerning the fact that a decree, typically of lower legal standing than a law, can possess equivalent authority in the Haitian legal context and can amend legal provisions. It should be noted that the decree stipulates (in Article 5) that "the provisions of this decree are transitory in nature and shall remain in effect until promulgation of the new law on insurance company operations" – which has never been adopted.

390. The anti-money laundering law of February 2001 clearly designates each financial institution oversight authority as holding responsibility for implementation of anti-money laundering mechanisms by entities covered under the law. Article 4.2.4 thus indicates that these disciplinary authorities may initiate appropriate proceedings in the event of noncompliance with a legal obligation, resulting from either "a serious lack of due diligence or deficiencies in organizing internal procedures for money laundering prevention."

Supervisory and oversight powers

391. The banking law defines the powers of the banking supervisor. In particular, it states that inspectors may conduct inspections (Article 52) and, as indicated in the description of bank secrecy, they may request any and all information from all books and records "to enable them to ascertain with full accuracy the position of the bank undergoing inspection." Furthermore, Article 33 of the law indicates that "all financial institutions must provide to BRH all information and data which BRH may request in order to successfully perform its duties and responsibilities," especially accounting records and "all other records for the purpose of auditing same." The sanctions set forth in the 1979 law for noncompliance with BRH directives are strictly tied to certain articles of the law which have nothing to do with the fight against money laundering (credit and financial management policies of banks).

392. This right to communication is however circumscribed insofar as, with respect to demand deposit, term deposit, and savings account transactions, "BRH inspectors may only ask for those items needed to audit trial balances without reference to the depositors' names." These provisions limit the legal capacity of inspectors to gain access to records that are not related to a bank's "position," or to perform test audits on customer accounts. BRH indicated to the evaluators that, in practice, inspectors face no restrictions in their access to information and do perform test audits (which the supervision results discussed with the evaluators appear to confirm). However, it should be noted that Article 2.2.7 of the anti-money laundering law does not mention supervisory authorities in the list of public institutions entitled to gain access, upon request, to information related to customer due diligence, and that the second paragraph of this article states that "the abovementioned information and records shall not be given to natural or legal persons other than those enumerated in Paragraph 1, without express authorization of these authorities." Apart from these (significant) limitations, the banking supervisor does not need to obtain a court ruling to obtain access to relevant information.

393. The decree on money transfer companies designates BRH as oversight body (Article 14). In the same article, it specifies BRH's powers of inspection, both on site and with respect to a firm's records. Article 15 lays out the right to communication of "all required information, books, and ledgers [that the inspectors] deem necessary."

394. As indicated earlier, an opinion issued by the Minister of Finance designates BRH as oversight authority for money changers. The 1989 decree does not define the supervisory powers of the oversight authority, particularly the power of inspection on site and with respect to records.

Article 8 states that money changers "are required to provide, at the request of any agent designated for this purpose by the competent authorities, all ledgers and records related to their operations."

395. The law on savings and loan cooperatives designates BRH as oversight authority in Article 7 of the law (creating a specific department for this purpose – "Department of the General Inspectorate of Credit Unions"). Article 13 authorizes BRH to audit by itself (or through a specially commissioned independent auditor) the accounts and activities of "any entity whose operations activities (*sic*) are similar to those of a savings and loan bank."

396. In practice, due to the structural specificities of savings and loan banks (CECs), their supervision is shared between BRH and the CEC federations, which must inspect the CECs affiliated with them (under the supervision of BRH). With respect to communication of information, Article 85 states that "any person who keeps, possesses, or oversees books, account ledgers, files, and other records must, at the request of the person performing the inspection or carrying out inquiries or investigations, inform this person of same and facilitate this person's access to same." Article 120 states that the annual inspection of affiliated CECs must "assess […][the] internal control systems […]." Article 121 calls for on-site inspections.

397. Savings and Housing Banks (BELs) are governed by the law of August 28, 1984. These institutions are banks whose principal activity is "the mobilization of private and public, national or foreign savings, in order to grant mortgage loans […]." Article 1 of the law stipulates that banks with BEL status shall operate "within the framework of the laws and regulations pertaining to bank operations." Article 11 states that BELs must conduct their operations in a manner consistent with "banking standards and practices" and "conform to the financial ratios established by BRH." The law contains no other provisions defining BRH's supervisory power over Savings and Housing Banks – this power can only be derived from the supervisory powers defined by the banking law itself, inasmuch as the BELs are banks. In the evaluators' view, these two articles provide an acceptable legal basis for concluding that Savings and Housing Banks are subject to the same obligations as commercial banks.

398. Insurance companies are governed by the law of July 13, 1956, amended by the decree of 1989, which does not specify who is responsible for their oversight (other than at the time of their creation). It is stipulated that the incorporating documents must be deposited at the Department of Finance and Economic Affairs (Article 3 as amended), and that the Department of Commerce and the General Tax Administration "may, at any time, perform audits of statements, accounting books and records, and, in general, any documents related to the financial position of insurance companies" (Article 15) – thus conferring audit rights focused on accounting matters. Article 15 of the law of 1956 was not amended by the decree of 1981, which states however (Article 5 as amended) that "the Secretary of Finance and Economic Affairs is charged with supervision of insurance companies," in an article that pertains to collateral only and makes no other mention of any specific supervisory or oversight powers. In practice, the authorities indicated to the evaluators that the Ministry of Finance had created an insurance oversight office, but that it was subsequently dissolved, and no supervision of insurance is currently provided in Haiti.

Powers of sanction – Sanctions

399. Beyond the powers of sanction mentioned above in connection with the law on BRH – and which the evaluators consider not applicable to anti-money laundering efforts, the banking law is silent on the capacity of BRH to impose financial sanctions other than those pertaining to

prudential rules (set forth in Article 43 of the law). Apart from the prudential rules, the monitoring measures explicitly mentioned are the application for redress, placement under interim oversight (Article 54), and relinquishment (Chapter IV).

400. In addition, the banking law calls for criminal penalties (a fine of 50,000 to 250,000 gourdes) in the event of "general" offences.

401. In practice, BRH indicated that it applies Article 45 of the banking law to impose financial sanctions, based on the following provision: "BRH may take, if necessary, any other action that it deems appropriate to prod or help the bank at fault to normalize the situation, or to enforce upon the bank the provisions of this decree." Article 34 of the law on BRH also discusses the possibility of imposing financial sanctions (penalties) and their collection methods. The evaluators note however that these articles strictly concern the monitoring of breaches of prudential rules, and that it is doubtful that this approach provides a solid legal basis for sanctioning breaches of anti-money laundering obligations (especially breaches of internal controls), despite the provisions of the anti-money laundering law (cf. Paragraph 280).

402. Article 17 of the 1989 decree on money transfer companies provides for sanctions in the form of revocation, by the Ministry of Finance, based on the recommendation of BRH, of a firm's authorization to operate, in the event of "ongoing and repeated violations of legal and regulatory provisions." The other criminal penalties specified solely involve unauthorized operations by money transfer companies.

403. The 1989 decree on money changers does not define BRH's powers of sanction, as the decree makes no mention of sanctions (except for cases of illegally practicing the profession of money changer).

404. With respect to powers of sanction over savings and loan cooperatives, a federation may issue written instructions to correct a situation, may prescribe a recovery plan, or may name an interim administrator in the event of serious breaches. In addition, Article 139 of the 2002 law on cooperatives calls for the following sanctions: warnings, temporary prohibitions to perform certain operations, revocation of the authorization to operate, suspension of the activities of managers, members of the board of directors, members of the supervisory committee, and members of the loan committee. The law calls for criminal penalties for specific offences – it does not provide for administrative financial sanctions in the event of breaches.

405. The principal sanction laid out by the 1956 insurance law pertains to the offence of illegally practicing the profession of insurer (Article 16 as amended). Other sanctions (for other breaches of the law's provisions) are defined as criminal in nature (Article 22) or limited to license revocation.

406. The anti-money laundering law calls for a series of sanctions, criminal in nature, in the event of breaches of the due diligence obligations of financial institutions (in addition to administrative sanctions – Article 4.2.4, cf. below). The criminal sanctions are listed in Article 4.2.5.1 as a prison sentence of three to 15 years and a fine of 20 to 100 million gourdes (or just one or the other), for the following offences:

- disclosures regarding suspicious transaction reports
- destruction or removal of records pertaining to due diligence obligations

- transmission of shortened or erroneous records in response to the right to communication of information

- failure to transmit a suspicious transaction report; it should be noted (cf. below) that Article 4.2.5.2 also penalizes the offence of knowingly failing to make a suspicious transaction report

407. Article 4.2.5.2 also provides for criminal sanctions in the event of breaches of anti-money laundering obligations, involving a prison sentence of one to five years and a fine of five to 20 million gourdes (or just one or the other), in the following situations:

- failure to make a suspicious transaction report

- failure to implement a computer system for suspicious transaction reports and origin (or "knowingly" impeding the system's operations)

- execution of a cash payment above the threshold

- breaches of the provisions on international transfers of funds

- breaches of obligations, "knowingly" committed, in the areas of record keeping, communication of information, and implementation of prevention programs (internal controls, training, compliance officer)

408. Finally, Paragraph 4.2.5.3 states that these criminal sanctions may be accompanied by permanent or temporary professional disqualification.

409. Article 4.2.3 describes the (criminal) responsibility of legal persons for a "subsequent offence […] committed by one of their units or representatives" (cf. Recommendations 1 and 2), punishable by a fine five times greater than fines for natural persons, as well as additional penalties such as permanent or temporary professional disqualification from certain activities, permanent or temporary shutdown, dissolution, and announcing the decision in the press.

410. With respect to administrative and financial sanctions, the law of February 2001 makes reference to the prudential provisions of common law (cf. above). The two most relevant circulars for banks are the ones on internal controls and the statement of origin.

- The sanctions laid out in the circular on internal controls (Section 9) focus on the availability of information for inspections, with a penalty of 5,000 gourdes for each day late. Otherwise, it is only indicated that BRH may "require that a bank" take steps to resolve any breaches observed, without specifying what other measures besides "moral persuasion" might be adopted.

- The sanctions laid out in the circular on statements of origin impose a fine of 150,000 gourdes.

411. A summary table of financial sanctions imposed by BRH since 2001 shows penalties for noncompliance with prudential standards on bank exposure, for insufficient reserves, and for late reporting. Thus, no financial sanctions have been required on the basis of the circular on internal controls, nor on the basis of statements of origin. BRH indicates that it uses administrative sanctions of the injunction type in the event of breaches of obligations concerning internal controls or the statement of origin of funds.

Market entry conditions

412. As part of the supervision it provides, BRH incorporates, as relevant to money laundering prevention, prudential regulation and supervision measures applicable to banks, money transfer companies, and savings and loan cooperatives.

413. With respect to banks, responsibility over the licensing process is shared between the Ministry of Finance and BRH. The latter investigates the application, and approval is awarded by the Minister of Finance based on the Central Bank's recommendation (Articles 16 and 18 of the banking law).

414. Article 11 of the banking law stipulates that persons "convicted of common law crimes" may not practice the profession of banker. Article 106 states, in the chapter on bank administrators and directors, that "no person may direct, administer, or manage a bank under any capacity if he or she has been […] convicted in Haiti or abroad […]" of a crime of forged currency, counterfeiting or forgery, corruption or misappropriation of public funds, theft, extortion, embezzlement or breach of trust, fraud, or receipt of stolen goods. In both cases, the law targets shareholders, administrators, and directors – and does not mention beneficial owners. The law makes no explicit mention of criteria of fit and proper.

415. With respect to money transfer companies, which alone are authorized to offer services involving the transfer of funds and securities (Article 18 of the decree of 1989), authorization to operate must be issued by the Minister of Finance, based on a favorable opinion from BRH. Article 6 stipulates that, in examining the application, BRH shall "conduct any necessary investigations to establish […] the moral character of the applicants," and the application for authorization must provide the identity of the applicants, members of the board of directors, and executives.

416. For savings and loan cooperatives, authorization to operate is issued by the National Council of Cooperatives based on the opinion of BRH. Article 24 of the law provides for a monopoly of the savings and loan cooperative profession. Article 48 ties the capacity to direct a savings and loan bank to the absence of any criminal conviction (in Haiti or abroad) and to the absence of formal recognition of having perpetrated a crime (even in the absence of a conviction). The 2002 law defines the directors as members of the board of directors, the supervisory committee, and the loan committee, as well as any person named as a director by the board of directors.

417. For money changers, the 1989 order indicates that they are appointed by the President of the Republic, based on the recommendation of the Minister of Commerce. For its part, the anti-money laundering law of February 2001 requires that natural or legal persons habitually performing manual foreign exchange operations must submit "a statement of activity" to the Ministry of Finance "for the purpose of obtaining authorization to commence and perform operations under the laws in effect, and must prove, in this statement, the lawful origin of the funds needed to create the establishment." Neither the order nor the law contains any conditions pertaining to moral character or competence.

418. The statutes related to insurance do not contain any provisions regarding the integrity of business introducers, shareholders, and directors of insurance companies. There are also no restrictions for insurance agents and money changers.

Resources of oversight authorities

419. With respect to insurance, as indicated earlier, neither the Ministry of Finance nor the Ministry of Commerce currently has a unit in charge of insurance regulation and supervision.

420. With respect to BRH, two departments are responsible for oversight of entities subject to the law: the Department of Bank and Financial Institution Supervision in the case of commercial banks, savings and housing banks, money transfer companies, and money changers, and the Department of the Credit Union General Inspectorate in the case of savings and loan cooperatives.

421. The Department of Banking Supervision has a professional staff of 28 employees. Directly regarding supervisory functions, there are 12 budgeted positions for on-site supervision of banks (ten inspectors are currently in place), and six employees undertake off-site inspection; three inspectors are in charge of supervision of money transfer companies and money changers (on-site inspections and off-site supervision) – for a theoretical workforce of eight employees (this unit on transfer and money changer activities was only recently created).

422. Employees of the Department of Banking Supervision have received anti-money laundering training, and the information provided to the mission indicates that some of this training was focused on the role of banking supervisors (on-site inspections and reviews of records) in ensuring compliance with anti-money laundering obligations. In addition, BRH has developed a module on anti-money laundering training as part of its internal training program.

423. The Department of the Credit Union General Inspectorate was created relatively recently for savings and loan cooperatives. It is organized around on-site inspections and off-site supervision and according to categories of savings and loan bank activities. This department has 23 employees, 17 of whom are involved in supervising savings and loan banks (on-site inspection, off-site inspection and licensing, follow-up to inspections). Staff members have diplomas in economics and/or accounting, and some of them have a master's degree. For the most part, they have prior experience in the field of banking or cooperatives.

Performance of oversight and supervision

424. No oversight mechanism is in place for insurance companies (for general prudential purposes or targeted at money laundering).

425. With respect to banks, the frequency of on-site inspections is generally biannual. Inspections targeting money laundering were conducted at the time of adoption of the anti-money laundering law of February 2001. Oversight of compliance with anti-money laundering obligations appeared to the evaluators (based on their exchanges with BRH and with lending institutions) to be highly focused on compliance with obligations related to the statement of origin – without encompassing the entire mechanism of internal controls (including due customer diligence, suspicious transaction reporting, etc.). Furthermore, in the evaluators' view, supervision is concentrated on formal compliance with obligations (timely transmission of documents, procedures for submitting statements of origin, etc.) and much less on the real effectiveness of the internal anti-money laundering system (compliance with the substance of legal and regulatory obligations, adequacy of customer risk profiles in relation to products offered). At the time of the mission, follow-up measures to observed breaches focused on "moral suasion," and no sanctions have been imposed for substantial breaches.

426. With respect to money transfer companies and money changers, oversight of compliance appeared to the evaluators still to be inadequate, even though the developments under

way are encouraging. No on-site visit to a money changer had been made at the time of the on-site mission. Only a small number of money transfer companies have received on-site visits. At the time of the mission, the anti-money laundering component seemed to be only partly taken into account in the oversight of money changers and money transfer companies. No measures have been adopted for monitoring breaches by money changers or money transfer companies.

427. With respect to savings and loan cooperatives, the oversight mechanism is in an early stage of implementation, after the mechanism was thoroughly reviewed in 2002. Oversight has not yet focused on anti-money laundering obligations – but the competent department has begun to prepare circulars for implementing these obligations.

Analysis

428. The entire supervisory system in Haiti is outdated, and does not reflects the instruments adopted at the international level (which are necessary at the local level) for effective supervision. This general weakness naturally has implications for the implementation of oversight of compliance with obligations related to the fight against money laundering and terrorist financing. The banking bill reflects the intention of the authorities to modernize and thoroughly revise banking supervision, and will address the main weaknesses in the oversight of anti-money laundering efforts.

429. As indicated earlier, the restrictions placed on the supervisor by bank secrecy (even if they do not appear to be implemented in practice) are a significant constraint. In addition, in the evaluators' view, the banking supervisor's approach is essentially "formalistic," both in terms of the scope of the audits and the scope of the corrective measures put forward.

430. Apart from the banking sector, supervision is either very limited as regards prevention of money laundering and terrorist financing (for institutions that fall under BRH), or else nonexistent (for insurance in particular).

431. The requirements of competence and integrity for the banking sector and for savings and loan cooperatives represent a solid foundation, but they are not sufficiently broad (specifically concerning beneficial owners). The absence of similar obligations for money changers, insurance companies, and microfinance institutions is a serious omission.

432. The powers of sanction and levels of sanction present a more complicated picture. The criminal sanctions imposed by the 2001 law are high, and thus seemingly deterrent (but not necessarily proportionate, based on a literal reading). Nevertheless, enforcement requires identification of offences by the financial supervisors – which seems improbable under the circumstances, and a decision by the supervisor to transmit his or her findings to the judicial authorities – which would constitute a break with the current approach rooted in "persuasion." The disciplinary sanctions, where they exist, are not adapted to the fight against money laundering and terrorist financing, and their legal basis is at best uncertain in the evaluators' opinion. The evaluators conclude that the system of sanctions is not effective, proportionate, and deterrent.

433. Overall, the human resources and the expertise provided to supervisors of the financial sector are insufficient, even when the limited size of the Haitian financial sector is taken into account. Inspector training does not yet include specific content about on-site inspections and off-site supervision as part of the fight against money laundering and terrorist financing.

3.10.2 Recommendations and Comments

434. The new banking bill proposes a thorough review of the framework and system for supervising the Haitian banking sector. Many of the weaknesses identified in the context of this evaluation will be resolved once this bill is adopted – specifically: inclusion of all banks, money transfer companies, and money changers under the banking law; a broader definition of financial institution oversight and a corresponding expansion of due diligence prior to the decision to award approval; insertion of compliance with anti-money laundering obligations in the approval award guidelines; clarification of fit and proper conditions; clarification of the obligations of oversight over internal controls by external auditors; clarification of possible regulatory action by BRH; enhancement of the importance of internal controls; expansion of admissible requests by BRH for information and documentation; authorization for BRH to participate in international cooperation with foreign supervisory institutions; expansion of the conditions for lifting bank secrecy on behalf of BRH; expansion of sanctions available to BRH. Furthermore, the banking bill contains a chapter specifically on the fight against money laundering – in part referring to the provisions of the 2001 law, and in part creating new obligations (particularly regarding correspondent banking relationships). However, it should be noted that some of the wording in this bill is not strictly identical to the wording of the 2001 law – which could result in legal ambiguities.

435. At the time of the on-site mission, the banking bill was submitted to Parliament, and scheduled for debate by the National Assembly in early 2008.

436. To enhance the effectiveness of the financial sector supervisory system from an anti-money laundering perspective, the authorities should:

⇒ Lift bank secrecy for inspectors involved in banking supervision;

⇒ Adopt a less formalistic approach to compliance with obligations related to the prevention and detection of money laundering and terrorist financing, particularly by placing greater emphasis on obligations regarding suspicious transaction reporting;

⇒ Strengthen the obligations of integrity and competence for the entire financial sector and for beneficial owners, business introducers, shareholders, and senior officials of financial institutions, by incorporating, in particular, professional disqualification in the event of a conviction for money laundering or terrorist financing;

⇒ Revise the system of sanctions for breaches of anti-money laundering and anti-terrorist financing obligations, particularly by (a) rebalancing criminal and administrative sanctions and (b) establishing a wider scale of (administrative) sanctions and a broader definition of breaches triggering these sanctions;

⇒ Adopt a more proactive approach in supervising these obligations, especially in the case of nonbank financial institutions.

3.10.3 Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7), 29, & 30

	Rating	Summary of factors relevant to Section 3.10 underlying overall rating

R.17	**NC**	**Absence of a dissuasive, proportionate, and effective system of sanctions** **Lack of implementation of the current system of sanctions**
R.23	**NC**	**Absence of requirements of integrity and competence for many pillars of the financial sector, particularly money changers, insurance companies, and microfinance institutions** **Absence of coverage of beneficial owners under the obligations of integrity and competence for the banking sector and savings and loan cooperatives** **Existence of an unregulated, informal sector of money/value transfer services**
R.25	**NC**	**Absence of guidelines issued for the entire financial sector**
R.29	**PC**	**Excessive restrictions on the ability of financial sector supervisors to gain access to all necessary records** **Weaknesses in the ability of supervisors to impose sanctions on financial institutions, their directors, and their shareholders**

3.11 Money/value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

437. Money/value transfer operations may only be performed by banks or money transfer companies. The conditions of approval for the latter were described in the preceding section. Banks and money transfer companies are subject to the obligations of due diligence described in the corresponding sections of this report. Money transfer companies must in addition keep an up-to-date list of their agents and representatives, available to BRH – which supervises them.

438. The evaluators received several indications about the existence of informal suppliers of money/value transfer services, but no precise information concerning the size or number of such transfers. They note that, in all probability, these operators are more involved in receiving funds or securities than in sending same, given the structure of money transfers in Haiti. Understanding that some of these operators are known to the authorities, the evaluators feel that they have not received a convincing response about efforts to integrate these operators into the formal sector – or else place sanctions on them. BRH indicated that the purpose of creating a specific unit on money transfer companies is to study and assess these situations, and to promote integration of informal operators into the formal sector.

3.11.2 Recommendations and Comments

439. The authorities should adopt a more proactive approach toward money transfer services currently provided in the informal sector.

440. The recommendations of this report in the areas of due diligence, record keeping, and supervision of SVTs, as presented in the corresponding sections of the report, are relevant to any effort to improve Haiti's compliance with Special Recommendation VI.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	⇒ See the summary of weaknesses of the Haitian system for Recommendations 4-11, 13-15, 21-23, and 17 and Special Recommendation VII

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record keeping (R.12)

(pursuant to R.5, 6, & 8-11)

4.1.1 Description and Analysis

441. Article 2.2.1. of the anti-money laundering law expands the obligations of prevention and reporting and goes well beyond banks and specifically mentioned financial institutions and intermediaries to encompass, much more broadly, *"all natural and legal persons who, as part of their profession, perform, oversee, or advise operations involving deposits, trading, investments, conversions, or any other movement of capital."*

442. This definition is in fact very broad from the viewpoint of businesses or professionals who perform such operations, and cannot realistically be interpreted as being applicable to the majority of Haitian economic actors. Moreover, it is not in line with the FATF Recommendations, which are based on identification of the professionals involved in certain activities. Finally, inasmuch as Haitian law provides for criminal sanctions in the event of breaches of anti-money laundering obligations, such a generic (and vague) definition of the professions covered by the law is likely to be legally inoperative.

443. The evaluators thus consider that, with the exception of casinos and real estate transactions – and specifically them, with no reference to related professions – the remaining categories of non-financial businesses and professions cited by the 40 + 9 Recommendations are not covered by the Haitian system for fighting money laundering and terrorist financing. In particular, there is no specific attention to traders of precious metals, precious stones, or art objects, notaries (for activities other than real estate transactions), lawyers and other independent legal professionals, or accountants. In reality, these professions and independent professionals are not aware of, or do not meet, legal obligations of prevention, detection, and reporting as set forth in the anti-money laundering law. There is no Haitian authority that currently performs oversight of compliance with these obligations.

444. In other respects, Article 2.2.1 brings the force of the law to bear on all operations of casinos and gaming establishments, as well as on parties that perform, oversee, or advise real estate transactions.

445. The provisions pertaining to customer identification, record keeping, transaction oversight, reporting of transactions above 200,000 gourdes, and maintaining identification and transaction records are the same as described above.

446. The evaluators were unable to estimate the size of the precious metals and precious stones trade. However, based on the information gathered during the mission, it turns out that there is no awareness-building, informational outreach, or oversight from the authorities regarding the prevention of money laundering and terrorist financing in this sector.

447. Casinos and gaming houses are covered by specific provisions, in addition to the general anti-money laundering obligations, and must report the origin of suspicious transactions above 200,000 gourdes. In particular, Article 2.2.10 of the 2001 anti-money laundering law cites the following obligations:

– *"Before commencing operations, submit a statement of activity to the Ministry of Economy and Finance in order to obtain authorization to open and operate the establishment as required by the laws in effect, and demonstrate, in this statement, the lawful origin of the funds needed to create the establishment;*

– *"Maintain regular accounts and keep the records, along with all related documentation, for at least five years, in accordance with accounting principles specified by the laws in effect;*

– *"Ascertain the identity, based on presentation of an original, official, and currently valid photo identification document, a copy of which will be made, of players who purchase, bring, or exchange tokens or chips in an amount equal to or greater than the amount indicated in Article 2.1.2, Paragraph 1;*

– *"Record, in chronological order, all transactions specified under Paragraph C of this article, their nature and their amount, along with the full name of the players and the official number of the identification document presented, in a register bearing a serial number from the Haitian Central Bank and initialed by same, and keep said register for at least five years after the last recorded transaction.*

"In the event that the gaming establishment is held by a legal person possessing several affiliates, the tokens must identify the affiliate by which they were issued. In no case may the tokens issued by one affiliate be reimbursed at another affiliate, including affiliates abroad."

448. Except for external audits of banks, which are performed practically by a single firm and which include verification of compliance with anti-money laundering obligations,[35] auditors do not examine such compliance on the part of other professions and entities subject to external auditing and are not trained in the provisions of the anti-money laundering law.

449. The information received by the evaluators indicates that casinos are not subjected to oversight by authorities as regards compliance with their specific obligations, which they apparently do not fulfill. There are no awareness-raising efforts for this sector by the authorities to promote understanding and implementation of these obligations. Thus, in the evaluators' opinion, the system now in place is ineffective, despite the small number of casinos (whose customer base, moreover, appears fluid – which makes customer identification all the more important).

450. The real estate sector is not legally formalized and, except for a few dozen known agents, the sector appears to be occupied by informal or occasional money changers. The provisions pertaining to their anti-money laundering obligations are not enforced. For this sector

[35] This accounting firm is an affiliate of a large international audit firm and follows the audit principles and procedures of the latter.

as well, there are no awareness-raising efforts and no oversight concerning implementation of anti-money laundering provisions.

451. Finally, it should be noted that lawyers and notaries play an important role in Haiti in business creation and may act as representatives of legal persons. As indicated in the description of Recommendation 5, there are specific provisions of due diligence in the event that legal or accounting professionals conduct business with a financial institution on behalf of a customer. The activities of these professionals in business creation (and the applicable FATF provisions on due diligence) are not covered in the 2001 law.

4.1.2 Recommendations and Comments

452. Obligations under the anti-money laundering law do not cover all designated non-financial businesses and professions. In addition, they are not implemented by those covered by the law.

453. In a context where cash transactions play an essential role, and a significant share of economic transactions may be performed without the intermediation of the financial system, the inclusion of designated non-financial businesses and professions is of substantial importance to ensure the effectiveness of the system to fight money laundering and terrorist financing.

454. The Haitian authorities should:

⇒ enforce the obligations already stipulated by law for casinos and real estate transactions, specifically through a major effort to mobilize and train the professionals involved.

⇒ Expand the anti-money laundering and anti-terrorist financing obligations to include other designated non-financial businesses and professions, especially notaries, accountants, independent legal professionals, lawyers, traders of precious metals and stones, art dealers – for all the activities listed by FATF (for each of these professions). Consideration should be given, based on an analysis of the gravity of money laundering risks, to the possibility of including other non-financial professionals, such as traders of assets of value (luxury automobiles in particular).

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to Section 4.1 underlying overall rating
R.12	**NC**	**Absence of coverage, under the mechanism to fight money laundering and terrorist financing, of many of the designated non-financial businesses and professions, and (except for casinos) identification of activities that are covered, and not of professions that are covered for a given range of activities.** **Absence of enforcement of existing legal provisions for non-financial businesses and professions covered by the law. Absence of awareness-raising efforts and lack of monitoring of the enforcement of prevention and detection obligations for casinos and real estate transactions.**

4.2 Suspicious transaction reporting (R.16)
(pursuant to R.13-15 & 21)

4.2.1 Description and Analysis

455. The system of suspicious transaction reporting is identical to the one described under Recommendation 13 for non-financial businesses and professions cited in the provisions of Article 2.1.1 as mentioned above. The information gathered by the mission indicates a lack of implementation of these obligations.

4.2.2 Recommendations and Comments

456. The Haitian authorities should make sure that non-financial businesses covered by the anti-money laundering law meet their obligations with respect to detecting and reporting suspicious transactions. In addition, they should expand the suspicious transaction reporting obligation to include all designated non-financial businesses and professions.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to Section 4.2 underlying overall rating
R.16	**NC**	**Weaknesses of the suspicious transaction reporting mechanism (cf. Recommendation 13)** **Overly restrictive coverage of designated non-financial businesses and professions** **Absence of suspicious transaction reporting by non-financial professions** **Absence of enforcement of existing legal provisions**

4.3 Regulation, supervision, and monitoring (R. 24 & 25)

4.3.1 Description and Analysis

457. Casinos are subject to the general legal obligations that apply to businesses. The only obligations are those pertaining to the Tax Department, the offices of which provide monitoring of tax obligations. There does not appear to be any monitoring or oversight of gaming activities. Although singled out for specific obligations under the anti-money laundering law, the requirements are not implemented, and even seem unknown, based on the evaluators' visit to one of the three official casinos in Haiti.

458. In reality, non-financial professions that are covered by the same prevention and reporting requirements as banks under the supervision of the Central Bank do not fulfill their obligations, especially with respect to reports of origin or of suspicion. There is no oversight of them and they are not subject to any sanctions.

459. Certain professions attempt to practice self-regulation, especially the professional associations of notaries and accountants and the bar association. However, the information received by the evaluators does not indicate that the measures adopted by these professional associations have addressed money laundering prevention, or that self-regulating mechanisms have been set in place for this purpose.

460. Only the Haitian Central Bank has issued guidelines for money laundering prevention and the implementation of related legal obligations. UCREF has not developed any corresponding mechanism for all financial and non-financial businesses covered by these obligations. There is no feedback mechanism to help financial institutions and designated non-financial businesses and professions implement legal provisions to fight money laundering. In particular, no typologies have been issued. Only a few training actions have been carried out for staff members of financial institutions and UCREF.

4.3.2 Recommendations and Comments

461. The authorities should set in place the necessary mechanisms to ensure the execution of obligations related to money laundering prevention by non-financial professions, especially casinos, and provide oversight of proper implementation of these mechanisms.

462. They should provide information to, and raise the awareness of, financial and non-financial entities subject to the legal obligations of the anti-money laundering law, by issuing guidelines and particularly money laundering typologies, so as to enable these entities to fulfill their obligations under optimal conditions. Similarly, there is a need to strengthen the training of private and public actors involved in preventing and cracking down on money laundering.

4.3.3 Compliance with Recommendations 24 & 25 (criterion 25.1, non-financial businesses and professions)

	Rating	Summary of factors relevant to Section 4.5 underlying overall rating
R.24	**NC**	**Inadequate framework of supervision for non-financial businesses and professions** **Lack of monitoring and oversight of legal obligations of non-financial professions at present covered by the mechanism**
R.25	**NC**	**Absence of guidelines for designated non-financial businesses and professions** **Absence of any mechanism for feedback from UCREF**

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS – ODERN AND SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 Description and Analysis

463. Haiti has not expanded the money laundering prevention and detection mechanism to include designated non-financial businesses and professions, much less other non-financial businesses and professions. As indicated in the corresponding section, the very broad definition of natural and legal persons covered by the anti-money laundering law would seem to make it possible to encompass a very wide range of professions – but such a reading of the law appears excessive to the evaluators, especially since no effort has been made to mobilize entities beyond the financial sector. In the evaluators' view, Haiti has thus not yet given attention to expanding the obligations of due diligence and detection to other non-financial businesses and professions.

464. Cash is predominant in Haiti. Checks are subject to rigorous regulation (cf. circular on bad checks) but are used only by those who avail themselves of banking facilities, and the number of credit cards remains very low.

465. The law banning the use of cash (or bearer securities) for transactions above 200,000 gourdes (Article 2.1.2 of the anti-money laundering law) is a welcome attempt to promote the development of modern technical means of managing funds. However, the evaluators were able to observe that the ban is not enforced or complied with, and they received no indications that structural measures aimed at introducing more modern payment methods are currently being set in place. Under the circumstances, the ban does not appear to the evaluators to be appropriate to the Haitian context, and they therefore conclude that it is ineffective.

4.4.2 Recommendations and Comments

466. The evaluators consider that the risk of money laundering in private lotteries (*borlettes*) and in the automobile sales sector (especially luxury automobiles) warrants a more in-depth analysis.

467. The Haitian authorities should:

⇒ Consider expanding (based on risk) the anti-money laundering and anti-terrorist financing system to include other non-financial businesses and professions (cf. also the recommendation under Recommendation 12)

⇒ Review the provisions aimed at promoting the use of other payment instruments besides cash, in view of the present ineffectiveness of such provisions

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**NC**	**Absence of attention given to expanding the anti-money laundering and anti-terrorist financing system to include non-financial businesses and professions based on the specific risk level in Haiti** **Ineffective mechanisms for promoting the use of other payment**

		instruments besides cash

5 LEGAL PERSONS AND ARRANGEMENTS AND NONPROFIT ORGANIZATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

468. In Haiti, any natural person, whether national or foreign, is free to create a private company (Article 1601 of the Civil Code: "the company is a contract under which two or more persons agree to place something in common, with a view to sharing the profits that may result from same"), including the legal figures of a general or limited partnership. There are two types of company:

- Partnerships, including the legal figures of a general or limited partnership;
- Joint stock companies, including corporations and limited partnerships.

469. Trading companies are regulated by the commercial law of 1926, amended in 1949. Corporations are covered by specific regulations, based on the law of August 3, 1955 on the formation and operations of corporations, which has been successively amended by the decrees of August 28, 1960, October 16, 1967, November 11, 1968, October 10, 1979, March 8, 1984, and April 11, 1995.

470. In practice, the entities most often created are general partnerships, so far as partnerships are concerned, and corporations, in the case of joint stock companies.[36]

471. To be able to operate, companies must be listed in the register of companies of the Commercial Court, which falls under the Ministry of Commerce, and at the Tax Department of the Ministry of Finance, and their name must be published in the press or, in the case of corporations, in the Official Gazette.

472. The registration formalities consist of submitting an application, along with articles of agreement for the company, which may be created, in the case of partnerships, either by authentic act or by private agreement, whereas, for joint stock companies, the services of a notary are required. Information on associates and the breakdown of capital are given, as well as data to identify the former, and certification of payment of the latter into a bank account, covering at least one quarter of the capital.[37]

473. With respect to registration, the only verification performed is to ensure that the documents provided are in compliance. There is no verification of the identity of persons listed

[36] During fiscal years 2005-2006 and 2006-2007, beginning on September 1st of each year, there were respectively 73 and 125 general partnerships and 222 and 149 corporations entered in the trade register.

[37] The amount of capital is unchanged and, depending on the company's type of activity, is either 25,000 gourdes or 100,000 gourdes, i.e. approximately US$700 or US$2,800.

as associates, which involves noting the person's National Identity Card number and address. A copy of the National Identity Card is not required.

474. At the Tax Department, the same formalities are carried out for issuance of a Professional Identity Card and for registration for payment of taxes specifically corresponding to the type of license. Tax Department inspectors may perform a verification of the company's stated site of operations.

475. In the case of branches of foreign companies, the same procedure is followed, with the added requirement of certification of documents translated into French, provided by the local Haitian consulate. Any affiliate of a foreign company must be established under Haitian law.

476. Once registered, the company is not required to submit its financial accounts each year (except for its compulsory tax formalities vis-à-vis the Tax Department) to the trade register, where the only compulsory formality is annual submission of a statement of operations, even if the company is dormant.

477. Haitian law authorizes bearer shares for corporations, but only requires submitting and publishing amendments to the articles of incorporation. It is thus possible for changes in the shareholding structure to occur without having to be reported. Furthermore, in practice, the evaluators note that the requirement about amendments to the articles of incorporation is not really adhered to, and there are no sanctions taken against companies that do not adhere to this obligation even though, under the law, offenders could see their authorization to operate revoked.

478. Furthermore, in practice, the evaluators note that the requirement about changes in the composition of the board of directors is not really adhered to, and there are no sanctions taken against companies that do not adhere to this obligation even though, under the law, offenders could see their authorization to operate revoked.

479. In fact, the only controls over company operations fall under the Tax Department, which holds oversight over the company's required tax returns.

480. With respect to notaries, the controls are similarly limited to presentation of legitimate identification papers for both natural and legal persons.

5.1.2 Recommendations and Comments

481. The required formalities for creating, registering, and securing administrative authorization for a company do not provide sufficient transparency concerning beneficial ownership and oversight of the activities of legal persons. Measures should be taken to enable the authorities to monitor effectively and record any changes in the bearers of bearer shares of corporations. The risk is heightened by the unreliability of official identification papers and by the falsification of papers pertaining to legal persons.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**NC**	**Ineffective system of transparency for legal persons, which does not allow for rapid access to reliable, up-to-date beneficial ownership and control**

		information

5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

482. The concept of trusts and trusteeships does not exist in Haitian law. Thus, this recommendation is not applicable. The requirements related to identification of beneficial owners and the requirements placed on advisors to companies (lawyers, notaries, certified public accountants), which are relevant in the case of legal arrangements, have been described in the corresponding sections of the report.

5.2.2 Recommendations and Comments
5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**NA**	**Absence of the concept of trusts in Haiti**

5.3 Nonprofit organizations (SR.VIII)

5.3.1 Description and Analysis

483. In Haiti, nonprofit organizations consist of state-approved associations, political parties, and labor unions. With respect to state-approved associations, there are only two types of nonprofit organization: foundations and nongovernmental organizations (NGOs) involved in development assistance.

484. Foundations are regulated by the 1934 law on foundations, amended in 1954, and they involve social projects with asset allocation (*"assets that are dedicated permanently or temporarily to the attainment of an idea, satisfaction of a shared human need, pursuit of a common interest"*). All foundations must have a philanthropic orientation. Foundations are registered only at the town halls of the municipalities in which this asset allocation takes place, and they fall under the jurisdiction of the Ministry of Social Affairs. Registration simply involves recording the association and its assets, and publication in the Official Gazette. Once registration at the town hall of the municipality has been completed, the founder or the board of directors of the foundation may request civil status in the legal forms provided for this purpose (Article 3 of the law of July 23, 1934). Each municipality keeps a matching register, but there is no centralization at the national level to identify and track comprehensively the number of foundations and the activities of this sector in Haiti. A foundation's operations may not legally extend beyond the territorial limits of the municipality in which it is registered. Once registered, with no requirement of particular formalities to verify the identity of its members, there is no Government oversight of its operations, nor of its finances and movements of funds.

485. Nongovernmental organizations for development assistance are regulated by the NGO law of 1982, amended in 1989. They are defined as private, nonprofit, apolitical institutions or

organizations that work toward development goals at the national, departmental, or municipal level and possess resources to take concrete action.

486. Other types of nonprofit associations are regulated either by the labor code, in the case of labor unions, or by the civil code in the case of associations. Most are associations set up for the purpose of providing a local service (education, health, etc.) and some have been created by various churches. The Haitian Constitution guarantees freedom of association,[38] and it is possible to create an association that merely has to be recorded at the Ministry of Social Affairs and Labor (or the ministry holding competence over the NGO's area of activity), which issues a certificate that is renewable every two years, and at the Tax Department to obtain a Professional Registration Card. Public authorities perform no oversight of the conditions of these associations' activities, nor of their financing arrangements. However, so far as banking relationships are concerned, these relationships fall within the scope of the identification and oversight requirements implemented by financial institutions as part of their anti-money laundering obligations. No incident of suspicions of money laundering by associations appeared to have been raised by the date of the on-site mission.

487. Nongovernmental organizations for development assistance must be recorded and registered at the NGO Coordination Unit (which goes by the acronym UCAONG and has a workforce of 23 civil servants) within the Ministry of Planning. The registration requirements are set forth in Article 8 of the Decree of September 14, 1989. The organization must submit its articles of association in the form of an authentic act and must present an application for NGO recognition, a letter of guarantee issued by two recognized NGOs operating in Haiti or by a bilateral or multilateral agency, a license from the municipality of the intended target area, a description of the development programs and projects to be implemented, and a minimum guarantee benchmark of 50,000 gourdes (roughly equivalent to US$1,500 at the present time) by a Haitian bank. Identification of the persons involved only requires indicating the full name, address, residence, and profession of members of the board of directors, plus their positions; in the case of a foreign NGO, the certificate of recognition is legalized by the relevant consulate in Haiti. There is no verification of the identifying data provided, and identification based on official identity papers applies only to the board of directors and the founding members of the NGO. All that is required of persons is their curriculum vitae, along with a character reference issued by Haitian or foreign authorities.

488. Accreditation and registration provide legal status to the NGO.

489. A total of 407 NGOs have registered to date with UCAONG, which functions as the supervisor of this sector. However, between 600 and 700 have been counted in the field. In fact, according to the Haitian authorities, the number of NGOs in actual operation is closer to one hundred.

490. The law requires NGOs to present each year to the Ministry of Planning the investment program and budget planned for the next fiscal year, a program and project progress report, the organization's consolidated financial performance, prepared by a certified public accountant, and a list of foreigners working in the organization along with the residence permit number for each of them.

[38] Article 31: The freedom of association and assembly, unarmed, for political, economic, social, cultural, or any other peaceful purposes is guaranteed.

491. For fiscal year 2006-2007, only 78 NGOs met their annual obligations, which corresponds to roughly 19 percent of all officially registered NGOs, but close to 80 percent of those were said to be in actual operation. However, no sanctions are imposed for noncompliance with these obligations. Also, there is apparently no real in situ oversight of NGO activities and operations – not by the Ministry of Planning and not by other ministries involved in projects active in their areas.

492. NGOs may receive funds, whether at the national level or from abroad. The Haitian Government may grant funds to them within the framework of its development assistance program.

493. Movements of funds, whether national or international, are not monitored in any way by UCAONG. There is no obligation to present bank accounts, only the financial performance, prepared and certified by a certified public accountant. There are no controls concerning the honesty of the financial accounts. The Ministry of Planning has not prepared a list of accountants that it has certified for providing this certification – thus any certified public accountant may certify these accounts.

494. Noncompliance with legal obligations and violations of same[39] are punishable by revocation of the recognition granted to the organization at fault, which leads to its dissolution and liquidation of its property. In recent years, five NGOs have been suspended for fraud but their cases were not referred to the judicial system for criminal proceedings.

495. There is not yet any mechanism to combat the financing of terrorist activities in Haiti, and UCAONG does not yet have any guidelines with respect to arrangements for the prevention of money laundering and terrorist financing in the nonprofit organization sector. The supervisory unit has not received any training to build its awareness regarding the prevention of money laundering and terrorist financing. In 2006, this unit had to respond to a request for information from UCREF concerning the identification of one NGO.

5.3.2 Recommendations and Comments

496. The current administrative mechanism does not promote the transparency of nonprofit organizations with respect to their leadership or to their financial operations. Even if the present risk of such entities being used in Haiti for international terrorism appears negligible, it is still necessary to strengthen oversight of the identity of founding members and directors, their operations in terms of implementation of their projects, and their financial position, in order to guarantee that this sector cannot be used for money laundering or terrorist financing purposes.

497. A study of the risks of charitable organizations being misused for terrorist financing purposes should be conducted.

498. The NGO Coordination Unit (UCAONG) should be made aware of the problems of money laundering and terrorist financing and should develop a preventive program of oversight in these areas.

[39] Articles 29 to 33 of the Decree of September 14, 1989.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**NC**	**Absence of legal framework to combat terrorist financing** **Ineffective supervision of nonprofit organizations from the perspective of the fight against terrorist financing** **Absence of any assessment of the risks of Haitian nonprofit organizations being misused for terrorist financing purposes**

6 NATIONAL AND INTERNATIONAL COOPÉRATION

499. As indicated on several occasions in the follow-up to the report, Haiti is not a party to, or has not adapted to Haitian law, several key international agreements aimed at combating money laundering and terrorist financing. This situation represents a very serious gap and adds further to the weaknesses of the Haitian legal framework, thus creating obstacles to Haiti's capacity to actively participate in all aspects of international efforts to combat financial crime and terrorist financing – obstacles to which ad hoc responses cannot suffice. Moreover, the failure to sign and ratify the United Nations Convention for the Suppression of the Financing of Terrorism and the absence of an "action plan" for taking an active role in the collective efforts of the international community in the fight against financial crime warrant more resolute and substantial action by the authorities.

6.1 National cooperation and coordination (R.31)

6.1.1 Description and Analysis (R. 31 & 32 (criterion 32.1 only))

500. The law of February 2001 intended to give to the National Anti-Money Laundering Committee (CNLBA) the mission of promoting, coordinating, and recommending policies for the prevention, detection, and suppression of money laundering.

501. This entity includes a magistrate from the judiciary, a civil servant from the Ministry of Economy and Finance, a criminal investigation officer, a representative of BRH, a representative of the Professional Association of Banks, and a representative of the para-banking sector (insurance companies and savings and loan cooperatives).

502. This public-private coordinating body is chaired by the coordinator of the National Anti-Drug Commission (CONALD).

503. UCREF serves as its secretariat. Its director general holds consultative powers, provides CNLBA with all requested information and explanations, and implements CNLBA directives and decisions. The evaluators were not given any progress reports on CNLBA, nor the minutes of any of its meetings.

504. The statistics developed by UCREF on cases processed and funds seized are not complete and are difficult to cross-check with other figures put forth by the judicial authorities or the customs administration. The judicial authorities have not provided any consolidated figures on the number of money laundering cases handled by the judicial system.

505. An intersectoral group on financial crime has also been created outside the legislative framework (cf. Point 1.5). Its composition and its diverse mission give it an important role to play in coordinating the different actors involved. Just recently created, this group has not yet demonstrated its effectiveness.

6.1.2 Recommendations and Comments (R. 31 & 32 (criterion 32.1 only))

506. The intersectoral group is too new to show conclusive results. But this initiative reflects a will to coordinate and motivate the various agencies in charge of fighting financial crime.

507. CNLBA has not to date played the role assigned to it by the law. It has been chaired on an interim basis for several months pending the appointment of a coordinator of CONALD. However, there have apparently been discussions within CNLBA concerning the bill to amend the law of February 21, 2001, which is now under review.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**PC**	**Ineffectiveness of the coordinating body** **Lack of operational coordination between Haitian actors involved in the fight against money laundering and the fight against terrorist financing**

6.2 Conventions and United Nations Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

508. Haiti has signed and ratified (on November 4, 1990) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna in 1988. The country has also signed the United Nations Convention Against Transnational Organized Crime, adopted in Palermo in 2000, and the so-called Merida Convention, against corruption, but has not ratified them. No efforts have been made to adapt any of these statutes to Haitian law.

509. Haiti has not signed the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism. As regards implementation of United Nations Resolutions 1373 and 1267, cf. Point 2.4 of this report.

510. Haiti has signed and ratified the Inter-American Convention Against Terrorism, but has not adopted the necessary measures to ensure its effective adaptation to Haitian positive law.

511. Of the 13 United Nations conventions related to terrorism, Haiti has signed five: the Tokyo convention on offences and acts occurring on aircraft, the Hague convention on aircraft hijackings, the Montreal convention on acts of sabotage, the 1973 convention on the prevention

and suppression of offences against persons entitled to international protection, and the 1979 convention against hostage taking.

512. No information was given to the evaluators about the schedule for signing (and adapting to Haitian law) the various conventions to which Haiti is not yet a party, despite the stated political intent to move forward with these signatures and/or ratifications.

6.2.2 Recommendations and Comments

513. The Haitian authorities should:

- take measures to implement the Vienna Convention;
- ratify and implement the Palermo Convention;
- sign, ratify, and take measures to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**NC**	**Has not implemented the Vienna, Palermo, and Merida Conventions**
SR.I	**NC**	**Has not signed the United Nations International Convention for the Suppression of the Financing of Terrorism**

6.3 Mutual legal assistance (R.36-38 & SR.V)

6.3.1 Description and Analysis

514. The law of February 21, 2001 organizes international legal cooperation to combat money laundering through information sharing, investigations and procedures, provisional measures, and confiscations of instruments and proceeds related to money laundering, all for the purposes of extradition and mutual technical assistance.

515. Terrorist financing is not included under the existing mechanism.

516. The system set in place by the Haitian authorities is consistent with R.36 and does not entail any unreasonable, disproportionate, or unduly restrictive conditions. In particular, mutual assistance may include:

- gathering of evidence or depositions
- provision of assistance to make prisoners or other persons available to the judicial authorities of the requesting Government, for purposes of testimony or assistance in conducting an investigation
- handing over of judicial records

- searches and seizures
- examination of objects and places
- provision of information and exhibits
- provision of the originals or conformed copies of relevant files and records, including bank statements, accounting records, and registers indicating a business's operations or its commercial activities

517. The February 2001 law does not contain any provision to permit rejection of a request for mutual assistance solely on the grounds that the offence is also considered to involve tax issues as well.

518. The grounds for rejecting a request for mutual assistance are consistent with the applicable legal principles in this area in most countries. A request for mutual assistance may be rejected only if:

- it does not come from a competent authority according to the laws of the requesting country or it is not properly transmitted
- execution of the request is likely to undermine law and order, sovereignty, security, or the underlying principles of Haitian law
- the facts to which it refers are the subject of criminal proceedings or have already been addressed by a final decision in Haiti
- the requested measures, or any other measures having analogous effects, are not authorized under Haitian law, or are not applicable to the offence cited in the request, according to Haitian law
- the requested measures may not be ordered or executed because of the statute of limitations on the crime of money laundering under Haitian law or the law of the requesting Government
- the decision for which execution is requested is not enforceable under Haitian law
- the foreign decision was handed down under conditions that do not provide sufficient guarantees of the rights of the defendant
- there are serious reasons to believe that the requested measures or the requested decision targets the person involved solely because of his or her race, religion, nationality, ethnic origin, political opinions, gender, or status
- the request concerns a political offence
- the importance of the matter does not justify the requested measures or execution of the decision handed down abroad

519. However, assessment of "the importance of the matter" by the Haitian authorities constitutes grounds for rejection that could be disputed by the requesting party.

520. Bank secrecy may not be put forward as grounds for rejecting a request for mutual assistance. The powers of the competent authorities may be utilized in response to a request for mutual legal assistance.

521. No mechanism has been established to avoid jurisdictional conflicts and to determine the most appropriate venue for court proceedings against persons implicated in more than one country.

522. Requests filed by competent foreign authorities for the purpose of establishing money laundering facts, for the purpose of executing or handing down provisional measures or a confiscation, or for the purpose of extradition are transmitted by diplomatic channels. In an urgent situation, such requests may be communicated through ICPO/Interpol or directly by foreign authorities to the Haitian judicial authorities, either by postal mail or by any other means of rapid transmission, leaving a written or materially equivalent trail. The requests and their annexes must be accompanied by a translation into Creole or French, certified by a sworn translator and that shall be deemed an authentic textual reference.

523. In addition, with respect to the contents of a request for mutual assistance, the requirements are suitable to permit constructive and effective cooperation inasmuch as they incorporate the traditional elements, as follows:

- the authority placing the request
- the authority receiving the request
- the purpose of the request and any relevant comments on its context
- the facts justifying the request
- all known facts likely to facilitate identification of the persons involved, particularly civil status, nationality, address, and profession
- all necessary information for identifying and locating the persons, instruments, resources, or assets involved
- the text of the legal provision establishing the offence or, if necessary, an overview of the law applicable to the offence, and an indication of the sentence incurred for the offence

524. The 2001 law also states that Haitian judicial authorities receiving a request from a foreign authority for the purpose of handing down provisional measures shall order such measures in accordance with the laws in effect. They may also take measures whose effects most closely match those of the requested measures. In the case of provisional measures handed down abroad, the Haitian court to which the matter has been referred may execute same by substituting, if appropriate, measures whose effects best match those of the requested measures.

525. In the event that a confiscation order is sought through a request for mutual legal assistance, the court gives its decision once the matter has been submitted to it by the authority responsible for legal action. The confiscation decision must target an asset that represents the proceeds or instrument of an offence and that is located in Haiti, or else consist of the obligation to pay a sum of money equivalent to the value of this asset.

526. Finally, the Haitian Government holds the power to dispose of assets confiscated in Haiti at the request of foreign authorities, unless an agreement concluded with the Government decides otherwise.

527. Thus, the law does not provide for any particularly rapid measures to identify, freeze, seize, and confiscate laundered assets, the proceeds of money laundering operations or underlying offences, the instruments used or intended to be used for committing these offences, or assets of equivalent value. Only the confiscation procedures partially meet the required international standard.

528. Haiti has provided for the possibility that confiscated resources or assets will fall to the Government, which may then earmark them for a fund to combat organized crime or drug trafficking. A sharing of the confiscated assets may be possible if an agreement is concluded between the Haitian Government and the foreign Government involved in the matter.

6.3.2 Recommendations and Comments

529. The system does not appear to have been implemented. Not a single example was reported of mutual legal assistance granted by the Haitian Government in a money laundering case. Furthermore, no statistics were reported on requests for mutual legal assistance received by Haiti regarding money laundering matters. In fact, the evaluators are unable to assess whether Haiti is in a position to provide mutual legal assistance on money laundering matters in timely fashion.

530. Haiti should have a mechanism for coordinating seizure and confiscation initiatives with other countries.

531. There is no mechanism in Haiti for mutual legal assistance concerning offences in the area of terrorist financing.

6.3.3 Compliance with Recommendations 36-38 and Special Recommendation V

	Rating	Summary of factors relevant to Section 6.3 underlying overall rating
R.36	**LC**	**Ineffectiveness of the legal system in place**
R.37	**LC**	**Ineffectiveness of international mutual assistance on criminal matters**
R.38	**PC**	**Absence of effective implementation of legal provisions and lack of a mechanism to coordinate seizure and confiscation actions with foreign jurisdictions**
SR. V	**NC**	**Absence of criminalization of terrorist financing, blocking participation in international cooperation**

6.4 Extradition (R.37 & 39 & SR.V)

6.4.1 Description and Analysis

532. Mutual legal assistance is possible in the absence of dual criminality, but not extradition.

533. Extradition is performed only if the offence in question or a similar offence is punishable under the laws of the requesting Government and those of the Republic of Haiti.

534. Haiti recognizes money laundering as an extraditable offence and authorizes the extradition of its citizens.

535. In the event of an extradition request, if the individual has been recognized guilty of an offence, the ruling or a conformed copy of the ruling must be provided, along with all other documents establishing that the party's guilt has been recognized and indicating the sentence handed down, the fact that the ruling is enforceable, and the extent to which the sentence has not been executed.

536. The Ministry of Justice and Public Security, after ascertaining that the request is in order, transmits it to the public prosecutor's office at the place where the person whose extradition is requested is situated. This office then submits the matter to the competent court. It may, however, defer submission of the case to the court if the requested decision is apt to harm investigations or proceedings under way. In this case, it must so inform the requesting authority immediately, either through diplomatic channels or directly.

537. For offences related to laundering the proceeds of illicit drug trafficking and other serious offences, if the individual gives his or her express consent, the competent Haitian authorities may grant extradition upon receipt of the provisional request for arrest.

6.4.2 Recommendations and Comments

538. The principle of dual criminality established by the Haitian anti-money laundering law limits the scope of extraditions ordered by the Haitian authorities. However, Article 5.3.2, which sets forth this principle of dual criminality, is worded in a fairly flexible way, since the existence under Haitian law of a "similar" offence would not block a positive response to a request for extradition.

539. In practice, the Haitian authorities reported not a single request for extradition in connection with money laundering. There is no extradition mechanism in place for terrorist financing.

540. The Haitian authorities should expand the existing mechanism for extradition to include the crime of terrorist financing, once it has been criminalized.

6.4.3 Compliance with Recommendations 37 & 39 & Special Recommendation V

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37	**LC**	**Dual criminality required, but "similar" offences taken into account; absence of data on effective implementation**
R.39	**LC**	**Insufficient effectiveness of the legal mechanism in place**
SR.V	**NC**	**Absence of criminalization of terrorist financing, blocking participation in international cooperation**

6.5 Other forms of international cooperation (R.40 & SR.V)

6.5.1 Description and Analysis

541. Haiti is part of the International Criminal Police Organization – INTERPOL – and its national liaison office falls under the Legal Intelligence Bureau (BRJ) at the Criminal Investigation Department (DCPJ) of the Haitian National Police (PNH). Through this organization, the Haitian police can exchange criminal intelligence and conduct investigations on behalf of foreign countries that are members of INTERPOL.

542. With respect to drug trafficking, a 1997 cooperation agreement to fight and suppress drug trafficking in Haiti's territorial and internal waters entails constant cooperation with North American coast guards. The North American anti-drug agencies – DEA – conduct investigations and make arrests in Haiti with their Haitian police counterparts at the Drug Trafficking Investigation Bureau of DCPJ.

543. Haitian authorities also cooperate with international authorities in connection with the presence of MINUSTAH and UNPOL.

544. UCREF occasionally conducts investigations pursuant to foreign requests for financial information, but apparently does so outside the legal framework of the 2001 law, which permits UCREF to exchange such information only with counterpart agencies. In these specific cases, there are no controls or guarantees that the information transmitted in this manner is used in accordance with the principle of protecting private lives and data. In fact Article 3.1.3. of the anti-money laundering law authorizes UCREF, under condition of reciprocity, to exchange information with foreign agencies charged with receiving and handling suspicious transaction reports, provided that said agencies are subject to analogous secrecy obligations and whatever the specific nature of the agencies. This possibility of exchanging information thus appears limited to foreign Financial Intelligence Units that provide the abovementioned guarantees, notwithstanding the fact that UCREF is not yet part of the Egmont Group, seemingly due to the absence of legislation on terrorist financing. UCREF has signed agreements in this area with Honduras, Guatemala, the Dominican Republic, and Panama.

545. The law does not authorize the banking supervisor to exchange confidential information with his or her foreign counterparts (neither the law on BRH nor the banking law contains any such authorization – and the other statutes on money changers, money transfer companies, and savings and loan banks do not contain any provisions in this area either). As a result, from a legal point of view, BRH may not participate in international administrative cooperation. The situation is similar for the insurance sector.

546. In the current absence of any legislation to criminalize terrorist financing, the country has not signed specific agreements to cooperate in this area with foreign countries. It does not appear that any case has arisen to date of foreign requests to take specific measures against alleged terrorists located in Haiti.

6.5.2 Recommendations and Comments

547. UCREF has not yet joined the Egmont Group because of the failure to adopt any legislation on terrorist financing. However, the law does permit it to exchange information with counterpart agencies under condition of reciprocity. The possibility of exchanging financial information with non-counterpart foreign agencies should be clarified.

548. The Haitian authorities should authorize all the financial sector supervisory bodies to participate actively in international cooperation between supervisors.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors specific to Section 6.5 underlying overall rating
R.40	**NC**	**Restrictions on international cooperation due to excessive requirements for lifting bank secrecy** **Incapacity of financial sector supervisory bodies to participate in international cooperation** **Absence of strict oversight of the exchange of financial information reserved for foreign counterpart intelligence units**
SR.V	**NC**	**Absence of criminalization of terrorist financing, blocking participation in international cooperation** **Restrictions on international cooperation due to excessive requirements for lifting bank secrecy** **Incapacity of financial sector supervisory bodies to participate in international cooperation**

7 OTHER ISSUES

7.1 Resources and statistics

7.1.1 Description and Analysis

549. With respect to human and budget resources and staff training, the situation at the various Haitian institutions in charge of implementing the anti-money laundering and anti-terrorist financing system is described in each of the relevant sections of this report. Overall, with the exception of UCREF (and, to a lesser extent, banking supervision), the resources are highly insufficient – both in budget and human terms – even taking into account the structural constraints and significant needs for other development priorities facing the country. At these institutions, staff training in money laundering and terrorist financing suppression is insufficient, and has remained too general (i.e. it has not yet reached the degree of specificity appropriate to the different missions of these institutions).

550. Information related to statistical monitoring of the implementation of the anti-money laundering and anti-terrorist financing system is described in the corresponding sections of this report. Certain authorities have undertaken encouraging efforts with respect to statistical monitoring (particularly UCREF), but the current situation is that the statistics collected remain partial and incomplete, and the data collected do not present the required degree of reliability.

7.1.2 Recommendations and Comments

551. In the evaluators' view, the available resources could be optimized in the very short term by refocusing each of these institutions on its core mission and reallocating expertise accordingly.

552. More generally, the Haitian authorities should:

- ⇒ Better distribute and allocate existing (especially human) resources
- ⇒ Strengthen human and budget resources earmarked for the fight against money laundering and terrorist financing
- ⇒ Develop more specialized training programs for each of the institutions responsible for combating money laundering and terrorist financing
- ⇒ Set in place a complete and reliable system for collecting and tracking statistical data

7.1.3 Compliance rating

	Rating	Summary of factors underlying overall rating
R.30	**NC**	**Insufficient human and budget resources overall, and less than optimal use of same** **Overly generalized training**
R.32	**NC**	**Absence of a reliable mechanism for collecting statistical data**

7.2 Other relevant AML/CFT measures or issues

7.3 General structure of the AML/CFT system (cf. also Section 1.1)

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

The ratings of compliance with FATF Recommendations should be based on the four levels of compliance established in the 2004 methodology: *Compliant* (C), *Largely compliant* (LC), *Partially compliant* (PC), and *Noncompliant* (NC), or, in special cases, they should be marked *Not applicable* (NA).

Forty Recommendations	Rating	Summary of factors underlying rating[40]
Legal systems		
1. Money laundering offence	NC	The criminalization of money laundering does not cover all of the serious offences listed by the FATF, such as corruption, smuggling, arms exports, counterfeiting, migrant smuggling, sexual exploitation, and terrorist financing. The criminal law policy on combating money laundering and terrorist financing is currently ineffective.
2. Money laundering offence – mental element and corporate liability	PC	The requirements for invoking the criminal liability of legal persons are too restrictive, notwithstanding the inherent weaknesses of the predicate offences and the offence of money laundering (see Recommendation 1).
3. Confiscation and provisional measures	PC	System is ineffective due to confusion in the implementation and management of conservatory measures and seizures.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	Bank secrecy too broad in scope and excessively restrictive, thus undermining the effectiveness of the anti-money laundering mechanism Excessive access to bank information by UCREF, apt to result in defiance by informant

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

		entities and create legal risks harmful to judicial proceedings
5. Customer due diligence	NC	Too limited scope of the ban on anonymous accounts and accounts in fictitious names; lack of risk-based identification mechanism for customers predating 2001 (or 1994 for bank deposit accounts) Identification threshold too high for customers performing wire transfers Legal uncertainties about the identification threshold for occasional customers Absence of an identification requirement, independent of the threshold, when there is a suspicion of money laundering or terrorist financing Absence of requirements to identify and verify the identity of beneficial owners and to understand the way in which the ownership and control of a legal person are organized Absence of a requirement to collect information on the purpose and nature of the business relationship, and to ensure due diligence (including the updating of identification data) Absence of a requirement of enhanced diligence for high risks Lack of objective data on the effectiveness of the requirements of due diligence
6. Politically exposed persons	NC	Absence of a requirement of enhanced diligence toward foreign politically exposed persons
7. Correspondent banking	NC	Absence of requirements pertaining to the establishment of correspondent banking or equivalent relationships
8. New technologies and non face-to-face business	NC	Absence of requirements pertaining to business relationships conducted at a distance or risks associated with new technologies
9. Third parties and business introducers	NC	Absence of obligations on the part of intermediaries and business introducers; lack of certainty regarding the ultimate responsibility of the financial institution to meet the requirements of due diligence.
10. Record keeping	LC	Lack of a legal basis for authorities to request an extension of the length of time that records must be held

		Lack of objective data on the effectiveness of the system in place, and delays in transmitting records
11. Unusual transactions	LC	Existence of a (monetary) threshold that triggers requirements for unusual or complex transactions Uncertain implementation of the requirements
12. Designated non-financial businesses and professions – R.5, 6, 8-11	NC	Absence of coverage, under the mechanism to fight money laundering and terrorist financing, of many of the designated non-financial businesses and professions, and (except for casinos) identification of activities that are covered, and not of professions that are covered for a given range of activities. Absence of enforcement of existing legal provisions for non-financial businesses and professions covered by the law. Absence of awareness-raising efforts and lack of monitoring of the enforcement of prevention and detection obligations for casinos and real estate transactions.
13. Suspicious transaction reporting	NC	Absence of suspicious transaction reporting regarding terrorist financing Virtual absence of implementation of the system of suspicious transaction reporting by financial institutions
14. Protection and no tipping-off	C	
15. Internal controls and compliance	PC	Lack of information regarding internal control obligations, both general and specific to anti-money laundering efforts, on the following points: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to recruitment; minimum content of compulsory training
16. Designated non-financial businesses and professions – R.13-15 & 21	NC	Weaknesses of the suspicious transaction reporting mechanism (cf. Recommendation 13) Overly restrictive coverage of designated non-financial businesses and professions Absence of suspicious transaction reporting by non-financial professions Absence of enforcement of existing legal provisions

17. Sanctions	NC	Absence of a dissuasive, proportionate, and effective system of sanctions Lack of implementation of the current system of sanctions
18. Shell banks	PC	Absence of any obligation for Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent accounts
19. Other forms of reporting	LC	No access to the computerized database by authorities other than UCREF
20. Other non-financial businesses and professions and secure transaction techniques	NC	Absence of attention given to expanding the anti-money laundering and anti-terrorist financing system to include non-financial businesses and professions based on the specific risk level in Haiti Ineffective mechanisms for promoting the use of other payment instruments besides cash
21. Special attention for higher risk countries	NC	Absence of a legal framework and operational mechanism enabling Haiti to guard against countries with weak systems for combating money laundering
22. Foreign branches and subsidiaries	NC	Absence of obligations aimed at foreign branches and subsidiaries of Haitian financial institutions, relative to their capacity to implement satisfactory measures to fight money laundering and terrorist financing
23. Regulation, supervision, and monitoring	NC	Absence of requirements of integrity and competence for many pillars of the financial sector, particularly money changers, insurance companies, and microfinance institutions Absence of coverage of beneficial owners under the obligations of integrity and competence for the banking sector and savings and loan cooperatives Existence of an unregulated, informal sector of money/value transfer services
24. Designated non-financial businesses and professions – regulation, supervision, and monitoring	NC	Inadequate framework of supervision for non-financial businesses and professions Lack of monitoring and oversight of legal obligations of non-financial professions at present covered by the mechanism
25. Guidelines and feedback	NC	BRH guidelines not widely distributed and not well known to the financial professions; no feedback from UCREF to the financial

		professions Absence of guidelines issued for the entire financial sector Absence of guidelines for designated non-financial businesses and professions Absence of any mechanism for feedback from UCREF (DNFPBs)
Institutional and other measures		
26. Financial Intelligence Unit	PC	Ambiguities (especially in practice) as regards the operational independence and autonomy of UCREF Lack of mobilization of all professions subject to the law Absence of status reports and reliable statistics Ambiguity in the practices followed for exchanging information with foreign authorities Absence of a policy on employee integrity and appropriate training Ineffectiveness of the Financial Intelligence Unit due to its atypical functioning, pursuant to a broad interpretation of its legal framework
27. Law enforcement authorities	PC	Lack of mobilization and utilization of police services in criminal investigations of money laundering Lack of implementation of specific investigative techniques appropriate to the fight against money laundering, particularly delivery surveillance, undercover operations, and interception of communications Absence of a group devoted to investigations of personal property or assets suspected to be of criminal origin
28. Powers of competent authorities	PC	Impossibility of assessing the effectiveness of the existing legal framework because of the absence of money laundering investigations completed to date. Current laws relating to criminal procedure are vague with respect to procedures for submitting matters other than crimes *in flagrante delicto* to the police for investigation, and with respect to providing support to cases being investigated by the investigative magistrate.

29. Supervisors	PC	Excessive restrictions on the ability of financial sector supervisors to gain access to all necessary records Weaknesses in the ability of supervisors to impose sanctions on financial institutions, their directors, and their shareholders
30. Resources, integrity, and training	NC	Insufficient human and budget resources overall, and less than optimal use of same Overly generalized training
31. National cooperation	PC	Ineffectiveness of the coordinating body Lack of operational coordination between Haitian actors involved in the fight against money laundering and the fight against terrorist financing
32. Statistics	NC	Absence of a reliable mechanism for collecting statistical data
33. Legal persons – beneficial owners	NC	Ineffective system of transparency for legal persons, which does not allow for rapid access to reliable, up-to-date beneficial ownership and control information
34. Legal arrangements – beneficial owners	NA	Absence of the concept of trusts in Haiti
International cooperation		
35. Conventions	NC	No implementation of the Vienna, Palermo, and Merida Conventions
36. Mutual legal assistance	LC	Ineffectiveness of the legal system in place
37. Dual criminality	LC	Ineffectiveness of international mutual assistance on criminal matters Dual criminality required, but "similar" offences taken into account; absence of data on effective implementation
38. Mutual legal assistance on confiscation and freezing	PC	Absence of effective implementation of legal provisions and lack of a mechanism to coordinate seizure and confiscation actions with foreign jurisdictions
39. Extradition	LC	Insufficient effectiveness of the legal mechanism in place
40. Other forms of cooperation	NC	Restrictions on international cooperation due to excessive requirements for lifting bank secrecy Incapacity of financial sector supervisory bodies to participate in international

		cooperation Absence of strict oversight of the exchange of financial information reserved for foreign counterpart intelligence units
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	NC	No signature of the United Nations International Convention for the Suppression of the Financing of Terrorism
SR.II Criminalize terrorist financing	NC	No legislation on the financing of terrorism No signature or ratification of the International Convention for the Suppression of the Financing of Terrorism
SR.III Freeze and confiscate terrorist assets	NC	No legal framework for freezing assets used for terrorist financing
SR.IV Suspicious transaction reporting	NC	The scope of suspicious transaction reporting does not cover terrorist financing
SR.V International cooperation	NC	Absence of criminalization of terrorist financing, blocking participation in international cooperation Restrictions on international cooperation due to excessive requirements for lifting bank secrecy Incapacity of financial sector supervisory bodies to participate in international cooperation
SR.VI AML/CFT requirements for money/value transfer services	NC	See the summary of weaknesses of the Haitian system for Recommendations 4-11, 13-15, 21-23, and 17 and Special Recommendation VII
SR.VII Wire transfer rules	NC	Identification threshold set too high Absence of requirements regarding wire transfers (conveyance of identification data)
SR.VIII Nonprofit organizations	NC	Absence of legal framework to combat terrorist financing Ineffective supervision of nonprofit organizations from the perspective of the fight against terrorist financing Absence of any assessment of the risks of Haitian nonprofit organizations being misused for terrorist financing purposes
SR.IX Reporting/communication of cross-border transactions	PC	Ineffectiveness of the system due to its unsuitability to the Haitian context and, as a result, deficiencies in implementation

		Absence of proportionate, deterrent, and effective penalties Lack of coordination among authorities in charge of implementing the mechanism currently in place

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal system and related institutional measures	
2.1 Criminalization of money laundering (R.1 & 2)	Adopt a criminal law policy with regard to serious offences that takes account more systematically of the laundering of the proceeds from the offences being prosecuted, by raising the awareness of prosecutors, investigative magistrates, and the police. Take a census of the cases where money laundering is considered from the outset of the preliminary investigation or when criminal proceedings are started. Reword the sentence about the liability of legal persons and lower the threshold for invoking legal persons' liability by removing the reference to the commission of an offence by a structure or a representative of the legal person. In a subsidiary move, provide that, where the proceeds of crime are derived from conduct that occurred in another country, which is not an offence in that other country, but which would have constituted an offence in Haiti, this constitutes a money laundering offence in Haiti.
2.2 Criminalization of terrorist financing (SR.II)	Criminalize terrorist financing, in compliance with the Convention on the Financing of Terrorism. Ensure that the future criminalization of terrorist financing and the sanctions meet the standards set by the Convention
2.3 Confiscation, freezing, and seizing of proceeds of crime (R.3)	Require courts, Government agencies, and departments concerned to keep accurate statistics about the conservatory measures taken and confiscations made by each of them. One authority should be designated to

	centralize the statistics. Ensure that the funds seized by the competent authorities (Police, Customs) are managed by those same authorities pending a final court decision on whether the funds are to be released or confiscated by the State.
2.4 Freezing of funds used for terrorist financing (SR.III)	Introduce measures to provide for the freezing of assets used for terrorist financing, in accordance with the requirements of Resolutions 1267 and 1373.
2.5 The Financial Intelligence Unit and its functions (R.26 & 30)	Clearly redefine UCREF's scope of action in line with the anti-money laundering law of 2001 Build awareness on the part of professions subject to the suspicious transaction reporting requirement Ensure that UCREF exchanges information only with persons authorized to receive same (foreign counterparts) Reinforce UCREF's operational independence in relation to CNLBA and establish real functional autonomy in relation to BRH Charge UCREF with publishing a periodic status report Bring Haitian law in line with the conditions required for membership in the Egmont Group Regularly ensure the integrity of UCREF employees and see to their training Develop reliable statistics on UCREF activities
2.6 Law enforcement, prosecution, and other competent authorities (R.27 & 28)	Clarify the Criminal Investigation Code in order to expand and strengthen the legal bases for submitting cases to the DCPJ that involve money laundering, drug trafficking, and other crimes and offences sanctioned by law. Redefine and regulate more strictly, in relation to the functions of the national police officers who are officers of the court, the various frameworks for investigation, and in particular investigations of cases other than crimes *in flagrante delicto* or those providing support to the investigative magistrate. Reconsider, in terms of how legal action is organized, the role of specialized police agencies as sole point of interface with magistrates in money laundering investigation.

	Equip the Financial and Economic Investigation Bureau (BAFE) of DCPJ with a sufficient number of investigators and offer specialized training in the fight against money laundering. Examine the total or partial reassignment of original BAFE investigators attached to UCREF since its creation. Create a specialized jurisdiction of national scope to fight against money laundering and terrorist financing. Provide DCPJ with adequate financial and material resources, as well as pre-service and in-service training to implement special techniques for investigating money laundering, such as interception of telephone calls, delivery surveillance, and infiltration of criminal groups to track their management of funds from their activities. Perform a property investigation for investigations of drug trafficking and other crimes falling within the scope of enforcement of the crime of money laundering. Undertake a rigorous monitoring and centralization of legal actions and results of money laundering investigations within the Ministry of Justice, along with the development of statistics. Centralize and work up reliable statistics on money laundering investigations.
2.7 Reporting/communication of cross-border transactions (SR. IX)	Establish either a declaration system or a reporting system; Incorporate this law into the customs code so as to ensure the legal basis for seizures and subsequent investigations; Implement reporting arrangements among and between customs, the police, and UCREF concerning information gathered after funds are seized; Establish penalties that tie the severity of punishment to the absence or presence of evidence of an illicit origin or destination for the funds.
3. Preventive measures – financial institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced identification measures (R.5 to 8)	Strengthen the bans on anonymous accounts and accounts in fictitious names Lower the customer identification threshold for wire

	transfers to US$1,000 Clarify the legal identification threshold for occasional transactions in forms consistent with the anti-money laundering law of 2001 Clarify the customer identification requirement in occasional transactions, independent of the threshold, when there is a suspicion of money laundering or terrorist financing Institute a requirement to identify and to verify the identity of beneficial owners, based in particular on a requirement that financial institutions understand the way in which ownership and control of a legal person are organized Establish a requirement to collect information on the purpose and nature of the business relationship and to update identification data on a regular basis Implement a risk management approach for the highest risks Based on a risk analysis, consider adopting flexible requirements for demonstrably low risks Set in place a risk-based customer identification mechanism for business relationships predating 2001, in connection with a stronger and more direct requirement regarding anonymous accounts and accounts in fictitious names Institute requirements of enhanced diligence toward politically exposed persons Institute specific and enhanced requirements for establishing correspondent banking or equivalent relationships Institute requirements proportional to risk for business relationships conducted at a distance and with no face-to-face contact
3.3 Third parties and introduced business (R.9)	Clarify the requirements of due diligence in situations where a financial institution provides a role to third parties or business introducers, specifically by indicating the conditions (regarding obligations to fight money laundering) that must be met by the intermediary and by affirming the principle that responsibility for the

	customer identification process always falls to the financial institution
3.4 Financial institution secrecy or confidentiality (R.4)	Revise the obligations pertaining to bank secrecy so that the current restrictions, which pose a potential impediment to the fight against money laundering (scope and depth of banking supervision, domestic and international cooperation), are lifted. In addition, ensure that UCREF's practices regarding access to banking information are performed in full compliance with the letter and spirit of the law of 2001
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	Ensure that it is possible for competent authorities to request an extension of the length of time that records must be held. Implement wire transfer regulations concerning the conveyance of identification data on the originator, in accordance with Special Recommendation VII – with specific attention (in view of the pattern of wire transfers in Haiti, where virtually all transfers are received, not sent) focused on the obligations of banks receiving cross-border wire transfers.
3.6 Monitoring of transactions and relationships (R.11 & 21)	Revise the requirements pertaining to unusual and complex transactions to eliminate the threshold of 200,000 gourdes, below which there is no requirement at present. Develop mechanisms to inform financial institutions about the shortcomings of certain systems to combat money laundering and terrorist financing, as well as a legal framework that will enable them to enforce countermeasures against countries that continue to not adequately implement the FATF Recommendations
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25, & SR.IV)	Expand the scope of suspicious transaction reporting to include terrorism and its financing Make all persons covered by the 2001 law aware of suspicious transaction reporting and automatic transaction reporting Simplify the systematic reporting mechanism and expand it to all transactions above a threshold set by BRH, consistent with the law – even if this goes beyond the standard Provide for access to the UCREF data base for other authorities involved in the fight against money laundering and terrorist financing
3.8 Internal controls, compliance, and	Clarify internal control obligations, based on the 2001

foreign branches (R.15 & 22)	law and the circular on internal controls, especially as regards: access to customer information by compliance auditors; capacity of internal auditors to undertake verification of samples; verification of staff backgrounds prior to recruitment; minimum content of compulsory training. Adopt stronger administrative sanctions as a way to enhance the effectiveness of internal control obligations. Establish obligations aimed at the foreign branches and subsidiaries of Haitian financial institutions, relative to their capacity to implement satisfactory anti-money laundering mechanisms in their host country.
3.9 Shell banks (R.18)	Require Haitian financial institutions to ascertain that their correspondent banks are not shell banks and that their correspondent banks do not allow shell banks to use their correspondent accounts
3.10 The supervisory and oversight system – competent authorities and SROs (role, duties, functions, and powers, especially powers of sanction) (R. 17, 23, 25, & 29)	Lift bank secrecy for inspectors involved in banking supervision; Adopt a less formalistic approach to compliance with obligations related to the prevention and detection of money laundering and terrorist financing, particularly by placing greater emphasis on obligations regarding suspicious transaction reporting; Strengthen the obligations of integrity and competence for the entire financial sector and for beneficial owners, business introducers, shareholders, and senior officials of financial institutions, by incorporating, in particular, professional disqualification in the event of a conviction for money laundering or terrorist financing; Revise the system of sanctions for breaches of anti-money laundering and anti-terrorist financing obligations, particularly by (a) rebalancing criminal and administrative sanctions and (b) establishing a wider scale of (administrative) sanctions and a broader definition of breaches triggering these sanctions; Adopt a more proactive approach in supervising these obligations, especially in the case of nonbank financial institutions.
3.11 Money/value transfer services (SR.VI)	Adopt a more proactive approach toward money transfer services currently provided in the informal sector.

	The recommendations of this report in the areas of due diligence, record keeping, and supervision of SVTs, as presented in the corresponding sections of the report, are relevant to any effort to improve Haiti's compliance with Special Recommendation VI
4. Preventive measures – designated non-financial businesses and professions	
4.1 Customer due diligence and record keeping (R.12)	Enforce the obligations already stipulated by law for casinos and real estate transactions, specifically through a major effort to mobilize and train the professionals involved. Expand the anti-money laundering and anti-terrorist financing obligations to include other designated non-financial businesses and professions, especially notaries, accountants, independent legal professionals, lawyers, traders of precious metals and stones, art dealers – for all the activities listed by FATF (for each of these professions). Consideration should be given, based on an analysis of the gravity of money laundering risks, to the possibility of including other non-financial professionals, such as traders of assets of value (luxury automobiles in particular).
4.2 Suspicious transaction reporting (R.16)	Make sure that non-financial businesses covered by the anti-money laundering law meet their obligations with respect to detecting and reporting suspicious transactions. In addition, they should expand the suspicious transaction reporting obligation to include all designated non-financial businesses and professions
4.3 Regulation, supervision, and monitoring (R.24-25)	Set in place the necessary mechanisms to ensure the execution of obligations related to money laundering prevention by non-financial professions, especially casinos, and provide oversight of proper implementation of these mechanisms. Provide information to, and raise the awareness of, financial and non-financial entities subject to the legal obligations of the anti-money laundering law, by issuing guidelines and particularly money laundering typologies, so as to enable these entities to fulfill their obligations under optimal conditions. Similarly, strengthen the training of private and public actors involved in preventing and cracking down on money laundering
4.4 Other non-financial businesses and professions (R.20)	Consider expanding (based on risk) the anti-money laundering and anti-terrorist financing system to include other non-financial businesses and professions (cf. also the recommendation under Recommendation 12)

	Review the provisions aimed at promoting the use of other payment instruments besides cash, in view of the present ineffectiveness of such provisions
5. Legal persons and arrangements and nonprofit organizations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	Enable the authorities to monitor effectively and record any changes in the bearers of bearer shares of corporations.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Nonprofit organizations (SR.VIII)	Strengthen the oversight of the identity of founding members and directors, their operations in terms of implementation of their projects, and their financial position, in order to guarantee that this sector cannot be used for money laundering or terrorist financing purposes Undertake a study of the risks of charitable organizations being misused for terrorist financing purposes should be conducted. Raise awareness of the NGO Coordination Unit (UCAONG) on the problems of money laundering and terrorist financing and develop a preventive program of oversight in these areas.
6. National and international cooperation	
6.1 National cooperation and coordination (R.31)	Ensure that the CNLBA fully plays its role
6.2 Conventions and UN Special Resolutions (R.35 & SR.I)	Take measures to implement the Vienna Convention; Ratify and implement the Palermo Convention; Sign, ratify, and take measures to implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism.
6.3 Mutual legal assistance (R.36-38, SR.V)	Set up a mechanism for coordinating seizure and confiscation initiatives with other countries. Set up a framework for mutual legal assistance concerning offences in the area of terrorist financing.
6.4 Extradition (R.37 & 39 & SR.V)	Expand the existing mechanism for extradition to include the offence of terrorist financing, once it has been

	criminalized.
6.5 Other forms of cooperation (R.40 & SR.V)	Clarify the possibility of exchanging financial information with UCREF non-counterpart foreign agencies. Authorize all the financial sector supervisory bodies to participate actively in international cooperation between supervisors.
7. Other issues	
7.1 Resources and statistics (R.30 & 32)	Better distribute and allocate existing (especially human) resources Strengthen human and budget resources earmarked for the fight against money laundering and terrorist financing Develop more specialized training programs for each of the institutions responsible for combating money laundering and terrorist financing Set in place a complete and reliable system for collecting and tracking statistical data
7.2 Other relevant AML/CFT measures or issues	
7.3 General structure of the AML/CFT system – structural elements	

Table 3: Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country Comments

ANNEXES

Annex 1: List of abbreviations
Annex 2: List of all bodies met on the on-site mission – Ministries, other Government authorities or bodies, private sector representatives and others
Annex 3: Copies of key laws, regulations, and other measures
Annex 4: List of all laws, regulations, and other material received