Preventing and Countering the Financing of Terrorism within the Roman Catholic Church

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I. Introduction

Over the years, the Vatican Bank, formally known as the Institute for Works of Religion (IOR), has operated without complete financial transparency, leading several critics and interested parties to question the integrity of the Church’s financial accountability. On July 15, 2013, more eyebrows were raised when Reuters, after reviewing judicial documents, reported that Italian prosecutors had alleged that “two former top executives at the Vatican bank repeatedly broke Italian laws on money laundering by failing to give sufficient information when ordering multi-million-euro bank transfers.” The prosecutors did not go as far as to say that the former Vatican officials had actually laundered money, but they did allege that there was enough ambiguity in the details of transfers for laundering to have occurred, highlighting lack of

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1 Expected graduation date of Dec. 2013 from the University of Mississippi School of Law. Bachelor of Journalism from the University of Missouri.
2 Lisa Jucca and Mario Sarzanini, RPT-Ex-Vatican bank officials broke anti-money laundering laws, prosecutors say, Reuters (Tues. July 16, 2013 1:30AM), http://www.reuters.com/article/2013/07/16/vatican-bank-laundering-idUSL6N0FL3DD20130716. The two former directors accused of the crimes are former general director Paolo Cipriani and former deputy director general Massimo Tulli. Id. Prosecutors are investigating fifteen irregular bank transfers from these two former directors to determine if the lack of information on the origin of the money and the reasons for the bank transfers indicates foul play. Id.
information as to the “identity of the owners of the funds and the reason for transfer.”3 When money transfers are not accounted for, the international community becomes suspicious about two specific concerns: (1) whether the money is being laundered or (2) whether the money is being used to finance terrorism. This situation is not the first time the IOC has raised eyebrows for financial ambiguities, either, and Pope Francis has taken notice.

Meanwhile, the Vatican City State’s border-country on all sides, Italy, took a big leap in cracking down on money laundering in 2007 when it, along with several other European Union nations, adopted a 2005 European Union directive, Directive 2005/60/EC, which increases “financial transparency” and detects “illicit money flows.”4 Since 1991, Italy has built an “extensive and mature” framework for combating money laundering and terrorism financing, ultimately leading to about 600 convictions per year.5 The Vatican, though not a member of the EU, has followed Italy’s examples in implementing several measures toward meeting Directive 2005/60/EC, including applying customer due diligence measures, filing suspicious transaction reports, using simplified customer due diligence, establishing a financial intelligence unit, implementing enforcement mechanisms, and applying enhanced customer due diligence when necessary.6 Papal commitment to compliance and the Holy See/Vatican City State’s, hereinafter HS/VCS, early measures beginning in 2010 suggest that the Vatican will be in compliance with international norms in the very near future if the Vatican stays the course, quelling the suspicions

3 Id.
4 Id. Italy signed on to Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, a Directive aimed at preventing financial systems from being abused for the purpose of terrorism financing or money laundering.
of the international community as to whether the HS/VCS is laundering money or financing terrorism.

II. Background

A. Early Efforts of the Vatican in Combating Money Laundering and Terrorism Financing

On Dec. 30, 2010, Pope Benedict XVI issued an Apostolic Letter in the form of a “motu proprio” for the prevention and countering of illegal activities in the area of monetary and financial dealings.7 Within the proprio motu, Pope Benedict XVI formed a new law applicable to the Vatican City State, the Dicasteries of the Roman Curia, and “each and every dependent institution or entity in which they carry out their activities” to prevent and counter “the laundering of proceeds from criminal activities and of the financing of terrorism.”8 The law is formally titled the “Law concerning the prevention and countering of the proceeds from criminal activities and of the financing of terrorism,” but is hereinafter referred to as AMF/CFT Law.9 Pope Benedict XVI made this law enforceable under penal jurisdiction by the judiciary Authorities of Vatican City State.10

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8 Id.
9 Id.
10 Id.
Not only did he sign this new law into effect, Pope Benedict XVI also formed the Financial Information Authority (FIA) under Art. 33 of the Law “as an Institution connected with the Holy See in accordance with Articles 186 and 190-191 of the Apostolic Constitution Pastor Bonus, conferring upon it a public canonical juridical personality and a Vatican civil personality and approving its Statutes. . . .”11 The FIA now serves as the Vatican’s financial regulator.12

The original AML/CFT law applied to individuals and legal entities engaged in professional financial services in the state. Pope Benedict XVI issued a Motu Proprio that extended the AML/CFT law to include “all agencies and departments of the Holy See” that “perform professional activities of a financial nature” and its employees.13 The Motu Proprio also extended the financial reporting requirements of the original law to the Roman Curia and related institutions.14 However, the new law and the Motu Proprio left the FIA unchanged and intact.15

With all of the changes made to the AMF/CFT law, the HS/VCS sought to gauge its compliance with international norms on combating money laundering and terrorism financing. Therefore, Cardinal Bertone, Secretary of State for the Vatican City State, applied for a MONEYVAL evaluation in April, 2011 on behalf of the Holy See.16 MONEYVAL is “the

11 Id. In Italian the Financial Information Authority is translated as Autorità di Informazione Finanziaria, which is how it appears in text.
14 Id. “The Roman Curia is the ensemble of the dicasteries and bodies that assist the Pope in the exercise of his supreme pastoral office for the good and in service of the Church throughout the world and of the particular Churches, assisting in the maintenance of the unity of the Faith and the communion of the People of God and in the promotion of the proper mission of the Church in the world.” See http://www.catholic-pages.com/vatican/curia.asp. Essentially, it is the administrative arm of the Holy See that assists the Pope in governance of the Church.
15 See supra note 12.
16 Mutual Evaluation Report—Executive Summary for The Holy See (Including Vatican City State) on Anti-Money Laundering and Combating the Financing of Terrorism, COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-
Council of Europe’s primary monitoring arm in anti-money laundering and countering the financing of terrorism (AML/CFT).”\(^\text{17}\) However, the MONEYVAL evaluation and follow-up procedure was conducted prior to any amendments to the original AML/CFT laws, so the HS/VCS’s most recently amended AML/CFT law was not evaluated. MONEYVAL made the on-site visit of the Vatican in Nov. 2011 and the findings of the evaluation of the HS/VCS’s original AML/CFT law were reported in the MONEYVAL report.

**B. Strengths and Weaknesses of Law No. CLXXVI Identified by MONEYVAL Report**

MONEYVAL, as the Council of Europe’s primary financial monitoring arm, “assesses the compliance with and the effectiveness of the implementation of the legal framework, plus the financial and law enforcement measures in place to combat money laundering and terrorist financing.”\(^\text{18}\) MONEYVAL’s assessment of the HS/VCS was not of any past allegations, but rather was of the current AML/CFT laws in place.\(^\text{19}\) MONEYVAL primarily assesses compliance against the global standards set by the Financial Action Task Force, hereinafter FATF;\(^\text{20}\) an inter-governmental “policy-making body” designed to “set standards and promote effective implementation of legal, regulatory[,] and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.”\(^\text{21}\)

The structure of the HS/VCS economy is a public monopoly in which no market economy exists, making the risk of money laundering and terrorist financing very low because

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\(^{17}\) See supra note 16, at 1. The AMF/CFT Law was amended on Jan. 25, 2012 by Decree No. CLIX. See supra note 12. The amended AMF/CFT Law was presented and converted into Law No. CLXVI on April 24, 2012, and it was put into effect on Dec. 14, 2012. Id.

\(^{18}\) See supra note 16, at 2.

\(^{19}\) Id. at 2.

\(^{20}\) Id. at 1.

\(^{21}\) Id.
there are no private economic actors. This low risk may explain why no formal risk assessment had ever been conducted prior to the November 2011 visit; however, low risk does not mean no risk and a low risk assessment may not account for the severity of the potential risk.

MONEYVAL was able to show that while the risk may be low, there are several factors which elevate the HS/VCS’s AML/CFT risk, “including: high volumes of cash transactions and wire transfers [ ]; global spread of financial activities [ ]; and the limited availability of information on the non-profit organisations operating in the HS/VCS.” The assessment of these risk factors were confined within the only two financial institutions within the HS/VCS for the consideration in the MONEYVAL report: the Institute for Works of Religion, with 33,404 accounts in operation at the time of the report, and the smaller Administration of the Patrimony of the Holy See (APSA).

The MONEYVAL Report found that while the HS/VCS has come a long way in a short period of time, there is much room for improvement. MONEYVAL was quick to point out that all measures taken by the HS/VCS are improvements, especially since it is essentially building

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22 Id. at 2.
23 Id. The process to conduct a risk assessment has begun, though. Id. The Vatican economic structure is extremely unique in that its main source of revenue is donations from Roman Catholics throughout the world. Holy See (Vatican City) Economy, ECONOMY WATCH (June 30, 2010), available at http://www.economywatch.com/world_economy/vatican-city. It also “generates revenue from postage stamp sales, admission fees for museums, sale of mementos, and publication sales,” and it generates revenue from tourism, small manufacturing enterprises, and international banking and financial operations. Id. Therefore, the money flowing into the Vatican is of a noncommercial nature, while its expenses for staffing, maintaining infrastructure and buildings, and travel must also be accounted for. Id. Given the unique nature of the Vatican’s economic setup, the Vatican’s economy cannot be analyzed by the same mechanisms used to analyze a conventional economy. Id. Pope Francis has taken affirmative measures to restructure the Vatican’s economic structure by creating the Economic Council, an eight-member panel consisting of only one cleric. Pope Creates Commission to Reform Vatican Economic Structure, LATIN AMERICAN HERALD TRIBUNE (Nov. 13, 2013), available at http://www.laht.com/article.asp?ArticleId=873880&CategoryId=12396. Chief among the goals of the Economic Council is to require all businesses to operate with a “high degree of transparency” in their business dealings. Pope Francis establishes new Economic Commission to reform Vatican departments, ROME REPORTS (July 19, 2013), available at http://www.romereports.com/palio/pope-francis-establishes-new-economic-commission-to-reform-vatican-departments-english-10560.html#.UoPPdY0fr7s.
24 Id.
25 Id.
26 Id.
the money laundering/terrorism financing requirements from scratch, as the HS/VCS relied solely on the Italian Criminal Code prior to the 2010 adoption of the AML/CFT Law. As of 2010, there was no law in place specifically addressing the criminalization of ML/TF. There were no standards for customer due diligence (CDD) or record keeping preventative measures in place. The MONEYVAL Report ultimately found that while the Vatican was nearing international compliance in just three years, there were several key weaknesses with its original AML/CFT law.

**Weakness #1: Lack of Practical Application**

The first key weakness identified in the MONEYVAL report is the lack of practical application, demonstration, and experience. Although the HS/VCS’s criminalization of money laundering meets FATF standards, no investigations have been conducted yet.\(^{27}\) Furthermore, while the HS/VCS has now criminalized terrorism financing, MONEYVAL criticizes HS/VCS’s failure to specifically address “certain terrorist acts in relevant UN counter-terrorism.”\(^ {28} \)

MONEYVAL notes that although the HS/VCS is fully authorized to “freeze, seize[,] and confiscate criminal funds and assets[,]” it has yet to do so.\(^ {29} \)

**Weakness #2: Lack of Specialized Law Enforcement**

The second key weakness identified by MONEYVAL is the lack of law enforcement specialized in investigation. The VCS delegated the responsibility of investigating financial crime and money laundering offenses to its established Gendarmerie;\(^ {30} \) however, as

\(^{27}\) *Id.*  
\(^{28}\) *Id.* While specific offenses in combating the financing of terrorism have been identified by the Law, “the ability to prosecute the financing of terrorism in respect of certain terrorist acts in some relevant UN counter-terrorism conventions is still missing.” *Id.* at 4. Also missing is the “financing of individual terrorists or terrorist organisations for legitimate purposes, which is also required under FATF standards[,]” *Id.*  
\(^{29}\) *Id.* at 2. The key deficiency is the HS/VCS has yet to develop a system for applying this provision. *Id.* at 4.  
MONEYVAL notes, despite the Gendarmerie’s adequate legal and material resources, it lacks the requisite training to investigate financial crimes. Law No. CLXXVII also left a key loophole in detecting “the physical cross-border transportation of currency or negotiable instruments.” While the HS/VCS authorities may investigate and inspect suspicion of ML/TF at financial institutions, it is unclear whether they may do the same for cross-border “transportation of currency through containerised cargo.” The key hiccup appears to be that while the Gendarmerie may communicate with Customs authorities, there are limitations on the amount and type of information the FIA may exchange with “counterparts on cross-border transportation.”

**Weakness #3: Inadequate Preventative Measures & Reporting Regime**

The third key weakness is the inadequate measures taken to prevent money laundering and terrorism financing. While the AML/CFT Law made a major step in the right direction by implementing comprehensive preventative measures, especially in regard to Customer Due Diligence (CDD) and record keeping requirements, the law left key gaps, especially related “to the requirements for the monitoring and scrutiny of business relationships and transactions and the implementation of the risk-based approach established by the law.” The HS/VCS’s CDD utilizes a risk-based approach in which enhanced CDD is applied to “politically exposed persons

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31 See supra note 16, at 2. Due to the small size of the Public Prosecutor’s Office and the Gendarmerie Corps, “there are no law enforcement authorities specialised in investigation and prosecution of ML or TF.” Id. at 5. Because the enforcement authorities have not specifically been confronted with these issues, MONEYVAL was unable to assess their effectiveness in enforcing these statutes. Id.

32 Id. at 5.

33 Id.

34 Id.

35 CDD is a preventative measured aimed at minimizing risk by identifying and verifying customers engaged in financial transactions and assessing risk of the customer. Federal Financial Institutions Examining Council, BANK SECRECY ACT/ANTI-MONEY LAUNDERING INFOBASE (Nov. 18, 2013), available at http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_013.htm. The CDD framework sets up procedures, policies, and processes for assessing the potential suspicion of transactions, allowing institutes to combat improper transactions. Id.

(PEPs), correspondent current accounts, and non-face-to-face relationships.”

MONEYVAL points out that key deficiencies lie in exclusions from PEP categorization, “undue exemptions” from non-face-to-face relationships, and lack of utilization of a local risk assessment for categorizing a customer as requiring enhanced CDD. Also, MONEYVAL indicates that the HS/VCS’s preliminary assessment for categorizing a customer under simplified CDD, i.e. low risk customers, needs to be completed and formalized. Lastly, the AML/CFT Law provided outright exemptions for customers who fall under simplified CDD requirements except when ML/TF is suspected, which runs contrary to international standards, which lower the standards but does not eliminate them.

The CDD framework has other key weaknesses, including: no requirement to verify that transactions are consistent with what is known about the transferee and its funds, no requirement for additional research into the background of transferees, does not apply FATF Recommendations or do so insufficiently, and there are no requirements to do extra research on large transactions, or “unusual patterns of transactions, that have no apparent or visible economic or lawful purpose.”

While the revised AML/CFT Law addresses many of these concerns, even going beyond what is required in some instances, it appears the IOR still fails by way of incomplete risk categorization. Incomplete risk categorization has limited the amount enhanced CDD measures and customers who fall subject to it.

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37 Id.
38 Id.
39 Id.
40 Id.
41 Id. at 6-7.
42 Id. at 7. “Risk categorization applied by the IOR does not take into account geographic risk, product/service risk, type and frequency of transactions, the activity carried out, business volumes, or behaviour of the client.”
43 Id. Informational Technology systems are still being developed for spotting identifying risky customers and transactions. Id.
As identified in the first weaknesses, much of the AML/CFT laws has yet to be tested. Likewise, the IOR and FIA’s ability to prevent ML/TF has yet to be tested. The IOR is tasked with maintaining CDD files and the FIA conducts the supervisory assessments of the transactions. However, to date, the responsibilities of the IOR and the FIA have yet to be tested, leaving questions as to whether the HS/VCS’s preventative measures are effective. From what MONEYVAL was able to assess, it recommended that the IOR give “serious consideration . . . to a statutory provision setting out the categories of legal and natural persons that may hold accounts in the IOR.” While the Law addresses the maintenance of documents and records, it falls short in regard to how it maintains and assesses wire transfers.

MONEYVAL was also critical of the reporting regime under the original AML/CFT Law, specifically in that while the Law requires reporting of completed suspicious transactions, it does not require the reporting of attempted suspicious transactions. Ultimately, the original AML/CFT law does not require the reporting of “funds suspected to be linked or related to, or to be used for terrorism, terrorist acts[,] or terrorist organisations.” This deficiency in reporting compromises the effectiveness of the Vatican’s entire reporting regime under the AML/CFT law. However, the original law has provided adequate protections for those who do report suspicious transactions, whether completed or merely attempted.

44 Id.  
45 Id.  
46 Id. The IOR is given the most attention by MONEYVAL and by this Article because it is the bigger financial institute of the two financial institutes in the HS/VCS.  
47 Id. Mainly, the Law does not prohibit non-routine transactions from being held in “batches” rather than independently. Id. Also, among other problems identified, there are perceived weaknesses in how the Law verifies the identity of and interprets “domestic transfers.” Id.  
48 Id. This is so because the “reporting requirement refer to ‘transactions’ rather than ‘funds,’” requiring that only transactions be reported but not of suspicious funds. Id.  
49 Id.  
50 Id.  
51 Id. at 8.
**Weakness #4: Lack of Authority Granted to FIA**

The fourth key weakness is the lack of authority granted to the FIA. The FIA has not been expressly granted access to “customer identification data and other CDD information, transaction records, and other relevant information,” nor has it been expressly granted power to conduct certain other investigatory functions beyond internal controls and employee selection.\(^52\) MONEYVAL suggested that the AML/CFT law make it clear that the FIA may investigate all AML/CFT activities, and especially grant the FIA the authority to “review [ ] policies, procedures, books and records[,] and sample testing,” as well as granting the FIA the right to enter premises for investigation and “demand access to books of account and other information.”\(^53\) Furthermore, MONEYVAL recommended that an independent, prudential supervisor oversee IOR, even though this is not required by international norms.\(^54\)

**Miscellaneous Weaknesses: Nuts & Bolts**

Lastly, MONEYVAL also touched on a few nuts and bolts. MONEYVAL indicated that sanctions for breaches of AML/CFT legislation should be made applicable to APSA since it is a “public authority.”\(^55\) It also suggested that the AML/CFT prevent secrecy provisions from obstructing exchange of certain information.\(^56\) MONEYVAL Report indicated that while the AML/CFT Law is applicable to all Designated Non-Financial Businesses and Professions, the identified DNFBPs have yet to reach compliance.\(^57\) Also, non-profit organizations have yet to be

\(^{52}\) *Id.* The AML/CFT Law is “unclear to what extent the power to carry out inspections.” *Id.* This ambiguity was furthered by the fact that the FIA had not conducted any on-site investigations by the time of the MONEYVAL inspection. *Id.*

\(^{53}\) *Id.*

\(^{54}\) *Id.* An independent supervisor would minimize the risk of ML/TF and increase the regulatory and supervisory measures of the IOR. *Id.*

\(^{55}\) *Id.*

\(^{56}\) *Id.* Essentially, the AML/CFT law should provide exemptions to secrecy provisions to allow certain types of information to be exchanged. *Id.*

\(^{57}\) *Id.* at 9.
monitored or evaluated to determine their risk of financing terrorism or money laundering. The HS/VCS has observer nation status in the UN and the Council of Europe, is a party to the Vienna, Palermo and Terrorist Financing Conventions of the UN, and has extensive provisions “relating to mutual legal assistance” that are applicable to Italy and all member states of the Convention. The HS/VCS cooperates with the Italian government and is regulated “by the relevant provisions of the Italian Code of Criminal Procedure,” furthering its efforts against ML/TF. The key weakness indicated by MONEYVAL in regard to international compliance is the FIA’s limited “ability to exchange information” due to “the requirement to have an MOU in place with its counterparts.”

### III. Vatican Response—Amendments to the AML/CFT Law & Newly Issued Motu Proprios

Notably, the Vatican City State is the smallest country in the world, both geographically and demographically, and it lies outside of the European Union despite being geographically situated within Italy, a European Union nation. With the European Union crackdown on money laundering and terrorism financing, and with Italy’s compliance therewith, pressure has mounted on the HS/VCS to join the efforts in combating money laundering and terrorism financing. That pressure, combined with the pressure placed on the HS/VCS by Rome Public Prosecutor’s investigations mentioned in the introduction, may have led to the rushed passing of the original AML/CFT law with its deficiencies as noted by MONEYVAL. The HS/VCS took the MONEYVAL Report seriously and implemented several changes with the passage of Law No.

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58 Id.
59 Id. The Vatican became a party to this convention in January 2012. Id.
60 Id.
61 Id.
CLXVI and Law No. XVIII, which addresses many of the deficiencies noted by the MONEYVAL report.

In an effort to address the anticipated and realized shortcomings of Law No. CLXXVII, the Vatican held cooperative meetings with MONEYVAL for two days in March 2012 to iron out the technicalities of combating ML/TF.\textsuperscript{63} Prior to this meeting, the HS/VCS issued Decree No. CLIX amending the original AML/CFT Law, which was amended and converted to Law No. CLXVI eleven months later.\textsuperscript{64} The revised AML/CFT Law was a major leap for the HS/VCS in that it covered “the physical and material elements of money laundering required by the international standards.”\textsuperscript{65} However, this amendment alone was insufficient. On October 8, 2013, following the March meetings, the Vatican approved Law No. XVIII, which further ironed out the “rules on transparency, supervision and financial information.”\textsuperscript{66} Furthermore, Pope Francis issued two Motu Proprios to be read in conjunction with the new laws on July 11, 2013 and on August 8, 2013, respectively.

Law No. CLXVI and Law. No. XVIII have filled several of the gaps in preventative measures left by the original AML/CFT Law, furthering the HS/VCS’s efforts to meet the recommendations of the FATF and MONEYVAL.\textsuperscript{67} Law No. XVIII not only amends the original law, it addresses and adds components to the law that were entirely absent from the

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\textsuperscript{64} See supra note 12. The Decree was issued on January 25, 2012 and converted to law on December 14, 2012. \textit{Id.}

\textsuperscript{65} See supra note 16, at 4.


\textsuperscript{67} \textit{Id.} Leaning on the FATF and MONEYVAL was a major step for the HS/VCS, as these two organizations are “commonly referred to as the best regulatory instruments in order to establish an effective network of protection against acts of money laundering and financing of terrorism.” \textit{Id.}

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original law. The HS/VCS found the amendments in Law No. XVIII so important that they adopted them prior to passage of the law by way of Decree No. XI on August 8, 2013.

A. Addressing the Practical Application and the Lack of Specialized Law Enforcement

The first two key concerns raised by the MONEYVAL Report cannot be addressed immediately because the laws can only be applied and tested over time and a specialized law enforcement regime also takes time to implement. The HS/VCS’s application of the AML/CFT laws will be assessed overtime, and should be subjected to more MONEYVAL evaluations and to the scrutiny of an outside, independent reviewing agency as suggested by MONEYVAL’s initial report.

B. Addressing Inadequate Preventative Measures & Reporting Regime

The third suggestion from MONEYVAL is that the HS/VCS should further iron out the gaps in which the AML/CTF Law failed to comply with FATF standards, as MONEYVAL indicated that the HS/VCS is lacking in some areas of preventative measures. The HS/VCS can fill these gaps by simply erasing all exemptions to CDD requirements, broadening the category of customers who fall into enhanced CDD, and formalizing the requirements for simplified CDD.

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68 Id.
69 Id.
70 See supra note 16, at 6.
72 One author suggested that an effective customer due diligence requirement would be to require “banks and other financial institutions . . . to verify the legitimacy of customers when their transactions involve: (1) transfers from institutions foreign to the state in which the transaction is taking place; (2) any occasional transactions involving currency in an amount greater than an internationally established threshold (such as $15,000 or €15,000 (3) a bank or financial institution based out of an FATF non-cooperative state; or (4) suspicions about the accuracy of previously obtained customer information and data.” Michael Anderson, International Money Laundering: The Need for ICC Investigation and Adjudicative Jurisdiction, 53 Va. J. Int’l L. 763 (2012-2013) (citing the following authority as sources for his recommendations: 31 C.F.R. § 101.610 (2011); 31 C.F.R. § 1010.330 (2012); Press Release, FATF, High Risk and Non-Cooperative Jurisdictions Public Statement (June 22, 2012); 31 C.F.R. §§ 1010.651-670 (2011); The Money Laundering Regulations, 2007, S.I. 2157, art. 7 (U.K.).
Law No. XVIII, as explained by Bishop Dominique Mamberti, takes a leap forward in clearing up the gaps and shortcomings of the original AML/CFT law by making it clear which parties are responsible for determining risk of parties and counterparties involved in transactions based on the parties or the countries involved in the transaction.\(^73\) This appears to tackle the problems of when to apply enhanced CDD and when to apply simplified CDD based on the risk-approach explained earlier.\(^74\) By utilizing a clarified risk-based approach, the HS/VCS will be able to effectively and efficiently monitor suspicious activity in an economical manner, while saving resources by not pursuing less suspicious transactions with the same amount of zeal.\(^75\) Most importantly, the HS/VCS uses broad language in the new Law to require that “special attention” be given to all “suspicious activities” be, that all suspicious activities be reported to the FIA, and that the FIA conduct a thorough evaluation of the report, sending a detailed report to the Promoter of Justice if the suspicion is confirmed.\(^76\)

C. Addressing the Lack of Authority Granted to FIA

In addition to the reporting requirement, the HS/VCS addressed the fourth key problem raised by the MONEYVAL Report, i.e. not granting the FIA enough authority, by granting the FIA the authority to freeze or suspend the transaction for up to five days if it is deemed

\(^{73}\) See supra note 66.

\(^{74}\) Id.

\(^{75}\) The HS/VCS’s risk-based approach goes as far as stating “individuals who threaten peace and international security will be automatically denied the ability to trade or make financial transactions with the Vatican.” Edward Pentin, *Financial-Transparency Law Enacted*, NATIONAL CATHOLIC REGISTER (Oct. 31, 2013), http://www.ncregister.com/site/article/financial-transparency-law-enacted/. This goes even further than Hong Kong’s risk-based approach, which “requires banks to evaluate a clients’ risk based on two elements: (1) the country the foreign client resides in or is connected with, and (2) the client’s financial history, such as employment and the sources of the client’s assets and funds.” See supra note 72, at 16 (citing HONG KONG MONETARY AUTHORITY, GUIDELINE ON ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING §§ 3.1-3.6 (2012), available at http://tinyurl.com/qfgtvtu. The HS/VCS AML/CFT law even includes a provision for “politically exposed persons,” or those officials who are more prone to corruption or bribery, subjecting this class of persons to higher scrutiny when making trades or transactions with the HS/VCS. See supra note 12, at 8.

\(^{76}\) Id. Although HS/VCS’s CDD standards are not as explicitly comprehensive as Mr. Anderson’s Article recommends, the HS/VCS uses broad language to require that “special attention” be given to “suspicious activities.” See supra note 66.
suspicious.\textsuperscript{77} The FIA is granted the authority to assess administrative sanctions as needed, or it may, in severe cases, recommend that the President of the Governorate assess the sanctions.\textsuperscript{78}

Law No. XVIII and Pope Francis’s August 8 Moto Proprio further responded to MONEYVAL’s critique of the powers allotted to the FIA by granting the FIA supervisory power over “institutions performing professional activity of a financial nature” and by granting the FIA the “authority to monitor compliance with the obligations and responsibilities regarding administrative penalties.”\textsuperscript{79} The FIA is further granted the authority to immediately halt the “assets and resources” of any financial institute that is on the list of those who threaten peace and security or those who are reasonably believed to “threaten peace and international security.”\textsuperscript{80}

However, the new law comes up short in one key area in that it does not appear to grant the FIA the ability to exchange certain information regarding cross-border transportation of cash in or out of the state without first obtaining a Memorandum of Understanding, unless the communication has been allowed by a prior reciprocal agreement.\textsuperscript{81} The HS/VCS should allow the FIA greater latitude to exchange information with counterparts on cross-border transportation in order to close the gap for cross-border transportation of containerized cargo, and it appears to have taken a vital step in doing so by allowing certain routine communications to be authorized without MOU if deemed necessary.

\textbf{D. Addressing Miscellaneous Concerns Weaknesses Identified by MONEYVAL}

A key success of the Law No. CLXVI was the establishment of the Secretariat of State to be “responsible for the definition of the policies on AML/CFT, and for adhesion to international

\begin{flushright}
\textsuperscript{77} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id.
\end{flushright}
treaties and agreements.\textsuperscript{82} The Secretariat of State will be able to shore up several of the ambiguities left by the original AML/CFT law. In addition to the Secretariat of State, a key grant of power from Law No. XVIII beyond the full grant of supervisory power to the FIA is the establishment of the Financial Security Committee. Article Four of Pope Francis’s Motu Proprio establishes the Financial Security Committee “with the purpose of coordinating the competent authorities of the Holy See and the State of Vatican City on the prevention and combating of money laundering, financing of terrorism and proliferation of weapons of mass destruction.”\textsuperscript{83}

The Committee\textsuperscript{84} is tasked with the responsibilities of:

a) establishing criteria and procedures for the elaboration of the general assessment of the risks of money laundering and financing of terrorism and proliferation of weapons of mass destruction;
b) approve the overall risk assessment and regularly updated;
c) identify measures needed for the management and the control of risks;
d) coordinate the adoption and regular updating of policies and procedures for the prevention and combating of money laundering, financing of terrorism and proliferation of weapons of mass destruction;
e) promote active collaboration and exchange of information between the competent authorities of the Holy See and the State of Vatican City;
f) ensure that appropriate information to interested bodies on the risks identified;
g) adopt procedures and internal guidelines;
h) asks for information to the authorities and institutions which operate within the Holy See and the State of Vatican City;
i) demand studies and advice from external experts.\textsuperscript{85}

The establishment of the Financial Security Committee closes several of the gaps identified by the MONEYVAL report. Although it does not set up an independent, prudential supervisor, it

\textsuperscript{82} See supra note 16, at 2.
\textsuperscript{84} The Committee is comprised of “a) the Assessor for General Affairs of the Secretariat of State, who presides; b) the Under-Secretary for Relations with States; c) The Secretary of the Prefecture for the Economic Affairs; d) the Deputy Secretary-General of the Governorate; e) the Promoter of Justice in the Court of the State of Vatican City; f) the Director of the Authority of Financial Information; g) the Director of the Security Services and Civil Protection of the Governorate.” \textit{Id.}
\textsuperscript{85} \textit{Id.}
does allow the Committee to seek study and advice from external experts as needed. While it
does not instantly create procedure for implementing the law, it does create a committee to see to it that procedures are implemented, adapted, and applied. The Committee will serve as an
authority for ensuring that adequate reporting requirements in compliance with FATF are on the books, helping the FIA enforce the AML/CFT law. While the Committee is set to meet once every four months, it has the ability to meet whenever as needed.\(^{86}\) The FIA is included in the Committee, as the Director of the FIA serves as the Secretary of the Committee, furthering the joint effort of the FIA and the Committee.\(^{87}\)

Law No. XVIII also extends the AML/CFT law to the “departments of the Roman Curia and other organizations and institutions dependent on the Holy See, as well as non-profit organizations with legal and canonical office in the State of the Vatican City State” and brings them under the jurisdiction of the VCS.\(^{88}\) Further, the law “extends the scope of this reform by the State of Vatican City to the Holy See.”\(^{89}\) Thus, all financial institutes operating in the HS/VCS are subject to the AML/CFT law, including non-profits and APSA, closing a gap identified by the MONEYVAL report.

Lastly, Law No. XVIII furthers the regulations of cross-border cash transactions of an amount greater than or equal to 10,000 Euros, addressing the weaknesses identified by MONEYVAL regarding money transfers.\(^{90}\) Law No. XVIII is read in conjunction with Pope Francis’s Motu Proprio on criminal jurisdiction of July 11, 2013 and with his August 8, 2013

\(^{86}\) Id.
\(^{87}\) Id.
\(^{88}\) See supra note 66.
\(^{89}\) Id.
\(^{90}\) Law XVIII of the State of Vatican City on Transparency, Watch and Financial Information, HOLY SEE PRESS OFFICE (Sept. 10, 2013), http://press.vatican.va/content/salastampa/it/bollettino/pubblico/2013/10/09/0644/01452.html#. 
Motu Propio.\textsuperscript{91} It is also read with laws Laws NN. VIII and IX 11 July, 2013 and Act No. X of July 11, 2013, affecting substantive and procedural criminal law and administrative sanctions.\textsuperscript{92} Reading all of these laws together, it is clear that the Vatican is taking prompt and effective measures to reach compliance with international norms.

The Vatican has also taken a key step in international compliance by becoming a party to the Vienna, Palermo and Terrorist Financing Conventions of the UN as of January 2012.\textsuperscript{93} The Palermo Convention combats transnational organized crime, the Vienna Convention combats illicit traffic in narcotic drugs and psychotropic substances, and the Terrorist Financing Conventions combat money laundering and terrorist financing through the policy-making of the Financial Action Task Force.\textsuperscript{94} By collaborating with UN states, the HS/VCS is able to leverage the knowledge and policies of the UN and its member states to not only reach compliance, but to serve as a beacon of light in combating TF/ML for the world community.

\textbf{IV. Conclusion: The Outlook of Vatican Compliance}

The key takeaway from the MONEVYAL assessment is that the Vatican has come a long way in a short period of time. Most of the deficiencies will be ironed out with continued communication with MONEYVAL, trial and error of enforcing Laws NN. CLXVI and XVIII, and continued efforts toward compliance with other international counter-terrorism conventions. Notably, Law No. CLXVI was passed after MONEYVAL’s November visit; thus, Law No. CLXXVII was assessed rather than the amended Laws NN. CLXVI and No. XVIII. Were these new laws to have been assessed, the weaknesses would have been fewer and narrower. The HS/VCS will soon be in compliance with AML/CFT Laws if they follow the model laid out by

\begin{itemize}
\item \textsuperscript{91} See supra note 66.
\item \textsuperscript{92} Id.
\item \textsuperscript{93} See supra note 12, at 9.
\end{itemize}
Italy and continue to strive toward the measures enacted in the EU’s Directive by continuous MONEYVAL evaluations until compliance is met or exceeded.