Financial Action Task Force on Money Laundering

Groupe d'action financière sur le blanchiment de capitaux

Annexes

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ANNEXES

ANNEX A

The Mandate for the future of FATF (September 2004 – December 2012)

The need for continued action against money laundering and terrorist financing

1. The current remit of the FATF expires at the end of August 2004. Considerable progress has been made in the fight against money laundering since the inception of the FATF in 1989. However, the FATF still has a major task to perform in continuing to set standards in the context of an ever more sophisticated international financial system. This key role should be completed by carrying out typologies and compliance work in order to ensure global action against money laundering. Following the expansion of its mandate in 2001 to include the fight against terrorist financing and the introduction of the Eight Special Recommendations, the FATF opened up an entirely new area of work. Although much has been done, there is an obvious need for continuing mobilisation at the international level to deepen and broaden anti-money laundering action and the fight against terrorist financing. This document, therefore, sets out the main tasks of the future mandate of the FATF.

(i) Strategic Issues

(a) Establish international standards for combating money laundering and terrorist financing

2. Over the years, the FATF's role as an international standard setter has become increasingly important and should therefore continue with the same intensity and energy. The FATF must also continue its work on reviewing measures in the areas of money laundering and the financing of terrorism, for instance, by drawing up guidelines to cover specific areas in the Forty Recommendations and in the Eight Special Recommendations taking into account the views of the industry sectors affected by the FATF's standards. The FATF should also consider the advisability of integrating the two sets of Forty and Eight Recommendations respectively into a single, unified standard. The timing and mechanism for such an exercise should also be carefully thought out and should take into account the feedback and reactions to the revised set of Recommendations.

(b) Ensure global action to combat money laundering and terrorist financing

3. The FATF should pursue the task of ensuring that members and non-members adopt relevant legislation against money laundering and terrorism, including reserving the right to take appropriate action in response to specific money laundering and terrorist financing threats. An important component of FATF's overall efforts is co-operation with other international bodies. The pilot programme, agreed with the IMF/WB, expired at the end of 2003. In order to achieve the best possible results, cooperation with the International Monetary Fund (IMF) and the World Bank (WB) should continue and indeed become stronger. Moreover, there should be closer co-operation with FATF-style regional bodies and other international organisations throughout the world, both in the fight against money laundering and terrorist financing. The FATF should focus in particular on co-operation with other organisations, such as the United Nations and various donor organisations, and FATF should work with the International Financial Institutions (IFIs) to ensure that the pilot project becomes permanent.

(c) Ensure that FATF members have implemented the revised Forty and the Eight Recommendations in their entirety and in an effective manner

4. The FATF should continue to carry out mutual evaluations among its membership (employing the common assessment methodology) to check that the member states have implemented both the Forty and the Eight Recommendations. Accordingly, the FATF should consider how and when it will conduct the already agreed third round of mutual evaluations. The attention of the FATF should continue to be focused on standard-setting, subsequent legislative work by countries and the effective

functioning of anti-money laundering (AML)/countering the financing of terrorism (CFT) systems. The elaboration and adoption of legislation combined with the effective implementation of such legislation should continue to be a priority objective in the successful fight against money laundering and terrorist financing. It is essential that this issue should be addressed in mutual evaluations.

5. In addition, one of the primary instruments by which the FATF monitors members' implementation of its Recommendations is the self-assessment exercise, which is a component in the evaluation exercise. This exercise may continue and a new questionnaire may be required to cover the implementation of the revised Recommendations.

(d) Membership

6. In September 1998, the FATF identified seven target countries for membership[1]. Significant progress has been made with respect to the seven target countries, insofar as five of them have already been granted membership status. The FATF should continue to actively work towards the membership of the remaining two countries[2]. However, the FATF has perhaps approached the limit of members if it is to continue to retain its current structure and character. Any future identification of possible strategically important countries should address the issue of geographical balance and the impact on the efficiency of FATF. Finally, the policy for the admission of new members should be reviewed to include counter-terrorist financing criteria.

(e) Enhance the relationship between FATF and FATF-style regional bodies (FSRBs), the Offshore Group of Banking Supervisors (OGBS) and non-member countries

7. In order to reinforce FATF's position as the world's leading standard setter in the areas of money laundering and terrorist financing, it is essential that as many of the world's countries as possible commit themselves to applying the Recommendations and feel themselves to be participants in the process. Therefore, it would be worthwhile to discuss how to further deepen the co-operation and enhance coordination between FATF, the FSRBs[3] and the OGBS as well as with non-member countries.

8. The FATF needs to be more proactive in its outreach to the FSRBs and the OGBS and to consult with them on essential policy issues. Building on efforts undertaken over the past years, there are numerous steps that can be taken to further enhance these relationships. One possibility would be to have regular technical meetings between the Secretariats of the FSRBs and the OGBS and the FATF Secretariat, and FATF presentations during the meetings of the FSRBs and the OGBS should be further developed. Another possibility would be to consider how the FATF Steering Group could become more involved in consultations with the OGBS, FSRBs or their Steering Groups, where these exist. The FATF should also consider how to provide the FSRBs and non-member countries with additional opportunities for their input in FATF discussions. For instance, a specific region covered by an FSRB could be given an opportunity, on a rotating basis, to present specific regional issues either in terms of typologies or in terms of counter-measures or practices to combat money laundering and terrorist financing - building for instance on the mutual evaluations exercises carried out by the FSRBs and the OGBS. Similarly, the FATF should also strengthen the dialogue on AML/CFT policies with non-member countries.

[1] Argentina, Brazil, China, India, Mexico, South Africa and the Russian Federation.

[2] China and India.

[3] As of May 2004, the existing FSRBs are: Asia / Pacific Group on Money Laundering (APG), Caribbean Financial Action Task Force (CFATF), Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG), Financial Action Task Force on Money Laundering in South America (GAFISUD)

(f) Further develop the typologies exercises

9. It is extremely important for the future that FATF intensifies its study of the techniques and trends in money laundering and terrorist financing. More attention and resources should be devoted to this work. This applies in particular to terrorist financing, which is a relatively new area of activity for the FATF. A stronger connection between the typologies exercises and the standard setting task of the FATF must be created. The analytical scope and robustness of the typologies reports should be significantly increased and the FATF should also increase its efforts to become the authoritative source of data/information on money laundering and terrorist financing issues. The FATF should also expand its co-operation in the typologies area with FATF-style regional bodies and the Egmont Group.

(g) Outreach

10. Communication and publicity should be sustained and further developed, in particular by reaching out, not just to the public and governments, but also to parties affected by the FATF's standards, e.g. financial institutions and certain non-financial businesses and professions. For example, the President/Secretariat could attend key meetings and fora of the private sector organisations in order to highlight FATF's work and receive feedback. Alternatively, there could be more focus on liaison mechanisms with associations or bodies representing such entities, subject to reasonable resource implications.

(ii) Operational issues

(a) Organisation of Work

11. As the FATF's mandate has been broadened to include new issues, e.g. the fight against the financing of terrorism, collaboration with the IFIs, demands have arisen for greater flexibility and effectiveness in the conduct of its activities. In order to make operations as effective as possible, the present organisation of the work is under review. This review will be concluded before the beginning of the new mandate (i.e. at the June 2004 Plenary meeting).

(b) Presidency

12. Each Presidency should continue to be designated by the Plenary for the duration of one year. Ideally, the President should be selected from among the members which have not yet held the Presidency. However, the possibility of selecting a country which has previously held the Presidency could also be considered.

(c) The Steering Group

13. The main function of the Steering Group should continue to be an advisory one. It would also be legitimate to improve communication between the Steering Group and the Plenary even though the main role of the Steering Group is to provide advice to the President. Following past practice, the President, the past President and the President-designate should be members of the Steering Group for a normal period of three years. Overall, the Steering Group should reflect all the categories of FATF members in terms of geography and size.

(d) Secretariat and Budget

14. Given the recent and significant expansion of its size, the Secretariat should be more involved in the work of the working groups to ensure co-ordination and consistency. With its current size, the Secretariat should be able to cope with the tasks contemplated in this mandate. Since the arrangements with the OECD have worked satisfactorily in the past, there seems no reason to change them.

15. The current arrangements for financing the FATF activities should be retained. The cost of the Secretariat and other services should be met by the FATF budget, using the OECD as the channel for these operations. With regard to the method of financing the FATF, members should continue to contribute according to the OECD scales. In addition, other members could also make voluntary contributions to the FATF budget if they wish, so as to provide further resources, in a flexible manner. A mechanism for providing the annual financial statements to members should be established. Information related to member countries in arrears should also be provided to the Plenary.

(e) Future duration

16. Since its inception, the FATF has been operating under a temporary life-span and requires a specific decision of the Task Force to continue. For the sake of stability and continuity and given the widening of the remit to include terrorist financing, the FATF should continue its work in the areas covered in this mandate for a period of eight years (i.e. expiration of the mandate in December 2012). However, in order to ensure that the FATF's activities concentrate on the requisite issues, continuous follow-up of the work is essential and there could be a mid-term review during that period.

14 May 2004

ANNEX B

Guidance on Implementing the Eight Special Recommendations

Interpretative Note to Special Recommendation II: Criminalising the financing of terrorism and associated money laundering

Objective

1. Special Recommendation II (SR II) was developed with the objective of ensuring that countries have the legal capacity to prosecute and apply criminal sanctions to persons that finance terrorism. Given the close connection between international terrorism and *inter alia* money laundering, another objective of SR II is to emphasise this link by obligating countries to include terrorist financing offences as predicate offences for money laundering. The basis for criminalising terrorist financing should be the United Nations International Convention for the Suppression of the Financing of Terrorism, 1999.[1]

Definitions

2. For the purposes of SR II and this Interpretative Note, the following definitions apply:

a) The term *funds* refers to assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.

b) The term *terrorist* refers to any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

c) The term *terrorist act* includes:

(i) An act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft (1970), Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), International Convention against the Taking of Hostages (1979), Convention on the Physical Protection of Nuclear Material (1980), Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988), Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988), and the International Convention for the Suppression of Terrorist Bombings (1997); and

[1] Although the UN Convention had not yet come into force at the time that SR II was originally issued in October 2001 – and thus is not cited in the SR itself – the intent of the FATF has been from the issuance of SR II to reiterate and reinforce the criminalisation standard as set forth in the Convention (in particular, Article 2). The Convention came into force in April 2003.

(ii) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act.

d) The term *terrorist financing* includes the financing of terrorist acts, and of terrorists and terrorist organisations.

e) The term *terrorist organisation* refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts; (iii) organises or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

Characteristics of the Terrorist Financing Offence

3. Terrorist financing offences should extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part: (a) to carry out a terrorist act(s); (b) by a terrorist organisation; or (c) by an individual terrorist.

4. Criminalising terrorist financing solely on the basis of aiding and abetting, attempt, or conspiracy does not comply with this Recommendation.

5. Terrorist financing offences should extend to any funds whether from a legitimate or illegitimate source.

6. Terrorist financing offences should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); or (b) be linked to a specific terrorist act(s).

7. It should also be an offence to attempt to commit the offence of terrorist financing.

8. It should also be an offence to engage in any of the following types of conduct:

a) Participating as an accomplice in an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;

b) Organising or directing others to commit an offence as set forth in paragraphs 3 or 7 of this Interpretative Note;

c) Contributing to the commission of one or more offence(s) as set forth in paragraphs 3 or 7 of this Interpretative Note by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either: (i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a terrorist financing offence; or (ii) be made in the knowledge of the intention of the group to commit a terrorist financing offence.

9. Terrorist financing offences should be predicate offences for money laundering.

10. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

11. The law should permit the intentional element of the terrorist financing offence to be inferred from objective factual circumstances.

12. Criminal liability for terrorist financing should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.

13. Making legal persons subject to criminal liability for terrorist financing should not preclude the possibility of parallel criminal, civil or administrative proceedings in countries in which more than one form of liability is available.

14. Natural and legal persons should be subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions for terrorist financing.

Interpretative Note to Special Recommendation III: Freezing and Confiscating Terrorist Assets

Objectives

1. FATF Special Recommendation III consists of two obligations. The first requires jurisdictions to implement measures that will freeze or, if appropriate, seize terrorist-related funds or other assets without delay in accordance with relevant United Nations resolutions. The second obligation of Special Recommendation III is to have measures in place that permit a jurisdiction to seize or confiscate terrorist funds or other assets on the basis of an order or mechanism issued by a competent authority or a court.

2. The objective of the first requirement is to freeze terrorist-related funds or other assets based on reasonable grounds, or a reasonable basis, to suspect or believe that such funds or other assets could be used to finance terrorist activity. The objective of the second requirement is to deprive terrorists of these funds or other assets if and when links have been adequately established between the funds or other assets and terrorists or terrorist activity. The intent of the first objective is preventative, while the intent of the second objective is mainly preventative and punitive. Both requirements are necessary to deprive terrorists and terrorist networks of the means to conduct future terrorist activity and maintain their infrastructure and operations.

Scope

3. Special Recommendation III is intended, with regard to its first requirement, to complement the obligations in the context of the United Nations Security Council (UNSC) resolutions relating to the prevention and suppression of the financing of terrorist acts—S/RES/1267(1999) and its successor resolutions,[1] S/RES/1373(2001) and any prospective resolutions related to the freezing, or if appropriate seizure, of terrorist assets. It should be stressed that none of the obligations in Special

[1] When issued, S/RES/1267(1999) had a time limit of one year. A series of resolutions have been issued by the United Nations Security Council (UNSC) to extend and further refine provisions of S/RES/1267(1999). By successor resolutions are meant those resolutions that extend and are directly related to the original resolution S/RES/1267(1999). At the time of issue of this Interpretative Note, these resolutions included S/RES/1333(2000), S/RES/1363(2001), S/RES/1390(2002) and S/RES/1455(2003). In this Interpretative Note, the term *S/RES/1267(1999)* refers to S/RES/1267(1999) and its successor resolutions.

Recommendation III is intended to replace other measures or obligations that may already be in place for dealing with funds or other assets in the context of a criminal, civil or administrative investigation or proceeding.[2] The focus of Special Recommendation III instead is on the preventative measures that are necessary and unique in the context of stopping the flow or use of funds or other assets to terrorist groups.

4. S/RES/1267(1999) and S/RES/1373(2001) differ in the persons and entities whose funds or other assets are to be frozen, the authorities responsible for making these designations, and the effect of these designations.

5. S/RES/1267(1999) and its successor resolutions obligate jurisdictions to freeze without delay the funds or other assets owned or controlled by Al-Qaida, the Taliban, Usama bin Laden, or persons and entities associated with them as designated by the United Nations Al-Qaida and Taliban Sanctions Committee established pursuant to United Nations Security Council Resolution 1267 (the Al-Qaida and Taliban Sanctions Committee), including funds derived from funds or other assets owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds or other assets are made available, directly or indirectly, for such persons' benefit, by their nationals or by any person within their territory. The Al-Qaida and Taliban Sanctions Committee is the authority responsible for designating the persons and entities that should have their funds or other assets frozen under S/RES/1267(1999). All jurisdictions that are members of the United Nations are obligated by S/RES/1267(1999) to freeze the assets of persons and entities so designated by the Al-Qaida and Taliban Sanctions Committee.[3]

6. S/RES/1373(2001) obligates jurisdictions[4] to freeze without delay the funds or other assets of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds or other assets derived or generated from property owned or controlled, directly or indirectly, by such persons and associated persons and entities. Each individual jurisdiction has the authority to designate the persons and entities that should have their funds or other assets frozen. Additionally, to ensure that effective co-operation is developed among jurisdictions, jurisdictions should examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions. When (i) a specific notification or communication is sent and (ii) the jurisdiction receiving the request is satisfied, according to applicable legal principles, that a requested designation is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee is a terrorist, one who finances terrorism or a terrorist organisation, the jurisdiction receiving the request must ensure that the funds or other assets of the designated person are frozen without delay.

Definitions

7. For the purposes of Special Recommendation III and this Interpretive Note, the following definitions apply:

a) The term *freeze* means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of, and for the duration of the validity of, an action

[2] For instance, both the *UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)* and *UN Convention against Transnational Organised Crime (2000)* contain obligations regarding freezing, seizure and confiscation in the context of combating transnational crime. Those obligations exist separately and apart from obligations that are set forth in S/RES/1267(1999), S/RES/1373(2001) and Special Recommendation III.

[3] When the UNSC acts under Chapter VII of the UN Charter, the resolutions it issues are mandatory for all UN members.

[4] The UNSC was acting under Chapter VII of the UN Charter in issuing S/RES/1373(2001) (see previous footnote).

initiated by a competent authority or a court under a freezing mechanism. The frozen funds or other assets remain the property of the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the freezing and may continue to be administered by the financial institution or other arrangements designated by such person(s) or entity(ies) prior to the initiation of an action under a freezing mechanism.

b) The term *seize* means to prohibit the transfer, conversion, disposition or movement of funds or other assets on the basis of an action initiated by a competent authority or a court under a freezing mechanism. However, unlike a freezing action, a seizure is effected by a mechanism that allows the competent authority or court to take control of specified funds or other assets. The seized funds or other assets remain the property of the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the seizure, although the competent authority or court will often take over possession, administration or management of the seized funds or other assets.

c) The term *confiscate,* which includes forfeiture where applicable, means the permanent deprivation of funds or other assets by order of a competent authority or a court. Confiscation or forfeiture takes place through a judicial or administrative procedure that transfers the ownership of specified funds or other assets to be transferred to the State. In this case, the person(s) or entity(ies) that held an interest in the specified funds or other assets at the time of the confiscation or forfeiture loses all rights, in principle, to the confiscated or forfeited funds or other assets.[5]

d) The term *funds or other assets* means financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.

e) The term *terrorist* refers to any natural person who: (i) commits, or attempts to commit, terrorist acts[6] by any means, directly or indirectly, unlawfully and wilfully; (ii) participates as an accomplice in terrorist acts or terrorist financing; (iii) organises or directs others to commit terrorist acts or terrorist financing; or (iv) contributes to the commission of terrorist acts or terrorist financing by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or terrorist financing or with the knowledge of the intention of the group to commit a terrorist act or terrorist financing.

[5] Confiscation or forfeiture orders are usually linked to a criminal conviction or a court decision whereby the confiscated or forfeited property is determined to have been derived from or intended for use in a violation of the law.

[6] A *terrorist act* includes an act which constitutes an offence within the scope of, and as defined in one of the following treaties: Convention for the Suppression of Unlawful Seizure of Aircraft, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, International Convention against the Taking of Hostages, Convention on the Physical Protection of Nuclear Material, Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, International Convention for the Suppression of Terrorist Bombings, and the International Convention for the Suppression of the Financing of Terrorism (1999).

f) The phrase *those who finance terrorism* refers to any person, group, undertaking or other entity that provides or collects, by any means, directly or indirectly, funds or other assets that may be used, in full or in part, to facilitate the commission of terrorist acts, or to any persons or entities acting on behalf of, or at the direction of such persons, groups, undertakings or other entities. This includes those who provide or collect funds or other assets with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts.

g) The term *terrorist organisation* refers to any legal person, group, undertaking or other entity owned or controlled directly or indirectly by a terrorist(s).

h) The term *designated persons* refers to those persons or entities designated by the Al-Qaida and Taliban Sanctions Committee pursuant to S/RES/1267(1999) or those persons or entities designated and accepted, as appropriate, by jurisdictions pursuant to S/RES/1373(2001).

i) The phrase *without delay*, for the purposes of S/RES/1267(1999), means, ideally, within a matter of hours of a designation by the Al-Qaida and Taliban Sanctions Committee. For the purposes of S/RES/1373(2001), the phrase *without delay* means upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, one who finances terrorism or a terrorist organisation. The phrase *without delay* should be interpreted in the context of the need to prevent the flight or dissipation of terrorist-linked funds or other assets, and the need for global, concerted action to interdict and disrupt their flow swiftly.

Freezing without delay terrorist-related funds or other assets

8. In order to fulfil the preventive intent of Special Recommendation III, jurisdictions should establish the necessary authority and adopt the following standards and procedures to freeze the funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with both S/RES/1267(1999) and S/RES/1373(2001):

a) ***Authority to freeze, unfreeze and prohibit dealing in funds or other assets of designated persons.*** Jurisdictions should prohibit by enforceable means the transfer, conversion, disposition or movement of funds or other assets. Options for providing the authority to freeze and unfreeze terrorist funds or other assets include:

(i) empowering or designating a competent authority or a court to issue, administer and enforce freezing and unfreezing actions under relevant mechanisms, or

(ii) enacting legislation that places responsibility for freezing the funds or other assets of designated persons publicly identified by a competent authority or a court on the person or entity holding the funds or other assets and subjecting them to sanctions for non-compliance.

The authority to freeze and unfreeze funds or other assets should also extend to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by such terrorists, those who finance terrorism, or terrorist organisations.

Whatever option is chosen there should be clearly identifiable competent authorities responsible for enforcing the measures.

The competent authorities shall ensure that their nationals or any persons and entities within their territories are prohibited from making any funds or other assets, economic resources or financial or other related services available, directly or indirectly, wholly or jointly, for

the benefit of: designated persons, terrorists; those who finance terrorism; terrorist organisations; entities owned or controlled, directly or indirectly, by such persons or entities; and persons and entities acting on behalf of or at the direction of such persons or entities.

b) ***Freezing procedures.*** Jurisdictions should develop and implement procedures to freeze the funds or other assets specified in paragraph (c) below without delay and without giving prior notice to the persons or entities concerned. Persons or entities holding such funds or other assets should be required by law to freeze them and should furthermore be subject to sanctions for non-compliance with this requirement. Any delay between the official receipt of information provided in support of a designation and the actual freezing of the funds or other assets of designated persons undermines the effectiveness of designation by affording designated persons time to remove funds or other assets from identifiable accounts and places. Consequently, these procedures must ensure (i) the prompt determination whether reasonable grounds or a reasonable basis exists to initiate an action under a freezing mechanism and (ii) the subsequent freezing of funds or other assets without delay upon determination that such grounds or basis for freezing exist. Jurisdictions should develop efficient and effective systems for communicating actions taken under their freezing mechanisms to the financial sector immediately upon taking such action. As well, they should provide clear guidance, particularly financial institutions and other persons or entities that may be holding targeted funds or other assets on obligations in taking action under freezing mechanisms.

c) ***Funds or other assets to be frozen or, if appropriate, seized.*** Under Special Recommendation III, funds or other assets to be frozen include those subject to freezing under S/RES/1267(1999) and S/RES/1373(2001). Such funds or other assets would also include those wholly or jointly owned or controlled, directly or indirectly, by designated persons. In accordance with their obligations under the United Nations International Convention for the Suppression of the Financing of Terrorism (1999) (the Terrorist Financing Convention (1999)), jurisdictions should be able to freeze or, if appropriate, seize any funds or other assets that they identify, detect, and verify, in accordance with applicable legal principles, as being used by, allocated for, or being made available to terrorists, those who finance terrorists or terrorist organisations. Freezing or seizing under the Terrorist Financing Convention (1999) may be conducted by freezing or seizing in the context of a criminal investigation or proceeding. Freezing action taken under Special Recommendation III shall be without prejudice to the rights of third parties acting in good faith.

d) ***De-listing and unfreezing procedures.*** Jurisdictions should develop and implement publicly known procedures to consider de-listing requests upon satisfaction of certain criteria consistent with international obligations and applicable legal principles, and to unfreeze the funds or other assets of de-listed persons or entities in a timely manner. For persons and entities designated under S/RES/1267(1999), such procedures and criteria should be in accordance with procedures adopted by the Al-Qaida and Taliban Sanctions Committee under S/RES/1267(1999).

e) ***Unfreezing upon verification of identity.*** For persons or entities with the same or similar name as designated persons, who are inadvertently affected by a freezing mechanism, jurisdictions should develop and implement publicly known procedures to unfreeze the funds or other assets of such persons or entities in a timely manner upon verification that the person or entity involved is not a designated person.

f) ***Providing access to frozen funds or other assets in certain circumstances.*** Where jurisdictions have determined that funds or other assets, which are otherwise subject to freezing pursuant to the obligations under S/RES/1267(1999), are necessary for basic

expenses; for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses,[7] jurisdictions should authorise access to such funds or other assets in accordance with the procedures set out in S/RES/1452(2002) and subject to approval of the Al-Qaida and Taliban Sanctions Committee. On the same grounds, jurisdictions may authorise access to funds or other assets, if freezing measures are applied pursuant to S/RES/1373(2001).

g) ***Remedies.*** Jurisdictions should provide for a mechanism through which a person or an entity that is the target of a freezing mechanism in the context of terrorist financing can challenge that measure with a view to having it reviewed by a competent authority or a court.

h) ***Sanctions.*** Jurisdictions should adopt appropriate measures to monitor effectively the compliance with relevant legislation, rules or regulations governing freezing mechanisms by financial institutions and other persons or entities that may be holding funds or other assets as indicated in paragraph 8(c) above. Failure to comply with such legislation, rules or regulations should be subject to civil, administrative or criminal sanctions.

Seizure and Confiscation

9. Consistent with FATF Recommendation 3, jurisdictions should adopt measures similar to those set forth in Article V of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), Articles 12 to 14 of the United Nations Convention on Transnational Organised Crime (2000), and Article 8 of the Terrorist Financing Convention (1999), including legislative measures, to enable their courts or competent authorities to seize and confiscate terrorist funds or other assets.

[7] See Article 1, S/RES/1452(2002) for the specific types of expenses that are covered.

FREEZING OF TERRORIST ASSETS[1]

International Best Practices

Introduction

1. Responding to the growing prevalence of terrorist attacks around the world, the international community united in a campaign to freeze the *funds or other assets*[2] of *terrorists, those who finance terrorism, and terrorist organisations* around the world. As part of this campaign, the United Nations Security Council issued resolutions *S/RES/1267(1999)* and *S/RES/1373(2001).* These international obligations are reiterated in FATF Special Recommendation III (SR III). The Interpretative Note to SR III (Interpretative Note) explains how these international freezing obligations should be fulfilled. To further assist in this effort, the FATF has identified the following set of best practices which are based on jurisdictions' experience to date and which may serve as a benchmark for developing institutional, legal, and procedural frameworks of an effective terrorist financing freezing regime.[3] These best practices are organised along five basic themes and complement the obligations set forth in the Interpretative Note. A common element to each of these themes is the importance of sharing terrorist financing information.

Importance of an Effective Freezing Regime

2. Effective freezing regimes are critical to combating the financing of terrorism and accomplish much more than freezing the terrorist-related funds or other assets present at any particular time. Effective freezing regimes also combat terrorism by:

(i) deterring non-designated parties who might otherwise be willing to finance terrorist activity;

(ii) exposing terrorist financing "money trails" that may generate leads to previously unknown terrorist cells and financiers;

(iii) dismantling terrorist financing networks by encouraging designated persons to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups;

(iv) terminating terrorist cash flows by shutting down the pipelines used to move terrorist-related funds or other assets;

(v) forcing terrorists to use more costly and higher risk means of financing their activities, which makes them more susceptible to detection and disruption; and

[1] The term "blocking" is a synonym of "freezing." These best practices will not address the funds or other asset seizure or funds or other asset confiscation / forfeiture authorities and procedures of a counter-terrorist financing regime, although the process of searching for such funds or other assets may be identical in cases of freezing, seizure and confiscation or forfeiture.

[2] Any term or phrase introduced in italics in this Best Practices Paper shall have the same meaning throughout as that ascribed to it in the Interpretative Note to FATF Special Recommendation III (SR III).

[3] These best practices focus on the financial sector because of the high risk of terrorist financing associated with this sector and also because of this sector's particular need for communication and guidance regarding the freezing of terrorist-related funds or other assets. However, the FATF recognizes that all persons and entities are obligated to freeze the funds or other assets of persons designated under either S/RES/1267(1999) or S/RES/1373(2001). Additionally, S/RES/1373(2001) prohibits all persons and entities from providing any financial services or any form of support to any designated person. Any references to *financial institutions* should, therefore, be understood to include other relevant persons and entities.

(vi) fostering international co-operation and compliance with obligations under S/RES/1267(1999) and S/RES/1373(2001).

3. Efforts to combat terrorist financing are greatly undermined if jurisdictions do not freeze the funds or other assets of designated persons quickly and effectively. Nevertheless, in determining the limits of or fostering widespread support for an effective counter-terrorist financing regime, jurisdictions must also respect human rights, respect the rule of law and recognise the rights of innocent third parties.

Statement of the Problem

4. The global nature of terrorist financing networks and the urgency of responding to terrorist threats require unprecedented levels of communication, co-operation and collaboration within and among governments, and between the public and private sectors. It is recognised that jurisdictions will necessarily adopt different terrorist financing freezing regimes in accordance with their differing legal traditions, constitutional requirements, systems of government and technological capabilities. However, the efficient and rapid dissemination of terrorist financing information to all those who can help identify, disrupt and dismantle terrorist financing networks must be a central focus of the international effort to freeze terrorist-related funds or other assets. Active participation and full support by the private sector is also essential to the success of any terrorist financing freezing regime. Consequently, jurisdictions should work with the private sector to ensure its ongoing co-operation in developing and implementing an effective terrorist-financing regime.

Best Practices

5. Establishing effective regimes and competent authorities or courts. Jurisdictions should establish the necessary legal authority and procedures, and designate accountable, competent authorities or courts responsible for: (a) freezing the funds or other assets of designated persons; (b) lifting such freezing action; and (c) providing access to frozen funds or other assets in certain circumstances. Jurisdictions may undertake the following best practices to establish a comprehensive and effective terrorist financing freezing regime:

i) Develop a designation process which authorises a competent authority or a court to freeze funds or other assets based on information creating reasonable grounds, or a reasonable basis, to suspect or believe that such funds or other assets are terrorist-related. Jurisdictions may adopt executive, administrative or judicial procedures in this regard, provided that: (a) a competent authority or a court is immediately available to determine whether reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, terrorist organisation or associated person or entity exits; [4] (b) terrorist-related funds or other assets are frozen immediately upon a determination that such reasonable grounds, or a reasonable basis, to suspect or believe exists; and (c) freezing occurs without prior notice to the parties whose funds or other assets are being frozen. These procedures may complement existing civil and/or criminal seizure and forfeiture laws, and other available judicial procedures;

ii) Establish effective procedures to facilitate communication, co-operation and collaboration among relevant governmental agencies and entities, as appropriate, during the designation process in order to: (a) develop all available information to accurately identify designated persons (e.g. birth date, address, citizenship or passport number for individuals; locations, date

[4] A designation by the Al-Qaida and Taliban Sanctions Committee constitutes, ipso facto, reasonable grounds, or a reasonable basis, to suspect or believe that a person or entity is a terrorist, terrorist organisation or an associated person or entity.

and jurisdiction of incorporation, partnership or association for entities, etc.)[5], and (b) consider and co-ordinate, as appropriate, any designation with other options and actions for addressing terrorists, terrorist organisations and associated persons and entities;

iii) Develop a process for financial institutions to communicate information concerning frozen funds or other assets (name, accounts, amounts) to the competent authorities or courts in their jurisdiction. Identify, assess the impact of, and amend, as necessary and to the extent possible, existing bank secrecy provisions or data protection rules that may prohibit this communication to appropriate authorities of information concerning frozen terrorist-related funds or other assets;

iv) Identify and accommodate the concerns of the intelligence community, law enforcement, private sector and legal systems arising from circulation of sensitive information concerning frozen terrorist-related funds or other assets;

v) Develop a publicly known delisting process for considering any new arguments or evidence that may negate the basis for freezing funds or other assets[6] and develop procedures for reviewing the appropriateness of a freezing action upon presentation of any such new information;

vi) Develop procedures to ensure that adequate prohibitions against the publication of sensitive information exist in accordance with applicable legislation;

vii) Develop procedures and designate competent authorities or courts responsible for providing access to frozen funds or other assets in accordance with S/RES/1452(2002) to mitigate, where appropriate and feasible, unintended consequences of freezing action; and

viii) Consider enacting hold-harmless or public indemnity[7] laws to shield financial institutions, their personnel, government officials, and other appropriate persons from legal liability when acting in good faith according to applicable law to implement the requirements of a terrorist financing freezing regime.

6. Facilitating communication and co-operation with foreign governments and international institutions. To the extent legally and constitutionally possible, jurisdictions may undertake the following best practices to improve international co-operation and the effectiveness of the international campaign against terrorist financing by sharing information relating to the freezing of terrorist-related funds or other assets:

i) Develop a system for mutual, early, and rapid pre-notification of pending designations, through diplomatic and other appropriate channels, where security concerns and applicable legal principles permit, to those jurisdictions invited to join in a designation and/or where funds or other assets of designated persons might be located, so that funds or other assets can be frozen simultaneously across jurisdictions with the objective of preventing terrorists, terrorist organisations and associated persons and entities from hiding or moving them. In this regard,

[5] Accurate identification of a designated person is a precondition to an effective terrorist financing freezing regime.

[6] Only the Al-Qaida and Taliban Sanctions Committee can delist persons designated pursuant to S/RES/1267(1999).

[7] In contrast to hold-harmless laws, public indemnity laws allow a remedy for innocent parties that are injured by the good faith implementation of a terrorist financing freezing regime. The appropriate compensation or relief for such innocent parties is not at the expense of the persons or entities that actually implement the terrorist financing regime in good faith, but comes from a public insurance fund or similar vehicle established or made available by the applicable jurisdiction.

consideration should be given to establishing a list of relevant contacts to ensure that freezing action is taken rapidly;[8]

ii) Develop a system for undertaking useful and appropriate consultation with other jurisdictions for the purpose of gathering, verifying, and correcting identifier information for designated persons as well as, where appropriate and where intelligence concerns and applicable laws permit, the sharing and development of information on possible terrorists and terrorist financing activity of the parties involved. In undertaking such consultation, jurisdictions should consider: (a) the greater effectiveness of freezing on the basis of accurate and complete identifying information; (b) the burden created by unsubstantiated or incomplete identifying information; (c) the security concerns associated with releasing sensitive identifier or corroborating information; and (d) the degree of danger or urgency associated with the potential designated persons. Where appropriate such information should be shared and developed before a designation is made;

iii) Prepare a packet of information for each potential designation that includes as much information as is available and appropriate to identify the designated person accurately and to set forth the basis for the potential designation in any pre-notification or communication of the designation (*see Paragraph 6.(i), above*);

iv) Develop a process for rapidly and globally communicating new designations and the accompanying packet of information to other jurisdictions;

v) Expand coverage of the hold-harmless and public indemnity laws referred to in *Paragraph 5.(viii)* above, or otherwise implement procedures to deal with situations in which freezing does not occur simultaneously, so as to avoid conflicting legal obligations for financial institutions that operate in multiple jurisdictions;

vi) Share on a mutual and confidential basis, to the extent possible, with other jurisdictions information about the amount of funds or other assets frozen pursuant to terrorist financing freezing orders by account; and

vii) Make public and update on a regular basis the aggregate amount of funds or other assets frozen in order to signal the effectiveness of terrorist financing freezing regimes and to deter terrorist financing.

7. Facilitating communication with the private sector. Because terrorist-related funds or other assets overwhelmingly are held in the private sector, jurisdictions must develop efficient and effective means of communicating terrorist financing-related information with the general public, particularly financial institutions. To the extent possible and practicable, jurisdictions can adopt the following practices to develop and enhance communication with the private sector regarding the freezing of terrorist-related funds or other assets, the availability of additional information concerning existing designations, and other counter-terrorist financing guidance or instruction:

i) Integrate, organise, publish and update *without delay* the designated persons list, for example both alphabetically and by date of designation to assist financial institutions in freezing terrorist-related funds or other assets and making the list as user-friendly as possible. Create different entries for different aliases or different spellings of names. Where technologically possible provide a consolidated list in an electronic format with a clear indication of changes

[8] Such a pre-notification system should be developed to compliment rather than replace the pre-notification system in place for submitting designations to the Al-Qaida and Taliban Sanctions Committee and should include designations arising from obligations under S/RES/1373(2001).

and additions. Consult the private sector on other details of the format of the list and co-ordinate the format internationally with other jurisdictions;

ii) Develop clear guidance to the private sector, particularly financial institutions, with respect to their obligations in freezing terrorist-related funds or other assets;

iii) Identify all financial institutions for use in notification and regulatory oversight and enforcement of freezing action related to terrorist financing, utilising, where appropriate and feasible, existing registration or licensing information;

iv) Implement a process for early, rapid and secure pre-notification of pending designations, where security concerns or applicable legal principles permit, to those financial institutions where funds or other assets of designated persons are known or believed to be located so that those institutions can freeze such funds or other assets immediately upon designation;

v) Implement a system for early, rapid, and uniform global communication, consistent with available technology and resources and where security concerns permit, of any designation-related information, amendments or revocations of designations. For the reasons set out in *Paragraph 6.(ii)* above, include as much information as is available and appropriate to clearly identify designated persons in any communication of a designation to the private sector;

vi) Implement a clear process for responding to inquiries concerning potential identification mismatches based on homonyms or similar sounding names;

vii) Develop appropriate regulatory authorities and procedures where applicable, and properly identify a point of contact to assist financial institutions in freezing terrorist-related funds or other assets and to address, where feasible, unforeseen or unintended consequences resulting from freezing action (such as the handling and disposition of perishable or wasting funds or other assets and authorising access to funds or other assets in accordance with S/RES/1452(2002)); and

viii) Elaborate clear guidance to the private sector with respect to any permitted transactions in administering frozen funds or other assets (e.g. bank charges, fees, interest payments, crediting on frozen accounts, etc).

8. Ensuring adequate compliance, controls, and reporting in the private sector. Jurisdictions may work with the private sector in developing the following practices to: (a) facilitate co-operation and compliance by the private sector in identifying and freezing funds or other assets of designated persons, and (b) prevent designated persons from conducting financial or other transactions within their territories or through their financial institutions:[9]

i) Co-operate with the private sector generally and financial institutions in particular, especially those that are independently implementing programs to prevent potential terrorist financing activity or those that have come forward with potentially incriminating information, in investigating possible financial activity by a designated person;

ii) Ensure that financial institutions develop and maintain adequate internal controls (including due diligence procedures and training programs as appropriate) to identify the existing accounts, transactions, funds or other assets of designated persons;

[9] Many of the best practices set forth in this section reinforce obligations of jurisdictions and financial institutions under the revised FATF 40 Recommendations. As with all of the best practices set forth in this paper, these best practices should be interpreted and implemented in accordance with the revised FATF 40 Recommendations.

iii) Ensure that financial institutions immediately freeze any identified funds or other assets held or controlled by designated persons;

iv) Ensure that financial institutions have the appropriate procedures and resources to meet there obligations under SR III;

v) Ensure that financial institutions implement reasonable procedures to prevent designated persons from conducting transactions with, in or through them;

vi) Develop an effective monitoring system by a competent authority or a court with sufficient supervisory experience, authority and resources with a mandate to support the objectives set out in *Paragraphs 8.(ii), (iii) and (iv)* above;

vii) Encourage, to the extent commercially reasonable, financial institutions to search or examine past financial activity by designated persons;

viii) Identify, assess compliance with, and improve as necessary client or customer identification rules used by financial institutions;

ix) Identify, assess compliance with, and improve as necessary record keeping requirements of financial institutions;

x) Adopt reasonable measures to consider beneficial owners, signatories and power of attorney with respect to accounts or transactions held by financial institutions when searching for activity by designated persons, including any ongoing business relationships; and

xi) Harmonise counter-terrorist financing internal controls within each economic sector, as appropriate, with anti-money laundering programs.

9. Ensuring thorough follow-up investigation, co-ordination with law enforcement, intelligence and security authorities, and appropriate feedback to the private sector. Financial information pertaining to designated persons is extremely valuable to law enforcement and other security authorities investigating terrorist financing networks. Law enforcement and prosecutorial authorities should, therefore, be given access to such information. Jurisdictions may adopt the following practices to ensure that information available from the private sector in freezing terrorist-related funds or other assets is fully exploited:

i) Develop procedures to ensure that appropriate intelligence and law enforcement bodies and authorities receive, share, and act on information gathered from the private sector's freezing of terrorist-related funds or other assets, including sharing such information internationally to the extent possible and appropriate;

ii) Develop procedures to ensure that, to the extent possible and appropriate, law enforcement authorities provide feedback to financial institutions indicating how financial intelligence is being used to support law enforcement actions; and

iii) Gather and analyse all available terrorist financing data to: (a) assess terrorist financing activity; (b) determine terrorist financing trends; (c) develop and share terrorist financing typologies, including sharing such information internationally as appropriate; (d) identify vulnerable sectors within each jurisdiction, and (e) take appropriate measures to safeguard any such vulnerable sectors.

ANNEX C

Summaries of Mutual Evaluations and Other Assessments Undertaken by the FATF

Executive Summary of the Second Mutual Evaluation of Argentina

Introduction

1. This summary for the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing* of *Terrorism* (FATF 40+8 Recommendations) was prepared by representatives of member jurisdictions of the Financial Action Task Force (FATF) and the Financial Action Task Force in South America (GAFISUD) and members of the FATF and GAFISUD Secretariats. The report provides a summary of the level of compliance with the FATF 40 Recommendations, as adopted in 1996, and the FATF 8 Special Recommendations on Terrorist Financing, adopted in 2001, and provides recommendations to strengthen Argentina's anti-money laundering and combating terrorist financing (AML/CFT) system[1]. The views expressed in this report are those of the assessment team as adopted by the FATF.

Information and Methodology Used for the Assessment

2. In preparing the detailed assessment, assessors reviewed relevant Anti-Money Laundering (AML) and counter terrorist financing (CFT) laws and regulations, supervisory and regulatory systems in place to deter Money Laundering (ML) and terrorist financing (TF), and criminal law enforcement systems. The evaluation team met with officials from relevant Argentine government agencies and the private sector in Buenos Aires from 20 to 24 October 2003. Meetings took place with representatives of the Ministry of Foreign Affairs, International Trade and Worship; the Ministry of Justice, Security and Human Rights; the Financial Intelligence Unit (*UIF*); the Federal Administration of Public Revenue (*AFIP*); the Federal Police; and the Public Prosecutor, as well as several prosecutors and investigating magistrates. The evaluation team also met with representatives of the Central Bank (*BCRA)*, the National Securities Commission (*CNV*), the Insurance Supervisory Authority (*SSN*), and representatives from the banking, insurance and bureaux de change sectors and stock broker companies.

Overview of the financial sector

3. Over the last several years, there has been a large number of mergers in many sectors of the Argentine financial services industry. As a result, the number of banks and financial institutions registered with the BCRA has drastically declined from 221 in 1990 to 98 in 2003. Banking has been moving rapidly toward privatisation, as provinces have sold-off provincial and controlled banks. Argentina has 63 exchange entities and 7 providers or concessionaires of postal services engaged in money transfers. The insurance sector has undergone a comprehensive restructuring in the recent years. Since 1999, the insurance market opened up to new players and foreign insurance companies. There are 194 insurance companies operating in Argentina.

General Situation of Money Laundering and Financing of Terrorism

4. Argentina has identified crime related to tax evasion, smuggling, corruption and different types of fraud as the major sources of illegal proceeds. While Argentina considered itself to be primarily a transit country for narcotic drugs during the first mutual evaluation in 2000, Argentine authorities

[1] The Argentine AML system was subject to a first FATF mutual evaluation in February 2000.

believe that it is no longer the case. The tri-border area (Argentine, Paraguay and Brazil) is also no longer considered as the main location for smuggling of narcotic drugs.

5. As far as terrorism is concerned, Argentina suffered two serious terrorist attacks – one against the Embassy of Israel in 1992 and one against the *Asociación Mutual Israelita Argentina* (AMIA) in 1994 – which were both investigated by the Argentine courts. In relation to terrorist financing and the existence of activities by Osama bin Laden, Al-Qaida, the Taliban and their associates in Argentina, no activities by such individuals or entities have been detected. Similarly, there is no evidence of activities by groups directly linked to them. One of Argentina's concerns has been to prevent the possible financing of terrorist activities from the tri-border area. To that end, Argentina is undertaking preventive operational activities with a view to detecting activity by groups or entities linked to terrorist organisations.

Main Findings

6. At the time of the on-site visit, no supplementary AML legislation had been adopted since the first mutual evaluation of Argentina[2]. The general Argentine AML regime, including the criminalisation of the offence of money laundering, the provisions in relation to the UIF, and administrative penalties, was established by Law 25.246 of 5 May 2000[3]. Since 2002, the UIF has established guidelines for categories of reporting parties and types of activity in relation to customer due diligence, record keeping, suspicious transactions reporting and internal control procedures. The number of reports sent to the UIF has been relatively satisfactory for its first year of operation (from November 2002 to October 2003, 335 STRs were sent to the UIF). It seems that international co-operation and exchange of information with the UIF counterparts works satisfactorily. Finally, Argentine has at its disposal adequate measures in relation to confiscation, mutual legal assistance and extradition.

7. Some deficiencies remain, however, and the most significant of these are as follows. First, the weaknesses of Law 25.246 (as identified in the first mutual evaluation, see paragraph 8 below) have not been remedied and still impede effective prosecution of money laundering offences. Second, with regard to terrorist financing, Argentina does not have a specific terrorist financing offence. Some existing legal provisions may be applied; however, they only partially cover the FATF requirements. Third, strict confidentiality and secrecy provisions hinder the activity of the UIF and lead to significant delays in handling investigations. Fourth, the reporting of suspicious transactions is subject to inappropriate limitations (to certain types of transactions and to a minimum threshold established by the UIF). Fifth, the process of verifying the compliance of the reporting parties with AML measures seems either ineffective or nonexistent in certain financial sectors (i.e. in the insurance sector and postal services engaged in wire transfers area). Finally, Argentina is unable to provide comprehensive statistics in several key areas (e.g. criminalisation of money laundering and terrorist financing; confiscation of proceeds of crime or property; and international co-operation). The absence of comprehensive statistics does not allow the assessment of the effective implementation of core AML/CFT requirements in Argentina.

Criminal Justice Measures and International Co-operation

(a) Criminalisation of *money laundering and financing* of *terrorism*

[2] Only Article 277 of the Criminal Code, which establishes the general criminal concealment provisions, was amended in November 2003 by Law 25.815.

[3] Law 25.246 was under discussion during the first mutual evaluation of Argentina and its content was inserted in the analysis of the first Mutual Evaluation Report. Article 2 of Law 25.246 (i.e. Article 277 of the Criminal Code) was amended by Law 25.815 of 5 November 2003. However, the evaluators were not able to properly assess this legislation.

8. The general AML system is established by Law 25.246. Since 1989 and the introduction of the criminalisation of money laundering for narcotics offences, only two convictions for money laundering have been reported. Even the adoption of new AML measures in 2000 which broadened the number of predicate offences for money laundering does not appear to have helped to increase the number of successful prosecutions in this area. In practice, the effectiveness of the ML offence would be improved if the following obstacles were overcome: (1) the relationship between Articles 277 and 278 is such that the offences of concealment and acquisition of criminal proceeds are subject to a different regime from the one applicable to the conversion or transfer of property of criminal origin; (2) the exemption of close relatives, intimate friends and persons to whom a debt of gratitude is owed (currently applicable in certain circumstances) from criminal liability for the offences of concealment, acquisition, possession or use of criminal proceeds; and (3) the continued inability to prosecute persons for laundering the proceeds when they also commit the predicate offences.

9. There is not yet an agreement in Argentina on applying criminal liability for money laundering to legal persons. Nevertheless, Law 25.246 subjects legal persons involved in money laundering offences to administrative fines.

10. Argentine law does not specifically criminalise terrorism or terrorist acts, and there are thus no penalties for such offences. The law is also silent on terrorism as a component of any other criminal offences or as a general or specific aggravating circumstance. At present, Argentina has not established a specific offence for the financing of terrorism or terrorist acts. The Argentine provisions on aiding and abetting only partially cover the FATF requirements related to the terrorist financing and provisions on criminal association insufficiently address the issue of terrorism and its financing. The absence of an autonomous offence also means that the financing of terrorism is not a predicate offence for money laundering. Argentina has recognised that the current penal provisions are insufficient to meet its obligations under the UN Convention on the Suppression of the Financing of Terrorism and FATF Special Recommendation II, and it has submitted legislation to correct this shortcoming. The legislation was still under discussion at the time of the on-site visit. Argentina's implementation of S/RES/1267(1999) and S/RES/1373(2001) has been ineffective due to its failure to enact a terrorist financing offence. With regard to S/RES/1455(2003), there have been no cases in Argentina concerning the practical application of measures involving the individuals and entities included in the UN list.

11. Argentina has ratified the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (Vienna Convention); the United Nations Convention against Transnational Organised Crime, 2000 (Palermo Convention) and the Inter-American Convention against Terrorism adopted in Bridgetown, Barbados, in 1993. The UN International Convention for the Suppression of the Financing of Terrorism 1999 was signed in March 2001; however, its ratification is still pending.

(b) Confiscation of *Proceeds* of *Crime or Property used to Finance Terrorism*

12. Argentine law on confiscation has some elements of a comprehensive system. It has at its disposal sufficient measures to enable competent authorities to confiscate laundered property, proceeds from the commission of any money laundering offence as well as the instrumentalities used or intended to be used in the commission of such crimes. Moreover, the scope of application of property seizure and confiscation is not limited to the criminal offence of money laundering or to predicate offences, but applies to any criminal behaviour. Argentina complies with the FATF standards dealing with the confiscation of the property of criminal organisations (the implementation of the provisions on confiscation seems to be mainly focused on the property of criminal organisations, not specifically on terrorist organisations, though).

13. Argentine legislation guarantees the protection of the rights of bona fide third parties in a very general way via the procedural and the civil law. There are however no explicit provisions according to which bona fide third parties may exercise their rights prior to the court proceeding. Furthermore,

there is no particular provision that protects that the rights of third parties in cases where their property might be subject to confiscation.

14. With regard to Special Recommendation III, the steps taken by the Argentine authorities to implement the obligations of the relevant UN Security Council Resolutions to block terrorist finances appear on paper to be relatively satisfactory. However, no comparable steps have been taken in relation to the freezing of assets or resources of individuals or entities which have not been designated by the UN. No specific measures have been adopted which would enable the competent authorities to seize and confiscate property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations. Argentina has not yet detected any assets that would be subject to such measures.

(c) The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority

15. The UIF was created by Law 25.246 of 13 April 2000 as a self-administered unit within the jurisdiction of the Ministry of Justice, Security and Human Rights. It has been operational since November 2002 and it is member of the Egmont Group. The UIF is entrusted with the analysis, processing and dissemination of information for the purpose of preventing and detecting money laundering as related to a list of offences set out by Law 25.246. Law 25.246 covers "the unlawful acts committed by unlawful associations established for the purpose of committing political or racial offences". This does not cover terrorist financing. The UIF has declared itself responsible for receiving suspicious transactions related to terrorist financing. Nevertheless, the UIF Resolutions are intended for those parties that are subject to reporting obligations and are not of general application. In practice, it seems that the UIF investigates any unusual transaction irrespective of the predicate offence and reports it to the Public Prosecutor' Office once the administrative investigation is concluded.

16. The UIF has the legal authority to enter into agreements and contracts with international and foreign agencies, and may participate in information sharing networks on the condition that there is a necessary and effective reciprocity. International co-operation and exchange of information with foreign counterparts appears to work satisfactorily.

17. The number of reports appears to be relatively satisfactory for the first year of operation. However, overall the results have been limited. The UIF could benefit from a more direct access to financial information. The UIF encounters some difficulties when requesting additional information from reporting parties, such as banks (need for a court order) or other Argentine authorities (i.e. the AFIP and the BCRA). The strict interpretation of secrecy provisions in Law 25.246 certainly reduces the effectiveness of Argentine's AML system.

18. The UIF provides for useful and comprehensive guidelines to reporting parties. The UIF also discloses information on typologies and new trends based on case studies. On the contrary, a formal system of feedback to the reporting parties (either general or specific) does not exist.

19. The UIF does not appear to be very well-resourced in terms of technical (including analytical tools) or staff resources.

(d) Law Enforcement and Prosecution Authorities, Powers and Duties

20. The investigation and prosecution of all federal offences is the responsibility of the Public Prosecutor's Office which is assisted by the police and domestic security forces. The Federal Police is responsible for the whole territory of Argentina for federal offences. The mandate of the Argentine Federal Police is to assist the Public Prosecutor's Office with the investigation and prosecution of offences under its authority. The *Gendarmería Nacional* and the Argentine Coast Guard carry out investigations within their geographic areas and as required by the federal justice system. The AFIP is responsible for customs and fiscal intelligence and deals with tax fraud and other economic crimes and can come across money laundering cases in the context of its investigations. Unlike the UIF with its

resource problems, other law enforcement and prosecution agencies that investigate and prosecute offences, seem to be, and also consider themselves to be, adequately structured, funded, staffed and provided with sufficient technical and other resources to fully perform their functions.

21. The Criminal Procedure Code allows for a wide range of investigative techniques. However, certain techniques such as undercover operations are available to law enforcement agencies for investigations of drug-related crimes only. No appropriate mechanisms or task forces exist to ensure adequate co-operation and information sharing between the different government agencies that may be involved in investigations of money laundering, financing of terrorism and predicate offences. Such mechanisms could reduce the compartmentalisation of information and facilitate the exchange of information. Training at all levels of the criminal justice system and police forces could be intensified in order to make money laundering, terrorist financing and asset tracing a regular part of criminal cases.

(e) International Co-operation

22. Argentina is a party to a broad range of conventions, treaties and other agreements that provide a comprehensive and adequate support for international co-operation. Laws and procedures provide for a comprehensive mutual legal assistance system and generally meet AML requirements. They set up a modern and far-reaching system, enabling Argentine authorities to render mutual legal assistance – under certain conditions – even in the absence of a treaty or international agreement. The sharing of confiscated assets can take place in Argentina by way of an arrangement between Argentina and the requesting state to permit a portion of the confiscated property to be retained.

23. Argentina does in principle have at its disposal various special investigative techniques such as controlled delivery or undercover agents. The application of these techniques is however limited to investigations of drug-related offences. If a foreign country requests legal assistance from Argentina to carry out such an investigative technique in Argentine, the prerequisite that the foreign offence is related to narcotics applies. The limitation of the application of these special investigative measures does effect both purely national Argentine investigations and foreign investigations taking place in Argentina. It unnecessarily limits Argentina's capability to assist foreign countries.

24. The absence of national provisions for confiscation of property of correspondent value prevents Argentina from responding to related requests in the course of international co-operation and mutual legal assistance.

25. With regard to extradition of individuals charged with money laundering, Argentina has adequate laws and procedures. There is a rather theoretical possibility to extradite an Argentine national[4] under the precondition that he consents to be extradited. Furthermore Argentina can be obligated by international agreements to extradite its nationals or can grant the extradition of its nationals within bilateral treaties. In cases where no extradition of the national takes place, Argentina will initiate its own investigations and proceedings if the requesting state provides sufficient evidence to do so. Theoretically, in terrorist financing matters, the lack of a specific terrorist financing offence and the dual criminality requirement prevent Argentina from granting extradition. Conversely, other terrorism-related crimes (such as aiding and abetting) could be subject to extradition because of the full applicability of the Argentine Criminal Code on criminal participation covered by the provisions on extradition.

B. Preventive Measures for FIs

(a) Financial Institutions

[4] Extradition of nationals is allowed in certain bilateral treaties.

26. Argentine AML provisions apply to the following financial institutions: (1) financial entities as defined in Law 21.526 (i.e. commercial banks, investment banks, mortgage banks, financial companies, savings and loan associations for housing and other real estate purposes and credit associations); (2) natural or legal persons operating foreign exchange operations or international transmission of funds; (3) brokers and dealers, mutual funds managers, over-the-counter market agents, and any agents in the purchase, rental or borrowing of securities operating under the scope of stock exchanges with or without markets ascribed thereto and intermediary agents registered in futures and options markets; (4) insurance companies and insurance brokers, advisors, agents and experts and liquidators; (5) companies issuing travellers' cheques or operating with credit or debit cards; (6) companies carrying out transportation of monies and securities; and (7) providers or concessionaires of postal services engaged in money transfers or transportation of different kinds of currency or notes.

27. Three separate authorities are responsible for supervising financial institutions and monitoring their compliance with AML provisions – the BCRA, the SSN and the CNV.

28. The activities of these financial institutions are regulated by laws and UIF provisions (Resolutions) which apply to (1) the finance and exchange system; (2) the capital market; (3) the insurance sector; (4) the SSN; (5) the AFIP; (6) the CNV; and (7) providers or concessionaires of postal services engaged in money transfers or transportation of different kinds of currency or notes. The BCRA, the SSN and the CNV issue AML regulations applicable to the sectors under their respective supervision.

29. Law 25.246 provides the general customer identification requirement for reporting parties and introduces a unified framework for a broad range of entities. Law 25.246 explicitly empowers the UIF to approve directives and instructions which are mandatory for reporting parties, including the financial sector. This share of responsibilities raises some structural difficulties inherent to the organisation of the Argentine AML system. Some basic AML obligations are established, not in the law, but by the UIF, which furthermore lacks inspection powers. This implies that the power to monitor the proper implementation of UIF Resolutions remains the responsibility of supervisory agencies (the BCRA, CNV and SSN). However, while the BCRA has a tradition of AML enforcement, other agencies have little or no experience or expertise in this field. With regard to reporting parties which are not supervised by the aforementioned governmental agencies (such as postal services), it is not clear which authority is responsible for enforcing AML Regulations.

30. As requested by Law 25.246, the UIF has set out further detailed guidance for the identification of both permanent and occasional customers and introduced high "know your customer" (KYC) standards. Specific requirements apply to non-face-to-face transactions. With regard to beneficial ownership, UIF Resolutions expressly require financial institutions to implement reasonable measures to obtain information on the real identity of the person(s) on whose behalf their customers are acting. It is not clear whether beneficial owners must be systematically identified with requirements similar to these applied to customers themselves. There is also a real concern with regard the identification of beneficial ownership in relation to legal entities, as no clear requirements apply to financial institutions in that respect (i.e. the obligation to identify principal owners, beneficiaries or whomever has actual control of the legal entity).

31. The regulations of the BCRA clearly state that financial entities cannot open anonymous accounts or accounts in fictitious names. These regulations are still in force, which means that banks are obliged to comply with two different regulations dealing with the same basic requirements (one from the BCRA, the other from the UIF). Financial entities are not required to implement graduated customer acceptance policies to deal with potentially high-risk clients.

32. In the insurance sector, the implementation of the UIF Resolution in relation to KYC rules appears to be problematic and very burdensome. Some of the requirements introduced by the UIF may be too rigorous or stringent. It seems that insurance agents are not subject to the AML measures. In the securities sector, KYC requirements have been generally well received.

33. Financial entities, exchange houses (*casas de cambio*) and postal services operating through the banking system are authorised to carry out wire transfers in Argentina. Argentine legislation has not yet implemented SR VII. According to BCRA officials, it is a general and customary practice in the financial industry to include meaningful originator information in all wire transfers. However, this business practice could not be confirmed by the representatives of the private sector. Even if this practice actually exists (which is unclear), it seems obvious that, in the absence of an express legal obligation, any financial institution which omits the inclusion of their originators' data would not be legally liable. Additionally, no specific legal provision exists (or, at least, it was not provided during the on-site visit) to require financial institutions to maintain all data through the payment chain. The Argentine approach (keeping identification data in a database) is sufficient only with regard to domestic wire transfers.

34. The UIF sets out high-standard for monitoring obligations, which require financial institutions to implement information technology tools to track all types of financial transactions. Postal services providing wire transfers are also subject to these requirements. Argentina has not delivered any useful information on the degree of implementation of these obligations in the financial sector. It is doubtful that these obligations can actually be implemented in the whole financial sector, especially in smaller financial institutions.

35. The list of non-cooperative countries or territories is circulated by the BCRA to the institutions under its supervision. It is not clear how the other financial institutions such as postal services are kept informed.

36. Argentine provisions on record-keeping of both customer identification and transactions are satisfactory and apply to a broad variety of financial institutions, including postal services engaged in wire transfers. No information was provided to the evaluators on the quality of the information actually kept by financial institutions. As well, lack of effective supervision of certain financial businesses (such as the insurance sector and the postal services engaged in wire transfers) does not help either evaluating the implementation of record-keeping requirements. The system of maintaining a central record of transactions carried out by financial institutions exceeding USD 3,500 (USD 17,000 for the insurance sector and postal services) requires the collection of a wide range of useful information. Such information must be made available to the UIF within 48 hours upon request. It remains unclear how the system of central record and diffusion of information to the UIF interacts with the secrecy rules set forth in Law 25.246. The threshold of USD 17,000 applicable to the insurance sector and postal services engaged in wire transfers appears to be excessive, especially in the context of low transactions related to terrorist financing[5].

37. According to the Resolutions issued by the UIF, suspicious transactions below USD 17,000 are not reported to the UIF. The provisions in the Resolutions are inconsistent with Law 25.246, which sets out the obligation to report any suspicious transaction to the UIF. During the on-site visit, the UIF explained that the reporting of suspicious transactions below USD 17,000 had been excluded for practical reasons. At the time that the resolution was issued, the UIF did not have enough technical resources to handle all suspicious transactions reports. It was also thought at that time that suspicious transactions below this amount could be dealt with by the supervisory authorities. The UIF informed the evaluation team that a majority of the reports filed by reporting parties do not contain sufficient information to establish the elements needed to build a case study. The number of STRs filed by insurance companies is limited compared to other financial entities (the banking sector, in particular). This might be indicative of a low level of awareness in the insurance industry regarding AML prevention.

38. The provisions adopted by the UIF on internal procedures and controls are satisfactory but very general. In the banking and capital market sectors, there is currently no evidence that internal

[5] The UIF has already prepared a proposal to lower that threshold.

procedures and control programmes are properly implemented. It is particularly the case for the hiring process. The insurance sector and postal services providing wire transfers also are a cause for concern. The low degree of awareness of AML matters in these sectors does not augur well for implementation of internal controls procedures. The insurance sector is still in an implementation stage. The SSN has not yet started its inspection programmes, and the postal services are not subject to any supervision programmes. It is important at this stage to make financial entities and the capital market aware of their AML obligations. The economic context has been difficult in the last couple of years, but there is now a real need to re-address AML matters in Argentina as the economic activity restarts and financial institutions move back into their normal business.

39. There is no legal obligation for Argentine financial institutions to ensure that their foreign branches and subsidiaries apply the Argentine provisions on money laundering prevention. The BCRA seems to have developed some common practices and signed co-operation agreements with other countries. The BCRA also tries to prevent banks from starting their businesses in certain foreign markets.

40. The banking, securities and insurance sectors have developed appropriate integrity standards that allow them to properly verify the background of applicants before they are authorised to carry out a financial activity. No similar provisions apply to postal services engaged in wire transfers.

41. The BCRA has at its disposal provisions to guard against the control or acquisition of a significant participation in financial entities by criminals. Similar provisions exist in the securities sector.

42. The evaluators were not provided with information about the existence of measures relating to shell corporations and charitable non-profit organisations.

43. The UIF has the authority to sanction all natural or legal persons subject to AML requirements which not fulfil their obligation to report to the UIF. However, the UIF lacks inspection powers. The BCRA, CNV and SSN remain responsible for monitoring whether AML requirements are properly implemented in their respective sectors. It remains unclear how the division of labour between the UIF and the supervisory agency works in practice since no sanctions have yet been imposed under the provisions of Article 24 of Law 25.246. No inspections were carried out in the banking sector in 2002. The BCRA launched a new round of inspections mid 2003. Both securities markets and companies were subject to inspections between 2002 and 2004. The CNV shares regulatory responsibility with the Exchange. Both have the authority to impose sanctions on market operators. The CNV is also empowered to sanctions the Exchange by initiating a criminal procedure where Exchanges do not properly carry out their regulatory functions on the market.

44. A proper and effective regime of inspections and sanctions is practically non-existent in the insurance sector[6]. As far as postal services engaged in wire transfers are concerned, there is no authority responsible for supervising the enforcement of AML regulations in this sector. They may be subject to sanctions by the UIF for non-reporting of unusual or suspicious transactions.

45. The BCRA and the CNV are able to respond to information or assistance request from foreign counterparts. Numerous memoranda of understanding have been signed by both supervisory authorities, especially with countries that have affiliates or subsidiaries of banks or securities firms operating in Argentina.

[6] Some inspections procedures have been developed by the SSN but not finalised yet.

46. The exchange of information with law enforcement authorities remains problematic due to strict secrecy requirements. It remains unclear how the co-operation and exchange of information is organised among the different supervisory authorities[7].

(b) Other Sectors

47. The following businesses and professions are also covered by the Argentine AML provisions: (1) natural and legal persons who normally run gambling operations; (2) natural and legal persons who buy and sell works of art, antiques or other luxury goods, deal in stamps or coins or are involved in the export, import, manufacture or industrialization of jewels or goods containing metals or precious stones; and (3) public notaries.

c) Controls and monitoring of *cash and cross border transactions*

48. The AFIP has the authority to receive declarations of cross-border transportation of cash or monetary instruments exceeding USD 3,500. Failure to declare may result in imposition of provisional measures such as seizure and ultimately in prosecution for money laundering.

49. There is no reporting system for cash transactions. There is an obligation for financial and foreign exchange entities, postal services, insurances companies and the capital market to record transactions exceeding USD 3,500 (USD 17,000 for insurance companies and postal services). The UIF has access to these data upon request.

Recommended Action Plan
to Improve Compliance with the FATF Recommendations

Criminal Justice Measures and International Cooperation	Recommended Action (Key points)
I—Criminalisation of ML and FT **(R.1, 4-5 and SR I-II)**	Restructure the AML provisions in the Criminal Code in order to have a more consistent regime of criminalisation the laundering of proceeds of crime. Remove the exemption of close relatives, intimate friends and persons to whom a debt is owed from criminal liability for the offences of concealment, acquisition, possession or use of criminal proceeds. Consider extending the offence of money laundering to persons who have committed both the laundering and the predicate offence (See the 2003 FATF Recommendations). Ratify and fully implement the UN International Convention for the Suppression of the Financing of Terrorism 1999. Take steps to fully implement S/RES/1267(1999), subsequent related UN Security Council resolutions and S/RES/1373(2001). Adopt a comprehensive terrorist financing offence that criminalises, at a minimum, the collection or provision of resources or financial services for domestic or foreign terrorists or terrorist organisations, and to support terrorist acts within or outside of Argentina. Ensure that the offence can serve as a true predicate for money laundering.

[7] Decree 456 of April 2004 establishes a coordination Committee between the BCRA, the SSN and the CNV within the jurisdiction of the Ministry of Economy. The UIF is not a member yet. The evaluators were not able to properly assess this legislation.

II—Confiscation of proceeds of crime or property used to finance terrorism **(R.7 and 38, and SR III)**	Close the gap in cases where a conviction of the perpetrator cannot take place because there is no criminal defendant to prosecute due to death, flight, immunity or other circumstances (such as an *in rem* procedure). Develop statistics on the amounts of property frozen, seized and confiscated relating to money laundering, relevant predicate offences and terrorist financing. Develop proper training for judges, prosecutors, and agents. Implement the provisions on the allocation of assets or resources judiciary seized or confiscated. Examine whether the rights of bona fide third parties in seizing and confiscation proceedings should be more clearly specified to ensure that these persons are able to exercise their rights over property involved in money laundering cases. With regard to Special Recommendation III, consider adopting additional legislation, which would among other things, establish express authority to block the assets of terrorists not identified by the UN.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels **(R.14, 28 and 32)**	Extend the reporting obligation to all transactions related to money laundering and terrorist financing. Entrust the UIF with the analysis, processing and dissemination information to prevent and detect money laundering from all "*delitos*" or criminal offences. Adopt a clear offence of terrorist financing to facilitate the investigation of potential terrorist financing cases. Amend secrecy and confidentiality provisions and send clear instructions to competent authorities when exchanging information. Develop formal mechanisms of feedback. Ensure that the UIF has adequate resources at its disposal. Facilitate its access to intelligence information. Enter into more memoranda of understanding with counterparts of the UIF in other countries.
IV—Law enforcement and prosecution authorities, powers and duties **(R.37)**	Facilitate investigation of terrorist financing cases by adopting a comprehensive terrorist financing offence. Adopt appropriate mechanisms or task forces to ensure adequate co-operation and information sharing between the different government agencies that may be involved in investigations of money laundering, financing of terrorism and predicate offences. Reduce the compartmentalisation of information and facilitate the exchange of information. Create specialised units the field of money laundering in the Office of the Public Prosecutor. Intensify training at all levels of the criminal justice system and police forces and incorporate basic courses on money laundering, terrorist financing and confiscation. Communicate the knowledge on trends, typologies and modus operandi to all parties involved in AML efforts.

	Develop programmes on terrorist financing. Develop and improve the collection of data and statistics on ML and TF investigations, prosecutions and convictions.
V—International cooperation **(R.3, 32-34, 37-38 and 40, and SR I and V)**	Review the use of special investigative techniques. Take action in responses to requests by foreign countries to confiscate property of correspondent value based on money laundering or the predicate offences. Consider adopting a specific terrorist financing offence to establish an unequivocal basis for extradition in terrorist financing cases. Consider developing centralised statistics on mutual legal assistance and other requests relating to money laundering, the predicate offences and terrorist financing, including details of the nature and the result of the request. Amend the law to clearly state whether judicial approval is necessary for international sharing of information between FIUs when the exchange involves information subject to bank secrecy limitations. Continue signing new MOUs for information exchange and technical assistance with other supervisory authorities.
Legal and Institutional Framework for Financial Institutions	**Recommended Action (Key points)**
I—General framework **(R.2)**	Amend confidentiality and secrecy provisions. Develop a clear procedure for financial institutions to receive and respond to requests properly made by competent authorities.
II—Customer identification **(R.10-11, and SRVII)**	Develop deeper awareness of those customers (PEPs, non-resident customers and legal persons or arrangements such as trusts) or those transactions (cross-border correspondent banking, private banking and wire transfers) which imply a higher money laundering risk. Harmonise existing standards applicable to financial entities and adopt a clear and unique set of requirements. Reconsider the current standards applicable to the insurance sector, i.e. centre surveillance and control on the payment of claims and policy rescues, rather than in the moment of the establishment of the business relationship and the knowledge of the policy holder. Clearly state that the identification of beneficial owners is an objective of the identification process as much as the identification of clients themselves. Deliver clear guidance to financial institutions in that respect, especially with regard to legal entities (impose the requirement to obtain from the customer information on principal owners, beneficiaries or whoever has actual control of the entity). Adopt a legislative framework in relation to the requirements set out in Special Recommendation VII.
III—Ongoing monitoring of	Ensure that AML/CFT trends and developments are updated and

accounts and transactions **(R. 14, 21 and 28)**	communicated to financial institutions. Develop specific criteria for identifying transactions suspected of being related to terrorist financing. Adopt further measures in relation to the implementation of effective and adequate monitoring systems within the financial industry. Develop appropriate mechanisms to distribute the NCCT list to all financial institutions, including postal services engaged in wire transfers.
IV—Record keeping **(R. 12)**	Ensure the availability of information to competent authorities. Subject financial institutions to a clear obligation to provide information to competent authorities in the course of investigations and prosecutions, and remove all major obstacles in the exchange of data.
V—Suspicious transactions reporting **(R. 15-18 and SR IV)**	Reconsider the limit of USD 17,000 for reporting suspicious transactions. Clearly extend the reporting obligation to all transactions related to money laundering and terrorist financing. Amend article 6 of Law 25.246 to explicitly include terrorist financing as conduct that should trigger the reporting mechanism. Ensure that specific and general feedback is given to reporting parties in order to improve the quality of the reports received by the UIF. With regard to Recommendation 18, the legal framework should be changed to enable the UIF to instruct financial institutions to perform further investigations or reviews in particular cases.
VI—Internal controls, compliance and audit **(R. 19-20)**	Re-address AML matters (including training programmes) in Argentina as the economic activity restarts and financial institutions move back into their normal business. Adopt appropriate provisions within the insurance sector in a consolidated form where all the requirements and procedures relating to internal procedures and controls would be clearly identified. Develop appropriate legislation in relation to postal services engaged in wire transfers, including the adoption of appropriate internal controls provisions and a proper oversight. Adopt legal provisions in relation to the supervision of foreign branches and subsidiary of Argentine financial institutions.
VII—Integrity standards **(R. 29)**	Develop and implement appropriate and comprehensive integrity standards for postal services engaged in wire transfers. Develop appropriate measures in relation to shell corporations and charitable non-profit organisations.
VIII—Enforcement powers and sanctions **(R. 26)**	Collect information on the findings of inspections and sanctions imposed to financial entities and intermediaries in the securities sector. Develop a strong supervision of compliance with AML measures and effective corrective measures when failures are identified. Grant supervisory authorities with adequate powers and resources. Develop appropriate mechanisms of supervision in the insurance and

	postal services sectors. Start an inspection programme for all financial institutions in order to determine the level of compliance of the financial sector for the AML framework set out by the UIF. Clearly grant the UIF with adequate resources to truly perform its duties of sanction.
IX—Co-operation between supervisors and other competent authorities **(R. 26)**	Strengthen the co-operation among supervisory authorities and law enforcement authorities, which implies the amendment of secrecy provisions.

Executive Summary of the Second Mutual Evaluation Report Federative Republic of Brazil

INTRODUCTION

1. This summary for the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism* was prepared by representatives of member jurisdictions of the Financial Action Task Force (FATF) and the *Grupo de Acción Financiera de Sudamérica* (GAFISUD) and members of the FATF and GAFISUD Secretariats. The report provides a summary of the level of compliance with the FATF 40 Recommendations, adopted in 1996, and the FATF 8 Special Recommendations, adopted in 2001, and provides recommendations to strengthen Brazil's anti-money laundering and combating the financing of terrorism (AML/CFT) system. The views expressed in this document are those of the evaluation team as adopted by the FATF Plenary.

INFORMATION AND METHODOLOGY USED FOR THE ASSESSMENT

2. In preparing the detailed assessment, assessors reviewed the relevant AML and CFT laws and regulations, the capacity and implementation of criminal law enforcement systems, and supervisory and regulatory systems in place in the following sectors: banks, currency exchange, securities, insurance, and money remittance to deter money laundering and financing of terrorism. The evaluation team met from 3-7 November 2003 with officials from the relevant Brazilian Ministries and agencies as well as financial institution representatives. Meetings took place with representatives from following government agencies and departments: Conselho de Controle de Atividades Financeiras (COAF, the financial intelligence unit), the Ministry of Justice, the Superior Court of Justice, the Central Bank of Brazil, the Federal Police Department, the Attorney General, the Federal Revenue Secretariat, the Brazilian Intelligence Agency, the Superintendence of Private Insurance, and the Securities and Exchange Commission. Meetings also took place with several financial institutions and following private-sector organisations: Caixa Econômica Federal, Banco do Brasil, the Brazilian Federation of Banks, Nossa Caixa, Unibanco, and the National Federation of Insurance and Capitalisation Companies.

Overview of the financial sector

3. Brazilian financial institutions operating in the domestic market are in general diversified, dynamic, and competitive. Brazil has approximately 168 multiple and commercial banks with total assets of approximately USD 349 billion[1] and equity of approximately USD 49 billion. There were also 45 financing companies, 18 savings and loan companies, 9 mortgage companies, 40 savings and loan associations, 58 leasing companies, and 1,381 co-operatives. As of November 2003, Brazil had 149 security brokers and 145 security dealers. In 2002, there were 140 insurance companies, 18 companies selling capitalisation securities, 77 companies in the area of complementary open pension funds and 78,500 insurance brokers.

4. Foreign exchange may be carried out only by banks and other authorised exchange brokers authorised by the Central Bank of Brazil (*Banco Central do Brasil*—BACEN), including 43 exchange brokerage companies, 268 travel agencies and 8 hotels authorised to carry out foreign exchange transactions. Foreign money remittance can only be performed through the banking system, either directly by authorised banks or through a customer of a bank on a contractual basis. Currently only one bank—Banco do Brasil—has such a contract (with Western Union).

GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

5. Brazilian authorities report that the major sources of illegal proceeds are crimes against the financial system (such as fraud and embezzlement), drug trafficking, and tax evasion. Money laundering in Brazil seems to be primarily associated with domestic crime, including the smuggling of contraband goods and corruption, narcotics trafficking and organised crime, which generate funds that may be laundered through the banking system, real estate investment or financial asset markets. Illegal money frequently leaves the country to find protection in an offshore market and comes back disguised as an investment or as a loan. The most frequent techniques consist of sending money abroad through legal or illegal means, the use of accounts opened in names of nominees ("*laranjas*"), and the use of bingos and lotteries.

6. The geographical situation of Brazil, with borders with ten countries and almost 8,000 kilometres of coastline, represents an additional challenge to fighting criminal activities, especially the tri-border area between Brazil, Argentina and Paraguay (Foz de Iguaçu). In these specific areas, the Federal Police report extensive cash smuggling through vehicles. With regard to typologies of terrorist financing, the Federal Police, in conjunction with authorities from other countries, have monitored the tri-border area. However, no evidence of terrorist financing has been observed.

MAIN FINDINGS

7. Brazilian has established a comprehensive legal and regulatory framework to combat money laundering. Law 9613/98 and sector-specific regulations incorporate the financial supervisors into the regime, and they appear to be broadly ensuring compliance by the financial sector. Brazil has made legislative improvements since its first mutual evaluation, especially by relaxing bank secrecy to allow broader access by COAF to financial information. Brazil has also broadened the range of predicate offences for money laundering to include terrorist financing and bribery of foreign public officials. COAF plays an important co-ordinating role. Over 24,000 STRs have been received as of September 2003, and the Federal Police have undertaken an increasing number of money laundering investigations. Finally, Brazil has recently established regional specialised courts to prosecute money laundering and financial crimes cases.

8. Some deficiencies remain, however. Bank secrecy still limits the securities regulator's ability to fully supervise the sector and fully share exchange information with foreign counterparts. Although

[1] As of 3 November 2003, the exchange rate was BRL 1 = USD .349.

financial institutions are required to identify the owners and controllers of accounts owned by legal entities, a more direct obligation to identify the ultimate beneficiary of such accounts as well as for all insurance payouts is recommended. Although Brazil's overall mechanisms to provide legal assistance appear generally comprehensive, Brazil should work to formalise additional agreements and consider strengthening the legal basis for legal assistance outside of a treaty ("direct assistance") in order to continue and expand its ability to provide legal assistance. Brazil also needs to adopt more comprehensive CFT measures, especially adequately criminalising the financing of terrorism to be able to comply fully with the UN Security Council Resolutions and improve measures to freeze and seize assets related to terrorist financing. Finally, Brazil needs to be able to more clearly demonstrate the effectiveness of its AML/CFT system through prosecutions and convictions. The recent establishment of specialised regional courts to prosecute money laundering and financial crimes are a positive step, and when fully functional, should help Brazil more easily demonstrate the effectiveness of its systems.[2]

CRIMINAL JUSTICE MEASURES AND INTERNATIONAL CO-OPERATION

(a) Criminalisation of ML and FT

9. The anti-money laundering Law 9613 of 3 March 1998 established the money laundering offence that appears sufficiently broad in terms of the definition of the offence, the predicate offences, the element of knowledge required, and the available sanctions. The law creates eight broad categories of serious offences as predicates for money laundering, including terrorism, corruption, acts committed by a criminal organisation, and crimes against the financial system, such as fraud and embezzlement. Laws 10467/02 and 10701/03, respectively, added bribery of foreign public officials and the financing of terrorism as predicate offences for money laundering. As there are no available statistics regarding money laundering prosecutions and convictions, it is difficult to assess the effectiveness of the scope of these legal provisions.

10. Brazil ratified on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention). Brazil signed the United Nations International Convention for the Suppression of the Financing of Terrorism and the United Nations Convention against Transnational Organised Crime; however, neither had been ratified at the time of the on-site visit.[3] Brazil has issued a series of Executive Decrees to implement the relevant United Nations Security Council Resolutions by incorporating the text of the Resolutions into the domestic legal regime.

11. Brazil has not yet ratified the Terrorist Financing Convention or criminalised the financing of terrorism according to the requirements of the Convention, and therefore has not fully implemented provisions of S/RES/1373.

(b) Confiscation of proceeds of crime or property used to finance terrorism

12. Legal measures for freezing and confiscating relating to money laundering appear sufficiently broad. The Criminal Code provides generally for the confiscation of assets, rights and valuables resulting from any crime after a guilty verdict, which would thus include proceeds from and instrumentalities used in or intended for use in the commission of money laundering and predicate offences. Law 9613/98 contains additional confiscation measures, as well as comprehensive provisional measures, including restraining orders, on an *ex-parte* basis.

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[2] In December 2003, the National Anti-Money Laundering Strategy group (ENCLA, which involves all the relevant ministries and agencies established the goal of developing a system to provide nationwide statistics on money laundering investigations, indictments, and convictions, under the coordination of the Justice Department's Department of Assets Recovery and International Legal Co-operation (DRCI).

[3] Brazil ratified the UN Convention against Transnational Organised Crime on 29 January 2004 and promulgated it by Decree 5015 of 12 March 2004.

13. Brazilian authorities were not able to provide any comprehensive statistics on the amount of assets frozen, seized or confiscated. The amount confiscated in favor of the Anti-Drugs National Fund—BRL 290,078 (approximately USD 100,000)—seems quite low given the size of the drug trade as indicated by the Brazilian authorities. Thus, it is difficult to determine the actual effectiveness of the legal measures.[4]

14. With respect to freezing and seizing funds related to the UN Security Council Resolutions, it is not clear whether funds may be frozen without an order from a judge, which would not be satisfactory for the case of S/RES/1267. Banks' ability to freeze funds relating to the UN Resolutions should be improved. On the other hand, Brazilian authorities reported that they have searched for funds and bank accounts and all relevant databases against various list of suspected terrorists and terrorist organisations, with no matches being found and no criminal proceedings being initiated.

(c) The financial intelligence unit (FIU) and process for receiving, analysing, and disseminating financial information and other intelligence at the domestic and international levels

15. Law 9613/98 created the *Conselho de Controle de Atividades Financeiras* (COAF) to function as Brazil's FIU. COAF's main functions are: examining and identifying any suspicious occurrence of the illicit activities defined in the law; regulating and issuing instructions for the those entities that are not already subject to any specific monitoring or regulatory agency (including bingos, real estate, factoring companies, and credit and payment card administrators), and applying administrative sanctions. COAF also coordinates and develops the policy for co-operation and information exchange in the fight against money laundering. COAF has been a member of the Egmont Group since 1999.

16. COAF is housed within the Ministry of Finance and consists of a Plenary Council ("The Council") and an Executive Secretariat. The Council is formed by a chairman and 10 commissioners or representatives of the government institutions that share the responsibilities of the fight against money laundering, who meet on an as-needed basis. The Executive Secretariat, which currently consists of 25 civil servants, carries out the daily functions of COAF.

17. COAF generally functions effectively and performs a useful AML co-ordination role within Brazil. Entities regulated by COAF, as well as the insurance sector, send STRs directly to COAF. The securities sector first STRs to the securities regulator (CVM), who then forwards them in their entirety to COAF, where they are entered into COAF's database. Legislation since the first mutual evaluation (Complementary Law 105/01 and Law 10701/03) now allows COAF to receive full bank STR data and access additional information from reporting parties. COAF can now fully and directly access bank STRs from the moment they are entered into the Central Bank's database. As a result, COAF can also now more fully share STR information as intelligence with foreign counterparts.

(d) Law enforcement and prosecution authorities, powers, and duties

18. Brazil has designated appropriate authorities to combat ML and FT effectively. The Brazilian Federal Police's Division for Combating Financial Crimes (*Divisão de Repressão de Crimes Financeiros*—DFIN) investigates money laundering cases, especially those related to offences against the national financial system. DFIN is working to establish six regional units to correspond to and work closely with the regional specialised courts to investigate and prosecute money laundering cases. Three units have already been established—in Brasília, São Paulo, and Rio de Janeiro. The Federal Police has registered an increasing number of ML investigations in the past several years—124 cases in 2000, 183 cases in 2001, 363 in 2002, and 353 in 2003 (to November).

[4] The Justice Ministry's Department of Assets Recovery and International Legal Co-operation (*Departamento de Ativos e Cooperação Jurídica Internacional*—DRCI) was formally established by Decree 4991 of 18 February 2004. One of its main tasks is to maintain improved statistics in this area.

19. The Federal Revenue Secretariat (*Secretaria da Receita Federal*—SRF), which also includes customs control, investigates money laundering related to offences under its jurisdiction such as drug and other types of smuggling.

20. The Attorney General's Office (*Procuradoria Geral*) is responsible for the defence of the legal order and of the democratic regime. The Office's "*promotores*" at the state level and "*procuradores*" at the federal level prosecute all criminal offences. There were no adequate statistics regarding prosecutions and convictions; however, Federal Revenue Secretariat (SRF) reported 9 cases of convictions in the first instance for money laundering offences relating to issues under its jurisdiction.

21. In May 2003, legislation established regional specialised courts ("*varas federais criminais"*) to prosecute crimes against the national financial system and money laundering. A judge heads each of these courts and oversees sentencing and the lifting of bank secrecy. The Attorney General coordinates the investigative work of the Federal Police and assistance from the financial supervisory bodies. As of November 2003, five specialised Courts were fully operating: one in Porto Alegre, one in Florianópolis, one in Curitiba, one in Rio de Janeiro, and one in Fortaleza. The newly established specialised federal courts will enhance AML efforts by specialising resources and attention to combating money laundering and similar crimes; they will also enable Brazilian authorities to better track cases and therefore evaluate the overall effectiveness of the system.

22. Law enforcement authorities appear to have adequate access to information and investigative techniques for investigations and prosecutions; bank information and records can be obtained via a court order.

(e) International co-operation

23. Brazil can provide mutual legal assistance (MLA) within the context of a treaty or on the basis of reciprocity; a letter rogatory will not be enforced to provide coercive measures such as the lifting of bank secrecy. Brazil currently has agreements in force to cover nine countries and is negotiating several others. Brazil can also provide assistance pursuant to requests for "direct assistance," whereby Brazilian authorities present foreign requests directly to Brazilian judges for information requiring judicial authorisation, such as the production of records and lifting of bank secrecy. The court will review the merits of the request and authorise the lifting of secrecy if it concludes that the request is in accordance with Brazilian law. However, the legal basis for this type of assistance is not entirely clear; Brazil should consider establishing a clearer and stronger legal basis for this type of assistance. Finalising more written agreements will also help ensure effective international co-operation.

24. Brazil's ability to provide legal assistance regarding terrorist financing is generally comprehensive, through treaties, agreements or direct assistance. However, in addition to the lack of clarity regarding the legal framework for direct assistance, it is also unclear how Brazil would be able to extradite for all terrorist financing offences, given that dual criminality is required for extradition.

25. Brazil received 40 MLA requests 741 letters rogatory between January 1999 and May 2003; however, authorities have not provided any additional information regarding the number that were responded to, or the content or time frame for these responses. Up to November 2003, the Justice Ministry had processed approximately 15 requests for "direct assistance."

26. Law 9613/98 provides adequate legal measures for sharing of confiscated assets with foreign authorities; however, there were no statistics available.

27. At the time of the on-site visit, Brazil was finalising the creation of a Department of Assets Recovery and International Legal Co-operation within the Ministry of Justice.[5] When fully staffed and

[5] See previous footnote.

operational, this unit should help Brazil respond more efficiently to mutual legal assistance requests and help Brazil to maintain more comprehensive statistics and thus more easily evaluate the effectiveness of Brazil's systems.

PREVENTIVE MEASURES FOR FINANCIAL INSTITUTIONS

(a) Financial institutions

28. Brazil has designated the appropriate competent authorities to supervise financial institutions. The National Monetary Council (CMN) is the main decision-making authority for the national financial system and consists of the Minister of Finance, the Minister of Planning and Budget, and the President of the Central Bank of Brazil (*Banco Central do Brasil*—BACEN).

29. BACEN licenses and supervises banks and other institutions, such as credit cooperatives, exchange brokerage companies, and travel agencies hotels that perform retail foreign exchange operations. BACEN's anti-money laundering unit (DECIF) supervises compliance for anti-money laundering regulations. DECIF currently consists of nine regional offices and a total staff of 229 employees. The Superintendence of Private Insurance (*Superintência de Seguros Privados*—SUSEP) regulates and supervises the insurance market, capitalisation companies and re-insurance for prudential and AML purposes. The Securities and Exchange Commission (*Comissão de Valores Mobiliários*—CVM) supervises the securities market and related activities for prudential and AML purposes. The Caixa Econômica Federal is a large public financial institution that also supervises the national lottery system.

30. Complementary Law 105 has improved one deficiency identified in the first mutual evaluation report by allowing COAF to receive full information on STRs. However, bank and other secrecy provisions could be further improved to allow COAF greater access to additional information. Bank secrecy also prevents CVM—the securities regulator—to fully access information to be able to fully supervise the sector and co-operate with foreign counterparts.

31. Law 9613/98 creates a generally comprehensive framework of anti-money laundering requirements for a wide range of financial institutions. The law makes general requirements for customer identification, record-keeping, and suspicious transaction reporting, which are to be specified and enforced by the existing supervisory agencies.

32. Requirements for banks are contained in CMN Resolution 2025 and BACEN Circular 2852. AML requirements for the securities and insurance sectors are specified in CVM Instruction 301 and SUSEP Circular 200, respectively.

33. The requirements for verification of the identify of the direct customer are comprehensive. In addition, financial institutions are required to verify the identity of the owner and controller of legal entities. However, there is no direct obligation to take reasonable measures to obtain information regarding the true identity of the person on whose behalf an account is opened for banks. For insurance, the identification requirement currently only extends to third-party payments exceeding BRL 10,000 (approximately USD 3,500) or to guarantee insurance contracts regardless of thresholds. A more direct obligation to identify the ultimate beneficiary might be more effective, especially given that Brazilian authorities have indicated that a common money laundering mechanism is to use accounts opened under the names of nominees. BACEN is considering revising its framework to adopt a more direct obligation.

34. The legislation and regulations adequately cover the requirements for increased diligence for unusual or suspicious transactions and transactions involving jurisdictions with deficient AML regimes. BACEN and COAF have issued numerous circulars advising of the increased money laundering risks and the need for enhanced scrutiny regarding transactions involving non-cooperative countries or territories (NCCTs).

35. Record-keeping provisions are comprehensive.

36. STR provisions are generally comprehensive and appear effective. The law and sector-specific regulations also contain adequate safe harbour provisions and prohibit tipping off clients. In addition, each sector-specific regulation contains comprehensive guidelines on the manner of STR reporting and a list of indicators that should be reported. The securities and insurance regulations are somewhat more limited in that they require reporting of suspicious transactions exceeding BRL 10,000 or transactions from the specific list, although the lists are general and broadly include most types of suspicious activities. There has also been an increasing number of STRs filed by the insurance sector. Statistics from BACEN and COAF reported the following number of STRs from 1999 to September 2003:

Financial sector	**Total STRs filed**
BACEN (STRs)	14,890
SUSEP	767
CVM	30
SPC (Pension Funds)	11

37. Law 10701/03 added terrorist financing as a predicate offence for money laundering; therefore, there is now a general obligation for all financial institutions to report transactions suspected of being related to terrorist financing.

38. Financial institutions are required to have AML programs, including training and compliance officers, although there is no formal audit requirement[6] for AML purposes or for screening employees. There is also no specific regulation for overseas branches and subsidiaries of Brazilian financial institutions to apply to local (Brazilian) standards, although the Central Bank is signing agreements to allow closer inspection of oversees branches and subsidiaries.

39. Regulations are generally comprehensive to prevent people involved in certain crimes from controlling or managing financial institutions. Resolution 3041 of 2002 and BACEN Circular 3172 of 2002 established specific conditions for financial institutions when hiring directors and senior managers. The applicant must have good reputation and not be convicted of any crime listed in the Resolution: bankruptcy, tax evasion, corruption, embezzlement, a crime against the national financial system, or any other crime which bans temporary or permanent future public employment. A regulation to specifically prevent criminals from holding a significant investment in a financial institution is still needed, however.

40. Enforcement and sanction authority for supervisors is comprehensive and appears effective with the exception of the CVM, where bank secrecy provisions still prevent direct access to information for its regulation of the securities sector.

41. Problems have arisen with the consistency and supervision of the non-banking currency exchange facilities, namely exchange brokers, hotels and travel agencies, which do not have the will or the means to comply with AML obligations. BACEN is now in the process of elaborating new regulations for this sector, which should have internal controls and compliance evaluation procedures similar to the ones applied to banks and brokers, tailored to their size and transaction profiles.

42. Domestic co-operation between regulators appears generally comprehensive. However, as CVM is prevented from accessing certain information still protected by bank secrecy, CVM cannot

[6] SUSEP Circular 249/2004 was issued on 20 February 2004. It purportedly obliges insurance companies, capitalisation companies, and open pension funds entities to establish, internal controls (including an internal audit) by 31 December 2004. The examination team has not evaluated the Circular.

fully co-operate with foreign regulators. For example, Brazil could not sign the IOSCO multilateral MOU.

(b) Other sectors

43. The Brazilian anti-money laundering Law 9613/98 also covered several other non-banking financial institutions and non-financial businesses and professions. COAF Resolution 1-8, issued in 1999, and Resolution 10, issued in 2001, define the obligations for the below sectors. (Regulation 9 modified provisions of Resolutions 3 and 5). Each regulation specifies the types of information that must be recorded for transaction records, including customer's name, address, CPF or CNPJ, identifying number and document type, and name, date, and description of the transaction. Each regulation also contains requirements to report suspicious transactions that should be reported directly to COAF and includes a list of specific examples.

44. The following chart indicates the sector, the COAF Resolution defining the AML requirements, the transactions to which AML obligations apply, and the number of reports sent to COAF since 1999:

COAF Resolution	Sector	Customer ID and Record-keeping applies to	Number of STRs received from 1999 to September 2003
1	real estate	transactions of at least BRL 50,000	2,806
2	factoring	transactions of at least BRL 10,000	91
3	lotteries	payouts of at least BRL 10,000	520
4	jewellery, precious stones and metals dealers	transactions of at least BRL 5,000 in retail sales and BRL 50,000 in industrial sector sales	8
5	bingos	payouts of at least BRL 2,000	2,476
6	credit and payment card managers	all transactions	155
7	commodities exchanges and their brokers	all transactions	2
8	objects of art and antiques dealers	transactions of at least BRL 5,000	1
10	money transfer services	All transactions	1

45. In addition, Law 10701/03 modified Law 9613/98 to include natural persons and legal entities that deal with luxury or high value assets as entities having all the various anti-money laundering obligations under the law. COAF is currently preparing its resolution specifying the requirements for the sector.

(c) Controls and monitoring of cash and cross-border transactions

46. BACEN Circular Letter 3098 of 11 June 2003 obliges financial institutions to report cash transactions exceeding BRL 100,000[7]. BACEN reported that it had already received 17,842 reports as of 29 October 2004. The significant number of large cash transaction reports seems to indicate high volumes of cash movements in the economy, and Brazil should maintain a high vigilance over this area.

47. Law 9069/95 requires that all inflows and outflows of domestic and foreign currency be effected through the banking system with proper identification of the sender and the beneficiary. This law and subsequent regulations (BACEN Resolution 2524/98 and SRF Normative Instructions 117 and 120 of 1998) require persons transporting domestic or foreign currency in cash, checks or travellers checks of

[7] USD 34,900.

BRL 10,000 (approximately USD 3,500) or its equivalent in foreign currencies to submit a declaration to the local unit of the Federal Revenue Secretariat (SRF). The SRF reviews these reports and may investigate potential violations of the law. Currently, the reports are not put into electronic form and therefore not analysed electronically; however, working group consisting of COAF, BACEN and SRF have proposed the implementation of an electronic system that would also allow the definition of passenger risk profiles by checking data with flight passenger lists, their fiscal data and other relevant information. In addition, comprehensive statistics on these reports were not available, despite the fact that statistics were available during Brazil's first mutual evaluation.

SUMMARY ASSESSMENT AGAINST THE FATF RECOMMENDATIONS

48. Brazil is compliant with or largely compliant with all of the FATF 40 Recommendations requiring specific action. However, Brazil needs to quickly adopt and implement more comprehensive anti-terrorist financing measures.

Table 1. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance and Securities Sectors.

Criminal Justice Measures and International Cooperation	**Recommended Action**
I—Criminalization of ML and FT	Brazil should quickly ratify and become a party to the Terrorist Financing Convention. Brazil should also adopt legislation to clearly make the financing of terrorism a criminal offence. Brazil should continue implementation of specialised courts for prosecuting money laundering and other financial crimes.
II—Confiscation of proceeds of crime or property used to finance terrorism	Brazil should enhance legal measures to allow authorities to more fully seize and confiscate terrorist assets.
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	Brazil should consider amending its bank and information secrecy provisions to allow COAF to access additional information and documentation relating to an STR.
IV—Law enforcement and prosecution authorities, powers and duties	Brazil needs to increase the number of money laundering investigations and prosecutions. Brazil should ensure that the new specialised courts and other enforcement agencies are fully resourced.
V—International cooperation	Brazil will need to ensure that the system for providing assistance through "direct assistance" requests continues to function effectively; Brazil should consider establishing a stronger legal basis for "direct assistance". Significantly increasing the number of written agreements in force will also help ensure effective international co-operation. Brazil also needs to make terrorist financing a more comprehensive autonomous offence so as to be able to comply with the dual criminality provisions for granting extradition. Brazil needs to ratify the Terrorist Financing Convention.
Legal and Institutional Framework for Financial Institutions	
I—General framework	Brazil should further amend Complementary Law 105 to give the CVM direct access to information so as to more adequately supervise the sector. Brazil should also consider amending secrecy provisions to allow for greater access to financial information by authorities without a court order.
II—Customer identification	Brazil should consider a clearer obligation to identify the ultimate beneficiary of accounts, especially for legal entities, and for the insurance sector regardless of the amount. BACEN, should continue to carefully monitor the sector to prevent further money laundering using CC-5 and nominee ("*laranja*")

	accounts. For wire transfers, there should be a more specific requirement to include the CPF/CNPJ (or the customer's date of birth, address, or unique identifying number) in the message instruction.
III—Ongoing monitoring of accounts and transactions	Provisions are currently compliant.
IV—Record keeping	Provisions are currently compliant.
V—Suspicious transactions reporting	Brazil should amend its regulations for securities and insurance to require the reporting of all suspicious transactions regardless of a threshold.
VI—Internal controls, compliance and audit	A more explicit requirement for an audit requirement for AML compliance is needed. Also, Brazil needs more specific regulations for its foreign branches and subsidiaries to apply the Brazilian standards.
VII—Integrity standards	Specific regulations preventing criminals from holding a significant investment in financial institutions are still required. Rules for adequate screening procedures could also be strengthened.
VIII—Enforcement powers and sanctions	CVM should be granted more comprehensive direct access to information so as to be able to more comprehensively supervise the securities sector. The regime for supervising hotels and travel agencies conducting foreign exchange should also be strengthened.
IX—Co-operation between supervisors and other competent authorities	Brazilian supervisors should continue to pursue information exchange agreements. Brazil should also consider giving CVM more complete access to financial information so that it may sign the IOSCO MOU and more effectively exchange information internationally.

Table 2. Other recommended actions

Reference	Recommended Action
Lotteries and bingos	Maintain vigilance over these sectors to detect and deter their use for money laundering.
Cash transactions	Brazilian authorities should maintain vigilance over the sector and ensure the cash transaction reports are properly analysed for information that could be useful in combating money laundering and terrorist financing.
Cross-border transactions	Brazil should make electronic and properly analyse the cross-border transaction reports received.

Republic of Germany: Report on Observance of Standards and Codes FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

Introduction

1. This Report on the Observance of Standards and Codes for the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism* (FATF 40+8 Recommendations) was prepared by representatives of member jurisdictions of the Financial Action Task Force (FATF) and members of the FATF Secretariat.[1]

[1] The assessment was conducted by Mr. Juan Antonio Aliaga Méndez, financial expert from the Ministry of Economy and Finance, Spain; Ms Elisabeth Florkowski, financial expert from the Financial Market Authority,

2. The report provides a summary of the level of observance with the FATF 40+8 Recommendations, and provides recommendations to strengthen observance. The views expressed in this report are those of the assessment team as adopted by the FATF and do not necessarily reflect the view of the government of Germany, the International Monetary Fund (IMF) or the World Bank.

Information and Methodology Used for the Assessment

3. In preparing the detailed assessment, assessors reviewed relevant anti-money laundering (AML) and counter terrorist financing (CFT) laws and regulations; supervisory and regulatory systems in place for banks, foreign exchange, securities, insurance, and money remittance; and criminal law enforcement systems. The evaluation team met with officials from the relevant German government agencies and the private sector in Berlin, Wiesbaden, Düsseldorf and Bonn from 22 to 29 May 2003. Meetings took place with representatives from the Ministry of Finance (BMF), the Ministry of Interior (BMI), the Ministry of Justice (BMJ), the Ministry of Foreign Affairs (AA), the Ministry of Economics and Labour (BMWA), the Central Bank (*Deutsche Bundesbank*), the Federal Criminal Police Office (BKA), the Customs Investigation Office and the Federal Financial Supervisory Authority (BaFin). The team also met with representatives from law enforcement authorities and prosecutors of the *Länder* and from the private sector (German banks, insurance companies and money remittance services providers).

Main Findings

4. Germany has adopted a very comprehensive set of repressive measures with regard to money laundering and terrorist financing. The cornerstone of German AML/CTF measures is Section 261 of the German Criminal Code ("Money Laundering: Concealment of Unlawfully Acquired Assets"), Section 129 ("Formation of Criminal Organisation"), Section 129a ("Formation of Terrorist Organisations") and Section 129b ("Criminal and Terrorist Organisations Abroad, Extended Forfeiture and Confiscation"). The financial intelligence unit (FIU) for Germany was established within the BKA on 15 August 2002. This new responsibility at the federal level now ensures for the first time that all STRs are gathered in a central location, although this new reporting arrangement was set up too recently to allow a complete review of its effectiveness. The supervision of financial institutions is satisfactory, and the Financial Supervisory Authority (BaFin) has sufficient authority to carry out its functions.

5. German legislation meets the general obligations of the FATF 40 Recommendations; however, there are specific issues which must be addressed to strengthen the whole system. With regard to the financing of terrorism, Germany has taken steps towards meeting the FATF Eight Special Recommendations. Nevertheless, Germany needs to complete the ratification and implementation of the *UN International Convention for the Suppression of the Financing of Terrorism* (1999). With regard to the criminalisation of terrorist financing, the provisions in the German Criminal Code only refer to terrorist organisations. Therefore, the provision of funding to an individual terrorist (who is not part of a terrorist organisation) is not covered by specific legislation. Germany has introduced detailed requirements on wire transfers which are partially in line with the FATF standards. While these new requirements apply to some cross-border wire transfers, they do not currently apply to cross-border transfers to or from countries within the European Union.

Criminal Justice Measures and International Co-operation

(a) Criminalisation of money laundering and financing of terrorism

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Austria; Mr. Paolo Guiso, legal expert from the Ufficio Italiano dei Cambi, Italy; Mr. Donald P. Merz, law enforcement expert from the Internal Revenue Service, United States of America and Mr. Vincent Schmoll and Ms. Catherine Marty from the FATF Secretariat.

6. Section 261 was incorporated into the Criminal Code through the "Act on Suppression of Illegal Drug Trafficking and other Manifestations of Organised Crime" which entered into force on 22 September 1992. Since its entry into force, Section 261 has been amended several times and all the amendments were primarily aimed at extending the list of predicate offences concerned with money laundering, particularly to cover criminal offences in the area of organised crime (including all minor crimes). Germany has criminalised money laundering on the basis of the Palermo and Vienna Conventions. The list of predicate offences to money laundering which is contained in Section 261 distinguishes between major and minor crimes. *Major crimes* are unlawful acts which carry a minimum sentence of imprisonment of one year or more. *Minor crimes* are unlawful acts which carry a shorter term of imprisonment or a fine. The ML offence of Section 261 does not give rise to serious difficulties in its application and meets the FATF standards.

7. Germany has not designated terrorist financing as a separate criminal offence, but instead relies upon the crimes "Formation of Terrorist Organisations" (membership[2]) and "Supporting Terrorist Organisations, recruiting for such organisations" to criminalise terrorist financing. These two provisions cover most of the requirement under Special Recommendation II. However, Section 129a only refers to terrorist organisations. Therefore, the providing of financing to an individual terrorist (who does not belong to a terrorist organisation) is not covered by this provision. The German authorities advised the examiners that in such a case, while difficult to foresee in practice, provisions on conspiracy could be applied. They also argued that the financing of a single terrorist could be a punishable act in accordance with the provisions on aiding and abetting under section 27 of the German Criminal Code. The German authorities can apply Sections 129a(1) and 129a(3) to terrorist financing activities in Germany – within the limitations mentioned above – even when a terrorist organisation is located abroad as well as when a terrorist act occurs in a foreign jurisdiction (Section 129b).

8. Germany has not yet ratified the *UN International Convention for the Suppression of the Financing of Terrorism (1999)* or the Palermo Convention (the appropriate regulatory instruments were in the course of adoption at the time of the on-site visit[3]). With regard to the UN Resolutions relating to the prevention and suppression of the financing of terrorist acts, their implementation takes place in Germany through the application of the correspondent EU Regulations. With regard to the implementation of S/RES/1373 (2001), since the European regulations do not cover terrorism financing in the case of "domestic" terrorism, there is also a loophole in this area[4].

9. Germany is reviewing new legislation to re-address the issue of the criminalisation of terrorist financing. Section 129a of the Criminal Code is to be adjusted to the requirements of the EU Council Framework Decision of 13 June 2003 on combating terrorism. Important amendments include extending the list of criminal offences in Section 129a, as well as introducing the concept of intent as related to terrorism. Furthermore, the maximum penalty for supporters of a terrorist organisation is to be increased to ten years. Germany expects that this legislation to be passed by the end of 2003.

(b) Confiscation of Proceeds of Crime or Property used to Finance Terrorism

10. The current provisions on forfeiture and confiscation have been in force since 1 February 1975. Since then, these provisions have undergone certain amendments and additions. Their scope of application is not confined to the criminal offence of money laundering or to predicate offences. They relate generally to property used in criminal offences, or derived from them, and moreover to objects derived from criminal offences committed with intent, or used or intended for their commission or

[2] Section 129a(1) StGB

[3] Meantime, the German legislative bodies have adopted a new legislation prior to the ratification of the UN International Convention for the Suppression of the Financing of Terrorism.

[4] A new section of the *KWG* which came into force in November 2003 has closed this loophole. The new provision will cover the cases of financial sanctions against terrorists residing within the European Union.

preparation. Since Section 261 came into force in September 1992, forfeiture and confiscation also apply to it.

11. German law provides for comprehensive means of regulating the forfeiture and confiscation of property belonging to criminal organisations. In principle, all "criminal" profits obtained by these organisations, even if individual acts cannot be ascertained, as well as all assets belonging to these organisations and supporting them, may be declared forfeit or may be confiscated. German law contains a series of provisions dealing with confiscation of property of corresponding value. If forfeiture of a particular property is not possible, the court shall order forfeiture of a sum of money equivalent in value to the property in question. The same applies with regard to property which would be subject to confiscation.

12. Germany has two mechanisms that permit the freezing of assets before they are subject to forfeiture. The first mechanism requires financial institutions to suspend a transaction that they suspect is related to ML for up to two business days. This permits the legal authorities to review the STR filed by the financial institution to determine if the legal authorities can request the court to issue a freezing order before the transaction is released. In addition, some provisions permit the issuance of freezing orders before judgement (forfeiture order) is given, when certain conditions are met, in particular if there are reasons for assuming that the conditions have been fulfilled for their forfeiture or for their confiscation. However, within 6 months but no later than 9 months, the property seized must be returned if the reasons for that action have not been substantiated or reinforced ("cogent reasons").

13. Germany permits the forfeiture and confiscation of property that is proceeds from terrorist financing, or of property that is used or intended to be used for the commission or preparation of terrorist financing. Recent amendments have extended the scope of options available regarding this matter by allowing the extended forfeiture and confiscation provisions to be applied to terrorist financing.

14. With regard to freezing of property of persons who do not appear on the UN lists, the adaptation of a new provision in the *KWG*[5] is expected to strengthen the German framework in having the regime of domestic terrorism in line with the one applied in the context of international terrorism.

15. The value of forfeiture and confiscation measures for all criminal offences was estimated at EUR 330 million in 2001 (EUR 77 million in 1997). The value of forfeiture and confiscation measures related to organised crime was estimated at EUR 102 million in 2001 (32 million in 1997). Nevertheless, the lack of comprehensive statistics on the amounts of property frozen, seized and confiscated relating to ML, the relevant predicate offence and FT remains a weakness of the German implementation of AML and FT policies, and appropriate actions should be taken. With 16 different *Länder* making seizures and completing forfeiture actions, it would be helpful if a uniform system were developed to gather the related statistics to aid in the evaluation of the German property seizure and forfeiture programme.

(c) The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority

16. The German FIU was only established on 15 August 2002 and joined the Egmont Group in June 2003. It was formed as a distinct entity within the BKA which provides for a specific "police character" of the FIU. To ensure a full range of expertise, the FIU has opted for a multi-disciplinary approach and has recruited consultants from the banking sector and a firm of auditors.

17. The FIU is required to (1) collect and analyse STRs filed, in particular checking against data stored by other offices, and (2) report to the federal and *Land* prosecuting authorities without delay information that concerns them as well as any connections between criminal acts ascertained. Apart

[5] KWG – Kreditwesengesetz – Banking Act as amended on 21 August 2002

from these "standard tasks", within the FIU there are specialisations in the areas of data processing, operational/strategic analysis and policy-making. The FIU does have access to numerous sources of information, whether financial, administrative, or law enforcement to enable it to adequately undertake its responsibilities.

18. German legislation does not establish a specific sanction for the failure to report suspicions of money laundering. The legislation provides administrative sanctions (a fine up to EUR 50,000) for informing the customer or a party other than a public authority of the filing of a report and for other types of administrative offences. Additional provision provides for an offence of negligent money laundering for which the penalty is up to 2 years of imprisonment or a fine, and an offence of obstruction of punishment, for which the penalty is up to 5 years of imprisonment or a fine. In addition, administrative sanctions are available for serious cases of non-reporting. Nevertheless, Germany should consider amending its legislation to specifically impose a sanction for failure to report suspicious transactions.

19. The *GwG*[6] permits the FIU to co-operate with its foreign counterparts when a request for assistance is received. The German FIU has started a close co-operation with the other FIUs within the European Union (Germany is participating in the discussions related to the "FIU Net Project" on exchange of information at EU level) and is satisfied with the level of co-operation. A closer partnership is under consideration with US and Russian counterparts. However, the German FIU does not spontaneously, i.e. on its own initiative, disseminate information to other foreign FIUs if intelligence is uncovered about individuals residing in that foreign jurisdiction. This weakness should be taken under consideration by the German authorities and appropriate measures should be taken.

20. The German FIU was set up too recently to allow a complete review of its effectiveness. Nevertheless, it appears adequately structured, funded, staffed and provided with the necessary resources to perform its functions. One point of concern is the efficiency of co-ordination and exchange of information between the *Land* and the federal level, and the sharing of responsibilities and duties which at this stage could only be theoretically evaluated.

21. 8,261 suspicious transactions were reported in 2002 (3,765 in 1999). The plan to standardise the reporting procedure in Germany by developing an STR form that will be valid nationwide should be encouraged. Germany is also planning to switch from paper to electronic STR forms. This will further expedite the flow of information and make it possible to automate part of the processing of STRs.

(d) Law Enforcement and Prosecution Authorities, Powers and Duties

22. The Germans have several law enforcement authorities responsible for investigating ML and FT activities. The primary law enforcement agencies are the 16 *LKAs*[7]. They are responsible for investigating all criminal violations in their individual *Länder*. Germany has also formed federal criminal investigation agencies, the BKA and Customs that are responsible for investigating ML and FT activities. Customs is responsible for cross border ML activities. The BKA is responsible for international ML and FT activities and may get involved when these activities cross the border of more than one German *Land*. However, all investigations are overseen by the prosecutor's office of the *Länder*. This ensures proper coordination of the investigations.

23. The German investigative agencies are permitted to use a wide range of special investigative techniques. Germany has instituted appropriate mechanisms, such as task forces, to coordinate their investigations of ML and TF activities. Germany also has a comprehensive training programme available to law enforcement and prosecution authorities to combat ML and FT.

[6] GwG – Geldwäschegesetz - Money Laundering Act as amended on 8 August 2002
[7] LKA – Land Criminal Police Office in charge of police matters

24. In the past, Germany has kept a number of statistical categories relating to its efforts to combat crime. However, Germany has not focused it statistics to capture all of its work in combating ML and FT. Therefore, the Germans statistics do not reflect a very accurate number of ML investigations that resulted in a successful conviction.

25. Germany has imposed a new obligation on the public prosecutor's offices at *Land* level to report to the FIU the charges filed and prosecution results related to STRs. This requirement should significantly close the gap in identifying the source of money laundering investigations and the success of the STR programme. However, Germany may wish to develop system whereby information on all prosecutions and convictions related to ML violations is collected.

(e) International Co-operation

26. Germany is a party to a broad range of conventions, treaties and other agreements that provide a comprehensive and adequate support for international co-operation, including the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 and their additional Protocols.

27. German laws and procedures provide effective mutual legal assistance in AML/CTF matters. Legal assistance proceedings in criminal matters are becoming increasingly de-formalised, particularly in relation to the EU countries. New forms of co-operation, such as the provision of spontaneous information or the creation of joint investigation teams, are taking the place of the traditional type of request for legal assistance.

28. The absence of reliable official statistics on mutual legal assistance makes it impossible to assess the effective implementation of certain requirements (such as the range of request types or the scope and duration of execution) in Germany.

29. With regard to extradition of individuals charged with ML and offences related to FT, Germany has adequate laws and procedures. Germany should render legal mutual assistance notwithstanding the absence of dual criminality in the perspective of implementing the new FATF 40 Recommendations.

B. Preventive Measures for FIs

(a) Financial Institutions

30. The AML/CFT preventive measures apply in Germany to *credit institutions* (which conduct banking business), *financial services institutions* (which provide financial services and which are not credit institutions) and those *insurance companies* (that offer accident insurance policies with premium redemption or life insurance policies, including insurance brokers) and *financial enterprises* (which are enterprises which are not institutions and whose main activities comprise essentially concluding leasing contracts, doing money-broking business, delivering investment advice) specified more closely in the GwG.

31. The relevant supervisory authority in Germany is BaFin. BaFin was established on 1 May 2002 as a result of the integration of the previously independent Federal Banking Supervisory Office (BAKred), the Federal Insurance Supervisory Office and the Federal Securities Supervisory Office (BAWe) into an independent single state regulator governed by public law. The motive for the consolidation of regulatory authorities was to establish a single regulator for integrated financial services supervision and to improve the quality of the supervision. Within BaFin, all responsibilities related to the combating of money laundering, financing of terrorism and fraud have been grouped together since the beginning of 2003 in the Anti-Money Laundering Group. BaFin is responsible for implementing the GwG with regard to all (1) *credit institutions* (with some exceptions such as the *DeutscheBundesbank*) (2) *financial services institutions including money remittance services,*

currency exchange and credit card business and (3) *insurance companies.* Financial enterprises, through very near to the financial sector, are not under BaFin supervision.

32. BaFin has responsibility for supervision of all businesses conducting money remittance services, currency exchange and credit card business. The supervision of these businesses represents a special component of the German anti-money laundering system.

33. The provisions on the prohibition of anonymous accounts or accounts in fictitious names are fully satisfactory. These regulations have existed in Germany since 1932; their implementation has been proven satisfactory. With regard to customer identification requirements, the FATF standards have been fully met in the banking and insurance sectors. Since the regulations have been in use for years in the area of credit and financial services institutions as well as insurance companies, the effectiveness thereof has already been proven in practice over a period of years. With regard the beneficial ownership, the requirements were met after the GwG was amended in 2002. BaFin has issued numerous supplementary comments on administration practice for the banking sector as part of its Guidelines and various position papers. The existing confusion regarding the definition of term economic beneficiary (defined as the person who is not conducting business on his/her own account) and beneficial owner (both are called *wirtschaftlich Berechtigter*) may give rise to problems in the future (with the implementation of the new 40 Recommendations). In the securities sector, the obligations under the FATF Recommendations are fulfilled. Nevertheless, AML/CFT preventative measures would be considerably enhanced if these rules were applied not only to business relationships between German investment firms but also to the establishment of business relationships with foreign counterparts, where the risk of misuse is higher, especially in relation to foreign financial institutions from high risk areas.

34. In relation to Special Recommendation VII, new provisions were introduced in the KWG on 8 August 2002 and entered into force on 1 July 2003. These provisions stipulate particular organisational duties in handling cross-border wire transfers to or from a state outside the EU. With regard to domestic transfers, as part of its supervisory powers, BaFin can request the ordering financial institution to immediately deliver full originator information. As far as cross-border transfers are concerned, Section 25b KWG requires that the *originating* credit institution executing transfers to countries outside the EU uses only correct and complete data records. The institutions must also take steps to identify and complete any incomplete transaction data. The *intermediary* credit institution must check that the mandatory details in the data record have been furnished and take steps to identify and complete any data records that are incomplete in respect to the name and account number. The credit institution of the *beneficiary* must check that wire transfers from countries outside the EU contain details on the name of the originator and, unless the transaction is a cash remittance, the originator's account number. However, it is obligated to take steps to identify and complete any data records that are incomplete in respect of the name and account number. Similar duties exist for financial services institutions which conduct money transmission services. These provisions are intended to apply only to cross-border wire transfers to or from countries outside the EU. This means that cross-border wire transfers conducted within the EU are not covered by current legislation in accordance with the requirements of Special Recommendation VII.

35. The FATF requirements on continuous monitoring of accounts and transactions are completely met with regard to the credit and financial services institutions and insurance companies, which fall under the supervision of BaFin. In the insurance sector, the provisions on complex, unusual large transactions are satisfactory but do not seem to be positively received by some of practitioners. Regarding business relationships with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML/FT, the German system meets the FATF requirements both in the legal framework and in implementation.

36. In Germany, all institutions are obligated to record all details obtained for the purposes of *identification*. The information obtained is to be recorded in the data files of the institution or a copy of the identity documents may be made and retained. In addition to the recording and retaining of

customer identification data, as along with the accompanying contractual and/or account opening documents and relevant correspondence, institutions must also keep a complete record of the information pertaining to *all transactions* effected by the customer within the scope of a business relationship and/or as "one-off transactions". With regard to record keeping, the German system fully meets the FATF requirements in terms of regulation and implementation. This is also the case in the remittance or currency exchange sectors, where BaFin requires that adequate record keeping systems be in place, including at the stage of granting the license. In relation to insurance brokers, the amendment of the GwG requires that the records concerning customer identification are forwarded from the insurance broker to the insurance company where the ultimate responsibility for customer identification and record keeping lies. Adequate measures in this area also exist for the securities sector.

37. Suspicious transactions reports must be made in Germany when facts suggest that a transaction (whether or not it involves cash) serves or – if accomplished – would serve the purpose of money laundering or of financing a terrorist group. According to the requirements of BaFin, the existence of objective facts, which suggest that a transaction is being carried out for money laundering or terrorist financing purposes, is sufficient reason for a suspicion to be reported. With regard to credit and financial services institutions and insurance companies, the suspicious transaction reporting procedure has proven successful. The requirements in relation to the protection from liability of directors, officers and employees of financial institutions when reporting a suspicious transaction and the prohibition for tipping off are also fulfilled.

38. All financial institutions subject to AML/CFT obligations must implement safeguards against money laundering. These safeguards include, among other things, (1) the designation of a compliance officer directly subordinate to management who is to act as contact person for law enforcement authorities and for the BKA as well as for the competent authorities, (2) the development of internal principles for the prevention of money laundering and the financing of terrorism, (3) the implementation of adequate screening procedures when hiring employees and (4) the conduct of ongoing employee information and training programmes. Apart from the ongoing control by the institution's compliance officer, a retrospective internal audit of an institution is also part of the regular monitoring of compliance with the institution's duties. The FATF requirements related to internal control and screening procedures are fully met in Germany in banking, insurance and securities sectors. There have been very isolated exceptional cases where the trustworthiness of staff has been challenged (essentially related to negligent customer identification or opening of accounts in fictitious names). The strong reliance on external auditors to monitor the internal audit mechanisms and to conduct a large part of the onsite supervision is part of the German system, which seems to be well managed by supervisors. The external auditors as well as the supervisors ensure the application of high standards.

39. Given the high number of financial institutions in Germany, a higher volume of annual audits would be expected. In particular, it would be appropriate to develop a plan of special audits or a more comprehensive plan for on-site inspections covering not only larger credit institutions but also those medium size or small credit institutions where the suspicious transaction reporting is lower than the average.

40. With regard to enforcement powers, the supervisor and other competent authorities are able to apply a broad range of sanctions if financial institutions fail to fulfil their obligations. The German system basically meets the FATF requirements, and the instruments in place have proven effective. Generally, both the GwG (for basic duties) and the KWG (for more structural deficiencies or substantial shortcomings) allow for imposing sanctions on financial institutions. Although there is no specific sanction for non-compliance with the obligation to identify the customer involved in a suspicious transaction, it is possible for BaFin to impose fines for such violations whenever they are related to some other substantial shortcoming by the financial institution. The competent authorities are empowered to impose these fines on the institutions, persons and entities supervised by them. BaFin makes use of this instrument at its discretion. German authorities may want to consider whether

a specific sanction for non-compliance with this obligation should be created, as it would make it possible to impose sanctions when this shortcoming is detected in instances unrelated to other compliance violations. The incorporation of such a sanction in the *GwG* would make enforcement mechanisms more operational in practice. It should be noted however that under existing rules, if there is a suspicion of money laundering, the employee who does not identify the client and executes the transaction despite his suspicion may eventually be charged with negligent money laundering.

(b) Other Sectors

41. The new requirements[8] detailed in the GwG and in line with the second EC Money Laundering Directive subject additional professions outside financial institutions (in particular, lawyers, estate agents, notaries, tax consultants and accountants) to the identification and reporting requirements. Three reports on suspected ML were sent to the authorities in 2002.

c) Controls and monitoring of cash and cross border transactions

42. There is no requirement for systematic reporting of large cash transactions in Germany. The German Customs authorities does however have the responsibility for monitoring the import, export and transit of cash or equivalent means of payment in order to prevent and prosecute money laundering activities. The relevant provisions stipulate that cash or equivalent means of payment totalling EUR 15,000 or more must be declared on the request of customs officials or the Federal Border Guard. Furthermore, within the framework of this cash control, the parties concerned are obliged to state the source of the money, the person legally entitled to it, and its intended purpose. The officials have search and seizure authority. In cases where parties fail to declare or incompletely declare money amounts in their possession, irrespective of whether or not they are suspected of money laundering, a fine may be imposed on the violator.

43. Despite the effort made to promote cashless payments, it would perhaps be useful for Germany to analyse further the specific risks of money laundering linked to large cash transactions and to consider the creation of mechanisms to manage these risks.

Summary assessment against the FATF Recommendations

44. The AML/CFT system in Germany is very comprehensive and has proven to be effective and efficiently implemented. However, there are a few deficiencies that must be addressed in the field of terrorist financing where Germany only largely complies with some of the FATF standards. With regard to Special Recommendation I, the *UN International Convention of the Financing of Terrorism (1999)* has not yet been ratified. As far as the criminalisation of terrorist financing is concerned, Germany's current legislation does not cover the provision of financial support to individual terrorists (who are not part of a larger terrorist organisation). With regard to freezing of property, domestic terrorism is not treated in the same way as international terrorism. As far as wire transfers are concerned, the legislation that came into effect on 1 July 2003 effectively covers cross-border wire transfers involving countries outside the EU. Cross-border wire transfers involving other EU members are not adequately covered by this legislation however.

Table 1. Recommended Action Plan to Improve Compliance with the FATF 8 Special Recommendations

Reference FATF Recommendation	Recommended Action
I. Ratification and implementation of relevant United Nations instruments	Ratification and implementation of the UN International Convention of the Financing of Terrorism 1999.

[8] The last amendment became effective on 15 August 2002

	Ratification of the Palermo Convention.
II. Criminalisation of terrorist financing	Germany should extend the criminalisation of terrorist financing to include the provision of financial support to individual terrorists.
III. Freezing and confiscation of terrorist assets	Germany should adopt measures to have a regime of domestic terrorism in line with the one applied in the context of international terrorism.
VII. Wire transfers	Germany should modify its legislation to require transmission of complete originator information on all cross-border wire transfers, including those that are to other EU countries.

Table 2. Other Recommended Actions with regard to FATF 40 Recommendations

Reference	Recommended Action
Law enforcement and prosecution authorities, powers and duties	There is no general provision in Germany in relation to feedback, especially between the FIU or the LKA and the institutions filing STRs[9].
International co-operation	Germany should render legal mutual assistance notwithstanding the absence of dual criminality.
Legal and institutional framework for financial institutions	Financial enterprises should fall under BaFin supervision.
Customer identification	The definition of the term beneficial owner may raise some concerns in the future. With regard to cross-border wire transfers, current provisions should be extended to cross-border wire transfers within the EU. Further AML-CFT preventive measures in the securities sector should be extended to business relationships with foreign counterparts.
Suspicious Transactions Reporting	A specific sanction for failure to report suspicious transactions should be adopted. The FIU should establish guidelines with regard to the reporting obligations.
Internal controls, compliance and audit	Audit and on-site inspections should be more systematic and frequent.
Enforcement powers and sanctions	A specific sanctions regime for non compliance with the identification requirements in case of suspicious transaction should be incorporated within the legal framework.
Statistics	More comprehensive statistics should be available with regard to confiscation, STRs, prosecutions and convictions related to ML/FT cases and international co-operation.

Authorities' response

45. As regards the last sentence of paragraph 18 requiring Germany to consider amending its legislation to specifically impose a sanction for failure to report suspicious transactions, German authorities point out that there are no indications for a weakness in the German system in this regard and that therefore this recommended action is not justified. German authorities argue that the existing

[9] Although the information on the existence of a general system of feedback was not delivered during the on-site visit or during the elaboration of the Mutual Evaluation Report, it was eventually delivered during the finalisation of the ROSC.

range of sanctions available for law enforcement and supervisory authorities has proven to be adequate.

46. In relation to paragraph 19, the German FIU can spontaneously send inquiries to foreign FIUs in any such cases. A prerequisite is, however, that there are actually grounds to suspect money laundering or the financing of terrorism.

47. With regard to paragraph 20, there are many very close contacts between the financial intelligence services of the LKAs and the FIU. In addition to talks held in permanent bodies, project groups and working groups, staff of the financial intelligence services of the federal government and of *Länder* are in daily (telephone and written) contact regarding all relevant operational cases. Interaction and sharing of responsibilities between the police forces of the LKAs and the BKA are clearly regulated in the respective police laws. The concern voiced regarding the lack of co-ordination is therefore unfounded.

48. With regard to the recommended action in relation to the legal and institutional framework for financial institutions (paragraph 31), German authorities consider that financial enterprises, as defined under section 1 (3a) *KWG*, should not be covered by BaFin's AML-supervision. It has to be taken into consideration that AML supervision of these enterprises can only be effective with parallel solvency supervision of these enterprises on the basis of the *KWG*. Therefore, for reasons of principle and efficiency, the German legislator has refrained from including financial enterprises in the scope of the *KWG*. Moreover, according to existing EU law, only the inclusion of financial enterprises in supervision on an aggregated basis is stipulated. This is why in Germany – as in some other EU countries – financial enterprises are only supervised by financial supervisors within the framework of consolidated supervision. In Germany, some specific businesses (due to proved associated risks, e.g. credit card business) conducted in the past by financial enterprises are now considered to be financial services within the meaning of Section 1 (1a) *KWG*.

49. With regard to the recommended action in relation to customer identification (paragraph 33), the term "beneficial owner" will be clarified in the revised binding guidelines of BaFin for credit institutions and financial services institutions as well as for insurance companies dealing with AML/CFT measures. This will solve uncertainties which may possibly arise. It should be stressed that, under the administrative practice of BaFin, the true beneficial owner must always be established and, thus, there is no real problem in the current system.

50. With regard to cross-border wire transfers (paragraph 34), German provisions apply only to cross-border wire transfers to or from countries outside the EU. For reasons of principle and efficiency, the German legislator did intentionally not anticipate the necessary EU regulation which is currently under consideration.

51. With regard to the recommended action in relation to law enforcement and prosecution authorities, powers and duties, the new Section 5 paragraph 1 GwG provides for the general obligation of the FIU to "regularly inform the persons obliged to report, on types and methods of money laundering". Section 475 of the Criminal Procedure Act enables a specific feedback between the prosecutor and the person/institution filing an STR. The request of the person/institution filing an STR to get such a feedback is going to became part of the new STR form (see paragraph 21).

52. With regard to the recommended action in relation to internal controls, compliance and audit (paragraph 39), a higher volume of annual audits is planned for the near future. It is also planned to develop a comprehensive plan of special audits and on-site inspections covering both larger financial institutions and insurance companies, and medium or small size financial institutions and insurance companies.

53. With regard to the recommended action in relation to suspicious transactions reports, the recommendation is inadequately strong due to the reasons explained in paragraph 40.

ANNEX C

Executive Summary of the Second Mutual Evaluation of the United Mexican States

Assessment of measures in place as of 12 September 2003

Introduction

54. This Report on the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism* (FATF 40+8 Recommendations) was prepared by representatives of member jurisdictions of the Financial Action Task Force (FATF) and members of the FATF Secretariat. The report provides a summary of the level of compliance with the FATF 40 Recommendations, as adopted in 1996, and the FATF 8 Special Recommendations on Terrorist Financing, adopted in 2001, and provides recommendations to strengthen Mexico's anti-money laundering and combating terrorist financing (AML/CFT) system. The views expressed in this report are those of the assessment team as adopted by the FATF.

Information and Methodology Used for the Evaluation

55. In preparing the mutual evaluation report, assessors reviewed relevant anti-money laundering and counter terrorist financing laws and regulations, supervisory and regulatory systems in place to deter money laundering (ML) and terrorist financing (FT), and criminal law enforcement systems. The evaluation team met with officials from relevant Mexican government agencies and the private sector in Mexico City from 8 to 12 September 2003. Meetings took place with representatives from the Secretariat of Finance and Public Credit (SHCP) and the following units which are a part of it: the Attached General Directorate for Transaction Investigations (DGAIO), the Federal Fiscal Attorney's Office (PFF), the General Customs Administration (Customs), and the Service for the Administration and Alienation of Assets (SAE). As well, meetings took place with the Secretariat of Foreign Affairs, the Attorney General's Office (PGR), and the Federal Investigations Agency (AFI). The evaluation team also met with representatives of the National Banking and Securities Commission (CNBV), the National Insurance and Bonding Commission (CNSF), the National Retirement Savings System Commission (CONSAR), and representatives from the commercial banking, insurance, securities, pensions, and retirement funds sectors. This assessment is based on the information available as of 12 September 2003.

Overview of the financial sector

56. Currently, there are 32 commercial banks with 7,765 branches and 80 Foreign Financial Representative Offices operating in Mexico, with 7,765 branches. Seven commercial banks represent eighty-eight percent of total assets in the banking sector. Commercial banks, foreign exchange companies and general commercial establishments are allowed to offer money exchange services. In 2002, total money remittances equalled 9,815 million dollars. As of June 2003, money remittances reached 9,134 million dollars. Mexico has 81 insurance companies, 1 mutual insurance company, 13 bonding institutions, 211 credit unions, 28 money exchange houses. Despite the size of Mexico's retirement pension fund sector, both bonding institutions and retirement pension funds seem to have a low risk of being involved in money laundering. While casinos are not permitted in Mexico, gambling is legally allowed through national lotteries, horse races and sport pools.

General Situation of Money Laundering and Financing of Terrorism

57. Mexico reports that the main source of illegal proceeds is drug trafficking. Mexico acts as the main bridge between the southern and northern countries of the American continent. Drug trafficking activity in Mexico is also linked to other serious offences, including organised crime, firearms

trafficking and money laundering. Mexico's ability to combat drug trafficking is impeded, in part, by official corruption and the significant resources and technology of drug trafficking organisations. Mexico also reports that in the last three years its efforts to combat corruption have resulted in more than 26,300 arrests of people (including more than 140 public officers) involved in the drug cartels at all levels.

Main Findings, Part 1: Summary of AML/CFT measures in place at the time of the on-site visit (8-12 September 2003)

58. Mexico has made progress since the first mutual evaluation. It has removed specific exemptions to customer identification obligations, implemented on-line reporting forms and a new automated transmission process for reporting transactions to the FIU, and slightly reduced the delay in reporting transactions overall. Financial institutions with a reporting obligation (reporting institutions) now require occasional customers performing transactions equivalent to or exceeding USD 3,000 in value to be identified so that the transactions can be aggregated daily. Transactions performed in monetary instruments exceeding a daily aggregate of USD 10,000 in value must be reported to the FIU. Regardless of their value, any transactions that are considered to be suspicious or unusual must also be reported. Financial institutions have also implemented programs for screening new employees and verifying the character and qualifications of their board members and high-ranking officers. International co-operation between FIUs at the operation level appears to be working satisfactorily. Additionally, the FIU now provides general statistical feedback to financial institutions concerning their compliance with the reporting obligation. Mexico has also developed an overall AML strategy and plan.

59. However, there are a number of deficiencies in the system. The most significant of these are as follows. First, Mexico does not have a separate offence of terrorist financing and the blocking of terrorist assets could be improved. Although Mexico submitted draft legislation to the Mexican Congress in September 2003 to criminalise terrorist financing, that legislation has not yet been passed. Mexico is strongly encouraged to pass that legislation as soon as possible. Second, the reporting system suffers from significant delays, most of which originate within the financial institutions themselves. Third, bank and trust secrecy continue to impede many aspects of Mexico's AML/CFT system, particularly for law enforcement, prosecutorial and judicial authorities during investigations and prosecutions. Among these impediments is the lack of clear procedures for allowing law enforcement, prosecutorial and judicial authorities direct access to financial information during the course of investigations and prosecutions. Fourth, the Supervisory Commissions must substantially improve their process of verifying the compliance of Reporting Institutions with AML measures because the current approach is resulting in uneven application of AML measures overall. Fifth, limited co-ordination among key government institutions and procedural barriers, such as the requirement of an SHCP complaint for the issuance of an indictment, impede effective money laundering prosecution. Sixth, an unnecessarily high burden of proof and the lack of value-based confiscation measures frustrate confiscation. Finally, the absence of legislation to establish procedures for international co-operation limits the effectiveness of co-operation in money laundering and confiscation proceedings.

A. Criminal Justice Measures and International Co-operation

(a) Criminalisation of money laundering and financing of terrorism

60. Money laundering (ML) has been a criminal offence in Mexico since 1990. The current offence - Article 400-Bis of the Federal Penal Code (FPC) – was introduced in 1996 and is an all-crimes money laundering offence that incorporates the essential elements required by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention Against Transnational Organised Crime (the Palermo Convention). Moreover, once the prosecution has demonstrated the indicia of criminality, the law requires states the burden of proof shifts to the defendant to establish the legitimate origin of the

property. However, prosecutors are still finding it difficult to prove the nexus between criminal proceeds and a particular crime, and to persuade judges to apply the burden-shifting provision.

61. Criminal liability does not extend to corporations or other legal persons. However, where necessary for public safety, a judge can order the suspension or dissolution of a legal entity if one of its members or representatives engages in criminal conduct in the name of, on behalf of, or for the benefit of the legal entity. As well, the legal entity can be ordered to pay fines as reparation for any damages caused by criminal offences committed by its directors or managers.

62. Money laundering is punishable by a term of imprisonment from five to fifteen years and a fine from 1,000 to 5,000 days of wages. If the offence is committed by a government official who is in charge of the prevention, investigation or prosecution of crime, the penalty is increased by fifty percent and the official is barred from holding employment in a public institution for a period equal to the length of the term of imprisonment imposed. Nevertheless, although Article 400-Bis is a comprehensive money laundering offence on paper, which has been in force for many years, the number of convictions for the offence remains quite low (only 56 convictions for money laundering during the period from 2000 to September 2003), and procedural obstacles, difficulties establishing the elements of the offence, stringent bank secrecy laws, and only limited favourable jurisprudence have all limited its ineffectiveness.

63. Nevertheless, although Article 400-Bis is a comprehensive money laundering offence on paper and has been in force for many years, the number of convictions for the offence remains quite low. Significant procedural obstacles (such as requiring the Ministry of Finance to file a complaint before the PGR can obtain an indictment), difficulties establishing the elements of the offence, stringent bank secrecy laws, and only limited favourable jurisprudence have all limited its effectiveness.

64. Mexico does not have a separate offence of terrorist financing. Terrorist financing is only punishable as an ancillary offence, in that it is a crime to intentionally provide support for the commission of a criminal offence or aid a criminal following the commission of a crime in fulfillment of a promise made before the offence was committed. This offence is punishable by a term of imprisonment from 18 months to 30 years. If the funds used to finance terrorism had an illicit origin, engaging in conduct set out in Article 400-Bis could also be a money laundering violation, but only in cases where a terrorist act was committed or attempted. Moreover, the offence may not apply to legally obtained funds transferred or collected with intent to finance terrorism abroad, unless that terrorism produces an effect in Mexico. This approach does not meet the essential elements required by the UN International Convention for the Suppression of the Financing of Terrorism (1999) (Terrorist Financing Convention), nor the Eight Special Recommendations.

(b) Confiscation of Proceeds of Crime or Property used to Finance Terrorism

65. The text of Mexican laws on forfeiture and abandonment incorporate many of the elements of a comprehensive confiscation system. The Federal Penal Code and Federal Penal Procedures Code provide a broad basis for confiscating the proceeds, instruments and objects of all intentional crimes. In addition, Articles 29 and 30 of the Federal Law Against Organised Crime (FLAOC) establish an ability to reverse the burden of proof in cases involving the assets of criminal organisations by authorising a prosecutor, with prior judicial approval, to seize all property of a presumed member of a criminal organisation or all property presumed linked to members of a criminal organisation, and by precluding the release of that property unless the claimant can establish its legitimate origin. Mexican law also includes express authority to confiscate property held by nominees. Restraint and forfeiture are not restricted by type of asset, although the procedures established provide for different methods for restraint and notification depending upon the type of asset. The law also sets out a default judgment procedure (abandonment) for truncating proceedings when no claimant appears, procedures for giving notice to third parties and protecting their rights, and procedures for the management and disposal of seized and confiscated assets. Mexican law also permits the sharing of forfeited assets or the proceeds of their sale with local or foreign authorities that assist in investigations leading to

forfeiture or abandonment, although to date Mexico has not yet shared such assets with a foreign government.

66. Nevertheless, significant legislative weaknesses remain and, as in the case of the money laundering offence, confiscation has been of only limited effectiveness in practice. Once deficiency is the lack of clarity on the level of proof required in confiscation proceedings, which has led to the application of a criminal standard of proof for establishing the relationship between the property and the offence. This is an unnecessarily elevated standard for confiscation once an individual's responsibility for a criminal offence is established through conviction on a criminal standard. In addition, because the forfeiture system is purely property-based, it is not possible to confiscate property based upon the value of the proceeds generated or the assets involved in the offence. This creates difficulties for the prosecutor who must establish a direct link between the offence, the offender and the property itself. Likewise, forfeiture of property in the hands of nominees is impeded by the requirement of establishing both the underlying offence and the nominee's intent to conceal the property, giving presumptive validity to the transfer of offence-related property when the person who conveyed title did not have valid title to the property in the first place.

67. Mexico's ability to trace, seize, freeze and confiscate offence-related property is also limited by the inability of law enforcement and prosecutorial authorities to directly access financial information in a timely way. The effectiveness of forfeiture proceedings is also limited by the length of criminal proceedings.

68. Mexican authorities have issued restraint orders in relation to the UN resolutions S/RES/1267(1999) and S/RES/1373(2001) concerning the freezing of terrorist assets, but it appears that compliance with these orders has been incomplete in that some financial institutions report having rejected transactions being attempted by designated persons rather than accepting the transactions and subsequently freezing the assets.

(c) The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority

69. Mexico's financial intelligence unit, the DGAIO, has been operational since 1997 and is a member of the EGMONT Group. DGAIO is a well-organised FIU that has succeeded in developing systems for receiving, storing and analysing the various types of reports that it receives. The DGAIO receives reports on three different types of transactions: *relevant transactions* which are large cash transactions over USD 10,000 in value, *suspicious transactions (STRs), and concerning transactions* which are suspicious transactions involving an employee of a financial institution. The DGAIO also receives customs declarations made by persons transporting currency or monetary instruments of a value exceeding USD 10,000. Currently, there is no legal requirement to report transactions suspected of being related to terrorist financing.

70. The DGAIO is empowered to co-operate with foreign competent authorities. Exchanges of financial information and intelligence occur pursuant to agreements or treaties executed with foreign countries, and are subject to international reciprocity principles. International co-operation at the operational level appears to be working satisfactorily, with the DGAIO exchanging information with the United States, and co-operating in joint investigations.

71. The number of cases that the DGAIO processes has been increasing annually; however, overall the results have been limited. DGAIO could benefit from direct access to collateral information such as criminal intelligence information, commercial databases, local land registries and immigration records. The staff of the DGAIO appear to be highly skilled and well-trained; however, they should also receive specific training on terrorist financing. DGAIO's analysis is extremely thorough; however, refocusing the scope of this analysis would be desirable in order to reduce the length of time it takes to pass the information on to the law enforcement and prosecutorial authorities.

(d) Law Enforcement and Prosecution Authorities, Powers and Duties

72. The investigation and prosecution of all federal offences, including money laundering, is responsibility of the PGR. The PGR has a police force (the AFI) which is under the immediate command of the Public Prosecutor. Since July 17, 2000, the PGR has had a dedicated national anti-money laundering unit responsible for prosecuting money laundering offences—the Special AML Unit. The PGR has recently been reorganised to place the Special AML Unit within the Office of the Deputy Attorney General for Investigations Specialised in Organised Crime (SIEDO), a move that should provide it with expanded powers of investigation. Although terrorism is investigated through the PGR's Special Anti-Terrorism Unit, terrorist financing itself is not investigated as an offence, except in the context of persons who aid or assist in the commission of a terrorist offence.

73. The PGR has broad powers of investigation at its disposal and can use any investigative methods it considers appropriate (even one not specifically provided for in law), provided that the method does not violate the law. The PGR requests warrants of arrest, searches for and submits evidence, verifies that judgments are legally developed, and requests the application of penalties.

74. Law enforcement agencies have a wider range of investigative techniques available in investigations involving organised crime, including the use of infiltration agents, wiretapping private communications, offering rewards, providing for the protection of persons, reducing sanctions to secure effective co-operation of persons involved in the criminal activity, and broader authority to seize assets. However, legislative authority for the use of such techniques could be strengthened, particularly with regard to the use of infiltration agents, which is a technique restricted to intelligence gathering and subject to practical impediments for agents acting in an undercover capacity. As well, there is no framework in which the supervisory commissions can co-operate spontaneously with the PGR or the judicial authorities. They can only do so once a formal request for co-operation has been made.

75. In money laundering cases involving a financial institution that is part of the formal financial sector, a formal complaint must be first filed by the PFF before money laundering charges can be laid. This procedural requirement creates duplication since both the PGR and the PFF conduct their own independent analysis of the case. Consequently, the requirement that the PFF issue a formal complaint in such cases should be removed.

76. Mexican law does not set out clear procedures through which law enforcement, prosecutorial and judicial authorities can obtain financial and trust information directly from financial institutions. Consequently, bank and trust secrecy laws impede the access of these authorities to financial information during the investigations and prosecutions. To comply with bank and trust secrecy laws, prosecutorial/law enforcement authorities and the DGAIO must obtain the required information (even basic information such as an account statement) by making a request to the relevant supervisory commission. Even though judicial authorities could obtain financial information directly from the financial institution in principle, there are no clear procedures in law for doing so. Consequently, in practice, judicial authorities also obtain financial information through the relevant supervisory commission. However, unlike suspicious and large cash transaction reports which pass through the supervisory commissions in an encrypted format, requests for information are unencrypted. Moreover, the supervisory commission reviews each request to ensure that it is founded and motivated properly. The corresponding response from the financial institution is also processed through the supervisory commission. Giving the supervisory commissions access to such information risks compromising the investigation itself. These weaknesses need to be addressed. Legislation must be passed to allow appropriate gateways through bank and trust secrecy during the investigation and prosecution of cases involving ML, FT or other serious offences.

(e) International Co-operation

77. Although Mexico has no specific statute governing the provision of mutual legal assistance in criminal matters, it can provide mutual legal assistance pursuant to international treaties and conventions to which it is a party. Mexico has ratified 17 bilateral treaties, and a number of international conventions (including the Vienna and Palermo Conventions) which urge international co-operation. Where no treaty exists, Mexican courts can still provide mutual legal assistance in response to a letter rogatory request from a foreign court. However, as described below, the lack of specific mutual legal assistance legislation inhibits Mexico's ability to provide timely and effective formal mutual legal assistance in money laundering and terrorist financing cases.

78. The scope of available mutual legal assistance includes seizure of evidence, searches, the taking of witness statements, identification of assets, and other measures not prohibited by law. Assistance can be provided in investigations involving either the predicate offence or the money laundering offence. In investigations involving organised crime, the more intrusive investigatory powers of the FLAOC can be invoked in response to a mutual legal assistance request. However, because Mexico's mutual legal assistance obligations are performed on the basis of the same provisions applicable to domestic investigations and prosecutions, bank and trust secrecy inhibit international co-operation in the same way that they inhibit domestic investigations and prosecutions. Mexico has provided information and spontaneous assistance in a small number of FT cases, but remains restricted in providing formal mutual legal assistance.

79. Mexico does not have specific legislation authorising the enforcement of foreign confiscation orders, and confiscation may be limited to domestic proceedings in which a conviction and confiscation order is issued in Mexico. In addition, the inability of courts to issue value-based confiscation orders impedes the execution of foreign confiscation orders in the same way as it impedes domestic confiscation proceedings.

80. The International Extradition Act (IEA) is a reasonably comprehensive piece of legislation that establishes the procedures for authorising extradition pursuant to a treaty or when no bilateral extradition treaty applies. Extradition is possible for both intentional offences and serious offences of criminal negligence. Mexican nationals can be extradited, but only in "exceptional cases". The requirement under Article 7 of the IEA that a formal complaint be issued in the requesting country if such a complaint would be required to prosecute similar conduct in Mexico, may inhibit extradition in ML cases because of the requirement of an SHCP complaint under Article 400-Bis. Moreover, because terrorist financing has not yet been criminalised, it is unclear whether there is a sufficient basis for extradition in terrorist financing cases.

B. Preventive Measures for Financial Institutions

(a) Financial Institutions

81. The following regulated financial institutions are subject to AML measures: credit institutions (both commercial and development banks and limited scope financial institutions (i.e. non-bank banks)), securities firms, investment companies, licensed foreign exchange companies (*casas de cambio*) and savings and loan companies (which are supervised by the CNBV); insurance companies, other insurance intermediaries, and bond companies (which are supervised by the CNSF), and retirement funds (which are supervised by CONSAR).

82. The general AML measures are scattered throughout various laws and regulations issued by the SHCP. More specific details of AML procedures are set out in the operation manuals of the financial institutions themselves. The law obligates financial institutions to develop operation manuals and submit them for approval by the SHCP. However, overall, implementation of AML measures is inconsistent between different types of financial institutions and amongst financial institutions of the same type.

83. Financial institutions are required to identify customers (both natural and legal persons) at the time a business relationship is established (i.e. an account is opened) and prior to any transaction being conducted. Customers performing large transactions (exceeding USD 10,000) with specified monetary instruments must be identified at the time the transaction is being performed. Foreign natural and legal persons are identified according to procedures as rigorous as those which apply to Mexican nationals. Financial institutions are not allowed to hold anonymous or numbered accounts. Failure to comply with these customer identification requirements can be sanctioned with a fine. However, because financial institutions are not required to regularly update their customers' files, customer identification information held on file may be outdated.

84. Exclusively non-face-to-face accounts are not held at Mexican banking institutions. Customers opening any type of account must undergo the full identification procedure described above, even if the account is ultimately going to be operated through the internet (in which case, the customer must also obtain the bank's specific authorisation).

85. Financial institutions are legally obligated to take *"reasonable measures"* to identify the person(s) under whose name an account is being opened or a transaction is being carried out. However, this obligation only applies if there are doubts as to whether the customer is acting on behalf of another person. Consequently, financial institutions are not obligated to identify the beneficial owner of a legal person. The trustees, settlors and beneficiaries of a trust must be identified.

86. Simplified customer identification procedures may be performed if an account is being established for payroll deposits or a business relationship that, due to its characteristics, is meant for low-income customers. However, the type of transactions performed and the profile of the customers involved evidently features a low risk of money laundering.

87. Customers that are also *"entities that integrate the Financial System"* (as set out in paragraph 28) are exempt from customer identification and verification procedures. However, this exception does not apply to money remitters, unlicensed foreign exchange offices (*centros cambiarios*) *or* foreign financial institutions or government agencies based in countries and territories which have been identified by the SHCP as being high risk or having favourable tax systems.

88. Although the CNBV's inspections have detected breaches relating to the customer identification requirements, the number of such infringements is much less than those relating to other types of breaches. The CNBV has required non-compliant financial institutions to make appropriate adjustments to their procedures, to gather the information necessary to properly integrate the customer identification files, and where appropriate has applied sanctions.

89. There is no legal obligation to include the originator information (name, account number and address) and any attached messages with a wire transfer. Nevertheless, the MBA requires all international credit institutions to attach complete originator information to all wire transfers directed to Mexican banks and, since July 2003, has required Mexican banks to reject international transfers that do not include at least the name of the sender.

90. Financial institutions are required to collect and maintain records of customer identification information, all customer transactions, and customer contracts. However, record keeping obligations would benefit from being more clearly defined. Moreover, a significant proportion of financial intermediaries (mainly banks) do not manage their customers' business relations on a consolidated basis. Failure to comply with recording requirements is punishable by two to ten years imprisonment and a pecuniary punishment. The law gives supervisory commission inspectors sufficient access to the records of the financial institutions being inspected, enabling them to perform their tasks appropriately.

91. Financial institutions are obligated to report large cash transactions and suspicious transactions to the DGAIO in a timely manner. Attempted transactions must also be reported. There is no express obligation to identify or report transactions suspected of being related to terrorist financing; however, the supervisory commissions have requested financial institutions to include the suspicion of being connected with FT as one of the criteria for considering a transaction to be unusual. As well, the United Nations and OFAC lists of potential terrorists and terrorist organisations have been disseminated to all financial institutions so that reports can be made concerning any natural or legal persons included on those lists. Financial institutions should be required to develop and apply specific criteria for identifying transactions suspected of being related to terrorist financing. Such transactions should be reported to the DGAIO.

92. Although some financial institutions have computer-based procedures for detecting suspicious transactions, some still employ manual processes. Once a suspicious transaction is detected by front-line staff, it is reported to a special committee (the Control Committee) of the financial institution. The Control Committee reviews the transaction and, if it considers the transaction suspicious, reports it to the DGAIO. The law prohibits the employees, officers, external auditors, managers or board members of a financial institution from informing anyone (other than the competent authorities) that a report has been made to the DGAIO. A similar prohibition applies to the officers of the supervisory commissions and the SHCP.

93. The law requires a suspicious transaction to be reported within three working days of the financial institution becoming aware of it. However, the financial institutions have interpreted this to mean within three working days of the Control Committee's decision on whether or not the transaction is suspicious. Because the Control Committees do not meet on a regular basis, this can result in a considerable delay between the time the transaction occurs and the time it is transmitted to the DGAIO.

94. To comply with bank secrecy laws, financial institutions cannot report directly to the DGAIO, but must do so through their supervisory commission. To facilitate that process, a completely integrated system was introduced in mid-2002 to allow reporting forms to be compiled on-line and sent electronically in an encrypted format to the DGAIO. This process is almost instantaneous.

95. Overall, the quality of reports is quite low; about 70% do not contain all the information required by the electronic form, and need to be returned. Additionally, a large number of suspicious transaction reports do not contain sufficient information to explain why the transaction was considered to be suspicious. In those cases, the DGAIO makes a request to the supervisory commission for additional information from the respective financial institution. Both the DGAIO and the supervisory commissions should provide regular specific feedback to financial institutions, with a view to improving the quality of reports.

96. Financial institutions are required to implement internal AML programs, training, and stringent employee screening procedures (especially for higher-level employees). Persons who have been indicted for a crime punishable by more than one year in prison are prohibited from being board members, external auditors, officers, director generals, or compliance officers. Restrictions also apply to persons who have been previously banned from practicing commercial activities or holding positions in the public sector or financial system. On-site inspections have confirmed that banks and securities firms comply with these requirements. Strict shareholder acquisition and control rules also apply to banks, securities firms, insurance companies, and *casas de cambio*.

97. The supervisory commissions conduct on-site inspections. Foreign subsidiaries of banking entities authorised to operate in Mexico can also be subject to on-site inspections by their home supervisory authority. Particular attention is given to the monitoring systems for accounts and transactions, especially the criteria embedded in the systems to detect suspicious transactions, the information flow, and the actual functioning of the system. The inspectors also test the AML knowledge of personnel. However, six years after the adoption of unusual transaction reporting

requirements, the CNBV still is not conducting meaningful evaluations of whether Reporting Institutions are reporting as they should. Inspections by the supervisory authorities do not assess the syllabus of training programs. In these respects the inspection process takes a rather formalistic approach focused on confirming the existence of measures without fully assessing their quality. At the time of the on-site visit in 2003, neither money remitters nor unlicensed foreign exchange offices (*centros cambiarios*) were legally obligated to implement internal AML policies, procedures, controls, or employee training, information dissemination or screening procedures. As well, supervision of branches/subsidiaries of Mexican financial institutions located abroad is very passive and inadequate to effectively assess compliance with AML measures.

98. When weaknesses are detected during the inspection process, the CNBV is empowered to implement corrective actions. For instance, the CNBV can temporarily suspend some or all operations of a non-compliant financial institution when serious and frequent violations occur, and can advise the SHCP to revoke its licence. The supervisory commissions can also admonish, suspend or veto any board member or senior officer who commits a felony or does not comply with the AML laws. However, the sanctioning process is flawed because the ability of the supervisory commissions to impose sanctions (other than fines) is quite limited.

99. Although the CNBV reports commencing seventy-nine administrative sanctions proceedings against various financial institutions between 2001 to 2003, to date, very few fines have been imposed, and there are no cases of senior officers being suspended or the authorisation/licence of a financial institution being suspended or revoked for violations of AML provisions. The Mexican authorities should ensure that infringements of AML provisions directly activate an effective sanctioning process. Recently passed legislation may address this issue; however, it is too soon to assess its effectiveness.

(b) Controls and monitoring of cash and cross border transactions

100. Article 9 of the Customs Law requires that all cross-border transactions worth USD 10,000 or more must be declared to the customs authority. Failure to do so is an administrative offence. Failure to declare currency in excess of USD 30,000 upon entering or leaving Mexico is a criminal offence, and is punishable by three months to six years imprisonment. If convicted, the amount exceeding USD 30,000 becomes the property of the Federal Fiscal Authority, unless the defendant can establish its legal origin.

Table 1. Recommended Action Plan to Improve Compliance with the FATF Recommendations

Criminal Justice Measures and International Co-operation (including sector specific issues)	
Criminalisation of ML and FT	1. Create appropriate gateways and clear procedures through bank and trust secrecy during the investigation and prosecution of cases involving ML, FT or other serious offences. Such procedures should allow judicial authorities to obtain financial information directly from financial institutions, and should allow law enforcement and prosecutorial authorities to do the same on the basis of a court order. 2. Eliminate the requirement that the SHCP be involved in investigations or prosecutions (through filing a formal complaint) in cases involving the financial institutions which compose the financial sector. 3. Establish criminal liability for legal persons involved in ML and enact a ML conspiracy provision that extends full penalties to all those involved in a ML conspiracy. 4. Enact domestic legislation as soon as possible to effectively implement all of the provisions of the Terrorist Financing Convention and to criminalise terrorist financing.
II—Confiscation of proceeds of crime or property used to finance terrorism	1. Create appropriate gateways and clear procedures through bank and trust secrecy to improve the ability of law enforcement agencies and prosecutors to identify, trace and seize assets. 2. Allow restraining/seizure orders to be issued directly to financial institutions. 3. Consult with financial institutions to determine the cause of failures to comply with terrorist-related freezing orders, and then take the necessary steps to prevent future failures. 4. Prohibit financial institutions from rejecting transactions being performed by designated persons and require the blocking of funds involved in such transactions. Obligate the supervisory commissions to monitor and sanction breaches of this obligation. 5. Apply a lower standard of proof in forfeiture proceedings. 6. Establish a presumption upon conviction that, where a defendant does not have sufficient legitimate income, assets acquired at or shortly following the commission of the offence are presumed to be offence-related property unless the defendant can prove otherwise. 7. Allow courts to issue value-based confiscation orders for the full value earned from or involved in the criminal conduct, and allow such judgments to be satisfied against any property of the convicted offender (whether traceable to the offence or not). Alternatively, create a provision permitting the forfeiture of property of an equivalent value when offence-related property cannot be found or forfeited. 8. Make transfers of offence-related property to third parties presumptively invalid, unless the third party in possession of the assets can establish that he was a bona fide purchaser for value and took all reasonable steps to ensure that the property was not involved in an offence before he acquired it. 9. Authorise abandonment of seized property when claims have been rejected for failure to establish its legitimacy. 10. Pursue the liquidation of seized property more aggressively and prohibit the provisional use of seized property. 11. Conduct a comprehensive study of the adequacy of existing confiscation proceedings; the sufficiency of training for judges, prosecutors, and agents; and whether to establish a

	specialised unit or designated prosecutors for confiscation and abandonment matters.
III—The FIU and processes for receiving, analysing, and disseminating financial information and other intelligence at the domestic and international levels	1. Create clear procedures which allow the DGAIO to communicate directly with the financial institutions. 2. Give the DGAIO on-line access to other relevant on-line information such as commercial databases, registers of land ownership and transactions, and the registration and other details of legal entities. 3. Refocus DGAIO's analysis of transactions, to ensure that the analysis is passed on more quickly to the PGR. 4. Enact a specific law setting out the DGAIO's mandate and powers. Provide training which focuses on identifying FT to the staff of the DGAIO. 5. Obligate the DGAIO and the supervisory commissions to provide considerably more general and specific guidance and feedback to financial Institutions, with a view to improving the quality of reports and avoiding over-reporting.
IV—Law enforcement and prosecution authorities, powers and duties	1. Create clear procedures through bank and trust secrecy laws to allow law enforcement, prosecutors and judicial authorities direct access to financial information. 2. Criminalise FT in accordance with the Terrorist Financing Convention. 3. Clearly authorise modern investigatory techniques, including the use of infiltration agents to gather evidence, with appropriate safeguards. 4. Allow the supervisory commissions to spontaneously co-operate with the PGR or judicial authorities. 5. Eliminate the requirement that the SHCP issue a formal complaint in ML cases. 6. Provide training to all law enforcement and prosecutorial authorities concerning FT. 7. Keep statistics concerning FT in the same manner that they are currently kept for ML.
V—International cooperation	1. Adopt comprehensive legislation which authorises the execution of mutual legal assistance requests; allows assistance to be provided without the necessity of opening a criminal investigation in Mexico; and permits the effective enforcement of foreign confiscation judgments (including value-based judgments) without requiring the offence to have affected Mexico or resulted in a conviction in Mexico. Create clear and appropriate procedures for allowing judicial, prosecutorial and law enforcement authorities direct access to financial information, without having to make such access through the Supervisory Commissions. 2. Eliminate the requirement under Article 7 of the International Extradition Act that a formal complaint be issued in the state requesting extradition if a complaint would be required in Mexican proceedings. 3. Adopt an independent FT offence to establish an unequivocal basis for extradition in FT cases. 4. Continue signing new Memoranda of Understanding (MOUs) to provide for information exchange and technical assistance with other foreign supervisory authorities.
Legal and Institutional Framework for Financial Institutions	
I—General framework	1. Enact legislation to create appropriate gateways and procedures through bank and trust secrecy to allow law enforcement agencies, prosecutors and judicial authorities direct access to financial information (i.e. without having to make such access through the Supervisory Commissions) in the context of investigations and prosecutions.

	2. Extend AML measures to money remitters and unlicensed foreign exchange offices, and improve overall consistency of the regulatory framework.
II—Customer identification	1. Extend the customer identification obligation to money remitters and unlicensed foreign exchange offices. 2. Amend the legislation to require the identification of beneficial owners of legal entities and trusts in all cases. 3. Introduce specific customer identification obligations for retirement funds, and to prevent the unlawful use of shell corporations and charitable or non-profit organisations.
III—Ongoing monitoring of accounts and transactions	1. Obligate money remitters and unlicensed foreign exchange office to implement monitoring of their accounts and transactions. 2. Develop specific criteria for identifying transactions suspected of being related to FT, and require that such transactions be reported to the DGAIO. 3. Require all financial institutions to implement consolidated computer-based monitoring systems, in particular in the banking sector. 4. Amend the current list of high-risk jurisdictions issued by the SHCP, so as to not alert financial institutions to counterparts based in jurisdictions that do not present significant ML risks.
IV—Record keeping	1. Extend record keeping obligations to money remitters and unlicensed foreign exchange offices. 2. Clearly define the timeframe within which records must be maintained and the objectives of the record keeping obligations.
V—Suspicious transactions reporting	1. Extend the reporting obligation to all money remitters, unlicensed foreign exchange offices and retirement funds. 2. Require all financial institutions to report transactions suspected of being related to FT. 3. Take steps to reduce the delay between the time a transaction occurs and the time it is reported to the DGAIO. 4. Amend the financial secrecy laws to permit Reporting Institutions to report directly to the DGAIO.
VI—Internal controls, compliance and audit	1. Legally obligate money remitters and unlicensed foreign exchange offices to implement internal AML policies, procedures, controls, ongoing employee AML training and dissemination of current AML policies, and employee screening procedures. 2. Obligate financial institutions to designate a compliance officer responsible for monitoring and enforcing AML measures. 3. Ensure that inspections by supervisory authorities assess the syllabus of training programs to ensure that they adequately keep employees informed of new developments in AML and CFT. 4. Conduct active supervision of foreign branches and subsidiaries of Mexican financial institutions. 5. Increase the internal controls applicable to limited scope financial institutions.

VII—Integrity standards	1. Enact legislation imposing employee screening rules and integrity standards on money remitters and unlicensed foreign exchange offices.
VIII—Enforcement powers and sanctions	1. Enact legislative authority and designate a supervisory authority to supervise, regulate and, if appropriate, sanction money remitters and unlicensed foreign exchange offices. 2. Improve supervision and regulation of financial institutions to improve the quality of reports and ensure that reporting is more consistent amongst the various types of financial institutions. 3. Amend the sanctions process to improve its effectiveness. 4. Ensure that the Supervisory Commissions aggressively impose sanctions for misconduct and violations of AML requirements. 5. Ensure that on-site inspections assess the quality and sufficiency of all aspects of each Reporting Institution's AML measures and focus on the performance of all employees, not just top executives.
IX—Co-operation between supervisors and other competent authorities	1. Designate a supervisory authority responsible for supervising money remitters and unlicensed foreign exchange offices, and empower it to co-operate with other competent authorities. Continue signing new MOUs with foreign supervisory authorities.

Assessment of measures in place as of 15 May 2004

Introduction

1. This half of the Report summarises the AML/CFT measures implemented by Mexico between 13 September 2003 and 15 May 2004. Where appropriate, it reassesses the level of compliance with the FATF 40 Recommendations, as adopted in 1996, and the FATF 8 Special Recommendations on Terrorist Financing, adopted in 2001. It also provides additional recommendations to strengthen Mexico's AML/CFT system. Unless stated otherwise, the situation described above remains the same.

Information and Methodology Used for the Evaluation

2. In preparing this half of the Report, the assessors reviewed relevant anti-money laundering and counter terrorist financing laws and regulations, and supervisory and regulatory systems implemented between 13 September 2003 and 15 May 2004. This assessment is based on the information available as of 15 May 2004.

Main Findings, Part 2: Summary of AML/CFT measures implemented between 13 September 2003 and 15 May 2004

3. Mexico has made progress since the on-site visit of its second mutual evaluation. In particular, Mexico has extended AML/CFT obligations to money remitters and unlicensed foreign exchange offices (*centros cambiarios*). The Tributary Administration Service (SAT) is the competent authority for supervising, overseeing, inspecting and, where appropriate, issuing sanctions against both sectors. Customer identification and record keeping requirements have been strengthened. Additionally, Mexico has amended the law to more clearly define the powers and obligations of the financial intelligence unit (FIU) and to restructure its operations. As well, financial institutions are now obligated to report transactions suspected of being related to domestic terrorism. However, there is still no legal obligation to report any transaction suspected of relating to terrorist financing, regardless of whether the terrorism is somehow connected to Mexico.

A. Criminal Justice Measures and International Co-operation

(a) Criminalisation of money laundering and financing of terrorism

4. In the seven-month period between September 2003 and March 2004, the PGR started 25% more money laundering investigations than it did during the previous eight-month period. During the same period, the SHCP issued more than twice as many formal complaints for money laundering as were issued during the previous year. However, although the system continues to achieve some results, the number of convictions for money laundering offences remains relatively low. Consequently, overall, the offence remains ineffective.

(b) Confiscation of Proceeds of Crime or Property

5. Mexico's freezing and confiscation system continued to achieve some limited results between September 2003 and March 2004. In particular, Mexico continues to have difficulty confiscating assets. No steps were taken to improve the system as recommended by the FATF.

(c) The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority

6. Mexico's financial intelligence unit, which is now called the Financial Intelligence Unit of the Ministry of Finance and Public Credit (FIU), has also undergone a restructuring. However, it is still too early to fully assess the overall effect that this restructuring will have on the FIU's performance in the long term.

7. In May 2004, Mexico adopted secondary laws legislation which more clearly elaborate the powers of the FIU and assign it additional responsibilities. For instance, the FIU is now responsible for: providing direct input concerning legislative amendments; interpreting AML/CFT legislation; designing reporting forms; co-operating directly with authorities in the course of a criminal proceeding; liaising with regulatory authorities on issues of AML/CFT compliance; liaising with foreign countries and intergovernmental organisations; and participating in national and international AML/CFT fora and events. Some of these functions that are now enumerated responsibilities of the FIU were previously performed by other authorities within the SHCP or were carried out without a specific designation of responsibility. As well, the FIU's obligation to receive, compile and analyse transactions and other information has been expanded from money laundering transactions to include transactions that may be related to terrorism. The FIU is also now legally obligated to issue typologies and guidelines on probable cases within the scope of its authority. Additionally, the FIU must report to the regulatory commissions—including the SAT (which is now responsible for supervising money remitters and unlicensed foreign exchange offices) concerning financial institutions that fail to comply or comply in an untimely manner with their reporting obligations.

8. Although the FIU still obtains financial information (such as account statements) from financial institution through the Supervisory Commissions, the FIU is now empowered to request information directly from other individuals or sources as needed. These provisions should improve the FIU's access to information with the SHCP and clarify it's authority for requesting information from other sources. As such, these provisions may improve its ability to conduct a timely analysis; however, it is still too early to assess how effective these new measures will ultimately be.

(d) Law Enforcement and Prosecution Authorities, Powers and Duties

9. In May 2004, Mexico reassigned some procedural responsibilities to the FIU in money laundering cases involving the Mexican financial system. The FIU is now legally obligated to co-operate with the authorities concerning criminal procedures in ML/FT cases. Additionally it will perform follow-up and control proceedings in cases originating from an SHCP complaint and will provide assistance to the PGR as needed. How these liaison relationships function in practice may be

of particular importance to more effective AML/CFT enforcement. Moreover, improving the communication, co-operation and co-ordination between the SHCP and the PGR should be made a priority in Mexico's implementation of AML/CFT measures.

(e) International Co-operation

10. Between 13 September 2003 and 15 May 2004, Mexico did not take any of the action recommended by the FATF or implement any new measures in this area.

B. Preventive Measures for Financial Institutions
(Measures implemented between 13 September 2003 and 15 May 2004)

11. Mexico extended AML/CFT obligations (including those relating to customer identification, record keeping and reporting) to money remitters and unlicensed foreign exchange offices (*centros cambiarios*). Mexico also designated the Tributary Administration Service (SAT) as the authority responsible for supervising and, where appropriate, imposing sanctions on money remitters and unlicensed foreign exchange offices who do not comply with their AML obligations. The SAT is authorised to require sector participants to modify their client identification, due diligence policies and AML/CFT measures when it is considered necessary for their correct implementation. Although the SAT has been designated to supervise and impose sanctions on money remitters and unlicensed foreign exchange offices, it is too soon to adequately assess the SAT's authority and ability to co-operate with other regulatory supervisors and competent authorities.

12. All financial institutions (including money remitters, unlicensed foreign exchange offices and retirement funds) are now obligated to collect additional information in the course of identifying customers, including information establishing the customer's domicile or residency status and identifying legal representatives and beneficiaries. These additional identification obligations exist regardless of whether the customer is a natural or legal person. Prior to establishing a commercial relationship, the financial institution must also conduct a personal interview with the customer or legal representative. Financial institutions are prohibited from opening accounts or executing any type of contracts unless the customer has satisfactorily complied with the identification procedures.

13. Financial institutions are also obligated to strictly implement their customer identification policies in cases of correspondent accounts opened by financial institutions domiciled abroad and incorporated in jurisdictions which insufficiently apply AML/CFT measures. As well, financial institutions are prohibited from carrying out correspondent transactions with financial institutions or intermediaries that do not have a physical presence in any jurisdiction.

14. Mexico has better defined the obligation of financial institutions to take reasonable measures to identify beneficial owners. Financial institutions must know the corporate structure and controlling interests of legal persons; identify the partners, associates (or the equivalent of associates) of companies or civil associations; and identify the trustees, mandators, commission agents, shareholders or participants of trusts, mandates, commissions or organisations. Financial institutions must also take reasonable measures and establish procedures to identify beneficial owners. The term *beneficial owner* is defined as the natural person who ultimately owns or controls a customer, exercises ultimate control over a legal person or contract and/or the person on whose behalf a transaction is being conducted.

15. All financial institutions are also now obligated to perform the client identification procedures described above on anyone performing a wire transfer. The customer identification process must include a personal interview with the customer. Regardless of whether the wire transfer is domestic or cross-border, the sending financial institution must gather, keep and transmit with the wire transfer at least the name, address and, when applicable, the account number of the sender.

16. Customer identification information must be kept current. Financial institutions must randomly solicit client identification and domicile information to verify that it matches with the customer identification file. If it does not, the file must be updated. Records of transactions and transaction reports must be kept for at least ten years. Client identification files must be kept for the duration of the account or contract and afterwards for a period of not less than ten years.

17. Financial institutions are also now obligated to classify their clients according to their level of risk. In making this classification, the financial institution must consider the client's background, profession, activity or business purpose, origin of funds involved, and other circumstances such as whether the client is a politically exposed person. Transactions by high-risk clients must be given particular attention.

18. Financial institutions are now obligated to report transactions which are suspected of being related to domestic terrorism (in addition to those suspected of being related to money laundering). The legislation also provides more specific guidance as to what types of transactions are unusual. As well, financial institutions must follow specified internal procedures which may shorten the length of time that it takes for suspicious and unusual transactions to be reported to the FIU from the time that they are performed by the financial institution.

19. As is the case with other types of financial institutions, money remitters and unlicensed foreign exchange offices (*centros cambiarios*) that report transactions to the FIU are protected from liability if those reports are made in good faith. As well, persons are prohibited from informing any unauthorised persons that such a report has been made.

20. Credit institutions are now obligated to have computer-based procedures which allow them to detect unusual/suspicious transactions; manage customer accounts on a consolidated basis; send transaction reports to the FIU electronically in encrypted format; classify and detect possible unusual transactions; analyse historical patterns of activity on individual accounts; and retain historical records of possible unusual and concerning transactions.

21. All financial institutions are obligated to establish either a committee or a compliance officer (depending on the size of the financial institution) which is responsible for overseeing the financial institution's implementation of AML/CFT measures including: submitting client identification and due diligence policies to the financial institution's Audit Committee for approval; being informed of operations with high risk clients and making recommendations as appropriate; establishing and disseminating the criteria for classifying the risk level of clients; disseminating the officially recognised lists of people linked to terrorism or other illegal activities; determining whether unusual or concerning transactions should be reported to the FIU; approving AML/CFT training programs; and informing the financial institution's competent area of behaviour being performed by its directors, officials, employees or legal representatives which may result in a breach of the New General Provisions. Financial institutions are also required to hold annual AML/CFT training programs. Money remitters and unlicensed foreign exchange (*centros cambiarios*) offices must also adopt employee screening measures.

22. Foreign branches and subsidiaries of Mexican financial institutions which are located in jurisdictions which apply AML/CFT measures more rigorously than Mexico are obligated to comply with the more rigorous measures and inform the Mexican home financial institution of such instances.

23. All of the regulatory authorities (including the SAT) can now penalise financial institutions with fines up to 100,000 days of the minimum general daily salary set out in the Official Gazette. Fines can be imposed on both the financial institutions themselves and their employees.

Table 2. Outstanding/Further Recommended Action Plan to Improve Compliance with the FATF Recommendations

Criminal Justice Measures and International Co-operation (including sector specific issues)	
Criminalisation of ML and FT	**Outstanding Recommended Action:** 1. Create appropriate gateways and clear procedures through bank and trust secrecy during the investigation and prosecution of cases involving ML, FT or other serious offences. Such procedures should allow judicial authorities to obtain financial information directly from financial institutions, and should allow law enforcement and prosecutorial authorities to do the same on the basis of a court order. 2. Eliminate the requirement that the SHCP be involved in investigations or prosecutions (through filing a formal complaint) in cases involving the financial institutions which compose the financial sector. 3. Establish criminal liability for legal persons involved in ML and enact a ML conspiracy provision that extends full penalties to all those involved in a ML conspiracy. 4. Enact domestic legislation as soon as possible to effectively implement all of the provisions of the Terrorist Financing Convention and to criminalise terrorist financing.
II—Confiscation of proceeds of crime or property used to finance terrorism	**Outstanding Recommended Action:** 1. Create appropriate gateways and clear procedures through bank and trust secrecy to improve the ability of law enforcement agencies and prosecutors to identify, trace and seize assets. 2. Allow restraining/seizure orders to be issued directly to financial institutions. 3. Consult with financial institutions to determine the cause of failures to comply with terrorist-related freezing orders, and then take the necessary steps to prevent future failures. 4. Prohibit financial institutions from rejecting transactions being performed by designated persons and require the blocking of funds involved in such transactions. Obligate the supervisory commissions to monitor and penalise breaches of this obligation. 5. Apply a lower standard of proof in forfeiture proceedings. 6. Establish a presumption upon conviction that, where a defendant does not have sufficient legitimate income, assets acquired at or shortly following the commission of the offence are presumed to be offence-related property unless the defendant can prove otherwise. 7. Allow courts to issue value-based confiscation orders for the full value earned from or involved in the criminal conduct, and allow such judgments to be satisfied against any property of the convicted offender (whether traceable to the offence or not). Alternatively, create a provision permitting the forfeiture of property of an equivalent value when offence-related property cannot be found or forfeited. 8. Make transfers of offence-related property to third parties presumptively invalid, unless the third party in possession of the assets can establish that he was a bona fide purchaser for value and took all reasonable steps to ensure that the property was not involved in an offence before he acquired it. 9. Authorise abandonment of seized property when claims have been rejected for failure to establish its legitimacy. 10. Pursue the liquidation of seized property more aggressively and prohibit the provisional use of seized property. 11. Conduct a comprehensive study of the adequacy of existing confiscation proceedings; the sufficiency of training for judges, prosecutors, and agents; and whether to establish a specialised unit or designated prosecutors for confiscation and abandonment matters.

III—The FIU and processes for receiving, analysing, and disseminating financial information and other intelligence at the domestic and international levels	**Outstanding Recommended Action:** 1. Create clear procedures which allow the FIU to communicate directly with the financial institutions. 2. Provide training which focuses on identify FT to the staff of the FIU. 3. Obligate the Supervisory Commissions to provide considerably more general and specific guidance and feedback to financial institutions in the long term, with a view to improving the quality of reports and avoiding over-reporting. **Further Recommended Action:** 1. Ensure that the newly enacted provisions allowing the FIU to request information directly from other individuals and sources results in the FIU having on-line access to relevant on-line information such as commercial databases, registers of land ownership and transactions, and the registration and other details of legal entities. 2. Ensure that the newly restructured FIU refocuses its analysis of transactions in the long term, to ensure that the analysis is passed on more quickly to the PGR. 3. Ensure that the newly enacted provisions obligating the FIU to issue typologies and guidelines results in considerably more general and specific guidance and feedback to financial institutions in the long term, with a view to improving the quality of reports and avoiding over-reporting.
IV—Law enforcement and prosecution authorities, powers and duties	**Outstanding Recommended Action:** 1. Create clear procedures through bank and trust secrecy laws to allow law enforcement, prosecutors and judicial authorities direct access to financial information. 2. Criminalise FT in accordance with the Terrorist Financing Convention. 3. Clearly authorise modern investigatory techniques, including the use of infiltration agents to gather evidence, with appropriate safeguards. 4. Allow the supervisory commissions to spontaneously co-operate with the PGR or judicial authorities. 5. Eliminate the requirement that the SHCP issue a formal complaint in ML cases. 6. Provide training to all law enforcement and prosecutorial authorities concerning FT. 7. Keep statistics concerning FT in the same manner that they are currently kept for ML. **Outstanding Recommended Action:** 1. Improving the communication, co-operation and co-ordination between the SHCP and the PGR should be made a priority in Mexico's implementation of AML/CFT measures.
V—International cooperation	**Outstanding Recommended Action:** 1. Adopt comprehensive legislation which authorises the execution of mutual legal assistance requests; allows assistance to be provided without the necessity of opening a criminal investigation in Mexico; and permits the effective enforcement of foreign confiscation judgments (including value-based judgments) without requiring the offence to have affected Mexico or resulted in a conviction in Mexico. Create clear and appropriate procedures for allowing judicial, prosecutorial and law enforcement authorities direct access to financial information, without having to make such access through the Supervisory Commissions. 2. Eliminate the requirement under Article 7 of the International Extradition Act that a formal complaint be

	issued in the state requesting extradition if a complaint would be required in Mexican proceedings. 3. Adopt an independent FT offence to establish an unequivocal basis for extradition in FT cases. 4. Continue signing new Memoranda of Understanding (MOUs) to provide for information exchange and technical assistance with other foreign supervisory authorities.

Legal and Institutional Framework for Financial Institutions	
I—General framework	**Outstanding Recommended Action:** 1. Enact legislation to create appropriate gateways and procedures through bank and trust secrecy to allow law enforcement agencies, prosecutors and judicial authorities direct access to financial information (i.e. without having to make such access through the Supervisory Commissions) in the context of investigations and prosecutions.
II—Customer identification	**Outstanding Recommended Action:** 1. Introduce specific customer identification obligations to prevent the unlawful use of charitable or non-profit organisations. **Further Recommended Action:** 1. Ensure that the effectiveness of the newly enacted identification procedures is not impaired by the range of acceptable identification documents. 2. Ensure that the transactions of both occasional customers and account holders can be aggregated. 3. When sending cross-border wire transfers, financial institutions should be obligated to include a unique reference number for the originator of the transaction when an account number does not exist.
III—Ongoing monitoring of accounts and transactions	**Outstanding Recommended Action:** 1. Amend the current list of high-risk jurisdictions issued by the SHCP, so as to not alert financial institutions to counterparts based in jurisdictions that do not present significant ML risks. **Further Recommended Action:** 1. Consider implementing a provision allowing financial institutions to report rejected transactions as unusual for the very same reasons those transactions were initially rejected.
IV—Record keeping	**Outstanding Recommended Action:** 1. Clearly define the objectives of the record keeping obligations.
V—Suspicious transactions reporting	**Outstanding Recommended Action:** 1. Require all financial institutions to report transactions suspected of being related to FT in all cases, not just those relating to domestic terrorism. 2. Amend the financial secrecy laws to permit Reporting Institutions to report directly to the FIU. **Further Recommended Action:** 1. Ensure that the implementation of the newly enacted General Provisions results in the delay between the time a transaction occurs and the time it is reported to the DGAIO being reduced.
VI—Internal controls, compliance and audit	**Outstanding Recommended Action:** 1. Ensure that inspections by supervisory authorities assess the syllabus of training programs to ensure that they adequately keep employees informed of new developments in AML and CFT. 2. Conduct active supervision of foreign branches and subsidiaries of Mexican financial institutions.
VII—Integrity	**Outstanding Recommended Action:**

standards	1. Enact legislation that addresses the issue of taking the necessary measures to guard against control or acquisition of a significant participation in money remitters and unlicensed foreign exchange offices (*centros cambiarios*) by criminals or their confederates.
VIII—Enforcement powers and sanctions	**Outstanding Recommended Action:** 1. Improve supervision and regulation of financial institutions to improve the quality of reports and ensure that reporting is more consistent amongst the various types of financial institutions. 2. Amend the sanctions process to improve its effectiveness. 3. Ensure that the Supervisory Commissions aggressively impose sanctions for misconduct and violations of AML requirements. 4. Ensure that on-site inspections assess the quality and sufficiency of all aspects of each Reporting Institution's AML measures and focus on the performance of all employees, not just top executives.
IX—Co-operation between supervisors and other competent authorities	**Outstanding Recommended Action:** 1. Continue signing new MOUs with foreign supervisory authorities.

Kingdom of Saudi Arabia: Executive Summary
FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

Introduction

1. This summary for the *FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing* of *Terrorism* (FATF 40+8 Recommendations) was prepared by representatives of member jurisdictions of the Financial Action Task Force (FATF) and the Gulf Co Operation Council (GCC) and members of the FATF and GCC Secretariats.

Information and Methodology Used for the Assessment

2. In preparing the detailed assessment, assessors reviewed relevant Anti-Money Laundering (AML) and counter terrorist financing (CFT) laws and regulations, supervisory and regulatory systems in place to deter Money Laundering (ML) and terrorist financing (TF), and criminal law enforcement systems. The evaluation team met with officials from relevant Saudi government agencies and the private sector in Riyadh over a five day period from 21 to 25 September 2003. The team had meetings with officials from the Saudi Ministry of Finance, the Ministry of Justice, the Ministry of Interior, the Ministry of Commerce, the Ministry of Islamic Affairs, the Ministry of Labour and Social Affairs and the Ministry of Foreign Affairs. In addition the team met with the Saudi Arabian Monetary Agency (SAMA) other law enforcement authorities such as the BIP, CDC, SAFCU, SADC and representatives from the commercial banking, insurance and money exchange sectors. This assessment is based on the information available as of 27 February 2004.

Overview of the financial sector

3. The Kingdom of Saudi Arabia (KSA) is a significant regional financial centre servicing the largest market economy in the Middle East. The banking sector consists of 11 commercial banks operating over 1,200 branches throughout the Kingdom that offer a full range of commercial banking services, including securities trading and the provision of insurance. Currently all securities

transactions are executed through banks. Insurance is largely provided by the National Company for Co-operative Insurance (NCCI) the largest retail insurance company in the country. NCCI is 30% government owned and has 15 offices throughout Saudi Arabia providing general insurance for property and casualty.

General Situation of Money Laundering and Financing of Terrorism

4. The KSA does not have an appreciable illicit drug problem and is not a significant drug transit country. The majority of illegal proceeds within the country are generated from unlicensed business activities that violate commercial and labour laws. The country has been affected by terrorist attacks, notably in May 2003, November 2003 and April 2004 and Saudi authorities have focused heavily on systems and measures to counter terrorism and the financing of terrorism. Specifically, they have taken action to increase the requirements for financial institutions on customer due diligence, established systems for tracing and freezing terrorist assets and tightened the regulation and transparency of charitable organisations.

Main Findings

5. The KSA meets almost all of the general obligations of the FATF 40 + 8 Recommendations. Saudi Arabia implemented its first customer identification procedure in 1975. Beginning in the mid 1990's the Kingdom began to put in place a more expansive AML regime with the issuance of the 1995 AML manual and several other circulars from SAMA and other government agencies.

6. The Kingdom has established three permanent committees to coordinate and ensure inter-departmental co-operation AML and CFT initiatives: the Permanent Committee on Combating ML (PCCML), the Permanent Committee on Combating the Financing Terrorism (PCCFT) and the Permanent Mutual Legal Assistance Committee (PMLAC). There are also two other committees that deal with the financial sector, the Financial Crimes and Money Laundering Committee (FCML) and the Self Supervisory Committee (SSC).

7. The legal system in Saudi Arabia is based on the rules of Islamic Shari'ah according to the principles indicated in the *Qur'an* and in statutes decreed by the Ruler which do not contradict those principles.[1] Over the past 10 years the Kingdom has put into place a relatively comprehensive AML/CFT legislative framework. In August 2003, the KSA enacted the *AML Law* (2003) providing a statutory basis for ML and TF offences, establishing an FIU, and enabling a greater exchange of financial information in cases of suspected ML and TF. Currently, the offence of TF contained in Article 2 of the *AML Law* (2003) does not conform to the international standards as expressed in the UN International Convention on the Suppression of Terrorist Financing (1999). It should be noted, however, that the provision or collection of funds used for terrorist acts is forbidden under Shari'ah law[2]

8. SAMA plays a central role in overseeing AML/CFT programmes. SAMA supervises all banking securities and insurance activities in the KSA and chairs the PCCML. SAMA also acts as the sole conduit for through which Saudi legal and law enforcement authorities can obtain banking information.

9. The KSA has comprehensive rules covering the AML/CFT requirements for the banking sector. All of the AML/CFT requirements also apply to the insurance and securities sectors, whilst separate rules exist for money exchange business. Until the implementing regulations to the *AML Law* (2003) are issued, the 2003 *SAMA AML/CFT Rules* for banks are the only rules that apply to the

[1] Article 48, *The Basic Law*

[2] During the on-site visit and according to information provided by the UN previously Saudi Arabia had no prosecutions for terrorist financing despite the possibility to do so under Shari'ah Law. Subsequently Saudi authorities provided the evaluators with information showing that five successful prosecutions for terrorist financing had occurred since 2002. One of these cases resulted in a conviction with confiscation of SAR 10 million.

insurance and securities sectors regarding customer identification. While at the time of the on-site visit general AML/CFT rules applied to the insurance sector, there were no specific rules that applied directly to the insurance sector.

10. Since the on-site visit, but prior to the discussion of the draft report by the FATF Plenary, Saudi authorities provided information on various legal and regulatory changes that seek to address some of the issues such as the issuance of (2003) AML Law Executive Regulation and the Circulars to Banks and Money Exchangers identified in this report.[3]

11. In addition, in the fight against ML and TF, the Kingdom has embraced and places great importance in comprehensive training courses which have been well-attended by government enforcement authorities, judges and bankers.

Criminal Justice Measures and International Co-operation

(a) Criminalisation of *money laundering and financing* of *terrorism*

12. ML is considered an offence under Shari'ah law and the KSA has also established a broad statutory ML offence with the *AML Law* (2003). The *AML Law* (2003) includes all offences as predicates for ML and provides an all-encompassing definition for type of property concerned. The ML offence as defined by the *AML Law* (2003) covers the essential elements required of the UN Conventions (both *Vienna* and *Palermo*) and Article 2 describes acts that are considered to be ML offences; these include TF.

13. TF is also an offence under Shari'ah law. Under Article 2 of the AML Law (2003) TF, is defined as a type of ML offence. This statutory definition of TF is assessed as not conforming to the international standards as expressed in the *UN International Convention on the Suppression* of *Terrorist Financing,* (1999). The Convention includes both intention and knowledge elements that are not specifically present in the *AML Law* (2003). By classifying the TF offence only as a type of ML offence with no further definition, it is unclear whether TF is only an offence if the funds are from illegal sources. Both elements are necessary in the description of a TF offence in order to cover situations where the perpetrator intends that the funds are to be used for terrorism, as well as where, he or she knows that the funds are to be used for terrorism (regardless of whether a terrorist act results).

14. Saudi authorities indicated that there had been 62 successful prosecutions for ML. Additionally, 5 cases had been initiated for TF with one successful conviction. It should be noted that all of these cases were initiated based on violations of Shari'ah law.

15. ML is treated as a serious crime and is dealt with by the General court responsible for dealing with serious criminal acts. Article 16 of the *AML Law* (2003) ensures that persons who commit an offence under Article 2 of the *AML Law* (2003) can be subject to a prison sentence of up to 10 years and a fine of up to SAR 5 million[4]. Article 17 of the *AML Law* (2003) allows these sentences to be increased to 15 years imprisonment and a SAR 7 million[5] fine if the ML offence is committed under aggravated circumstances.

[3] Ministerial Order No. 6929, Executive Regulation of the AML Law (2003), dated 18 February 2004; SAMA Circular to Money Exchangers No. BCI/333, dated 14 February 2004; and SAMA Circular to Banks No. BCI/335, dated 17 February 2004. These changes have not been assessed as an element of the compliance ratings in this mutual evaluation.

[4] Equivalent to USD 1.3 million.

[5] Equivalent to USD 1.9 million.

(b) Confiscation of *Proceeds* of *Crime or Property used to Finance Terrorism*

16. The general principles of freezing and seizing of the proceeds of funds or assets related to illegal drug trafficking are contained within the Implementation Rules for the Vienna Convention (IRVC). Article 16 of the *AML Law* (2003) extends the basis for confiscation to property, proceeds and instrumentalities connected with all forms of ML and allows for Saudi courts to recognise a property confiscation order issued by a foreign authority, providing that the property would be subject to a confiscation order under Saudi Law.

17. The same measures in the *AML Law* (2003) can be applied for the confiscation of funds used in TF as the offence is a specific action indicated in Article 2. The KSA, in addition, also has mechanisms for co-ordinating the execution and freezing of assets required by relevant UN Security Resolutions. SAMA has issued a series of circulars[6] to all commercial banks and exchange houses to inform them of their freezing obligations under UN Security Council Resolution 1267 (1999). The PCCFT acts as the central point for undertaking action with reference to terrorists assets identified by United Nations Security Council Resolution 1373 (2001).

18. Article 80 of the General Criminal Code allows for the seizure of any item 'which is likely to have been used in the commission of a crime or resulting therefrom'. Articles 3 and 22 of the IRVC provide the basis for seizing the proceeds and property connected with narcotics trafficking and Article 12 of the *AML Law* (2003) provides freezing authority for proceeds and property connected with all forms of ML.

19. Both the AML Law (2003) and the IRVC provide a basis for the receiving and executing of foreign requests to confiscate, freeze and seize, or trace criminal assets. The requests must receive a 'full description of the crime'. Should a foreign request require an investigation that requires access to bank account information, law enforcement would have to make requests for banking information through SAMA. .

(c) The FIU and Processes for Receiving, Analysing, and Disseminating Intelligence: Functions and Authority

20. There has been a requirement to report suspicious transactions directly to the police since 1975. Financial institutions reported suspicious transactions to the local offices of the Directorate for Combating Drugs (DCD). Article 11 of the *AML Law* (2003), mandated the creation of the Saudi Anti-Financial Crime Unit (SAFCU) as the FIU for the KSA. SAFCU is a law enforcement-style FIU and part of the Ministry of Interior. It has a budget of USD 2.13 million and has 27 permanent employees from a range of legal, financial and investigative backgrounds who work with a number of specialists who are to be seconded to the unit. There are plans to establish sub-branches of SAFCU in each of the 13 provinces of the KSA using DCD personnel who had performed similar work under the previous STR system. SAFCU was not fully operational at the time of the on-site visit.

21. Article 7 of the *AML Law* (2003) requires financial and non-financial institutions to report immediately all complex, unusual, large or suspicious transactions, operations related to ML, terrorist acts and terrorist organisations. Article 8 requires that financial institutions must provide "judicial or concerned authorities" with financial documents and records when requested. If SAFCU wishes to obtain such information from financial institutions, they have to route a request via SAMA.

22. Under Article 13 of the *AML Law* (2003) the FIU is permitted to disseminate information received from financial and non-financial institutions to all domestic competent authorities. Information submitted to SAFCU can be exchanged internationally on the basis of multilateral, bilateral or in the absence of both; a reciprocity agreement, or on an FIU to FIU basis. However, if the

[6] Circulars issued on 22 November 1999, 26 and 2 October 2001.

information required was held by a financial institution the FIU would have to approach SAMA, who could then obtain the information from the financial institution.

23. The *SAMA AML/CFT Rules* provide guidance directed at banking institutions on their reporting obligations under Saudi AML/CFT legislation. The Rules state that employees of financial institutions who are suspicious, but who fail to make further inquiries may be considered under the law to have requisite knowledge and to have committed a ML offence. Article 18 of the *AML Law* (2003) provides the legal basis for imposing penalties for failure to report suspicious transactions. Penalties of up to two years imprisonment or a fine of up to SAR 500,000[7] can be imposed. There are no current guidelines for those entities obliged to report STRs to the FIU that do not fall under supervision of SAMA.

(d) Law Enforcement and Prosecution Authorities, Powers and Duties

24. The Ministry of Interior has overall responsibility for internal security within the KSA, and is responsible for most of the agencies charged with investigating and prosecuting ML and TF offences; the Bureau of Investigation and Prosecution (BIP) and the DCD. To further facilitate communication and co-ordination among all agencies involved in the AML/CFT effort, Saudi Arabia has created a series of "committees". Law enforcement agencies operate under the responsibility of the Ministry of Interior, which sets policy through the Permanent Committee for Combating Terrorist Financing (PCCFT) and the Mutual Legal Assistance Committee (MLAC).

25. The BIP is operationally autonomous from the Ministry of the Interior and since 2001 has responsibility for conducting criminal investigations and prosecuting cases on matters under its jurisdiction as defined in Article 14 of the *Law* of *Criminal Procedure*. These include the investigation of ML and TF.

26. The DCD investigates narcotics related criminal activity, and until recently, was also the organisation responsible for receiving reports of suspicious transactions from financial institutions on which it conducted analysis before forwarding to the BIP for investigation.

27. When seeking to obtain financial information, which is not directly related to an STR, the BIP and DCD have to route a request through SAMA to obtain this information on their behalf.

(e) International Co-operation

28. The basic legal structures regarding international co-operation are sound. The KSA has a range of conventions, treaties multilateral and bi-lateral agreements that provide for general international co-operation particularly within the Middle East and GCC regions. The MLAC acts as a central point for the receipt of and response to foreign requests for legal co-operation on ML inquiries. In instances where it may be unclear what type of assistance can be provided the Grievances Court has the overall authority for resolving any requests to enforce foreign judgements.

29. SAFCU is a law enforcement-type FIU and is able to exchange information directly with foreign counterpart agencies on the basis of bilateral agreements or reciprocity. As mentioned previously any requests for financial information must be obtained through SAMA.

30. The FIU has just been established and there were no cases of actual sharing of information at the international level at the time of the on-site visit.

[7] Equivalent to USD 133,300.

B. Preventive Measures for FIs

(a) Financial Institutions

31. The AML Law (2003) applies to all financial and non-financial institutions and provides the core of KSA AML and CFT legislation. Articles 8, 13 and 22 of the AML Law (2003) provide gateways through banking secrecy in cases where information is requested in accordance with applicable regulations, if the institution holds information that indicates a breach of the AML Law (2003), or if information is required by a concerned foreign authority.

32. SAMA is the regulatory authority for large majority of the financial sector including banks, insurance and money exchange businesses. Currently the provisions for insurance services and trading in the securities markets occur largely within the banking sector where SAMA is the supervisor of these functions. The creation of a new, independent, securities sector commission has been decided. Money exchangers (which include both money remitters and currency exchangers) can operate only with a licence issued by SAMA: Class B exchangers are limited to money changing; Class A exchangers are able to conduct money exchange and remittance activities. Any money exchanger operating without such a licence is operating illegally. 8 The Insurance Law (2003) will allow, for the first time, the incorporation of insurance companies within Kingdom and the Capital Markets Law (2003)9 will create a new securities sector with an independent and specialised supervisor separate from SAMA. It will be important for Saudi authorities to ensure that as these sectors increase in size and complexity that they are adequately regulated and supervised for AML/CFT compliance.

33. SAMA has issued AML and CFT rules, regulations and guidelines for financial institutions to ensure the implementation of AML and CFT legislation. The SAMA AML Manual 1995 and the revised rules issued in 2003 provide comprehensive guidance for banking institutions on their AML and CFT obligations. The insurance and securities sectors and money exchangers are also required to adhere to the SAMA AML/CFT Rules.

34. The KSA has adequate legislation and instructions requiring banks to identify customers. Article 4 of the *AML Law (*2003*)* prohibits financial and non-financial institutions from carrying transactions with anonymous or fictitious customers. It further requires that all financial institutions verify the identity of the client, based on official documents, at the start of dealing with such client or upon concluding commercial transactions therewith in person or in proxy. The *SAMA AML/CFT Rules* (2003) prohibits numbered accounts and any banking relationships with occasional clients who have no accounts with the bank.

35. Part II of the *SAMA KYC Rules* requires banks to understand the true relationship and purpose of customers who open accounts as sponsors, nominees, trustees or authorised representatives, and ensure that such sponsors, nominees, trustees or authorised representatives do not act only as a "front" for others as intermediaries or on their behalf. Until the implementing regulations to the *AML Law* (2003) are issued, the 2003 and 1995 SAMA AML Guidelines apply to the insurance sector and securities sector.

36. Money exchangers who may engage in remittances (Class A) have general customer identification requirements issued by SAMA Circular 4304/MAT/75. There currently appear to be no customer identification requirements for money changers who are not licensed to engage in remittance (Class B). Furthermore, no specific verification requirements, and no reference at all is made to identification procedures for legal persons. There do not seem to be any rules for money exchangers relating directly to beneficial ownership, except to the extent that the banking rules apply to Class A licences. The *AML Law* (2003) could be relevant once implementing regulations are issued.

[8] The *SAMA AML/CFT Rules (2003*) Section 9; *Banking Control Law (1966)* Sections 2, 23.

[9] At the time of the mutual evaluation visit neither law had been enacted.

37. In relation to Special Recommendation VII Section 5.7 of *SAMA AML Manual*, (1995) requires that all banks implement procedures to identify the remitters and the beneficiaries for all transactions, by obtaining complete information on them. This should include their names, addresses, account numbers and any other relevant information that could be useful in subsequent follow-up and investigation by the bank or by the authorities. SAMA has issued circulars to money exchange houses requiring customer identification and record keeping[10] and suspicious transaction reporting[11], for both incoming and outgoing remittances. However, currently no obligation exists to include originator information on wire transfers through the payment chain.

38. Banks obligations to undertake ongoing monitoring of accounts and transactions are outlined in SAMA instructions. Part II Section 9 of the *Rules Governing the Opening of Bank Accounts and General Operational Guidelines* (2003) requires banks to monitor accounts and their transactions and activity, identify any suspicious transactions and report these to the appropriate authorities. Section 5.9.1 of the *SAMA AML Manual of 1995*, requires banks to formulate internal policies and procedures to be followed by employees when they have reason to suspect that a ML transaction is taking place. Section 5.1.3 requires senior management approval of all high-risk accounts.

39. Article 6 of the *AML Law* (2003) requires all financial and non-financial institutions, including insurance and the new securities sector, to have measures to detect and combat ML and TF. Article 7 requires complex, suspicious or unusual transactions to be reported to the FIU.

40. Section 5.4.1 of the *SAMA AML Manual* requires banks to retain all documents and records relating to their operations in accordance with normal banking practices for the use by supervisory authorities, other regulators and auditors. Article 5 of the *AML Law* (2003) requires records of transactions, evidence of identity and other relevant financial records to be kept for at least five years from the date of concluding the relationship or closing the account. SAMA Circular 4304/MAT/75 requires money exchange houses to maintain records of the details of money remittance transferors and beneficiaries for at least ten years. However, these requirements are linked directly to remittance transactions, and the circular is silent with respect to any other financial activity of the exchange house.

41. Article 18 of the *Banking Control Law* (1966) allows SAMA to examine bank records. Section 8 of the *SAMA AML/CFT Rules* requires records to be made available to supervisors. Section 7.2 of the *SAMA AML/CFT Rules*, the bank's Money Laundering Compliance Unit should be responsible for receiving requests from and channelling information authorities requesting documentation. SAMA, as the insurance regulator, has access to insurance records.[12]

42. The KSA has a number of additional safeguards to ensure the banking industry is not vulnerable to abuse. Article 3 (3) of the *Banking Control Law* (1966) requires the members of the Board of Directors of Banks to be persons of good reputation. The Internal Control Guidelines for Commercial Banks operating in the Kingdom of Saudi Arabia issued by SAMA in 1989 require banks to undertake a range of steps that require a financial institution to undertake thorough background investigations of all new employees.

43. Section 10 of the *SAMA AML/CFT Rules* requires banks to establish a dedicated Money Laundering Control Unit responsible for combating ML and TF and that, at a senior management level, a bank must have an AML compliance officer. Section 6.7, in addition, requires banks to design and develop internal control systems for AML and CFT.

[10] SAMA Circular (4304/MAT/75) 28/02/1424AH (24 April 2003).

[11] SAMA Circular (MIT/160) 21/10/1421AH (January 2001).

[12] Article 8, *Law on Supervision of Cooperative Insurance Companies.*

44. Section 5.1.2 of the *SAMA AML/CFT Rules* requires banks to have KYC procedures. Detailed KYC requirements by customer and account type are additionally set out in the *Rules Governing the Opening of Bank Accounts and General Operational Guidelines* (2003).

45. Article 18 of the *AML Law* (2003) provides that failure by an institution to comply with the Law with regard to identification of customers, record keeping, internal controls, suspicion reporting, provision of information to the authorities, tipping off and the development of AML/CFT procedures and training programs results in the owners, directors, managers or employees being liable for a prison sentence of up to 2 years or a fine of up to SAR 500,000[13].

46. Article 22 of the *Banking Control Law* (1966) gives SAMA the power to impose various sanctions against a bank that fails to comply with rules made under the law including revocation of license. Article 23 provides a range of penalties for any person (individual or corporate) who fails to comply with the provisions of the *Banking Control Law* (1966) including fines and imprisonment. The *Minister of Finance Resolution No. 3/920* on the organisation of money exchange activities authorises SAMA to withdraw the licence of money exchangers in the event that the provisions of the *Banking Control Law* (1966) are violated.[14]

47. Under Article 22 and 23 of the *Banking Control Law* (1966), SAMA has the authority to require a bank that fails to comply with any rules issued under the law to take such steps as SAMA considers necessary. Article 22 also empowers SAMA to revoke the license of a bank. *SAMA AML/CFT Rules* are issued under Article 16(3) of the *Banking Control Law* (1966) SAMA has a general power under Articles 17 and 18 of the *Banking Control Law* (1966) to request information from banks.

(b) Other Sectors

48. Non-Bank Financial Institutions (NBFIs) are covered by the requirements of the *AML Law* (2003) and are subject to strict registration requirements: accountants, from the Saudi Society for Certified and Public Accountants; solicitors and notaries, from the Ministry of Justice; precious metals dealers, from the Ministry of Commerce; domestic charities by the Ministry of Labour and international charities by the Ministry of Islamic Affairs.

49. Saudi Arabia has put into force a significant set of restrictions on the financial activities of charities. In SAMA Circular No. 110/MAT dated 24 May 2003 and in the *SAMA Rules on the Opening* of *Bank Accounts & General Operations Guidelines,* new restrictions were placed on the bank accounts of Saudi charities. Charities are now required to operate only one main consolidated account for each organisation, hold the account in Saudi Riyals, are not allowed to transfer money outside of the KSA, cannot make cash disbursements and are not allowed to carry out transactions through ATM or credit cards.

c) Controls and monitoring of *cash and cross border transactions*

50. The SADC monitors the physical movement of cross-border transportation of cash. The import or export of currency in excess of SAR 100,000[15] must be declared at the border, or point of entry. A record is maintained of declarations and investigations carried out if there are doubts as to the source of the money. In addition the KSA applies strict controls on the movement of the SAR outside the kingdom. Saudi banks are encouraged to buy any excess Saudi riyals that they may have accumulated in other countries as a counterfeiting and AML counter-measure.

[13] Equivalent to approximately USD 133,300.

[14] Article 10, *Banking Control Law (1966).*

[15] Equivalent to USD 26,666.

Summary assessment against the FATF Recommendations

51. The KSA is compliant or largely compliant with most of the FATF 40+8 Recommendations. However, the Kingdom is not fully compliant in three areas. (1) A clear definition for TF is required to ensure that it is an offence if the funds are intended for terrorist use, or derived from a legal source; (2) all law enforcement requests, including those from the FIU, for information from financial institutions must currently be routed via SAMA; this may delay unduly the process of providing effective legal assistance in AML/CFT inquiries or prosecutions; (3) there is a need to strengthen customer identification measures for non-bank financial institutions; including the requirement to transmit originator information on wire transfers throughout the payment chain as called for under Special Recommendation VII. [16]

52. An important priority for the KSA is to issue the implementation rules for the *AML Law* (2003) and ensure that these rules are comprehensive across financial sectors and that they are appropriately detailed. There is a requirement to ensure comprehensive legislation and rules covering the AML/CFT requirements for the non-banking sector.

[16] See paragraph 10.

TABLE 1 Recommended Action Plan to Improve Compliance with the FATF Recommendations

Criminal Justice Measures and International Cooperation (including sector specific issues)	
I—Criminalisation of ML and FT	Saudi Arabia should take steps to modify statutory provisions regarding terrorist financing to ensure that it covers relevant acts involving funds from legal as well as illegal sources. It should also take steps to ratify and fully implement the *International Convention on the Suppression of the Financing of Terrorism, 1999* as soon as possible.
II—Confiscation of proceeds of crime or property used to finance terrorism	Saudi Arabia should consider modifying statutory provisions to ensure that there is adequate authority to confiscate, freeze or seize funds related to terrorist financing in situations other than under UN Security Council resolutions
III—The FIU and processes for receiving, analysing, and disseminating financial information and other intelligence at the domestic and international levels	Saudi Arabia should review and amend its legislation as necessary to ensure that access by the Saudi FIU to information from financial institutions is not unnecessarily restricted by requirements to go through SAMA[17]. Implementing regulations for the AML Law (2003) and for the Saudi FIU could clarify this issue
IV—Law enforcement and prosecution authorities, powers and duties	Saudi Arabia should review and amend its legislation as necessary to ensure that access by the Saudi law enforcement to information from financial institutions is not unnecessarily restricted by requirements to go through SAMA. Implementing regulations for the AML Law (2003) could clarify this issue.[18]
V—International cooperation	Saudi Arabia should review and amend its legislation as necessary to ensure that requiring SAMA to be the gateway to information from financial institutions does not unnecessarily delay or impede the fulfilment of foreign requests for AML co-operation that come through the Saudi FIU or law enforcement / investigative agencies. Saudi Arabia should enter into bilateral agreements and arrangements for the exchange of AML/CFT information between regulatory authorities or the FIU and foreign counterparts. Many of the above mentioned actions may be able to be remedied through the issuance of the implementation regulations for the AML Law (2003) and for the Saudi FIU[19]. As mentioned elsewhere, Saudi Arabia should take steps to ratify the *International Convention on the Suppression of the Financing of Terrorism, 1999.*

Legal and Institutional Framework for Financial Institutions	
I—General framework	There are no significant recommendations for improvement in the banking sector. With the proposed development of the securities and insurance sectors Saudi Arabia should ensure that both sectors possess adequate AML/CFT requirements.
II—Customer identification	Saudi Arabia should ensure it is a requirement to include originator information on cross border wire transfers.

[17] See paragraph 14.

[18] See paragraph 15.

[19] See paragraph 15.

III—Ongoing monitoring of accounts and transactions	There are no significant recommendations for improvement in this area.
IV—Record keeping	There are no significant recommendations for improvement in this area.
V—Suspicious transactions reporting	Saudi Arabia should promulgate implementing regulations for the AML Law (2003) and the Saudi FIU.
VI—Internal controls, compliance and audit	There are no significant recommendations for improvement in this area.
VII—Integrity standards	There are no significant recommendations for improvement in this area.
VIII—Enforcement powers and sanctions	There are no significant recommendations for improvement in this area.
IX—Co-operation between supervisors and other competent authorities	There are no significant recommendations for improvement in this area.

ANNEX D

SUMMARIES OF MUTUAL EVALUATIONS UNDERTAKEN BY THE COUNCIL OF EUROPE MONEYVAL COMMITTEE

Albania

1. A MONEYVAL team of evaluators, accompanied by a colleague from the Financial Action Task Force (FATF), visited Albania between 14 and 17 October 2003, in the context of the second round of MONEYVAL evaluations.

2. As for the general money laundering situation, at the time of the second on-site visit, the major sources of criminal proceeds were reported as drug-related crimes, robberies, customs offences, exploitation of prostitution, trafficking in weapons and engines (incl. cars) and theft through abuse of office. Also tax crime, fraud and falsification of currency appear relatively often.

3. Criminal groups operate on a relatively large scale. The evaluation team was given figures suggesting that for the period January 2002 to September 2003, a number of 22 criminal groups with a total of 108 persons have been identified. Of the 108 persons, 76 have been arrested. The groups are involved in a variety of crimes, including counterfeiting of currency, falsification of documents, smuggling of cigarettes and fuel and robberies.

4. As for money laundering typologies the use of the financial system is slowly becoming more frequent. Still, however, the financial system is not very well developed, which is why also trade-related money laundering is frequently reported, including the investing of the proceeds into villas and cars and other goods. Around 80 % of all economic transactions are still carried out in cash, which naturally makes it difficult for the police to conduct money laundering investigations.

5. Recognising the importance of having an effective anti-money laundering regime, the Albanian government has strived to approximate the legislation and anti-money laundering structure of Albania to international standards. This has led to a number of changes in the anti-money laundering situation both from the preventive and repressive angles. First of all, the national FIU has been established in August 2001 as a Directorate of the Ministry of Finance. The general preventive anti-money laundering act, which came into force shortly before the first evaluation visit, has been implemented in practice, and was amended in June 2003. The amendments included into the preventive regime also professions outside of the financial sector, as foreseen by the 2001 EU Directive on Money Laundering. At the same time as the amendments of the preventive law, also the money laundering offence was significantly amended.

6. On the legal side, many of the problems concerning the criminalisation of money laundering that had been identified in the first round evaluation report have been adequately addressed by Albania, and generally there now seems to be a robust criminalisation of money laundering. Thus, a specific money laundering offence has been drafted in article 287 of the Criminal Code, and the definition of money laundering is replicated in the Law on the Prevention of Money Laundering. The offence is of an all-crime nature. However, from the letter of article 287 it is not totally clear, whether it covers also indirect proceeds just like there are some uncertainties as to whether own-proceeds laundering is covered.

7. Of a very serious nature are the problems concerning the nature of the evidence and the degree of proof required to prove the predicate offence not only in trial proceedings but possibly also for the purposes of the investigative measures requiring a judicial order. The approach of the prosecutors is disturbing in this respect, since it is clear that they are of the opinion, that a prior or simultaneous conviction for the predicate crime is needed in order to indict for money laundering. This extremely

strict interpretation of article 287 jeopardises the entire effort against money laundering.[1]

8. In the first mutual evaluation report of Albania, it was recommended, that careful consideration be given to the introduction in Albania of corporate criminal liability. Since then, Albania has adopted article 45 of the Criminal Code, which is not a provision on corporate criminal liability, but which is nonetheless a step in the right direction.

9. As for attachment (seizure) since the first round evaluation of Albania, a new provision has been introduced as article 274, paragraph 2, of the Criminal Procedure Code. Article 274 concerns preventive attachment (seizure), and paragraph 2, states explicitly, that proceeds from crime and any other property which can be subject to confiscation, can be seized. In spite of the positive development of the legal framework, it would seem that no seizure and/or freezing orders have been issued in the field of acquisitive offences.

10. As for confiscation, the two most relevant provisions are articles 30 and article 36 of the Criminal Code. Article 30 concerns the use of confiscation as a supplementary penalty, whereas article 36 is a broader provision setting out the general framework for confiscation. Article 36 has been amended since the first round evaluation, and provides now for a more comprehensive framework than was the case before. As one example, it is now clear, that also the confiscation of indirect proceeds is provided for. Against the relatively positive background with respect to the amended provisions concerning confiscation, it is highly disappointing to note, that apparently still the confiscation regime is being used to a very limited degree.

11. In the field of international co-operation, since the first round evaluation Albania has signed and ratified several of the key international conventions in the area of co-operation in criminal matters. The Albanian authorities informed the evaluation team, that all requests received in the area of mutual legal assistance have been successfully executed. However, none of the requests related to seizure and confiscation, and the evaluation team had some concerns about whether article 517 of the Criminal Procedure Code would provide the necessary legal basis for executing a foreign request for seizure.

12. On the preventive issues, the Law on the Prevention of Money Laundering as amended in 2003 designates a large number of financial and non-financial institutions as subjects of the Law. It will be beneficial for the future development of the system that such a wide range of institutions has been included into the anti-money laundering regime. Nevertheless, given the underdeveloped nature of the financial sector a number of the subjects are of low significance in the Albanian anti-money laundering strategy currently. In the light of this the evaluators questioned to what extent the Law had been created as a result of a real analysis of the current situation in Albania.

13. When it comes to customer identification requirements, it was found during the first round evaluation of Albania that there is no legal obligation to identify customers prior to establishing business relations, e.g. account opening. This is still the situation. Article 4, paragraph 1, of the Law on the Prevention of Money Laundering stipulates that clients have to be identified prior to conducting any financial transaction exceeding two million leke as set forth in article 5 of the Law (and not prior to the establishment of a business relationship) and when there is a suspicion of money laundering. The evaluators were advised by the Albanian Bankers' Club that in practice every bank according to its internal rules has to identify customers prior to establishing business relationships. Nevertheless, the Law does not reflect this situation. This is neither in accordance with the EU Directives nor FATF Recommendation 10.

14. On the registration and reporting obligations, article 5 of the Law on the Prevention of Money

[1] At the time of the adoption of the report, the Albanian authorities advised that a prosecution for money laundering was permitted in the absence of a conviction for the underlying predicate offence, but it is understood that this has not been tested.

Laundering sets out the requirements to register and report suspicious transactions and certain cash and non-cash transactions to the FIU. The reporting obligations, in English translation at least, are quite complex, and may require further guidance. According to article 5, the subjects of the Law are obliged to:

> Register cash and non-cash transactions exceeding 2 million leke.
> Register and report to the FIU cash and non-cash transactions regardless of the size of the transaction when there is a suspicion of money laundering. Indicators to establish a suspicion are set out in article 5, paragraph 3 of the Law.
> Register and report to the FIU cash and non-cash transactions exceeding 20 million leke.

15. Article 11 of the Law on the Prevention of Money Laundering seems to limit the reporting obligation of the banks to situations where the suspicion relates to banking activities of a certain nature, and not banking activities in general. If this understanding of article 11 is correct, it is a serious impediment to an efficient effort to fight money laundering in the banking area.

16. On record keeping requirements the Law of the Prevention of Money Laundering provides that all subjects of the Law must retain the data, information and reports of transactions performed on behalf of the customers for a period of not less than 5 years a) from the date the customer terminates civil and juridical relations with the subject or b) after the transaction has taken place. However, as already found in the first round evaluation there is no provision regarding the period of record keeping after account closing. The wording mentioned under a) is not sufficiently clear in that respect, because the termination date is not necessarily the same date as the account is closed.

17. During the first round evaluation neither the supervisory authorities nor the financial institutions had put in place staff training programmes. The situation seems to have ameliorated. The FIU as well as at least banks and insurance companies have put staff training programmes in place. Nevertheless, this is not the case for all the subjects of the Law.

18. As regards the foreign exchange operations the evaluators found that the situation since the first round evaluation has not changed very much. The Central Bank advised again that it had no powers to eliminate the illegal foreign exchange operations. For the Central Bank it was not clear who would be responsible for the elimination, the tax authorities or the police. The evaluators learned finally that the police are generally competent and have taken some action. In addition the police advised that the situation today is much better than a couple of years ago. Nevertheless, the evaluators could observe that there is still much exchange activity going on in public places, obviously to a certain degree tolerated by the police. The Albanian authorities should therefore ensure that there are effective means for the elimination of illegal foreign exchange operations and that action in practice is taken against persons offering this kind of illegal exchange.

19. When it comes to the operational issues, the overall results produced by the law enforcement and judicial system in terms of criminal investigations, prosecutions and particularly convictions for money laundering are very poor. Since the first evaluation only one conviction for money laundering has been reached. Under the current reporting regime the FIU has received a total of 265 reports, 68 STR's and 197 CTR's. Of the 265 reports, 36 reports were passed to the police and 8 reports directly to the prosecutors office. Thus, of the total number of reports received by the FIU, a relatively low percentage is passed on for further investigation. Given the relatively high number of cases concerning drug trafficking, fraud and offences against property, more cases concerning money laundering should be initiated. Following the proceeds of crime in major proceeds-generating offences should be a priority for law enforcement. Further training needs in modern financial investigation techniques should be reviewed and addressed. The specialised prosecutors should also be provided with further training. It is also vital that the police starts generating money laundering cases outside of the reporting system.

20. Generally, however, the FIU seems to have found its place in the law enforcement system, and it co-operates relatively smoothly with the traditional law enforcement institutions, even though it is an adminstrative unit. Much credit should also be given to the staff of the FIU, who appear very dedicated to their tasks. Furthermore, the FIU has gained membership of the Egmont Group, which is positive. The powers of the FIU, which were anticipated in the Law on the Prevention of Money Laundering already before the creation of the FIU, have also been extended significantly since the first evaluation. Today, the FIU claims to have access to any kind of financial information without a prior approval from the courts or from the prosecutors office. On the less positive side, it was unclear to the evaluators what kind of analysis is conducted by the FIU for the sake of improving the management of the reports of suspicious transaction and large cash transactions.

21. In the first round evaluation report it was expressed that the Customs was not sufficiently involved in the national anti-money laundering effort. This concern has received little attention. Undoubtedly, the Customs is involved in the general anti-money laundering co-ordination scheme in Albania, however, it seems that it is still facing lack of training and expertise. Therefore, the Customs authorities should take a more proactive and dedicated role in money laundering investigations, e.g. more systematically expanding their own investigations into the economic dimension of crimes within their competence and by detecting illegal proceeds in relation to money laundering. A priority for the Customs should be the prevention of the importation of stolen cars into Albania.

22. The position concerning the special investigative techniques such as interception of telephone communications, undercover operations, bugging, controlled delivery and use of agents provocateurs remains almost unchanged since the first mutual evaluation report. While a few of them – for example interception and recording of communication – are brought into legislation, others such as controlled deliveries are still not regulated[2], and it is still unclear whether these techniques have ever been used in money laundering cases. Furthermore, the police still does not have a central police database. It goes without saying, that a central database would be extremely helpful in the daily police work, and it could be beneficial also in cases concerning financial crime and money laundering.

23. To conclude it should be emphasised that Albania has progressed significantly since the first evaluation. The main components of a generally sound preventive system are in place, although deficiencies noted in supervision and customer identification are significantly impairing its effectiveness. In general the law enforcement sector looks more focused and makes more efforts to create results than was the case some years ago. However, this is very much thanks to the FIU. In addition, the effectiveness of a system must eventually be considered against the results it produces, and Albania has produced very few results. The evaluation team believes that the amendments and adjustments proposed would contribute to making Albania's anti-laundering regime produce the results it deserves and thus become a more effective system.

Bulgaria

1. In the framework of the second round of evaluations, a MONEYVAL team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Bulgaria between 7-10 October 2002.

2. Since the first evaluation round, a number of new measures and initiatives have been adopted or put in train. These include:

- adoption of the Law on the Amendments and Complements to the Law on Measures against Money Laundering (which entered into force on 6 January 2001). This law amended the Law on Measures against Money Laundering (LMML), including, extending the list of entities subject to the law, enhancing the powers and independence of the Bureau of Financial

[2] Subsequent to the evaluation visit, the Albanian authorities informed that in February 2004 a law was passed regulating the said investigative techniques.

Intelligence (BFI). It also introduced other changes, particularly with regard to insurance and gambling supervision;

- adoption of amendments (in 2000 and 2001) to the "Regulations for Implementing the Law of the Measures against Money Laundering";
- adoption of the Government Regulations on the Structure of the BFI (in force since 20 February 2001 and subsequently amended);
- drafting of further amendments (adopted by the Government on 19 September 2002) to the LMML as regards the BFI (functional independence of its Director and new control mechanisms over the Bureau), the implementation of the EU Directive 2001/97/CE and the establishment of a currency transaction reporting regime[1];
- drafting of new Penal Code provisions on the criminalisation of money laundering (e.g., in order to include preparation of and incitement to money laundering, and money laundering by negligence)[2];
- drafting of a Law on Measures against Financing of Terrorism (LMFT) providing for the possibility of provisional measures against terrorism finances and linking the reporting system of the LMML with the LMFT. At the time of the visit, a working group was dealing with these issues[3];
- drafting of a Law on the forfeiture of proceeds of crime (civil confiscation)[4];
- continued enhancement of co-ordination/cooperation among the different institutions (liaison officers, memoranda of understanding). An anti-money laundering working group (task force) involving all Bulgarian law enforcement agencies has been operational since June 2002;
- training of staff on money laundering issues (BFI, police, prosecutors);
- improvement of computer and network facilities, including database interconnections between the BFI and Customs.

3. The Bulgarian authorities indicated that the major sources of illegal proceeds are still the illicit traffic of drugs and precursors, as well as financial and tax crimes. The smuggling of cigarettes and high value goods like jewellery has also appeared during the past year as a major source of illegal proceeds. Organised crime and corruption are serious problems for the Bulgarian Government; they are thus at the top of the agenda. The statistics provided on the types of serious crimes committed in Bulgaria show that drug trafficking, smuggling, corruption and fraud remain the major sources of illegal income.

4. It will be recalled that the Bulgarian authorities began to engage with the money laundering issue in 1997, when the money laundering offence was established by the introduction of Article 253 of the Penal Code. Anti-money laundering mechanisms inspired by international standards were established the year after, with a Law on Measures against Money Laundering and the creation of a specialised

[1] The Bulgarian authorities later advised that these draft amendments were adopted by the National Assembly in March 2003 (published SG 31/04/2003) : the amendments to the Regulations for the Implementation of the LMML entered into force on 27 May 2003 and the Organic Rules on the Structure of the Financial Intelligence Agency on 12 August 2003 (the BFI was re-established as the Financial Intelligence Agency - FIA). The Bulgarian authorities underlined that according to the 2003 Regular Report on the EU accession, Bulgaria now fully complies with the EU Directive 2001/97/EC.

[2] The Bulgarian authorities later advised that these amendments to the Penal Code were adopted at the beginning of 2004 (SG 26/2004), and that the instigation, preparation and conspiracy in relation to money laundering are at present criminalized. The new law also provides for the confiscation of assets which have been converted as a result of the laundering process, and for the prosecution of the money laundering offence when the predicate offence has taken place abroad. The Bulgarian authorities underlined that the definition of money laundering was brought closer to that of the Strasbourg Convention and the Second Directive of the EU.

[3] Later, the Bulgarian authorities advised that the law had been adopted in February 2003, and published in the SG N° 16 from 18.02.2003, amend. SG from 04.04.2003.

[4] Later, the Bulgarian authorities advised that the draft was approved by the Government on 2 March 2004 and introduced in Parliament for adoption.

unit responsible for implementing the law – the Bureau of Financial Intelligence. Since then, the number of suspicious transactions reports received by the BFI has been constantly increasing from about 130 reports during the first twelve months of its existence, to an average of 300 reports for each of the following years (including 2002 according to a reasonable projection). For the period 2000 to August 2002, the vast majority of reports came from the banking sector (about 80-90%). During the same period:

- 15 transactions were suspended (the same figure as at the time of the first evaluation);
- over 200 cases were forwarded by the BFI to the police or prosecution services; and,
- 14 money laundering investigations were opened. However, no accusations were brought and no convictions were secured (an older "test case" is presently in court).

5. On the legal side, the money laundering offence is the same as at the time of the first evaluation round. Some mandatory elements of the definition in the Strasbourg Convention are not included and conspiracy to commit money laundering is not an offence[5]. On the other hand, it would seem that self laundering is covered, although jurisprudential confirmation is not yet available. The liability of legal persons for money laundering offences has not yet been introduced.[6]

6. Most importantly, there was no unanimity among those Bulgarian practitioners with which the team met as to whether money laundering is an autonomous offence and if a prior conviction for the predicate offence would be needed to obtain a conviction for money laundering. The provisions on confiscation were the same too, at the time of the visit, and the weaknesses identified during the first round remain (only direct proceeds can be seized/confiscated, and they must belong to the offender). As for legal provisions on temporary measures, their main objective remains the prevention of crimes and the collection of evidence. These issues need to be addressed.[7]

7. The absence of figures as to the amount of assets frozen/seized or confiscated made it difficult to say whether targeting the proceeds of crime is an established practice in Bulgaria.[8]

8. On the preventive side, the LMML was amended to extend the list of entities subject to the reporting duty.[9] Most preventive requirements are in place in Bulgaria and it was confirmed that the "Customer Identification Units" are performing the same tasks as money laundering compliance officers (particularly internal supervision, assistance, training).

9. Turning to the obligated entities, the cooperation of the banking sector seems quite satisfactory. Greater attention to the implementation of the Basel principles on "know your customer" might be useful since, for the time being, the banking sector relies mostly on the basic identification requirements contained in the LMML and those provided for in a general regulation of the National Bank on transactions and the opening and functioning of bank accounts. The situation remained somewhat unclear regarding non-bank financial institutions: there are no systematic detailed statistics on the reporting of certain obligated entities (foreign exchange bureaux, financial houses, stock brokers etc.) and it appears that the FIU is the only entity explicitly responsible for monitoring the

[5] Legislation was passed in 2004 to address these issues (which does not include negligent money laundering – which is not a mandatory requirement).

[6] Projects are under way to do so in 2004

[7] Article 156a of the Penal Procedure Code was amended in 2003, allowing for the securing of property subject to confiscation.

[8] The authorities later advised that a system for the systematic collection of such figures is being put in place in 2004, and that a Law on the forfeiture of proceeds of crime was approved by the government and introduced in Parliament for adoption (March 2004).

[9] Further amendments which took place after the visit would have brought the coverage in line with the EU Directive 2001/97/EC

implementation of the LMML. It is on a voluntary basis that the National Bank has also been active in this field by taking into account the LMML requirements as part of the on-site controls.

10. The examiners found that the current distribution of responsibilities has led to the existence of loopholes in the supervision network, and that there is no systematic normal and money-laundering specific supervision ensured over the various sectors covered by the LMML (especially those which are vulnerable to money laundering according to the Bulgarian authorities themselves or in the light of the examiners' findings – particularly foreign exchange offices, securities market and providers of cash transfer services etc.).[10]

11. Economic transactions are still heavily based on cash and measures need to be taken to reduce them. On-line banking is at an early stage of development.

12. As for international cooperation, the Republic of Bulgaria ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1992 and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1993.

13. The situation seemed to be satisfactory as far as the exchange of information is concerned. The insufficiency of statistics on formal mutual legal assistance cases and their outcome did not permit the evaluators to fully assess the situation in this field[11]. However, it is clear that Bulgaria still needs to introduce a legal framework to enable it to execute foreign confiscation orders.

14. Overall, the examiners welcomed the efforts deployed by the various institutions to improve inter-agency cooperation (an anti-money laundering working group was established at higher level, measures have been taken to facilitate the interaction between the FIU on the one side, and the police and prosecution on the other), and to overcome the current difficulties.

15. The FIU itself, which was re-established as an independent agency after the first evaluation visit, seems to have access to sufficient information, with one or two exceptions, and steps are being/need to be taken to improve the analytical work (training, software etc.). The FIU – in cooperation with other supervisory bodies - needs to focus more on under-reporting sectors and to reconsider the issue of feedback in a form that would both preserve the confidentiality of the on-going investigations, and provide encouraging signals and helpful indications to the reporting entities.

Croatia

1. In the framework of MONEYVAL's second evaluation round, Croatia received the visit of an evaluation team which visited Zagreb between 10-13 June 2002, is almost three years after the first evaluation round visit. Meetings were held with members of the Anti Money Laundering Department in the Ministry of Finance (AMLD), the Customs and Tax departments, the Foreign Exchange Supervision of the Ministry of Finance (FES), the Securities Commission, the Croatian National Bank, the Agency for the Supervision of Insurance Companies (SIC), the Criminal Police Department and Office for Combating Corruption and Organised Crime (USKOK), the State Prosecutor's Office and District Court of Zagreb, the Ministry of Justice. The team also visited the Bar Association, the Banking Association and a commercial bank (Reiffeisen Bank - Zagreb).

[10] Newer amendments (in 2003, after the visit) to the LMML would have improved the situation by conferring specific anti-money laundering supervisory responsibilities to all supervision agencies; the information provided by the Bulgarian authorities also suggest that there is at present a tendency to integrate supervision (a Financial Supervision Commission was established shortly after the visit to take over the supervision of the insurance sector and the securities market, the latter having appeared during the visit to be insufficiently involved in the anti-money laundering effort).

[11] As indicated later by the Bulgarian authorities, efforts are being made at the level of the Ministry of Justice to introduce a database for the screening of the flow and outcome of incoming and outgoing requests for mutual legal assistance in money laundering cases.

2. Subsequently, the MONEYVAL evaluators (in consultation with their FATF colleague who had participated in the evaluation), drafted the evaluation report, which was approved by MONEYVAL meeting in plenary on 30 June-4 July 2003.

3. Since the first evaluation round, there were no major changes as regards the phenomenon of money laundering. The most frequent predicate offences in money laundering cases dealt with by the authorities are the following: misuse of narcotics, abuse of office, illicit trade, customs control evasion, tax evasion. The evaluators were also occasionally advised that the real estate sector and legitimate businesses (for instance on the coast) offer similar money laundering opportunities as the financial sector (an opinion not shared by the country's authorities).

4. The Croatian authorities underlined that, considering the small number of cases of concealing illegally acquired monies (Article 279 of the Penal Code), it is not possible to make relevant conclusions regarding the phenomenon of money laundering and its connections with the predicate offences. Narcotics and economic crimes represent the main source of criminal income.

5. The Croatian authorities see no significant evolution in the number of reported criminal acts nor in the structure of criminality, on the basis of indictments or convictions for the above-mentioned criminal acts. The Croatian authorities further emphasised that the handling of complicated cases such as those of the above-listed categories remains difficult and that this is a problem when it comes to uncovering, processing and bringing accusations in those cases. There is a need for special expert knowledge of all participants involved in the processing of such cases (education of lawyers in financial investigations, education of personnel dealing with investigations and prosecutions, need of financial experts at the level of prosecutors). During the period 1999-2001, the State Prosecution Offices submitted 19 requests for investigation to the investigative judge under Article 279 of the Penal Code (concealing illegally acquired money). The first legally binding sentence for money laundering was passed (in December 2000; the property and funds involved were confiscated; the judge who handled the case started sharing his experience with colleagues). The Croatian authorities also explained that on several occasions, freezing orders had been applied.

6. At the time of the evaluation visit, there have also been little changes - since the first round - regarding the anti-money laundering policy and legislation. An Interministerial body was formed in 2000 under the lead of the Ministry of Finance. Meeting twice a year, it is in charge of assessing the efficiency of the anti money laundering policy on the basis of statistics, the work accomplished by the various bodies concerned and results in terms of criminal charges and indictments. It is also competent for initiating reforms and legal amendments if needed. At the same time, co-ordination between the Ministry of Finance, the Ministry of Interior (Police Directorate, Crime Police Department, Economic crime and Corruption Sector) and State Prosecutors Office was strengthened, notably with compliance/liaison officers; this change would enhance the efficiency of the fight against money laundering, co-ordination in concrete cases, and make the process faster and more effective.

7. The Law on the Office for Combating Corruption and Organised Crime (USKOK) entered into force on 19 October 2001, with the Office being progressively established, to perform as one of the Offices of the State Prosecutor's Office. It shall have special competencies in combating organised crime and corruption, including money laundering.

8. Croatia introduced the all crimes approach following amendments to the above Article. Further changes include the coming into force of the Law on Payments Mechanism and the power of the Croatian FIU to postpone transactions was extended (from 2 to 72 hours, with the amendment to Article 10 of the Law on Prevention of Money Laundering).

9. At the time the report was adopted, a new law on criminal proceedings and a new banking law were adopted. Further projects include, among others: the revision of the Law on Prevention of Money Laundering of 1997 - hereinafter the LPML (and in this framework, initiatives in favour of the

identification of beneficial owners and transparency of businesses); a Law on the Criminal Liability of Legal Entities; initiatives for the suppression of bearer instruments, an issue which focused part of the discussions when the report was adopted due to the existence, in Croatia, of bearer shares and until the end of 2003 (due to a phasing out procedure) of numbered passbooks.

10. As at the time of the first evaluation, according to Article 22 of the LPML, the responsibility for supervising the implementation of the anti-money laundering legislation is shared between the Croatian National Bank (CNB) and the various bodies of the Ministry of Finance, except the anti-money laundering department – hereinafter the AMLD, which centralises and analyses the reports on transactions sent to it according to the LPML, by the obligated entities (the list of which is quite comprehensive). The following figures on STRs were communicated:

SUSPICOUS TRANSACTIONS BY THE REPORTING INSTITUTIONS				
INSTITUTION	2000	2001	2002	TOTAL
BANKS	7674	12324	6099	26097
ZAP	4	34	0	38
SAVINGS BANKS	26	42	22	90
INSURANCES	0	102	39	141
BROKERS AND OTHERS	16	4	10	30
OTHERS	2	1	4	7
	7722	12507	6174	26403

11. In light of the high number of STRs from banks, it was concluded that the Croatian authorities should take measures to limit the apparent over-reporting of STRs which is facilitated by the present, rigid instructions given to the reporting entities, and which overwhelms the work of the AMLD. To achieve this, it is recommended that: detailed and comprehensive guidance notes to reporting entities should be issued by their respective regulatory authorities; adequate training of reporting entities' employees in identifying suspicious transactions should be given, banks' compliance officers should assume a special duty of making bank employees aware of the indicators of suspicious transactions.

12. Overall, it was concluded that Croatia certainly made some progress in improving its anti-money laundering regime addressing several issues brought up by the first report. It was clear during the evaluation visit that the country's administration and legal system are undergoing a major reform aimed at harmonisation with EU requirements. As part of this reform, the law enforcement sector was also reorganised by disbanding the Financial Police and re-allocating its functions to the Criminal Police, the Tax Administration and other government agencies. Within the Public Prosecutor's Office, a specialised Office was created to deal with organised crime and corruption cases and further changes are expected within the framework of the penal reform.

13. The applicability of the existing laws and regulations related to the repressive side of the Croatian anti money laundering system were tested by achieving one legally binding conviction together with confiscation of pecuniary benefits and applying successfully the provisional measures in place. The system is not perfect but was able to produce results. Learning from that, experiences and prioritising further specialisation, focusing on financial aspects of crimes and a clear division of powers among the police, prosecutors and investigating judges together with a better cooperation, more successes could be achieved.

14. The legal framework on the preventive side is in place with the leading role of the AMLD but it requires urgent action related to the identification of beneficial owners, the supervisory regime in general and the supervision of compliance with anti-money laundering measures specifically. The

supervision of the banking and non-banking sectors needs strengthening. The CNB should assume a more pro-active role in inspecting banks' compliance with anti-money laundering issues through a comprehensive guidance note to banks and by keeping to its schedule of on-site examinations. Furthermore, the Securities Commission and the Agency for the Supervision of Insurance Companies should be given legal mandate to supervise the securities and insurance sectors respectively in anti-money laundering matters. The political commitment to the anti-money laundering efforts is manifested in the establishment of an Interministerial Coordinating Body.

15. The improvement in the quality, efficiency and profitability of the banking sector of Croatia since the banking crisis of 1999 does not appear to have been matched with an equal improvement in the quality of supervision as regards anti-money laundering issues. Although progress appears to have been made as regards the overall awareness of the money laundering problem among supervised entities and although the CNB has started paying special attention, during its inspection process of banks, to the latter's' compliance with anti-money laundering issues, there is still a lot to be done both in terms of legal as well as operational measures. It was believed that with the appropriate political will, the Croatian authorities can enhance their anti-money laundering regime to implement, without any further delay, new laws and policies in regard to anti-money laundering issues and ensure that the new measures are effective.

16. It is believed that with providing the sufficient resources for the effective implementation of the reforms together with finding solutions for the weaknesses identified, Croatia can develop an effective operational system.

Estonia

50. A MONEYVAL team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Estonia between 5 November 2002 and 8 November 2002, in the context of the second round of MONEYVAL evaluations.

51. At the time of the second on-site visit, the major sources of criminal proceeds were reported as tax fraud (including tax evasion), smuggling, theft and corruption. Money laundering is still considered to be largely an external threat, though domestic money laundering does occur.

52. The financial sector is developing quickly. The banks continue to be regarded as highly vulnerable to money laundering, though considerable progress in regulation, supervision and enforcement in this sector has taken place since the first report was adopted. The Estonian authorities are conscious of the potential vulnerability to money laundering within the banking sector arising from the proportion of non-resident accounts, which is rising (approximately 12% of deposits at the time of the second on-site visit).

53. Exchange offices, money remitters and real estate are all increasingly profitable businesses in Estonia, though at the time of the on-site visit, they remained without any supervisory oversight for anti-money laundering purposes.[1] The exchange houses have no licensing procedure in place to verify the 'fitness and properness' of the owners and managers of these institutions and that should be remedied.

54. The securities and insurance markets are growth areas and present money laundering vulnerabilities.

[1] By amendments to the Money Laundering and Terrorism Financing Prevention Act (hereafter the MLPA), which came into force on 1 January 2004, exchange offices, money remitters and real estate businesses are subject to supervision by the FIU.

At the time of the on-site visit, there were no completed prosecutions for money laundering, though 2 investigations had resulted in the institution of criminal proceedings.[2]

55. Article 394 of the new Penal Code replaces the money laundering criminalisation in Article 14815 of the previous Penal Code. It is an all-crimes offence. In general terms, the structure of the criminal offence has remained the same. The major changes involve a readjusting of the criminal penalties and the very welcome introduction of corporate criminal liability. Article 394 refers back to the definition of money laundering (in the MLPA), which remained as it was at the time of the first report.

56. At the time of the on-site visit, one of the main concerns of the first evaluation team in respect of the definition of money laundering still needed to be addressed, namely an amendment to the definition which ensured that money laundering charges could be brought in respect of acts in relation to property constituting indirect proceeds, as well as direct proceeds.[3]

57. The first evaluation team also had concerns about how wide the physical elements would prove to be in practice, and this evaluation team considered that an amendment, which clearly encompasses all the language of the existing international conventions on the physical aspects of the offence would be highly beneficial.[4]

58. There has been a shift in legal thinking since the first evaluation in that, then, it was considered that the prosecution of an author of the predicate offence for 'own proceeds', laundering was not possible, but now the Estonian authorities consider this is possible. However it has not been tested in practice. Given that, the examiners strongly advise that the issue is put beyond doubt in legislation.

59. On the mental element of the offence, earlier plans to criminalise negligent money laundering have been abandoned, which is regretted by the examiners. In a further review of the mental element, the examiners would encourage a reconsideration of this issue, together with consideration of a lesser mental element of subjective suspicion.

60. The proof, in money laundering prosecutions, of underlying predicate offences appears now to be problematic. While it appears to be accepted that an investigation for money laundering can be initiated in the absence of a conviction for the predicate crime, a conviction for the predicate crime apparently has to precede the end of the proceedings. The examiners advise that the Estonian authorities should consider bringing money laundering prosecutions where a conviction for the predicate offence is not available, on the basis of circumstantial or other evidence sufficient to establish the predicate offence to the criminal standard. Written guidance for prosecutors and investigators on minimum levels of evidence generally for money laundering prosecutions, as suggested by the first evaluation team, would be useful – to encourage a more proactive approach to money laundering investigation and prosecution.[5]

[2] In April 2004, 4 cases were before the courts for money laundering.

[3] The new definition of money laundering in the 2004 amendments has removed the word 'direct' and refers to various acts done with property acquired as a result of a criminal offence.

[4] The definition of money laundering since 1 January 2004 covers the acquisition, possession, use conversion or transfer of or the performance of transactions or operations with property acquired (as a result of a criminal offence) or in return for participation in such an offence, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property.

[5] The Estonian authorities have advised that it is now their practice to bring money laundering prosecutions in the absence of a conviction, but this has not been tested by the courts. Consideration should be given to putting this beyond doubt in legislation.

61. Tipping off has been de-criminalised (though administrative penalties are available) since the first evaluation and the current examiners believe that tipping off in all its forms would be more effectively sanctioned by criminal penalties.

62. The range of offences to which confiscation can be applied appears largely unchanged, and could be widened. Confiscation of laundered property or property of corresponding value (and income from laundered property) should be made mandatory in money laundering cases, and consideration should be given to making confiscation generally more mandatory in specific serious profit-generating offences. The examiners advise incorporating into Estonian law elements of practice which have proved of value elsewhere, including the reversal of the onus of proof regarding the lawful origin of alleged proceeds in particular serious profit-generating offences. The examiners had the impression that provisional measures were taken more frequently to secure civil actions rather than to ensure that proceeds were available (which could be subject to criminal confiscation). The Estonian authorities should review their provisional measures regime to ensure that it fully enables the freezing and seizing of all criminal proceeds swiftly. Comprehensive statistical data should also be kept in order to evaluate the effectiveness of the provisional measures regime.

63. On the preventive side, some significant progress has been made. The Financial Supervision Authority (FSA) became operational on 1 January 2002 as the single prudential supervisor. Licensing of credit and financial institutions where the FSA is involved appears generally sound. The FSA issues guidelines of a quasi-binding nature that provide guidance to subjects of financial supervision, but they cannot impose any sanctions for non-compliance with their guidelines. They do issue sanctions for non-compliance with relevant legislation. Equally, the examiners advise that clearer job descriptions for contact persons should be prepared, supplementing what is now in the law and emphasising their functional independence.

64. The level of implementation of anti-money laundering measures at the time of the on-site visit was higher in the banking sector than in the insurance and securities sector. Supervision of casinos needs intensifying and further awareness-raising of anti-money laundering issues is required in the real estate market.

65. General procedures for customer identification, including the required documents, are set out in the Money Laundering Prevention Act (which has been amended on several occasions since the first on-site visit) and in the Financial Supervisory Authority Guidelines. In special cases, financial institutions can create a customer relationship without direct contact. The procedures for acting in these special cases are governed only by internal procedural rules of financial institutions and clear rules should be elaborated as to the exceptional cases where it might be possible to make identification at a distance, and which provide the necessary procedures to be carried out speedily to confirm or verify the identification of the real owners and the ultimate beneficiaries. Particular attention should be paid in supervision to the extent to which ultimate beneficiaries are identified in the establishment of business relations in accordance with FSA Guidelines, and the extent to which 'Know Your Customer' Principles generally are being put into operation, particularly with regard to non-residents.

66. Professional participants in the securities market may hold nominee accounts. While the Estonian Central Register of Securities Act obliges owners of nominee accounts to disclose information in relation to the accounts to the supervisory authority or the Registrar of the Estonian Central Register of Securities at their request, the evaluation team considers that, with such accounts in place, the transparency of the securities market is reduced and a re-examination of the rationale for such accounts is advised.

67. It is positive that the Strasbourg and Vienna Conventions have been ratified since the first round. There has, however, been little practice in respect of international co-operation at the judicial level. Assistance on provisional measures appears overly restrictive – particularly as it appears that, unless the property is required as evidence, applications for provisional measures depend on the existence of an extradition request. This contradicts the wide obligations under the Strasbourg Convention in this

respect, and should be reviewed. The FIU, as a member of the Egmont Group, appears to be co-operating satisfactorily in information exchange with other FIUs.

68. The FIU (which, at the time of the on-site visit, had 6 personnel in place, including its head (on an establishment of 7) receives an increasing number of reports:

2000: 394
2001: 1829
2002 (up to 15 September 2002): 842.

69. The bulk of these reports are from banks – indeed 60% of these reports came from one bank. The lack of reporting from the insurance and security market at the time of the on-site visit needed urgent addressing.

70. It appeared to the examiners (and to other authorities with which the team met) that the resourcing of the FIU needed re-visiting. A large number of cases remained open in the FIU at the time of the on-site visit. More sophisticated performance indicators needed developing, from which resource bids for the FIU could be made. This is particularly important as, at the time of the on-site visit, there were discussions as to whether the FIU should take on some supervisory functions in respect of vulnerable obliged institutions, which have no formal supervisory authority.[6]

71. A priority for the FIU should be to send more reports to law enforcement more quickly. It appears that, in 2001, 42 cases were passed to law enforcement for further enquiries. The Economic Crime Department of the Central Criminal Police (ECD) investigates most money laundering cases. The results on the enforcement side achieved by the ECD (and other police investigative bodies), despite adequate police powers and apparently good internal co-operation, were very modest. Only 2 money laundering cases had reached the judicial phase and 10 were still under investigation. With only 3 dedicated anti-money laundering officers in ECD, their resources were spread too thinly if they are to be the principal anti-money laundering investigators. The Estonian authorities should ensure that there is adequate provision for investigators, properly trained in financial investigations and anti-money laundering issues, both within ECD and generally within specialist squads, so that real improvements can be achieved in money laundering detection, prosecution (and related confiscations). Money laundering investigation should be generated both by the STR regime and the police themselves in major proceeds-generating offences (such as drugs, crimes perpetrated by organised crime and corruption). More prosecutions and confiscations should be pursued in major profit-generating crime beyond the tax predicate.

72. At the strategic level, the work of the Inter-Departmental Co-ordinating Committee is very important and it should create some key performance indicators for the system as a whole and, in the first instance, address the issue of why there have been so few prosecutions with a view to developing a more proactive repressive strategy.

73. In this way, Estonia can move towards the development of an effective anti-money laundering system.

former Yugoslav Republic of Macedona

1. A Moneyval team of examiners, accompanied by a colleague from a Financial Action Task Force (FATF) country, visited "The Former Yugoslav Republic of Macedonia" between 30 September and 3 October 2002.

[6] Under amendments to the Money Laundering and Terrorism Financing Prevention Act (hereafter the MLPA), which came into force on 1 January 2004, exchange offices, money remitters and real estate businesses are subject to supervision by the FIU. Since the on-site visit, the FIU now has 11 personnel in place.

2. Since the first round evaluation, although "the former Yugoslav Republic of Macedonia"'s economy has been depressed by political instability and the security crisis of 2001, some welcome changes have nonetheless occurred with regard to the legal and institutional framework for the fight against money laundering. However, at the time of the on-site visit, many serious deficiencies still remained.

3. The most significant changes were the adoption on 29 August 2001 of the Law on the Prevention of Money Laundering ('the AML Act'), which became operational on 1 March 2002, and the creation of an FAU. The Money Laundering Prevention Directorate (DMLP) was created as the National Financial Analytical Unit, and is an administrative body within the Ministry of Finance. It was, however, at the time of the on-site visit, (and remains) seriously under-resourced. A strategy for the FAU encompassing its full role and remit had still to be developed at the time of the on-site visit.

4. Some basic supervisory regimes have been put in place, but these need developing further.

5. At the time of the on-site visit, though the money laundering offence in Article 273 had been in force since 1996, there had been no money laundering convictions and very few money laundering investigations. Confiscation, as envisaged in the Strasbourg Convention, was very limited and bank accounts appeared hardly, if ever, to have been frozen in enquiries.

6. The country's geographical position, as a transit corridor on the Balkan route, together with its transition to a market economy, has resulted in highly profitable criminal activity, particularly trafficking in arms, aliens, and drugs, and smuggling. With the increasing entry of foreign capital, and the development of the privatisation process, economic and financial crime is becoming ever more widespread (particularly fraud and tax evasion). Corruption is a major threat to the economic stability of the state. At the time of the on-site visit, a new government was in the process of taking office and had made the fight against corruption a high priority.

7. While "The Former Yugoslav Republic of Macedonia" remains a heavily cash-based economy, there has been significant progress in breaking down the distrust within the public generally of the financial system, reported in the first evaluation report. Domestic deposits from householders accounted for almost 60% of the funds deposited in banks at the end of 2001.

8. The Macedonian authorities are clearly aware of the primary vulnerability of the banks to money laundering. The vulnerability of the small insurance sector to money laundering was also understood by the supervisors. Licences had been granted to 7 casinos and their vulnerability to money laundering was also acknowledged.

9. Money laundering criminalisation (A. 273 Criminal Code) remained unchanged from the first evaluation, though at the time of the on-site visit amendments to the Criminal Code were planned. Specifically it was intended to bring A.273 fully into line with the Strasbourg Convention. Some of the concerns about A.273 in the first report appeared to be addressed in proposed amendments but some were not. The examiners consider that a newly-formulated provision, clearly based on the language of the Strasbourg Convention, should be introduced, which clarifies all previously identified inconsistencies. Abandonment of the perceived need for a prior conviction for the predicate offence (in the case of both foreign and domestic predicates) in money laundering prosecutions in "the former Yugoslav Republic of Macedonia" is urged, in favour of a more flexible approach, which relies on sufficient circumstantial or other evidence. Likewise, simple possession of laundered proceeds should be criminalised.

10. The same legal structure for provisional measures, confiscation and "taking away" property gains remained in place as at the time of the first report. In practice many of the provisions have individual problems associated with them. The examiners were left with the impression that confiscation/taking away of criminal proceeds was rarely addressed by the Macedonian authorities in criminal cases, partly because the provisional measures regime does not allow for satisfactory freezing

or seizing at a sufficiently early stage before proceeds are dissipated. The current provisional measure regime is quite inadequate. The examiners endorse the recommendations of the first examination team, which still need to be actioned in a review of the regime. Specifically, while identified individual Articles in the various Acts could be improved, the examiners consider the regime would benefit from complete simplification and revisiting, and that confiscation of criminal proceeds, as widely defined in the Strasbourg Convention, should be clearly introduced as a specific criminal measure. The legal structure needs to be an enabling one, which will encourage the use of financial investigation into all the proceeds derived from major crimes (both direct and indirect). Without this "the former Yugoslav Republic of Macedonia" is unlikely to make serious progress in the fight against organised crime and corruption. Prosecutors should be able to propose freezing and other temporary measures. Instrumentalities, and property being the proceeds of crime (or property of equivalent value) need to be capable of being seized and frozen at sufficiently early stages in enquiries and they should be retained or frozen until a decision on confiscation is made. The Macedonian authorities should also consider the reversal of the burden of proof post-conviction, to assist the court in identifying criminal proceeds in appropriate cases.

11. The Macedonian authorities had recognised at the time of the on-site visit that the AML Act needed amendment to bring it fully in line with international standards, and draft amendments were bring prepared. Firstly, the AML Act is unclear as regards coverage and responsibilities of obliged persons and institutions. It is necessary to set out clearly which financial and non-financial institutions (and physical persons) are covered and it should be made clear that they all have the same basic responsibilities with regard to customer identification, reporting to DMLP suspicious and/or other transactions and introduction of internal programmes for money laundering prevention. The obliged persons should clearly cover all those set out in the 2nd EU Directive. Customer identification for casinos should be lowered to the equivalent of €1000 or more.

12. The general customer identification requirements were fragmented at the time of the first evaluation. It is a considerable improvement that they are now set out in the AML Act. These provisions, together with the Anti-Money Laundering Manuals of the National Bank, meet the basic standards of FATF Recommendations 10 and 11 in the banking sector. However, to meet the requirements of the EC Directives fully the identification requirement in relation to transactions and linked transactions should be extended to all transactions in the amounts of €15,000 or over and not just cash. The Macedonian authorities have indicated that it is their policy not to have numbered accounts. If the National Bank finds that such accounts do exist they should suppress them.

13. Record keeping requirements have been consolidated in the AML Act and appear now to be in general compliance with international standards. None-the-less, it should be clarified that records kept should be sufficient to permit reconstruction of individual transactions in a manner that can be used in prosecutions to ensure that "the former Yugoslav Republic of Macedonia" is fully in line with FATF Recommendation 12.

14. The DMLP and the National Bank had reviewed the anti-money laundering programmes submitted to them by various financial institutions and confirmed that they formally comply with the law. In the months leading to the on-site visit concentration had been placed on the banks, and it was unclear how many of the internal programmes other than banks had been reviewed by the DMLP, given their extremely limited resources. It was also unclear whether brokerage houses had appointed compliance officers. The examiners, like the Macedonian authorities, at the time of the on-site visit, could not say whether FATF Recommendation 19 was fully compiled with outside the banking sector.

15. The proactive approach of the National Bank to anti-money laundering supervision was not replicated elsewhere at the time of the on-site visit. Anti-money laundering supervision outside the banking sector is undeveloped. There had been no clear strategy agreed for the FAU's role in supervision. Decisions urgently need to be made as to who does what in anti-money laundering supervision outside the banking sector. Clear legal authority should be given to current supervisors in

each sector to inspect anti-money laundering compliance, as the National Bank is doing. Where no supervisors exist, the Macedonian authorities must decide the precise role of the DMLP and ensure a supervisor is assigned for anti-money laundering purposes, with clear legal authority to act. This is particularly the case for foreign exchange offices. The money transmitters also need to have a licensing and supervisory body assigned with clear anti-money laundering responsibilities.[1] The supervisory system also needs the capacity for quick monetary fines in respect of administrative infringements: Assigned anti-money laundering supervisors need the legal right to sanction directly. Locally based guidance also needs preparing on money laundering indicators for those entities that have not received them.

16. The Constitutional Court has rendered it impossible to enquire into past criminal records to determine "fitness and properness" of owners and managers of insurance companies. Legal means should be found to enquire into the previous records of owners (principal shareholders) and managers of insurance companies and any other financial entities (and market participants) caught by this ruling to ensure that "the former Yugoslav Republic of Macedonia" can comply with FATF Recommendation 20. Moreover, the origin of funds should be checked within licensing procedures (and where there are subsequent significant changes in ownership) in respect of casinos, exchange offices and the insurance sector.

17. At the time of the on-site visit the cash transaction reporting regime under the new AML Act had resulted in 9,300 reports. 2 were from the insurance sector and all the rest were from banks. There had been 105 suspicious transactions reported. The breakdown was as follows:

Banks – 92
Insurance – 2
Attorney-at-law – 2
Private citizens – 6
Other FIUs – 4

18. There were no reports from financial regulators, exchange houses, casinos, money transmitters or notaries at the time of the on-site visit. An awareness-raising campaign by DMLP and the relevant supervisors needs to be developed to ensure that these obliged persons and other sectors vulnerable to money laundering are trained to identify suspicious transactions and to make reports.

19. "The former Yugoslav Republic of Macedonia" is a party to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified since the first evaluation), the Convention on Mutual Legal Assistance in Criminal Matters (1959) and its Additional Protocol. They have also signed several bilateral agreements regulating extradition and legal assistance. As a general rule, all promulgated international conventions are binding on the Macedonian authorities and directly applicable. Overall, the underlying provisions for international co-operation are soundly based. However, given uncertainties in domestic law, the examiners recommend that the Macedonian authorities review their provisions to ensure that effective international co-operation can be given where the requesting state is seeking the identification, freezing and seizure of proceeds or property of corresponding value, and where the enforcement of foreign confiscation judgements is sought. Measures to empower the sharing of confiscated assets should be adopted.

20. On the operational side, the priority is to increase substantially the resources for the DMLP and increase the police resources for dedicated money laundering investigators and financial investigation generally, so that the police are also generating money laundering enquiries independently of the STR system.

[1] On 19 November 2003, the Macedonian Parliament passed legislation under which money transactions will be licensed and supervised by the National Bank.

21. The police are still focused on investigations of the predicate offences and "following the money" needs to become a routine component of major proceeds-generating crime investigation beyond the tax predicate, particularly in cases of drugs and human trafficking and corruption. Despite the work of diligent officers, there had been no real progress on money laundering investigation since the first round. Moreover, the examiners perceived a lack of communication between prosecutors and the police on money laundering cases. A team approach to major money laundering cases and the creation of specialised prosecutors is encouraged. As in the first round, perceived constitutional difficulties in the use of special investigative means were said to provide major obstacles to police enquiries. If the constitution does need amending for the full use of special investigative techniques, then this process should be addressed speedily.

22. The examiners had serious concerns that the DMLP, as presently resourced, could be thought of as an FAU in name only. At the time of the on-site visit, there were 3 people (including a newly appointed director) working in it, of the 15 employees envisaged in its organisational structure. It is seriously overstretched and the provision of much more in the way of professional qualified personnel to it and an adequate IT infrastructure to replace the manual reporting system will be a signal of the Macedonian commitment to fight money laundering properly. Of the reports received, 27 cases had been analysed in depth. One case had been sent and accepted by the Public Prosecutor, which involved predicate crimes of tax evasion and forgery. Two other cases had been analysed and were expected to go to law enforcement. Even with their limited resources, the tiny number of cases sent to law enforcement by the DMLP raises concerns. The need for grounded suspicion based on firm evidence set out in the legislation should be re-visited to ensure that DMLP (which is not an investigative body) is not looking for too much evidence before sending cases to law enforcement. The Unit needs to send more reports to the investigators, and should not focus exclusively on the tax issue.

23. There is a clear need for greater co-ordination of the work on anti-money laundering across departments and agencies, both at the strategic level and the working level. At the strategic level, an interdepartmental co-ordination body should be created, chaired at a suitably senior level:

- to develop a co-ordinated national strategy for the fight against money laundering;
- to assess the effectiveness of the system periodically and develop and monitor key performance indicators;
- to make recommendations to government where changes are required.

24. In this way, "the former Yugoslav Republic of Macedonia" can move to the development of a working anti-money laundering regime. There is a long way to go to achieve this.

Latvia

1. A MONEYVAL team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Latvia between 11-14 November 2002 in the context of the second round of MONEYVAL evaluations.

2. At the time of the second on-site visit the major sources of criminal proceeds continued to be drug trafficking, smuggling, corruption and fraud. Tax evasion, including VAT fraud, also generates large amounts of laundered proceeds, though the number of detected offences is relatively small.

3. Money laundering is not based on domestic predicate crime alone. The external threat to the Latvian financial system from crimes committed abroad is well understood by the Latvian authorities.

4. Latvia has continued to attract considerable foreign investment. At the time of the on-site visit the number of non-resident accounts stood at 52% of total deposits. It was understood by persons with whom the team met that the risk of money laundering was higher with regard to non-residents.

5. Banks remain a primary vulnerability for money laundering. They account for 90% of all suspicious and unusual transaction reports (11,398 between 2000 and 2002). Financial regulators and foreign FIUs, at the time of the on-site visit, were the next major sources of reports to the Control Service, which is the Latvian FIU. When the examiners were on–site, a much smaller number of reports had been received by the Control Service from notaries, the gambling and insurance sectors. No reports had been received from the 222 exchange houses. The Latvian authorities should place emphasis in outreach and training on the need for other vulnerable obliged persons and institutions to make reports to the Control Service – particularly the so-called "gatekeepers" and the exchange houses.

6. At the time of the on-site visit 3 criminal prosecutions for money laundering had been brought and one other case was being prepared for filing in court. There were no completed prosecutions or convictions for money laundering.

7. Overall, since the first evaluation, Latvia has made some progress towards the development of a comprehensive and coherent anti-money laundering system, but progress remains slow – particularly on the legal/repressive side. Much excellent work is being done by credit institutions and the Control Service, in particular in the generation and analysis of reports (which in relation to suspicious transactions are of a constantly improving quality). However the outputs from all this activity appeared very sparse. Numbers of money laundering related investigations, prosecutions, and confiscations were disappointing. Reports analysed by the Control Service, impressive as the numbers were, are not ends in themselves, and the investigation and prosecution side needs more emphasis.

8. On the normative side, the preventative law, the Law on the Prevention of the Laundering of Proceeds Derived from Criminal Activity (LPL) was amended on several occasions. These amendments *inter alia* extended the authority of the Control Service, changed the composition of the Advisory Board (the co-ordinating body) and targeted the financing of terrorism.[1]

9. The definition of the money laundering offence has also been broadened by an extension of the list of predicate offences. However the mental element has remained that of "knowledge", which appears to require a high degree of proof for it to be satisfied. Urgent consideration should be given to the possibility of clarifying, if necessary by means of legislation, the evidentiary requirements for a conviction. In particular, consideration should be given, at least, to putting beyond doubt in legislation that a conviction for money laundering is possible in the absence of a finding of guilt for the underlying offence, and that this element can be proved by circumstantial or other evidence. The introduction of corporate criminal liability, which was proposed at the time of the on-site visit, would also be a positive development.

10. At the time of the on-site visit the legislation in respect of confiscation was being revisited in a new draft Criminal Procedure Code. Its enactment would indicate substantial progress in this area and eliminate some, though not all, of the current uncertainties and deficiencies highlighted in the first evaluation report. The recommendation of the first evaluation team, where a re-visiting of the confiscation regime was urged, is re-iterated by these examiners. These examiners advise that confiscation is approached in a comprehensive way (particularly with the needs of the fight against money laundering in mind). This review should include consideration of the issue of the reversal of the burden of proof (post conviction), when establishing what property was unlawfully obtained in some serious proceeds-generating offences. The Latvian authorities should also satisfy themselves that provisional measures can be taken sufficiently early at the investigative stage, and that unrealistically high degrees of proof are not required to trigger them.

[1] Since the on-site visit the Parliament adopted on 18 December 2003 additional amendments primarily aimed at further harmonisation with the Second EU Directive. These amendments came into force on 1 February 2004.

11. On international co-operation, the provisions of the Draft Criminal Procedure Code should be re-examined to ensure that all possible assistance as required by the Council of Europe Convention 141 can be given by Latvia in the enforcement of foreign confiscation orders and provisional measures. The issue of sharing confiscated assets has been addressed in the new Criminal Procedure Code.

12. The Control Service remains a dedicated, professional and thorough FIU. They continue to be at the centre of the national anti-money laundering effort. They are adequately resourced and well supported by government. The examiners advise that they would benefit from the introduction of a police liaison officer(s) to optimise day-to-day co-ordination of law enforcement. The Control Service needs, and is trying, to send more reports to law enforcement.

13. On the operational side it did not appear to be standard practice to investigate with a view to prosecution the money laundering offence as distinct from the predicate offence, even where the predicate is considered to be a major proceeds-generating offence. The examiners urge that in major proceeds-generating criminal cases the money laundering aspects are investigated in parallel with the investigation of the predicate offence. A greater proactive asset-oriented approach generally by law enforcement to investigations should assist the pursuit of money laundering cases where there is no STR/UTR report referred to them by the Control Service. Such an approach is urged – not only in respect of financial and fiscal crime, but also in relation to drugs investigations and organised crime investigations generally. More trained financial investigators are needed to support such an approach. Some new resources have been put into specialised investigation of money laundering emanating from the Control Service – both in the Financial Police and in the Economic Crime Bureau. Nonetheless the resource needs of law enforcement generally need reconsidering better to support the work of the Control Service, and to pursue more money laundering cases proactively. Police and prosecutors should address together the reasons for lack of success so far, and revisit their current approach to money laundering investigation and prosecution. The Advisory Board should also consider whether current legislative initiatives will fully meet the need to speed up the process, and whether further legislative change is required to remove any remaining legal and institutional obstacles to prosecutions and major confiscation orders in these cases.

14. Since the first evaluation, the Financial and Capital Market Commission (FCMC) has been set up, bringing together the licensing and prudential supervision of credit institutions, loan and savings companies, the stock exchanges, the Central Depository of Latvia, securities and brokers firms, investment companies, and insurance companies. The Central Bank of Latvia retains its licensing and supervisory role in respect of exchange houses, and plays a major role in the setting of anti-money laundering policy. The Lottery and Gambling Supervision Inspectorate (LGSI) remains responsible for licensing and supervision of the lottery and gambling market. Concrete steps are being taken to develop the regulatory and supervisory structure for all these sectors, including a particularly determined approach to licensing by FCMC. The examiners advise an even more proactive approach to inspection policy in respect of exchange houses, with dissuasive sanctions where breaches are detected.[2] The LGSI inspection programme should be supplemented with on-site examinations which specifically target the anti-money laundering issue generally and the LGSI guidance on this issue. The Latvian authorities should also consider what other regulatory and supervisory structures are required where there are currently no supervisory bodies. The present lower level administrative fines available to FCMC appeared to the examiners to be not very dissuasive and, in their view, should be reconsidered. Sanctions should be capable of imposition in respect of breaches of FCMC guidelines.

15. Turning to customer identification, the examiners recommend that there should be explicitly included in the law in all cases where business relations are established or transactions carried out on behalf of customers who are physically not present for identification purposes (non face-to-face operations) that additional measures should be taken to compensate the greater risks of money laundering arising out of such operations. Copies of relevant documents should be obtained as a matter

[2] The Latvian authorities advised at the time of the adoption of this report that the number of on-site inspections in exchange houses increased in 2003 by 30% and that the scope of checks has significantly improved.

of course to allow verification, not only for new business relations or transactions, but to the extent possible, for already accepted clients as well. Supervisors should pay particular attention in on and off-site inspections to identification procedures in place in the case of non-resident account holders.

16. On the identification of beneficial owners generally, the law requires that relevant institutions, if they know or suspect that a transaction is conducted on behalf of a third party, should take reasonable measures to identify the third party. The Latvian authorities responded positively to the suggestion in the first evaluation report that written declarations in this regard might assist. An "Actual Beneficiary Identification Card " is annexed to the FCMC Recommendations for the Formulation of Procedures for Identifying Clients, Unusual and Suspicious Financial Transactions. This, in the examiners' view, should now be a clearer normative obligation, and not be left to the subjective judgements of individual institutions.[3] The Latvian authorities are also encouraged to consider issuing guidance as to the situations where it would be prudent not simply to rely on a written declaration but also to seek identification data, as well, before accepting clients. Generally, the extent to which ultimate beneficial owners are identified in account opening etc should be given special attention in supervision.

17. Nominee accounts are available in Latvia under the Law on Credit Institutions. It is assumed that the identities of the beneficiaries will be known to the appropriate persons in the financial institutions where they are held, and to the supervisors, but not to persons in financial institutions handling money movement on a day-to-day basis. Guidelines on the identification of suspicious transactions in the context of the operation of these accounts would be highly beneficial.

18. Lastly the examiners advise that, as necessary, the Advisory Board be given a clearer formal remit to assess the performance of the system as a whole and make necessary recommendations to Government.

19. In this way the progress that has been made can be built on to develop a balanced operational anti-money laundering system.

Liechtenstein

1. Liechtenstein was the eleventh Moneyval member state whose anti-money laundering regime was assessed in the framework of the second round of mutual evaluations conducted by the Committee. A team of Moneyval examiners, accompanied by two colleagues from a Financial Action Task Force (FATF) member state visited Liechtenstein from 27 to 30 May 2002. The objectives of the second evaluation round were to take stock of developments since the first round evaluation, to assess the effectiveness of the anti-money laundering regime in practice and to examine the situation in those areas which had not been covered during the first round evaluation.

2. The crime situation has not changed significantly since the first round evaluation. Liechtenstein does not face the common forms of organised crime, nor certain forms of ordinary crime (assaults, robberies etc.), but drug trafficking has been detected in a few cases and white-collar crime, in particular investment fraud and embezzlement, seems to be a relatively frequent type of proceeds-generating criminality at domestic level.

3. As a well established offshore financial centre, Liechtenstein provides a range of financial and corporate services, in particular in the area of (private) banking, asset management, investment advice and the setting up of trusts, companies and other legal entities. These services make Liechtenstein vulnerable to money laundering, particularly in the layering and integration phases, as international criminals, including organised crime groups, may misuse its financial and banking facilities for money laundering purposes. At the time of the on-site visit, 74 cases were under investigation by the police, a

[3] The Law on the Prevention of the Laundering of Proceeds Derived from Criminal Activity [LPL] as amended in December 2OO3 makes it a clear normative obligation to request a written declaration from the client to identify the third party.

large majority involving Liechtenstein trustees. Proceeds in those cases typically originated from predicate offences committed abroad, including fraud, misappropriation, breach of trust, organised crime, drug trafficking and fraudulent bankruptcy.

4. On the legal side, Liechtenstein has revised the Criminal Code by introducing a new definition of money laundering, criminalising self-laundering and broadening the range of predicate offences. The 1993 Mutual Legal Assistance Act has been repealed and replaced by a new Mutual Legal Assistance Law. As a result, the possibilities of appeal have been reduced and the delivery of assistance became more expeditious.

5. On the law enforcement side an independent financial intelligence unit has been established in March 2001 under a new FIU Act. The judiciary and prosecution structures have been strengthened with the addition of extra judges and prosecutors. Besides courts, a new office under the auspices of the Ministry of Justice is in charge of mutual legal assistance issues and international co-operation. A new police unit against economic and organised crime (EWOK) has been set up in June 2000 to complement the law enforcement structure. All this has resulted in an increase in the number of suspicious transaction reports and related investigations/prosecutions, both domestically and in international cooperation.

6. On the preventive side effective measures have been taken to address issues related to due diligence. The Due Diligence Act has been substantially revised and the 1997 Due Diligence Ordinance has been replaced. The new Due Diligence Executive Order set forth detailed duties of due diligence and processes for financial institutions to establish their own due diligence controls. Furthermore, in October 2001, a Due Diligence Unit, which is responsible for monitoring and supervising due diligence compliance, was established. This unit has taken over due diligence responsibilities formerly vested in the Financial Services Authority.

7. Financial intermediaries have also been heavily involved in implementation of these changes in the financial sector. This involved the cleaning up of old files, e.g. the retroactive identification of beneficial owners and the setting up of client profiles, and progress in compliance culture. This is welcomed by the evaluation team.

8. At the time of the visit, the Government indicated that it was planning further legislative changes, as required for the implementation of the second European Directive and the FATF 8 Special Recommendations on terrorist financing, as well as the setting up of a single regulator for Liechtenstein's financial markets (IFSA).

9. Overall, since the first round evaluation, Liechtenstein has made a very significant progress towards consolidating its anti-money laundering regime. Liechtenstein has positively responded to most of the recommendations made in the first round evaluation report and a number of important legislative, policy and practical measures have accordingly been taken. Apart from those mentioned above, it should be emphasized that the Strasbourg Convention has been ratified, that the possibilities of confiscation have expanded and that several new institutions were set up and most existing ones were reinforced by additional staff and resources. Liechtenstein has thus implemented in a record period of time a substantial package of legal and institutional reform, which the evaluation team welcomes whole-heartedly.

10. The new anti-money laundering regime already delivers results, which shows that the reform was worthwhile: some prosecutions for money laundering have been brought and currently await trial, significant amounts of assets were seized and, to a lesser degree, forfeited or confiscated, the number of suspicious transaction reports is on the rise and so is the general level of awareness and compliance culture in the financial industry.

11. Against the broadly positive picture, there are certain issues which still need addressing, the most important are the following : 1) the powers of the FIU to access information and gather

intelligence necessary for its analysis of STRs are insufficient; 2) mutual legal assistance in purely tax-related criminal cases is still impossible to obtain; 3) there is still resistance to criminalising negligent money laundering; 4) tipping-off can still not be completely excluded in the system; 5) certain aspects of the reporting obligation are still unclear and there is over-reliance on the FIU's advice 6) the apparent compliance culture may prove superficial and temporary in some quarters; 7) the time period for the FIU's analysis of STRs and subsequent reporting to the PPO is too short; 8) the continued existence of bearer accounts (passbooks).

12. With regard to the offence of money laundering, the examiners believe that the Liechtenstein authorities should consider the possibility of further extending the list of predicate offences to cover all criminal offences, i.e. including all misdemeanours, but at least those that are covered by the second European Directive. They also recommend that self-laundering and professional laundering be treated in the same manner under Article 165 of the Criminal Code and the deletion of the provision restricting the liability for self-laundering under paragraph 5 of this Article. Furthermore, the examiners find the penalty levels for money laundering too low in general, e.g. when compared to other jurisdictions, but also within the Criminal Code's penalty levels for economic crimes, and recommend raising them. The Liechtenstein authorities may wish to take also into account the approach of EU member States, which made a uniform decision concerning the penalties applicable to the money laundering offences referred to in Article 6, paragraph 1 (a) and (b) of the Strasbourg Convention.

13. Given the attraction of Liechtenstein as a financial centre, the examiners encourage the Liechtenstein authorities to consider the criminalisation of negligent money laundering, which will enable them to offer mutual legal assistance to those countries where this concept is already implemented and to which, given Liechtenstein's dual criminality principle, legal assistance would at this time be denied.

14. The examiners consider that the current system of corporate liability is not deterrent enough and recommend that the Liechtenstein authorities consider introducing corporate criminal liability. This would certainly help the private sector understand that corporate structures cannot be misused for money laundering purposes and this ultimately would enhance its participation in the overall anti-laundering effort.

15. Moreover, the non-ratification of the Vienna Convention and the obstacles to co-operation in fiscal matters are still potentially serious drawbacks in the area of international cooperation. The examiners regret that Liechtenstein has further delayed the ratification of the Vienna Convention given recent developments in Swiss drug policy. Equally, they regret that the authorities have not considered becoming a party to the 1978 Additional Protocol to the European Convention on Mutual Legal Assistance (ECMA). The evaluation team wishes to repeat the recommendation made in the first round evaluation to the effect that Liechtenstein should join both of the above mentioned international instruments and also consider joining the Second Additional Protocol to the ECMA. They further recommend that the Liechtenstein authorities reconsider their policy barring mutual legal assistance in fiscal matters, especially considering the fact that practice in the last two years shows that there were not many cases in which assistance was denied for this reason.

16. The examiners furthermore suggest that as further experience is gained on sector–specific issues of compliance with the regulatory framework for anti-money laundering prevention specific guidance be provided to each component of Liechtenstein's financial market, in particular on the recognition of suspicious transactions and related reporting requirements (list of indicators). This would enable due diligence personnel to rely more on objective criteria set out generally for a certain type of activity (banking, investment advice, trusts, insurance, etc.) and also help reduce the current tendency in some quarters to frequently hold consultations with the FIU on a personal basis prior to reporting.

17. The examiners have understood that a certain number of "old" bearer accounts (passbooks), whose beneficiary owner was unknown, still exist, even if the deposits held on these accounts were

said to be not significant. The examiners consider that given their transferability, the existence of these accounts raises issues with regard to FATF Recommendation 10 and should be immediately closed down or transformed into nominative accounts. Further, they recommend that the Due Diligence Act be amended to contain an explicit prohibition of any bearer accounts (passbooks) or other financial products.

18. For the sake of clarity and in line with relevant international best practice, the examiners recommend that a clear legal requirement be introduced under the Due Diligence Act for requiring the inclusion of information on the ordering and beneficiary customers so that their name, address and account number is recorded, at least for international fund transfers, and that such information remains in the system.

19. The evaluation team also recommends, given the current regime of tipping off which allows financial institutions and intermediaries to tip off customers about STRs after a maximum period of 30 days, that the Due Diligence Act be reviewed to clearly prohibit and sanction tipping off as well as provide for appropriate penalties.

20. The examiners believe that the FIU is lacking comprehensive and direct access to relevant financial information in order to be able to efficiently fulfil its functions, so they recommend to empower the FIU to have access to all necessary information for its analysis, including information related to beneficial ownership, and provide a legal basis for its access to data bases. The examiners also recommend a substantial increase of professional staff at the FIU. In addition, law enforcement agencies should be equipped with further investigative means for conducting money laundering investigations, such as undercover operations, controlled delivery of cash and monitoring of bank accounts.

21. Finally, the examiners suggest that clear instructions be given to police officers investigating serious crimes, including drug-related and economic crimes, to search and trace assets in every case, where proceeds may be involved and also use proactively the powers and techniques available to them for investigations.

22. To sum up, the Liechtenstein anti-money laundering regime has improved very significantly since the first evaluation round, and with a rapid implementation of the recommendations in this report, Liechtenstein will be able to further refine its anti-money laundering system. It should however ensure as a matter of priority the sustainability of the progress achieved by providing for staff continuity at key positions of the anti-money laundering system and offering further training to local professionals.

Lithuania

1. Lithuania was the 8th Moneyval member state whose anti-money laundering regime was assessed in the framework of the second round of mutual evaluations conducted by the Committee. A Moneyval team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited the Vilnius from 25 to 28 March 2002. The objectives of the second evaluation round were to take stock of developments since the first round evaluation, to assess the effectiveness of the anti-money laundering regime in practice and to examine the situation in those areas which had not been covered during the first round evaluation.

2. The crime situation has not changed significantly since the first round evaluation. Drug trafficking, fraud, contraband, smuggling and financial crimes are still considered to be the main sources of illegal proceeds to be laundered. Financial crimes often have an international character and their number is increasing. Offshore companies are often involved in economic crimes and usually have an account in Lithuania used to transfer money abroad.

3. Organised crime is believed to be involved in committing predicate offences and also in money laundering operations. The current economic situation seems to provide favourable conditions for the influence of organised crime in several sectors of the economy, such as the (illegal) trading in highly taxed commodities. The use of offshore company accounts and the fact that lawyers subject to a secrecy requirements are at times involved as agents or nominees in the management of these offshore structures adds a further layer of complexity to money laundering investigations.

4. Since the first round, the Lithuanian authorities have continued updating and expanding their anti-money laundering legal framework in accordance with their international commitments and domestic policy. Thus, the Law on the Prevention of Money Laundering has been extended to entities organising games (e.g. casinos) so that these entities are now obliged to identify clients under certain conditions, keep records and report transactions to the Tax Police Department (TPD). Moreover, at the time of the on-site visit several legislative amendments were under preparation, including a draft Bill amending the Law on the Prevention of Money Laundering, and the entry into force of the new Criminal Code and new Code of Criminal Procedure was pending. These new Codes will extend the scope of corporate criminal liability, amend the provision on money laundering and revise the regime of confiscation and provisional measures. The Lithuanian authorities have also adopted a Programme for the Prevention of Organised Crime and Corruption which identifies measures to improve the prevention regime of money laundering.

5. Since the first round Lithuania has established the Gaming Control Authority for supervising the gaming sector, as well as a Working Group to ensure coordination between the institutions responsible for the prevention of money laundering and the coordination and implementation of the Government's policy in this area. Furthermore, in 2001 the Government approved a policy plan for the years 2001-2004 on the reorganisation of the law enforcement sector. Accordingly, the Government submitted to Parliament a draft Law transforming the TPD into a new body called the "Financial Crime Investigation Service", which was passed with draft consequential amendments to related laws in March 2002.

6. With regard to the money laundering offence (Article 326 of the Criminal Code), there has not been any change since the first round evaluation. In terms of practical application, there have been 9 money laundering cases prosecuted since 1999 under Article 326, but all these cases have either been terminated without indictment or suspended. To date no convictions were yet obtained for money laundering. This situation may be explained by the inability to obtain the evidence necessary for successful prosecution, given that the predicate offences or other parts of money laundering offences often take place abroad, usually in offshore jurisdictions, and the procedures for legal assistance take too long in many countries if there is cooperation at all. The Lithuanian authorities consider that due to such lack of evidence most money laundering prosecutions are bound to fail and they prefer to prosecute the underlying (financial) crimes or the offence of receiving stolen goods. Money laundering by negligence and the failure to report suspicions of money laundering are not criminalised under the current regime.

7. The new Criminal Code, which was due to enter into force on 1 May 2003, amended the definition of money laundering in order to cure several shortcomings of the old offence, such as the limitation of the types of proceeds that can be laundered to monetary means, the lack of explicit criminalisation of self-laundering and the practical difficulty of applying the money laundering offence to corporate entities for lack of specific penalties applicable to them. Notwithstanding these changes, the evaluation team recommended that the definition of money laundering be brought fully in line with the international standards, including the possibility of inferring knowledge from objective, factual circumstances and considering the criminalisation of negligent laundering.

8. Corporate criminal liability was introduced in 2002 by amending Article 11 (1) of the old Criminal Code and has also been provided for under Article 20 of the new Criminal Code in similar terms. The provision has not yet been applied in practice, but it is broadly conform to international

standards. The evaluation team recommended in this respect that corporate entities be prosecuted systematically in money laundering cases where a connection exists with such entities.

9. In the legal framework of provisional measures and confiscation, no changes occurred since the first round. The Criminal Code (Article 35) still provides for mandatory confiscation, upon conviction, of all or part of the convicted person's property in relation to a large number of criminal offences listed by the provision. Confiscation is still an additional penalty, which therefore supposes a main criminal sanction. At the time of the on-site visit no specific data concerning the application of provisional measures and confiscation orders relating to the proceeds of crime were made available to the examiners, and authorities admitted that their data-collection system needs to improve. There has been a single case of money laundering since the first round in which provisional measures were taken, but no confiscation order was so far issued. The new Criminal Code will bring certain changes in the confiscation regime as well, in particular change its nature from a "punishment" to a "measure". These changes are welcomed by the evaluation team.

10. Since the first evaluation, Lithuania signed treaties on mutual legal assistance in criminal matters with the United States of America, Kazakhstan and China, as well as a bilateral cooperation agreement with Germany to combat organised crime, terrorism and other serious offences. The number of formal requests relating to money laundering matters made by or to Lithuania is very low. The authorities referred to some problems with the authentication of foreign evicence, which the evaluation team suggested to solve by a clear legal provision in the Code of Criminal Procedure. Moreover, the authorities complained about the lack of cooperation from jurisdictions with which they have no bilateral treaty relationship, particularly if these jurisdictions are considered as offshore jurisdictions. There have so far been no requests concerning external confiscation orders made to or by Lithuania. A small number of formal requests for assistance with provisional orders (freezing) made to Lithuania have been fulfilled. On the basis of the mutual assistance treaties concluded with the United States of America and China, the Government of Lithuania has the authority to share confiscated assets with other governments whose assistance contributed to the success of confiscation action. So far there were no actual cases of sharing assets under these treaties.

11. Since the first round, the Lithuanian FIU has joined the Egmont Group (in 1999), and signed seven bilateral memoranda of understanding with foreign FIUs on exchange of financial intelligence or information related to money laundering. The examiners noted that the volume of exchange of information on an FIU-to-FIU basis is steadily increasing from year to year, which they welcomed. The number of requests sent is much smaller.

12. Lithuania's anti-money laundering framework is based on the Law on the Prevention of Money Laundering, which is regularly updated, as well as on various resolutions of the Government addressing specific issues in the Law (e.g. on the procedure of client identification and submission of information on monetary operations, the criteria for identifying suspicious transactions, keeping of a register of monetary transactions, etc.) as well as on Methodological Recommendations of the Board of the Bank of Lithuania, which are regularly updated and provided to credit institutions with the aim of assisting them in properly implementing legal requirements for the prevention of money laundering in their operations. Similar guidance was issued in March 2002 to the securities sector by the TPD. Despite this sound legal framework, the evaluation team expressed some concern about the lack of its implementation across the financial sector, due to problems of coordination and supervision.

13. In fact, the supervisory regime of the anti-money laundering legislation remains ambiguous. The FIU is involved in the process of supervision, but this appears to be case-related *ad hoc* inspection in lieu of supervision. The examiners were informed that as a result of this inspection activity of the TPD, 4 banks were fined for non-compliance with the Law and 45 cases of infringement of related laws were also detected. The Bank of Lithuania focuses on prudential supervision and its on-site inspections are not specifically targeted at ensuring compliance with the anti-money laundering legislation. It also conducts "fit and proper" tests on the directors and management of banks and

approves their appointment. The evaluation team considers that this supervisory regime needs strengthening and recommended that a single or main supervisor be appointeed as a matter of urgency.

14. The "know-your-customer" principle was introduced by Article 9 of the Law on the Prevention of Money Laundering, which requires that credit and financial institutions identify customers if the monetary operations carried out by the customer involve a sum in excess of LTL 50,000 or equivalent in foreign currency and that this identification take place prior to the start of the monetary operation. Identification requirements do not oblige credit and financial institutions to take additional measures in case of non face-to-face identification. It is therefore possible to open accounts and establish a business relationship without such contact. The evaluation team recommended enhanced due diligence measures in this regard and that originator and beneficiary information be required for wire-transfers.

15. While no changes have taken place in the system of the reporting of suspicious and/or unusual transactions since the first round, the number of suspicious transactions, which in general seems rather low, decreased over the years, e.g. those filed by financial and credit institutions. In the period 1998-2001 the TPD received 222 suspicious transactions, in contrast to over 1.5 million reports on monetary transactions above the reporting threshold. The usefulness of this reporting regime is unclear to the evaluation team, as it seems that most of the money laundering investigations were not initiated by the TPD on the basis of the suspicious transaction reports or the threshold reports but rather on other police intelligence and foreign requests. The evaluation team expressed concern that the current reporting system does not seem to yield sufficient material to enable successful money laundering investigations and the lack of evidence, e.g. in cases that involve offshore jurisdictions, leads to the suspension of most investigations formally instituted. The situation of the FIU, in terms of human and financial resources, also raised concerns and the evaluation team recommended its restructuring and proper ressourcing.

16. The evaluation team considers that while in general the foundations of Lithuania's anti-money laundering regime are sound, progress needs to be made with regard to the supervision of the financial and non-financial sectors, as well as the effectiveness of the law enforcement authorities, including the FIU. The focus in the reporting regime on tax crimes should be reconsidered and the STR regime strengthened. The anti-laundering legislative and regulatory framework needs to be consolidated and brought fully into conformity with the relevant international standards.

Monaco

1. The Principality of Monaco is the 23rd country to be assessed by MONEYVAL (PC-R-EV) in the Committee's first mutual evaluation round. A team of examiners from MONEYVAL, accompanied by two colleagues from the Financial Action Task Force (FATF) and two members of the MONEYVAL secretariat, visited Monaco from 21 to 24 October 2002. Prior to the visit, the examiners had received a detailed reply to the mutual evaluation questionnaire and copies of the relevant laws from the Monegasque authorities. The purpose of this evaluation is to examine the situation with regard to money laundering and the system and measures in place to combat it.

2. Monaco has managed to escape the usual forms of organised crime: the only major threat to internal security comes from the so-called "floating population" or persons passing through. The types of crime found in Monaco do not appear to generate significant amounts of illegal proceeds, with the exception of fraud and cheque-related offences. The funds used in money laundering are derived solely from crimes and offences that have been committed abroad. Although the statistics show a steep rise in the number of suspicious transaction reports (STRs) filed, the Monegasque authorities believe this is due to greater awareness of money laundering rather than an increase in money laundering itself.

3. Throughout the visit, it was observed that the Monegasque authorities appreciated the need for effective action against money laundering. They also indicated their willingness to press ahead with a

programme of legislative reform, structural improvements, closer international co-operation and awareness-raising for professionals in order to maintain a high state of alert.

4. Monaco's anti-money laundering system is underpinned by legislation that is broadly in keeping with international standards. The current anti-money laundering policy is governed by Law No. 890 of 1970 on narcotics, as amended by Law No. 1.157 of 1992 and Law No. 1.161 of 1993 and by Law No. 1.162 of 7 July 1993 on the participation of financial institutions in action against money laundering and terrorism, as amended by Law No. 1.253 of 12 July 2002. Added to these are two Sovereign Orders adopted in 1994, and which supplement the general legislation on laundering. The first lays down the conditions governing the implementation of Law No. 1.162, while the second provides for the setting-up of a financial intelligence unit, the Service d'Information et de Contrôle sur les Circuits Financiers (SICCFIN). Other draft laws are currently being considered, including by the National Council, the body that exercises legislative power in Monaco together with the Prince.

5. Executive power is exercised, under the supreme authority of the Prince, by a Minister of State, assisted by a Council of Government consisting of three Councillors: one from the Department of Finance and Economic Affairs, one from Internal Affairs and one from Public Works and Social Affairs. Responsibility for anti-money laundering implementation and follow-up lies with the Finance Councillor. The Principality has a judicial system comprising several levels of jurisdiction (Public Prosecutor's Office, courts of first instance, court of appeal). Prosecutions and investigations relating to money laundering are handled by a two-man anti-money laundering unit that operates within the police force. Back-up is available from the Groupe de répression du banditisme or Organised Crime Squad where necessary.

6. In 2002, the financial sector accounted for 17.5% of the Principality's turnover, ie €1.6 billion out of a total figure of €9 billion. It consists of credit institutions and non-bank financial institutions (NBFIs). NBFIs include insurance companies, portfolio management firms, the Société des Bains de Mer (casino management company), trusts created through notaries and company service providers (companies which manage and administer foreign entities). Added to these are the finance-related activities pursued by chartered accountants and lawyers and, on the fringes of the financial sector, a sizeable property sector, powered by high prices. SICCFIN stands at the head of Monaco's anti-money laundering system and has two main functions, the first being to receive suspicious transaction reports, examine them and refer them to the prosecutor's office if they "concern facts relating to drug trafficking, organised crime, terrorism, terrorist activities, terrorist organisations or the funding thereof which may give rise to criminal prosecution", and the second to oversee the implementation of anti-laundering legislation

7. Monaco's banking and financial system is linked to that of France. The Franco-Monegasque convention on exchange control of 14 April 1945 established the rule that French banking regulations apply in Monaco, while the exchanges of letters of 18 May 1963, 27 November 1987 and 6 April 2001 determined the scope of this convention and the procedures for its implementation. The prudential regulations laid down by the French Comité de la Réglementation Bancaire et Financière or Banking and Financial Regulations Committee (CRBF) apply in Monaco. The French Comité des Etablissements de Crédit et des Entreprises d'Investissement or Credit Institutions and Investment Firms Committee (CECEI) awards accreditation to Monaco-based credit institutions, while the French Commission Bancaire or Banking Commission has the power to carry out on-site and documentary audits of Monegasque credit institutions. When it comes to combating money laundering and terrorist financing, however, Monaco has its own system.

8. Article 218-3 of the Monegasque Penal Code contains a detailed list of predicate laundering offences. During their visit, the examiners were told that a working party had been set up to prepare a draft law which, if passed, would widen this section of the Code to include other crimes and offences. Another draft law seeks to include the financing of terrorism in the list of predicate offences set out in Article 218 of the Code. At the time of the visit, under Monegasque law, legal entities could not be

held criminally liable for money laundering. They are, however, liable to civil and/or administrative penalties and can be banned from operating.

9. The Principality of Monaco has ratified the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. This instrument is applicable in Monegasque law and procedure[1]. A Sovereign Order on international co-operation in matters relating to seizure and confiscation in the fight against money laundering was issued on 9 August 2002 and aims to ensure implementation of Article 5 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted in Vienna on 20 December 1988.

10. Under Monegasque law, if assets and funds of illicit origin are mingled with legitimately acquired assets and funds, those assets may be confiscated up to the estimated value of the illegitimate assets and funds. Not only assets of illicit origin may be confiscated, but also any other assets acquired using these funds. Confiscation is ordered by the courts. Similar provisions can be found in the law on narcotics. At the time of ratifying Convention No. 141 on 8 August 2002, the Principality of Monaco entered a reservation in respect of Article 2 of the Convention, declaring that this article "shall apply only to the laundering of the proceeds of an offence as provided and punished by Articles 218 to 218-3 of the Penal Code" and in the law on narcotics. Confiscation is therefore restricted to the predicate offences listed in Article 218. The Principality has taken steps to render enforceable the provisions of the following conventions: the Council of Europe Convention, adopted in Strasbourg on 8 November 1990, on the laundering, search, seizure and confiscation of the proceeds of crime, and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, adopted in Vienna on 20 December 1988, including the provisions on confiscation and provisional measures.

11. In the case of money laundering offences, any requests for judicial assistance, whether made under bilateral agreements or on a reciprocal basis, have always met with a positive response. There are no barriers to international co-operation in the judicial sphere and requests for assistance in connection with money laundering are executed swiftly and in full. SICCFIN may also communicate, of its own accord or on request, with foreign agencies. It can provide or exchange any information (identification, criminal records, bank statements) concerning transactions suspected of being related to money laundering and request and receive information from financial institutions and gaming establishments, and from various government agencies and departments (police, customs, Directorate of Economic Expansion, etc.). It may also do so under co-operation agreements. Such information sharing is, however, subject to the condition that no criminal proceedings have already been instituted in the Principality on the basis of the same facts.

12. The examiners believe that much has been done in the Principality to render the anti-laundering system even more effective. They also feel that the gains already made in the daily battle against laundering and other economic and financial crimes might be further enhanced if the competent authorities, and in particular the judiciary, were to look at ways of improving their human resource management. In terms of legislation, even though the Monegasque Penal Code contains an exhaustive list of predicate offences, the Monegasque authorities would be very well advised to adopt the approach favoured at international level, whereby the underlying offence is extended to include all serious crimes. This would help to avoid problems when it comes to enforcing anti-laundering legislation.

13. As regards action in the financial sector, the examiners found that financial institutions were not always sufficiently knowledgeable about their clients and that Monegasque credit institutions were possibly over-reliant on information received from the parent company and tended to ask clients only perfunctory questions about the origin of their funds. The quality of customer identification and

[1] At the time of ratifying Convention N° 141, the Principality of Monaco made a reservation in respect of Article 2 of the Convention, declaring that this Article "shall apply only to laundering of the proceeds of an offence as provided and punished by the Monegasque Penal Code" and in the law on narcotics.

follow-up by Monegasque financial institutions was seen as being one of the weak points of the system. Of particular concern to the examiners were cases where accounts were opened on behalf of foreign clients who did not visit the bank in person. MONEYVAL suggested that particular care be taken when opening accounts for clients of this kind. On the subject of alias accounts, even though the examiners recognised that the use of pseudonyms was merely an affectation on the part of certain clients and that experience showed that banking transactions involving foreign countries were performed on behalf of the real account-holder, they nevertheless recommended that such practices be scrapped.

14. Gaming regulations have become much more stringent in recent years and since August 2002, casinos have been required to identify their customers, in addition to their STR obligations. The examiners recommended that the Monegasque authorities maintain a high level of vigilance and prevent casinos from being used for money laundering.

15. The total volume of transactions in the property sector is considerable due to the shortage of properties for sale and the high prices involved. The estate agents with whom the examiners met said that the majority of their clients were referred to them by credit institutions. No specific checks, therefore, are carried out on these individuals, who are assumed to be known to the banks. The examiners accordingly considered it vital that the Monegasque authorities responsible for action against money laundering display the utmost vigilance in this area.

16. There is a significant level of investment activity by foreign nationals in Monaco. These investments take the form of acquisitions of shareholdings in Monegasque companies and, in certain sensitive sectors, are subject to authorisation. Elsewhere, a statement or report must be filed. The examiners believed there was a risk that, through these transactions conducted by non-residents, companies might attract illicitly-obtained funds. They therefore recommended that the Monegasque authorities continue exercising very close scrutiny and take a tough stance in this area.

17. The Monegasque authorities have begun to give serious thought to ways and means of combating money laundering, which continues to pose a threat to the Principality's reputation. In these circumstances, the examiners strongly recommended that the authorities press ahead with their plans to increase staff, and that a police investigator's post be created. These staffing measures should be accompanied by action to improve SICCFIN's logistical and IT facilities (bigger premises and a more modern, efficient data storage facility), and backed by proper training for the staff who handle this particular type of crime. The examiners suggest that officials from the various institutions involved in action against money laundering undergo more specialised training, with the focus on money laundering detection and information about new investigative techniques and typologies. A recommendation was made, suggesting that SICCFIN run training courses for institutions that are particularly vulnerable to money laundering.

18. Given that all the money laundering cases identified to date stem from predicate offences that were committed abroad, the Monegasque authorities believe there is no need to employ special investigative techniques in the Principality. In the opinion of the examiners, however, the fight against money laundering calls for the use, under judicial supervision, of the most effective techniques available (eg controlled delivery, observation, interception of telecommunications).

19. Some recommendations and observations contained in the report also relate to other points brought to the attention of the Monegasque authorities in an effort to further enhance the Principality's anti-laundering system as a whole.

Poland

1. A MONEYVAL team of examiners, accompanied by a colleague from a Financial Action Task Force (FATF) country, visited Poland between 22 and 25 April 2002. This visit took place in the

framework of the second round evaluation. Its aim was to take stock of developments since the first round evaluation, and to assess the effectiveness of the anti-money laundering system in practice.

2. The situation regarding the money laundering trends has not changed significantly since the first evaluation round. The main offences to be considered as sources of illegal proceeds to be laundered continue to be production and trade of narcotics and psychotropic substances; forging money and securities; robbery; extortion and smuggling. In addition to these offences, corruption cases as a predicate offence of money laundering appears to be growing. Also the law enforcement institutions are increasingly being called upon to investigate other new forms of criminality directly linked to economic and financial activities – especially in the field of privatisation.

3. Combating organised crime, which is still a problem in Poland, constitutes one of the priorities of the security policy of the Polish authorities. Criminal groups are believed to be involved in committing both predicate crimes and laundering operations. As for money laundering operations, the most vulnerable institutions are banks, insurance companies and brokerage houses. The most frequently used methods of money laundering in Poland are the transfer of cash abroad through bank accounts, the use of loans, donations and fictitious accounts, the use of entities exempted from tax and division of transactions. The Polish authorities have advised that income obtained from criminal activity (most frequently from smuggling, drug dealing, trade in arms, financial and tax fraud, prostitution and theft) is often introduced by organised crime groups to legal financial trading, by depositing it in banks or other financial institutions.

4. There have been significant changes in the anti-money laundering policy in Poland since the first evaluation of 1999 where the overall system was considered as "both inadequate and not performing well". Taking this context into account, the changes made can be seen as reflecting a new and positive attitude of the Polish Government with regard to anti-money laundering policies.

5. One of the most significant changes in the anti-money laundering regime in Poland has been the adoption of the anti-money laundering law – the Law on Countering Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources – which came into force in November 2000. An equally important change has been the establishment of the Polish FIU – the General Inspector for Financial Information (the GIFI). An important change has also taken place regarding the money laundering offence, which is to be found in article 299, paragraph 1, of the Criminal Code, and which now has the character of an all crimes offence.

6. As for article 299, paragraph 1, of the Criminal Code, it is also clear, that it includes own funds or "self laundering"; it continues to be based on intentional fault and does not therefore encompass negligent conduct; and upon conviction an offender is liable to significant sanctions (the maximum being deprivation of liberty for a period of up to 10 years in certain specified circumstances). The evaluators welcomed the improved money laundering offence.

7. At the level of practice the evaluators also took note of several indications of progress. For example, there has been a substantial increase in the number of investigations and prosecutions for money laundering in recent years. Between 1 September 1998 and 30 March 2002, 166 proceedings were instituted in cases involving money laundering. In these proceedings 155 persons were charged with committing money laundering offences. In five investigations a total of 20 indictments were filed. As of the date of the on-site visit one conviction for money laundering had been secured.

8. Notwithstanding the positive development at the level of practice, the evaluators were still concerned about the level of proof required to demonstrate that the proceeds in question derived from a relevant predicate offence. The extent to which there is still no consensus on such a fundamental element of the law became apparent in the course of the on-site visit when radically different interpretations were provided to the evaluators. In the first mutual evaluation report it was advised "that inter-departmental consideration is given to the level of proof that is required for the money laundering offence generally and proof of the predicate offence in particular". This important

recommendation has yet to be acted upon, and therefore the evaluators adopt the above recommendation as its own and urge the Polish authorities to afford priority to its early implementation.

9. As for confiscation the Criminal Code provides for both special forfeiture and general forfeiture in money laundering cases. Both provisions have been subject to amendments since the first evaluation of Poland. Special forfeiture in a money laundering context is addressed in article 299, paragraph 7, of the Criminal Code. This provision is now framed in mandatory terms and encompasses both property and value confiscation. It is also worded in such a way as to reach proceeds transferred to third parties. The revised wording constitutes a significant advance over the previously existing formulation.

10. As for the use of confiscation in practice, it became clear that there existed a widespread perception that the system was ineffective. For example, it was stated on several occasions within differing parts of the Polish administration that the confiscation, post conviction, of a house or car bought with money derived from drug trafficking was very much an exception. Various contributing factors were mentioned. This picture is a disappointing one which needs to be addressed as a matter of urgency. It is recommended that, as a first step, an assessment be undertaken to determine the actual extent to which the existing legal framework is invoked in practice and to what effect. On this basis interdepartmental consideration should be given, at an appropriately senior level, to the identification and removal of impediments to the effective operation of the existing system.

11. Since the time of the first evaluation Poland has remained actively engaged in international co-operation. By way of illustration, it has both signed and ratified the UN Convention against Transnational Organised Crime, the negotiation of which, it will be recalled, was a Polish initiative. However, perhaps the most significant development since the first evaluation for present purposes is its full participation in the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime. This entered into force for Poland in April 2001.

12. While the position of Poland in international co-operation has been strengthened in a significant fashion the evaluators regret that the use of double criminality as a mandatory ground for refusal of confiscation at the request of a foreign state will preclude co-operation in instances in which the requesting state utilises, inter alia, a different knowledge standard. It is recommended that the Polish authorities revisit this difficult issue and consider whether an approach can be formulated and implemented more in keeping with the wording and spirit of FATF Recommendation 33 and its Interpretative Note. In the view of the evaluators it would also be appropriate to give further consideration to the issue of asset sharing.

13. Up until the enactment of the Anti-Money Laundering Law in November 2000 only banks and brokerage houses came within the ambit of anti-money laundering regulation. As a result of the new law, the following types of enterprises are subject to the regulation: Exchange bureaux, insurance companies, investments funds, pension funds, Polish Post, entities involved in gaming and betting, notaries public and real estate agents. It was noted by the evaluators that the greatly expanded scope of regulated activities does not encompass the legal and accountancy professions, nor does it include dealers in high value items. The evaluators recommend that consideration be now given to including these professions, which would bring the law fully into compliance with the 2001 EU Money Laundering Directive.

14. As for customer identification, the Anti-Money Laundering Law specifically requires customer identification in relation to transactions above the threshold level of euro 10.000 (will be euro 15.000 as of 1 January 2004). It does not, however, explicitly require customer identification at the time of opening an account. It was said that such provision, for banks at least, is rooted in the Banking Act, and more specifically in Sections 54 and 65. However, the position is not entirely clear since the translation provided to the evaluators of Section 54 of the Banking Act merely requires that at the time of opening an account the customer must be specified, and "specified". Although the Polish financial

institutions may interpret the requirement to "specify" a customer as a requirement to establish a customer's identity, for the avoidance of doubt, it is recommended that there should be a clearer legal requirement to do so for all obligated institutions, so that failure to adhere to it can result in penalties.

15. Customer identification requirements for legal persons caused some concerns. The only requirement in place for legal persons is to identify account signatories. There is no requirement in Banking Law to identify directors or major shareholders. There is no provision on how to deal with foreign bearer share companies. The evaluators recommend that the customer identification provisions in respect of legal persons should be brought fully into line with FATF Recommendations.

16. The anti-money laundering law requires obligated institutions to provide training to their personnel in identifying suspicious transactions potentially linked with money laundering. GIFI has made training a top priority. It has organised many training courses for the various types of institutions designed to enhance their ability to spot suspicious transactions and adopt internal policies, procedures and controls that would deter money launderers.

17. The legal basis for the obligated institutions to disclose a report on suspicious transactions to the GIFI is article 16, section 1, of the Anti-Money Laundering Law. Pursuant to this provision, obligated institutions intending to carry out a transaction in circumstances justifying a suspicion of money laundering or terrorist financing, shall inform the GIFI of the suspicion providing information and indicating that the transaction should be suspended or the account blocked, indicating the planned date of the transaction. Furthermore, article 11 provides that the obligated institutions shall, upon a written demand by the GIFI, "make available its documentation pertaining to transactions" related to money laundering to the GIFI.

18. It is the view of the evaluators that the concept of reporting only on the basis of "transactions" rather than "activities" could in some cases lead to the intermediaries refraining from sending a report, because a real transaction has not yet been asked for by the client. Even where the level of a specific transaction has not yet been reached, the obligated institution might have a money laundering suspicion, for example based on advice sought by the client or documents shown by the client. The evaluators recommend, that this question should be revisited by the Polish authorities, potentially with a view to changing the law so as to include suspicious activity or to communicate expressly to the obligated parties, that the term "transactions" should be understood to also cover suspicious activities other than just transactions.

19. Suspicious transaction reports continue to be relatively few in number, though their number has been increasing. Moreover, most reports have come from a small number of institutions in the banking sector. Very few reports have come from brokerage houses, and not one at the time of the on-site visit from bureaux de change.

20. The evaluators noted with satisfaction a number of improvements since the first evaluation concerning the operational matters relevant to money laundering cases. Noteworthy is the explicit power in article 33, section 1-3 of the Anti-Money Laundering Law given to the GIFI in terms of providing relevant law enforcement and supervisory authorities with confidential information. Furthermore, the access of the police to bank information, for example on bank accounts and transactions, has been made easier after the creation of the GIFI. Having said this, a number of improvements and refinements will still have to be made in order to further fine-tune the effectiveness of the system in place.

21. The co-operation between the GIFI, on the one hand, and police and prosecutorial services, on the other hand seems generally to be working quite well. However, as for money laundering cases not emanating from a suspicious transaction report, the evaluators were not convinced, that the GIFI always were provided with the relevant information by the law enforcement authorities. For a proper updating of its own databases, it is important, than the GIFI receives all information related to money laundering. The evaluators therefore recommend that clear procedures be established in order to make

sure, that the GIFI receives all relevant information also on money laundering cases not emanating from a suspicious transaction report.

22. According to article 5 of the Anti-Money Laundering Law, staff from various state agencies can act as liaison officers within the FIU. In order to further strengthen the co-operation with the National Prosecutor's Office, the evaluators advise the Polish authorities to consider whether the Prosecutor's Office could also exercise a similar function within the FIU.

23. Poland has adopted a number of measures since the first evaluation that demonstrate significant progress and the strengthening of its anti-money laundering regime. By addressing the issues above, Poland can further improve its fight against money laundering and make the regime to combat it more effective.

Romania

24. Romania was the ninth MONEYVAL Member State whose anti-money laundering regime was assessed in the framework of the second round of mutual evaluations conducted by the Committee. A team of MONEYVAL examiners, accompanied by a colleague from a Financial Action task Force (FATF) Member State visited Romania from 15 to 18 April 2002. The objectives of this second evaluation round were to take stock of developments since the first round evaluation (26-29 April 1999), to assess the effectiveness of the anti-money laundering regime in practice and to examine the situation in those areas which had not been covered during the first round evaluation.

25. The range of crimes generating illegal proceeds has not changed significantly in Romania since the First Round Evaluation: smuggling, banking/financial fraud, vehicle theft, drug trafficking, money counterfeiting, procurement. The number of embezzlements has decreased to an insignificant level whereas that of tax frauds committed by organised groups mainly to the prejudice of the State Budget has increased. Such frauds are committed particularly in relation to illegal manufacturing and smuggling of alcohol, illegal trade of oil products and scrap iron. Frauds in the sector of investments and corruption cases to the prejudice of the private and public sectors became typical. Offences committed by organised crime include drug trafficking, procurement for prostitution, theft and trafficking in luxury cars, customs-foreign exchange frauds and tax evasion and cyber crimes such as e-trade with stolen credit cards.[1]

26. The main economic sectors affected by money laundering are: interior/foreign commerce, banking-financial sector, capital market. A special problem seems to be the foreign currency exchange involving Romanian citizens carrying out significant and frequent foreign currency exchanges. Illegal funds to be laundered are generally routed through Romanian and foreign banks and other financial institutions. Sometimes offshore havens are used in the layering process (and funds may be returned to Romania for integration)[2]. The extensive use of cash and the phenomenon of smurfing worthy being underlined as facilitating money-laundering operations.

27. The methods of money laundering have not changed significantly since the first round: they usually involve domestic and foreign banks, whereas, as noted above, offshore territories are sometimes involved in the process. Money laundering continues to involve many Romanian and foreign citizens, as well as commercial companies (in particular in the form of investment in such companies or phantom companies of money derived from tax evasion, fraud to V.A.T, smuggling and corruption.). Complex cases can involve several jurisdictions, including offshore centres, so that information/intelligence gathering becomes quite difficult. According to the Romanian authorities,

[1] Law No 39/2003 on preventing and combating organized crime lists offences committed by organized crime associations which represent all serious crimes.

[2] NOPCML, 2001 Activity Report.

specific money laundering techniques include the establishment of phantom companies, the use of fraudulent bankruptcy and export frauds.

28. The Government policy and objectives in the anti-money laundering field focus on establishing programmes and national plans targeting institutional and legislative reform (justice, finances, etc). One of these programmes relates to certain predicate offences and aims at preventing and combating corruption, drug related and organised crimes, as well as trafficking of human beings Programmes also include training and technical development duties.

29. The most important achievement since the first evaluation has been the effective operational activity of the National Office for the Prevention and Control of Money Laundering (NOPCML). From end 1999, when the NOPCML became operational, to the end 2000, 298 notifications have been submitted to the General Prosecutor's Office. 276 cases were sent to the Police for criminal investigation. On the basis of notifications, investigations and their own inquiries, the Police initiated criminal investigations in 42 cases: in 21 of these cases the persons charged were convicted of money laundering. The remaining 218 cases were at different investigation or other procedural stages at the time of the visit. Another very important step was the adoption, a few days before the evaluation visit, of a new version of the Suspicious Transactions Guidelines which now apply to all reporting entities, also beyond the financial sector.

30. Several legislative or other regulatory measures were also taken that affected the legal regime in the field of money laundering, related to: criminal and criminal procedure law; terrorism; corruption; drug trafficking; co-operation in criminal matters; transfers abroad of convicted persons; extradition; human beings trafficking; credit co-operative organisations; know-your-customer (KYC) standards; documentation for the authorisation of the financial-banking operations, for issuing the functioning authorisation of the Insurance Companies as well as the Criteria for approving the insurer's significant shareholders, the administrators and managers of these companies, insurance brokers, securities, financial investment companies and real estate agents.

31. At the time of the visit, the Government envisaged new legislative initiatives, among which, as a priority, the revision of Law No. 21/1999 for the prevention and sanctioning of money laundering. A new draft law had been approved by the Government and submitted to Parliament before the Evaluation visit.[3] Amendments were also announced with regard to provisions of Law No. 78/2000 on the preventing, finding and punishing the corruption deeds[4], of Penal Code and Penal Procedure Code, of legislation regarding the fight against organised crime[5], the protection of and assistance to witnesses[6] and penal liability of legal persons. Finally, the Romanian Government announced their intention to ratify soon the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime[7].

32. Romania made significant amendments on the penal and financial aspects of the fight against money laundering, after the evaluation visit, by virtue of the adoption of the Law No 656/2002, which replaced Law No 21/1999, namely:

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[3] The new Law No 656/2002 on the Prevention and Sanctioning of Money Laundering of the 7th December 2002 replaced Law No. 21/1999.

[4] Law No 161/2003 on certain measures on ensuring the transparency in performing the public dignities, of public functions in business area too, the preventing and sanctioning of corruption; Governmental Emergency Ordinance No 43 on April 4th, 2002 (establishing the National Anti-Corruption Prosecutor's Office), approved by Law No 503/2002.

[5] Law no. 39/2003 on the prevention and combating organised crime;

[6] Law no. 682/2002 on the protection of the witnesses

[7] Romania ratified the Strasbourg Convention [ETS No. 141] on 6 August 2002. It entered into force with regard to Romania on 1st December 2002. Romania also issued Law No 161/2003 on transparency of public functions and prevention and suppression of corruption; Law No 39/2003 on the prevention and combating of organized crime; Law No 682/2002 on the protection of witnesses.

- the limitative list of predicate offences on which money laundering offence is based has been removed and replaced by the "all crimes approach";
- the coverage area of the reporting entities has been enlarged, including art objects dealers, the personnel with responsibilities in the privatization process, postal offices, companies that ensure fast electronic transfer of funds (money remittance services), real estate agents and State treasury;
- the identification obligation shall apply as from the date of entering into a business relation with a client (art. 3 of the Directive 97/2001/CE and FATF Recommendation No 10);
- the period for which the NOPCML could decide the suspension of an operation has been extended from 24 to 48 hours;
- non-opposability of professional and banking secrecy against the NOPCML has been expressly mentioned;
- non-opposability to the prosecution bodies and courts of the provisions of the law on banking and professional secrecy in the case of offences provided by Art. 23 (money laundering) and 24 (tipping off), once the penal procedure has been initiated by the prosecutor;
- the possibility has been provided for the NOPCML to perform commune controls and verifications jointly with financial control authorities or prudential supervision bodies mentioned in Art. 8;
- the NOPCML is no longer liable for financial losses suffered by legal and natural persons whose transaction has been suspended;
- criminalisation of facts performed by the persons provided for in art. 8 and their employees in case of transmitting money laundering information besides those cases provided by the law (tipping-off) has been introduced;
- the requirement provided by law according to which the reporting entities shall inform the NOPCML on the basis of "solid grounds" has been removed; mere "suspicions" now suffice;
- the obligation for all the reporting entities to report any "external" transaction of an amount higher than the equivalent of 10.000 EURO has been introduced;
- the obligation has been introduced for the Prosecutor's Office to provide information, when requested by the NOPCML, about the way they handled the information notes sent by the NOPCML (feed-back);
- verification and control obligation on the enforcement of money laundering provisions has also been established for the financial control and prudential supervision authorities for the persons provided for in art.8;
- if there are solid grounds to suspect a money laundering offence, the prosecutor may authorise, for an indefinite period of time, the access to telecommunication and computer systems or/and the supervision of bank accounts and accounts assimilated to such.

33. MONEYVAL recognised that major modifications were introduced with the adoption of Law No 656/2002. The Romanian authorities are now expected to effectively implement these new requirements. Following the first convictions for money-laundering, experience gained should allow the Prosecution and Courts to fight even more effectively money-laundering in the future within the new legal framework. Notwithstanding such major improvements, some recommendations of the first round evaluations remained apposite and MONEYVAL added some new ones.

34. The Romanian authorities should review the mental element of the offence (to consider lesser standards, such as suspicion or reasonable suspicion), consider a general negligence standard in appropriate circumstances or at least provide explicitly that elements of the money laundering offence can be inferred from objective factual circumstances.

35. The confiscation and provisional measures regime should be reviewed to ensure that there is explicit provision for property and value based confiscation and provisional measures as envisaged by the Strasbourg Convention, which covers both direct, indirect proceeds and substitutes, as well as incomes derived from proceeds and which cannot be frustrated by transfer to third parties.

Consideration should be given to mandatory confiscation in a broader range of proceeds-generating criminal offences. Provisional measures should be regularly taken where there is a danger of assets being dissipated before confiscation orders can be made.[8] Meaningful statistics should be kept which demonstrate the use of the system relating to particular categories of criminal offences. Elements of practice which have proved effective elsewhere should be considered such as reversal of the onus of proof regarding the lawful origin of alleged proceeds. Civil confiscation might be considered where criminal proceedings are not possible.

36. All foreign legally addressed requests for information should be responded to positively and bank secrecy lifted, even where criminal proceedings have not been instituted in the requesting jurisdiction. Legislation should consolidate the possibility to share assets with foreign counterparts and clarify the process by which this could be achieved.

37. Regular compliance inspections should commence quickly in the entire financial sector. The exchange offices and the Western Union systems are one of the most vulnerable sectors that require frequent inspections. The Romanian authorities should strengthen the supervision of the Western Union Money Transfer services in Romania in order to ensure the compliance with the due diligence and anti-money laundering requirements and, in particular, that the messages sent through them should contain full details of the ordering and beneficiary clients. This supervision should also benefit from co-operation to be established with other similar bodies abroad. In particular, supervisory bodies should be encouraged to make spontaneous disclosures. The authorities with financial control powers should strengthen their anti-money laundering supervision over the casino activities. An appropriate supervisory regime, including, where appropriate, on-site inspections should be considered with regard to the monitoring of the other reporting professions, institutions, such as real estate agents, lawyers, accountants, notaries.

38. The possibility of lowering in the law the existing threshold limit of 10.000€ for identifying customers performing such transaction should be considered as a mean of strengthening the preventive measures. Further detailed identification requirements could be explicitly introduced into Law with regard to gambling activities and to the other professions covered or not by Law No 21/1999 such as lawyers, legal counsellors, auditors, external accountants, real estate agents, public notaries, dealers in high-value goods, etc.[9]

39. The best way to resolve the problem raised by numbered accounts is to suppress them or to eliminate the possibility to open them. Alternatively, Romania should put in place strengthened supervision on these accounts, including guidelines on the identification of suspicious transactions in the context of the operation of these accounts.

40. The level of cash transactions over 10.000€ should decrease. Tougher regulations should been introduced in order to limit the use of cash by legal as well as natural persons. The operation of commercial companies should be more carefully supervised.

41. Appropriate and specific training in anti-money laundering requirements and suspicious transactions should continue for the following professions: lawyers, notaries, real estate agents, accountants and auditors, legal and tax counsellors and dealers in high-value goods working on their own.

42. It should be a matter of priority to increase the investigative means of the investigators at an early stage when conducting the preliminary investigations. The investigator should be in a position to obtain all necessary financial information required from financial institutions in money laundering cases without awaiting the launch of criminal proceedings. It should be allowed to use all special

[8] However the new Law No. 656/2002 introduced new specific provisions in this area (Article 25 paragraph 3 and Article 27 paragraph 2).

[9] The new Law No. 656/2002 now covers all these professions.

investigation means available, if not already able to do so, such as the use of under-cover agents and controlled deliveries. The investigator should be provided the possibility to obtain banking evidence capable of use in court at an early stage of investigations. The Customs authorities should adopt a more proactive approach to performing their obligations.

ANNEX E

Summaries of Mutual Evaluations Undertaken by the Financial Action Task Force on Money Laundering in South America (GAFISUD)

ECUADOR

1. Ecuador has a basic legal system to fight against money laundering which partially complies with the 40 Recommendations of the FATF and GAFISUD. The deficiencies the Ecuadorian system presents result from the fact that this system was set up in accordance with the general titles of the anti-drugs law (nº 108) and because laundering has been classed as an offence limited to drug trafficking laundering.

2. The elements of risk in money laundering come from the possible displacement and influence of drug-activities from neighboring countries and the large use of cash in the economy. It is also apparent that there is an important flow of money which is physically transported.

3. Money laundering is exclusively classified as a serious crime in relation to drug trafficking. Other complementary crimes regarded by this system are the illicit acquisition of wealth and the repression of figureheads. Ecuador has the possibility to carry out the seizure of assets, values and money that had been used to commit crimes or resulted from these crimes.

4. The possibility to control money laundering only when it is part of drug-related activities is an important limitation to the system, and it would be advisable to extend the controls over other profit-making illegal activities in the fight against money laundering. Ecuador has issued only one firm sentence regarding money laundering resulted from an action of international cooperation related to a crime of illicit drug trafficking.

5. The preventive system is run by the National Council of Narcotic and Psychotropic Substances and the Superintendance of Banks and Insurance, which has set up a special unit for the implementation of preventive policies. These organisms have set rules and guides that establish the obligations the financial sectors should comply with in the prevention of money laundering: report of suspicious transactions, and of transactions that exceed certain threshold; the preservation of documents related to those transactions; the obligation to appoint a compliance officer and the training of their employees. The implementation of preventive measures is hampered by the fact that there are different requirements about the threshold to issue a report according to each regulator. These involve the banking sector and they are neither enough for the insurance sector nor have been implemented in the value sector.

6. The regulation and supervision carried out by the National Council of Narcotic and Psychotropic Substances (CONASEP) in regard with money laundering is based on an internal and external audit system which the supervised entities have to comply with. There is no “in situ” supervision of AML controls but there are only one-day control visits, which are not enough. However, the activities carried out by the Superintendance of Banks and Insurance stand out: in a first stage it regulated not only internal and external audits but also “in situ” supervisions to be executed from the 2003 administration on; even if no visits had been done yet.

7. The definition of control policies and the prevention of drug-related laundering is an area of responsibility of the UPIR inserted in the CONSEP and the Superintendance of Banks and Insurance. However, the appointment of an Executive organism in charge of the definition and coordination of an integral policy in the fight against money laundering that extends to all the actors involved (antidrug judicial policy, financial supervision, police, judges and attorneys, customs, other financial superintendances, and the like) has not been legally contemplated.

8. With regard to training, there is a deficiency in every organism of control, for the interviewed staff does not know the subject thoroughly enough to carry out their job in an efficient manner. Likewise, this deficiency has had an effect on the obliged subjects, who have not been properly trained either. It has been established that the public sector is the responsible for providing this training and the CONSEP has barely been able to develop this activity.

9. On the other hand, it has been emphasized the need of Ecuador to improve the current legal standards by a general law that involves the organization of the structure and competences of the organisms in charge of the laundering prevention policy in order to overcome current coordination and efficiency problems. The absence of a Law that clearly establishes the competence of public organisms, the prevention obligations and the obliged sectors, has resulted in conflicts in areas of competence and lacks of supervision and control.

10. The investigation process is articulated on the basis of the automatic collection of information about suspicious transactions assigned by the CONSEP, the investigation carried out by Section of Financial Investigations of the National Anti-drugs Board of the National Police, and the actions taken by the Public Ministry tending to promote proceedings involving laundry.

11. The opportunity of improving the use of databases in order to facilitate the work of the Police and the Public Ministry has become apparent. The police have been able to confiscate an increasing amount of cash whose origins were not justified by its bearers. These seizures have turned into a source of investigation because of their eventual relationship with illicit activities or money laundering.

12. In terms of International Cooperation Ecuador has signed and ratified the UN Convention against the Illicit Traffic of Narcotics and Psychotropic Substances, the UN Convention against Transnational Organized Crime, The UN Convention for the Repression of Terrorism Financing, the Interamerican Convention about Petitions and Request Letters and the Interamerican Convention against Corruption. Currently, the Legislative Power is studying the ratification of the Interamerican Convention against Terrorism and the Interamerican Convention of Mutual Assistance in Judicial Matters.

13. The elements of the Ecuadorian system that have been subject to recommendations are:

- The approval of a new specific law that regulates and orders in a global manner the system for the repression and prevention of money laundering. This law is necessary to overcome the deficiencies and problems that result from the current system.

- The definition of the organisms which should have a competence in the regulation, control and sanction of the obliged subjects.

- The inclusion as obliged subjects of enterprises related to the stock and value market. Likewise, the evaluation of risks regarding other enterprises and professions vulnerable to laundering and the adoption of suitable controls, especially over external commerce enterprises such as bonded warehouses, transportation companies and associations of customs intermediation.

- The reinforcing of the judicial securities over the exoneration of the entities that make reports in good faith from responsibilities.

- The broadening of the extension of the supervision carried out by the superintendancies in order to verify the obliged subjects' compliance with the controls related to money laundering. It is advisable to have recourse to practices such as the one carried out by the Basilea

Committee for the supervision of banks in its document of October 2001 issued for the Banks about the Obliged Procedures towards their clients.

- The specific obligation of financial, stock exchange and insurance entities to train their employees. And also the reinforcement the training of the organisms of control.

- The suitable setting up of a Central Organism that works as a Unit of Financial Intelligence according to international recommendations in order to administer and analyze the information in an efficient manner.

- The setting up of a system that, without restricting the freedom to move capitals, tends to detect and supervise the cross-border flow of currency that at least includes the obligation to declare the amount of money carried when crossing the border and the possibility to use that information with judicial, administrative or statistical purposes.

- The appointment to high level organisms of the Executive Power (it might be a Ministry) with the responsibility to define an integral policy against the legitimization of illicit profits, and the setting up of an operative system for the coordination among institutions involved in the fight against money laundering that enables them to share experiences and draft strategies to improve the system. To favor this coordination money laundering must not be considered as offence only related to drug-trafficking for the spectrum of preceding crimes is much wider.

PARAGUAY

1. Since 1997 Paraguay has had a basic anti money laundering legal system which partially complies with the 40 Recommendations of the FATF and GAFISUD owing to the fact that, although the legal, repressive and preventive system was made up with instruments which seemed to be enough at first, the regulation development and the implementation of operative instruments have been carried out in an inefficient manner when practical problems had to be resolved.

2. According to what the authorities have reported, the main sources for illegal profit in Paraguay are drug-trafficking, tax evasion and forgeries trade. All of these crimes have been identified as the main problem and foundation of the Paraguayan global economy. Owing to the permeability of its borders, the products of these crimes usually result in the increase and development of smuggling.

3. With regard to this matter, the legal, operative and financial system of Paraguay has a set of legal regulations than can be categorized as underdeveloped. Money laundering is regarded as the focal point of this set of regulations, it is penalized with a fine and a maximum of 5 years in prison, and it is related to preceding crimes, such as: illegal traffic of narcotics and dangerous drugs; punishable actions committed by members of criminal associations; and crimes which are penalized with more than 5 years in prison. This system does not provide for several types of crime as preceding crimes, such as tax evasion, smuggling or copyright.

4. In the Penal Code, this system provides for the confiscation and especial seizure of those products that have been produced in a punishable action and those which prepared punishable actions provided that these actions are dangerous for the community or can favor the execution of similar activities.

5. The Paraguayan preventive system is organized around the Secretariat for the Prevention of Assets or Money Laundering (Secretaría de Prevención de Lavado de Dinero o Bienes – SEPRELAD), dependent on the Presidency of the Republic, collegial organism that includes different organisms with authority in this matter (the Ministry of Industry and Commerce, the Central Bank, the National Commission of Values, the SENAD (Anti-drugs National Secretariat), the Super intendancy of Banks

and the National Police). This Secretariat is, according to the law, the maximum organism in Paraguay's Executive Power with authority to pass the regulation needed in the implementation of the law, receive and analyze reports of suspicious transactions, and promote investigations. It is a member of the EGMONT Group.

6. The first stage of investigations, evaluations and analyses of those reports received by the SEPRELAD has to be carried out by the Unit of Financial Analysis (UAF), which depends on the SEPRELAD, but the investigations of transaction which show signs of money o asset laundering are done by the Unit of Investigation of Financial Crimes (UIFC) dependent on the SENAD.

7. Likewise, since October 2001 the Unit of Analysis for the Prevention of asset or money laundering has been working with the Superintendance of Banks. It is organized as an organism which analyzes the transactions carried out in the Central Bank, to answer to SEPRELAD's requests for reports and, at the same time, to receive reports about suspicious transactions from the financial sector as they are sent to the SEPRELAD.

8. Despite SEPRELAD's regulation faculties, provided by the law which prevents and punishes money laundering, it has not passed any regulations to establish the AML obligations the obliged subjects must comply with.

9. The only sectors that are regulated are: those which are under the supervision of the Superintendance of Banks (banks, finance and insurance companies, and foreign exchange offices), insurance companies supervised by the Superintendance of Insurances (dependent on the Central Bank) and credit and saving cooperatives (supervised by the INCOOP, dependent on the Ministry of Agriculture and Stockbreeding). It has been the Central Bank the organism that, on the grounds of its organic law, has regulated the obligations these sectors must comply with in the prevention of ML.

10. The current preventive system establishes the mechanisms, for the obliged entities, for the acknowledgement of their clients and the preparation of detection programs. It includes the obligation to identify clients, the conservation of the information and the obligation to report suspicious transactions and those cash transactions exceeding a threshold of U$S 10.000.

11. However, it stands out that when it comes to report suspicious transactions the banking finance entities are the only ones which have shown certain level of preparation, while the rest of the sectors have demonstrated a lack of consciousness and a poor implementation of programs.

12. With regard to administrative cooperation, the SEPRELAD has the authority to exchange information, on its own account or through international organisms, with authorities with similar faculties from other States. No effective assistance has been verified yet.

13. In terms of international cooperation Paraguay's signing of the Vienna Convention of 1988 should be pointed out. In regional terms Paraguay has signed bilateral treaties, such as: a Treaty between the Republic of Paraguay and the United States of America to cooperate in the prevention and control of money laundering resulted from the illegal traffic of narcotics and psychotropic substances (November 30, 1993), the Cooperation Treaty, between the Republic of Paraguay and the Republic of Colombia, for the Prevention, Control and Punishment of Money Laundering resulted from any illegal activity (July 31, 1997) and the Understanding Memorandum, between the government of Paraguay and the government of Bolivia, concerning the exchange of information about money laundering (March 12, 2002).

14. Nevertheless, it has not been possible to establish the efficiency of these treaties or agreements when cooperation, regarding criminal activities connected with corruption or money laundering was requested because of the lack of statistical information about cases in which cooperation might have been provided.

15. Finally, it is necessary to mention that the lack of legal procedures involving money laundering is tightly connected to the nearly inexistence of reports about suspicious transactions.

16. Among the aspects in which improving is suggested, it would advisable to:

- Develop a general plan which involves short, medium and long term strategies and confers the main responsibility on a central organism that works in cooperation with the rest of the involved agencies.
- Broaden the preceding crimes in a wider list or in more categories which involve a larger spectrum of serious offences including those crimes that are most frequent in Paraguay.
- Consider money laundering as an independent crime and accept the possibility of taking penal actions even if the preceding crime has not been proved.
- Strengthen the anticipated punishment in case of money laundering, classing it as a serious offence according to the Penal Code.
- Resolve the transitory situation of the administrative organization of the UAF and clarify the superimposition of faculties with the Unit of Analysis of the Central Bank, with the purpose of synthesis and operational capacity.
- Draft clear regulations to include obliged subjects in the preventive system to the ones anticipated by law 1015/97, and study the faculties the Central Bank and the Superintendance of Banks have to issue regulations based on this law.
- Deepen the Central Bank inspection program involving subjects who are obliged to comply with the prevention of money laundering and appoint a supervising and control authority to all the sectors that still do not have one.
- Facilitate the remittance of reports of suspicious transactions by writing a form which contains the basic necessary information to be analyzed and stipulate the remittance of automatic reports to the competent authorities.
- Promote the training and the implementation of programs among the different actors of the AML system, obliged subjects and implementation authorities.
- Make statistical studies of the reports of suspicious transactions that each entity has received, of the movement of assets connected with them and of the information shared among the agencies involved in the fight against money laundering.

17. The new Paraguayan authorities, who have been recently elected, are aware of the necessity to improve the global AML system and they have committed to promote and improve it in response to the constant evolution of this system in terms of international standards.

PERU

1. Peru possesses an anti-laundry legal system which partially complies with the 40 recommendation of the FATF and GAFISUD. This AML system is going through a restructuring stage and is being adjusted to the tendencies of international standards inspired by the sanction of a new legislation which involves the broadening of the crimes preceding money laundering, the setting up of a Unit of Financial Intelligence and the establishment of the obligation to report suspicious transactions, based on a policy which recognizes its client from those obliged by law. However, as it

was expected, some operative difficulties have been detected in the current Peruvian institutional AML structure.

2. The sources of illegal profits, of money laundering, are the illegal traffic of drugs as well as corruption, smuggling and arms trade (the last case being connected to terrorism).

3. From June 26 2002 on, Peru has a "Criminal Law against money laundering (law nº 27.765). The crimes that are classed as a serious offence by this law are money-laundering and omission to report a suspicious transaction to the competent authority. With regard to preceding crimes all those which generate illegal profits are covered by this law. This law has a catalogue of crimes only in an exemplary fashion, among which the one that stand out are:

- illegal drug-trafficking
- crimes against public administration
- kidnapping
- minors trade
- procurement
- tax evasion
- customs crimes

4. Once the FIU is created (law nº 27.693) it will be possible to start the structuring of a modern and efficient system for the prevention of assets laundering. However, it is essential to articulate to this process a mechanism to avoid client confidentiality to become an obstacle for the FIU's work. As client confidentiality is protected by the National Constitution, it should decline when the FIU needs to ask for information apart from the information requested in case of suspicious transactions are reported.

5. Although the FIU is not working yet, it has already appointed and Executive director and part of its staff.

6. With regard to cooperation the FIU possesses a Consultative Body, whose purpose is to develop a coordination function in the preparation of strategies, policies and procedures for the prevention of money or assets laundering, as well as to meet those cases the Executive Director of that Unit considers necessary to submit to the Body's opinion. In international terms, the FIU has the faculty to provide an efficient cooperation once the problems related to tax and stock exchange reserves and client confidentiality are settled.

7. With regard to confiscation, Peru only has general regulations classed as serious offences by the Penal Code. These regulations may set the seizure of assets obtained in illegal activities but, because of the importance of the handling of those assets related to money laundering, it is imperative to introduce legal precautions for their administration and disposal.

8. The preventive system that has been set up anticipates the obligation to report every suspicious transaction done by financial entities, and even when it has not been implemented for all the obliged subjects it means a significant step forward for the Peruvian system. Yet, there have not been attempts to include, among the obliged subjects, lawyers and accountants who work as brokers when suspicious activities are detected.

9. Terrorist financing is categorized as a serious offence in Peru, and this country has signed up the OAS and UN Conventions against Terrorism. However, it is essential to broaden the financial safety mechanisms in this matter.

10. Among the aspects in which improving is suggested, it would advisable to:

- Provide the FIU with the necessary means to start working and with a sufficient budget, including foreign financial help. Study the possibility of including the participation of the police in the Consultative Body of the FIU.

- Reform the penal type that involves money laundering to clarify its connection with preceding crimes.

- Pass a law that regulates in a special manner the seizure of assets in criminal proceedings in cases of money laundering, and that also regulates not only the administration but also the final allocation of those assets.

- Draft the necessary measures to resolve the constitutional obstacle of client confidentiality, in order that it is possible to comply with FATF's recommendations and to enable the international exchange of information related to suspicious transactions among competent authorities.

- Study the possibility of introducing the legislative and regulation changes needed by the FIU to regulate and supervise those obliged subjects by law nº 27.693, who do not have their own supervising organism, or try to regulate and supervise them through other means.

- Foster the passing of a legal regulation to provide the FIU or any other organism with the faculty to issue the instructions the obliged subjects should comply with once reported a suspicious transaction. This regulation should also include the steps to be followed in case the competent authority keeps silent.

- Consider the possibility of changing the legislation with the purpose to broaden the obligations anticipated in law nº 27.693 in order to include lawyers and accountants acting as brokers.

- Improve the communication and coordination among the Peruvian anti-laundry organisms, including the exchange of information and the access to different databases. Meetings among the organisms that make up the Consultative Body of the FIU should be held on a regular basis in order to encourage a better coordination among the members, and give support and a prominent role to the FIU. Establish a more frequent number of meetings for the Consultative Body.

- Implement a system that, without restricting the free movement of capitals, tends to the detection and/or surveillance of the cross-border transport of assets, which at least should involve: the obligation to declare the amount of money carried when crossing the border and the possibility of using that information for administrative, statistical and judicial purposes.

- Extend to most of the obliged subjects the obligation to train the personnel when it seems to be necessary and to posses global programs with regard to money laundering.

- Establish the obligation, among financial institutions, to report every transaction in the verge of illegality and make that information available for the FIU.

ANNEX E

CHILE

COMMON ASSESSMENT METHODOLOGY
REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Introduction

1. This Report on the Observance of Standards and Codes (ROSC) of the FATF/GAFISUD Forty+8 Recommendations was coordinated by the Deputy Executive Secretary of GAFISUD, Esteban Fullin, and by CONACE Adviser Andrea Muñoz on behalf of Chile. The evaluation team consisted of the following experts from three GAFISUD member countries: Legal expert, Alejandro Montesdeoca Broquetas, President of the Center for Training on the Prevention of Money Laundering, National Drugs Board of Uruguay; Financial expert, Alberto Rabinstein, member of the Financial Information Unit of Argentina; Operational expert, Luis Castellanos Nieto from the Money Laundering and Property Forfeiture Office of the National Prosecutor's Office, Colombia. The team conducting this evaluation exercise was supported by an additional expert, Dr. Jorge Silva Sánchez, Director General, Financial Crimes and Operations of Illicit Origin in the Public Prosecutor's Office of Mexico.

2. The report summarizes the level of observance of the Forty+8 recommendations, and suggests ways of strengthening this.

Information and methodology used for the evaluation

3. During preparation of the mutual evaluation report, the team reviewed the most important AML/CFT regulations and assessed the capacity and effectiveness of the law enforcement agencies and established regulation/supervision systems to prevent, control and suppress money laundering and the financing of terrorism.

4. Chile's national anti-money laundering system was appraised in May 2003, as part of the mutual evaluation exercise of the Financial Action Task Force of South America against Money Laundering (GAFISUD), using the traditional GAFISUD methodology in force at that time. The seventh plenary meeting of GAFISUD, held in Buenos Aires (Argentina) on July 1-3, 2003 decided to produce a Mutual Evaluation Report and a Report on Chile's Observance of Standards and Codes evaluating new data subsequent to the date of the evaluation visit and using the new methodology agreed with the International Monetary Fund and the World Bank.

5. This conversion of the traditional report was carried out by the same team that evaluated Chile's national anti-money laundering system in May 2003, based not only on information obtained during the visit of experts to Chile, but also on data furnished by the country itself. The evaluation focused particularly on the country's new legislation on money laundering,[1] which, as established in the seventh plenary meeting, had to have been passed before November 15, 2003, to be taken into account.

Key findings

Overview

It is only recently that Chile has moved to set in place an integrated legal and institutional framework to comprehensively address AML/CFT matters. Law 19.913, as gazetted on December 18, 2003 represents a substantial strengthening of the AML/CFT framework. It updates the legal definition of

[1] Law 19.913 was passed by Congress on September 2, 2003, and on October 28 it was approved as constitutional by the Constitutional Court. The legislation was officially published on December 18 that year.

the money laundering offence; it imposes AML/CFT reporting obligations on a wider range of institutions; and it provides the legal basis for creation of a Financial Analysis Unit to function as the financial intelligence unit, with authority to issue regulations and monitor compliance. Rulings by the Constitutional Court undercut the intended full force of Law 19.913 as originally passed by the Congress on September 2, 2003. Sanctioning powers of the FIU were eliminated; access of the FIU to information protected by bank secrecy was prohibited; access by the FIU to other public data bases was denied.

Banking secrecy provisions continue to limit the ability of Chile to investigate and disclose potential money laundering offences and, thereby, to provide effective international cooperation through the FIU. Provisions are available for mutual legal assistance but they are cumbersome; timely international cooperation in asset freezing is difficult. The expanded AML/CFT regime introduced by Law 19.913 is too recent to permit any conclusions about the effectiveness of its implementation. The FIU has not yet been established and regulatory and compliance arrangements outside the prudentially regulated sectors remain to be developed. Criminal law enforcement strategies need to be updated to exploit more fully the potential of new AML/CFT legislation.

Criminal justice measures and international cooperation:

- **Criminalization of money laundering and the financing of terrorism**

The offense of "money laundering" is typified in Article 19 of Law 19.913, in connection with illegal drug trafficking and other serious offenses, such as: terrorism in any of its forms (including the financing of terrorism), trafficking of firearms, child pornography and prostitution, white slave traffic, prevarication, misappropriation of public funds, fraud and extortion, graft, offenses covered by the Stock Market Act and the General Banking Act, kidnapping and abduction of minors.

The penalty for committing this crime is a prison term ranging from five years and one day to 15 years, plus a fine of 200-1,000 Monthly Tax Units.

Article 19 of the law envisages two different types of crime: (a) **concealment or disguise** of the unlawful origin of specified assets, **knowing** that they originate from specific crimes; and (b) **acquisition, possession, holding or use** of such assets, **knowing** of their unlawful origin**.** The crime embraces all types of property measurable in money terms, whether corporal or noncorporal, movable assets or real estate, tangible or intangible, in addition to the legal documents and instruments that accredit ownership or other rights thereon.

The concept of concurrent offenses is admitted between the money laundering itself and the predicate offense.

The law also states that it is not necessary to prove in advance that the assets in question originate from an illegal act classified as a predicate offense. In other words, prior conviction for the predicate offense is not necessary to obtain a conviction for money laundering.

The crime of money laundering is also sanctioned if the assets arise from an act carried out abroad, which is indictable in the country where it is committed and would constitute a predicate offense in Chile if it had been committed in this country.

In addition, Law 19.913 has defined a further category of culpable offense, namely when the perpetrator of the identified conducts has acted with **inexcusable negligence.**

It also specifies a set of aggravating factors, penalizes the attempt to commit an offense, and provides for a special mitigating factor consisting of effective cooperation with the administrative, police or legal authorities.

Current legislation does not provide for criminal sanctions against legal entities that fail to comply with regulations aimed at the prevention of money laundering.

Although the anti-money laundering bill approved by the legislature provided for sanctions to be imposed by the FIU on individuals and legal entities that fail to comply with the obligations set out in the law, a ruling by the Constitutional Court rejected this provision. It was therefore excluded from the law as enacted, making future reform on this point necessary. Nonetheless, the offense itself is duly typified.

In terms of legislation, the United Nations International Convention for the Suppression of the Financing of Terrorism was ratified by Chile on November 10, 2001, while Supreme Decree 488 of October 4, 2001 ordered compliance with United Nations Security Council Resolution 1373. The latter instructed authorities and public bodies to apply that resolution within their jurisdictions.

Law 19.906, published in the Official Gazette on November 13, 2003, defined an autonomous offense of providing funds with the intention or aim that these be used to commit terrorist offenses. Financing is thus separated from the actual perpetration of a specific terrorist crime, and the fact that the terrorist organization is located in another jurisdiction, or the terrorist acts are committed outside the country, does not prevent punishment of the crime of financing of terrorism. The text of the law is consistent with the provisions of the United Nations International Convention for the Suppression of the Financing of Terrorism and FATF/GAFISUD Special Recommendation II.

- **Confiscation of the proceeds of crime or property used to finance terrorism**
  - **- Legal framework**

The possibility of asset confiscation is fully legislated for. In this regard, by application of Chile's anti-money laundering law, all the confiscation regulations pertaining to drug-trafficking are applied to the crime of asset laundering. The Public Prosecutor's Office may apply to the judge overseeing the case (juez de garantía) to adopt protective measures as necessary to prevent the use, exploitation, benefit or disposal of any category of property, securities or monies arising from the crimes involved in the case. For these purposes, and without prejudice to the other faculties conferred by the law, the judge may, among other things, impose a ban on carrying out acts and entering into contracts, or the recording thereof in any type of register, along with other relevant measures. Such precautionary measures *may be adopted without giving prior notification to the affected party and even before the investigation has formally begun.*

The system in force in Chile regarding the confiscation and forfeiture of assets arising from criminal activities is largely compliant with international standards, although it is not legally possible to seize assets of equivalent value to those directly or indirectly proceeding from the crime. Moreover, the Chilean legal system does not provide for the establishment of mechanisms to share forfeited property with other jurisdictions.

  - **- Statistics and training**

At the time of this evaluation, the total value of property confiscated as a result of money laundering offenses amounted to US$8 million. Nonetheless, no sentences had been passed establishing the forfeiture of such assets.

- **The FIU and processes for receiving, analyzing and disseminating financial information and other intelligence at the domestic and international levels**
  - **- Structure and functions**

Law 19.913 creates the Financial Analysis Unit as a decentralized public service attached to the Ministry of Finance, with a mission to prevent the financial system and other sectors of economic activity from being used to commit money laundering offenses. In that context, the FIU is empowered to receive information concerning operations that are suspected of money laundering, analyze such information, and immediately forward it to the Public Prosecutor's Office should it find reason to

believe such an offense has been committed. The FIU may also exchange information with its counterparts abroad. At the time of the evaluation, however, the FIU was still in the process of formation and was not yet operational.

Parties obliged to report suspicious operations (reporting parties) include all financial institutions in general (the banking, securities, insurance and foreign-exchange sectors), together with casinos, general customs agents, auction houses, real estate brokers, firms engaged in real estate management, notaries and registrars, among others.

The term "suspicious transaction" is understood to encompass any act, operation or transaction, which, according to the usage and customs of the activity in question, is either unusual or lacking in apparent economic or legal justification, whether carried out on an isolated basis or repeatedly.

Persons obliged to report suspicious transactions shall also maintain special records for at least five years, and shall notify the FIU, on request, of all cash operations in any currency exceeding 450 Development Units−UF (*Unidades de Fomento)* (US$12,000 approximately).

The FIU is authorized to recommend measures to the public and private sector to prevent money laundering offenses being committed, and to issue instructions enabling reporting parties to fully comply with their duty to report suspicious transactions and maintain records of transactions exceeding UF450 or the equivalent in other currencies.

The FIU may not access information protected by banking secrecy (except when such information forms the basis of a specific report prepared by a reporting party, and provided this does not involve requesting complementary data), and there is no mechanism lifting this secrecy.

These restrictions will make it difficult for the unit to effectively use its power to exchange information protected by rules of secrecy with its counterparts abroad.

The absence of a regime for sanctioning reporting parties that contravene their legal obligations is a major obstacle to effective compliance.

When it detects signs that a money laundering offense has been committed, the FIU will send to the Public Prosecutor's Office any financial information it receives together with any background information in its possession, to enable the latter to initiate the corresponding criminal prosecution. It will also cooperate in any investigations undertaken.

Law 19.913 provides for the Financial Analysis Unit to be adequately organized in terms of legal design, and to have a reasonable degree of administrative decentralization and technical independence. It should be stressed that as the unit has not yet started to operate, regulations have not been issued for complying with obligations imposed by the law, especially in terms of reporting suspicious transactions and record-keeping.

- **- Maintenance of statistics**

As the unit is not yet operational, no statistics are available for the moment.

- **- Resources**

The FIU is envisaged as a decentralized public service, with legal status and its own assets, relating to the President of the Republic through the Ministry of Finance. Once operational, it will be possible to correctly evaluate whether the unit's resources are suitable. However, its planned staffing seems adequate.

- **Law enforcement and prosecution authorities, powers and duties**
  - **- Responsibilities during the investigation**

Chile's penal procedure system is in a transitional phase. At the present time, two different penal procedure systems coexist—the old one, which is inquisitorial, where the investigation is carried out by a judge who also formulates the accusation and passes sentence, without the existence of a prosecuting counsel to direct the investigation and the new one, which is of an indictment type, where

the prosecutor acts as investigator and accuser; this system was incorporated into the Chilean legal system by the Penal Procedures reform of September 29, 2000. The timetable agreed by Congress envisaged the new system being implemented throughout the country once it had taken effect in the Metropolitan Region of Santiago; this is now expected to occur in June 2005.

As a result of this reform of the criminal justice system, the Public Prosecutor's Office emerges as the new key player. This is a body of constitutional rank, autonomous and independent of the executive, legislature and judiciary; it was created to direct investigations of criminal acts, and conduct public prosecutions in the courts.

- **- Legal framework and procedure for producing evidence**

The Prosecutor General created the Specialized Money Laundering and Organized Crime Unit on December 14, 2001, essentially to support investigations by prosecuting counsels and to coordinate the tasks of prevention and control of money laundering in Chile.

The country has a legal system that functions adequately and it possesses processing and investigative mechanisms that meet international standards.

- **International cooperation**
  - **- Laws and procedures on mutual legal assistance, treaties, agreements on the exchange of information, joint investigations and extradition**

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on December 20, 1988, was ratified by Chile on March 13, 1990, promulgated through Supreme Decree 543 of the Ministry of Foreign Relations, and published in the Official Gazette on August 20, 1990.

Processing and compliance with international requests for legal cooperation are generally governed by Article 7 of the 1988 Vienna Convention, except where there is a current agreement, treaty or convention in force.

Article 30 of Law 19.366 contains a general rule enabling the Public Prosecutor's Office to request and grant the broadest possible cooperation with a view to achieving a successful outcome in investigations relating to the offenses covered by this law (money laundering among others), as agreed in international conventions and treaties; and it may provide specific information even in cases where discretion or secrecy has been ordered with respect to the defendant and other intervening parties.

- **- Requests for mutual legal assistance, statistics on information exchange, agreements to coordinate asset seizure, prevention of the use of safe havens for FT**

There is no specific law regulating international asset seizure in the money laundering field. In general, the provisions contained in the 1988 Vienna Convention are applied, which are confined to drug trafficking as the predicate offense.

There is no provision for sharing assets with other states.

Law 19.366 allows for extradition, both active and passive, with respect to the crimes it covers, although no treaty or reciprocity exists in this matter. This law also takes cognizance of sentences pronounced in foreign States for the purposes of establishing the aggravating feature of reoffense, even when the punishment imposed has not actually been carried out.

For these purposes, the principle of dual criminality applies, which means it is only possible to extradite for money laundering arising from the offenses covered by Law 19.913. The existence of a culpable offense will allow for broad international cooperation in the legal area.

- **Preventive measures for financial institutions**

Regulated sectors:

The financial sector; the foreign exchange sector (partially, only international foreign exchange operations that are subject to regulation by the Central Bank of Chile); the stock market sector and the insurance sector; pension funds and their managers are also regulated by the Superintendency of Pension Fund Managers (SAFP).

Unregulated sectors:

The foreign exchange sector, with respect to unregulated foreign exchange operations (the informal foreign exchange market) and fund remittance firms (couriers) except in regard to the obligation to report suspicions operations to the FIU.

- **Correctly regulated sectors**
  - **- Strengths and weaknesses**

Apart from the oversight and supervision bodies indicated in the different sectors, Law 19.913 provides for the creation of the Financial Analysis Unit (FIU); it also regulates the duty to report, and specifies the parties that are covered by its provisions. The attributions of the FIU, which has not yet been formed and is not operational, include issuing instructions of general application to parties obliged to report suspicious operations. Unfortunately the law does not provide for sanctions against reporting parties that fail to report suspicious transactions.

  - **- Banks – specific evaluation areas**

The Superintendency of Banks and Financial Institutions (SBIF) is responsible for regulating the Banco del Estado and all other banks of whatever kind, in addition to other financial institutions such as large saving and loan cooperatives that are not legally regulated by any other body.

As regards record-keeping, ***Law 19.913*** requires reporting parties (including the banking sector) ***to keep special records for at least five years,*** and to notify the FIU, on request, of all cash operations in amounts above a given threshold. The General Banking Act, on the other hand, requires institutions to keep account books, forms, correspondence, documents and other paperwork for six years.

In the case of foreign bank branches, in Chile "the law is obligatory for all inhabitants of the Republic, including foreign nationals." Accordingly SBIF instructions are applicable both to domestic banks and to foreign banks operating in Chile.

As regards the existence of rules for the prevention of money-laundering, we note that the SBIF has issued instructions on this subject to the institutions under its control, suggesting that they should base their precautions on *thorough knowledge of their customers and the activities* they engage in; this includes verifying the customer's official identification. Banks also check data on the constitution and existence of their corporate customers; and, according to SBIF staff, identification and information on the initiator and beneficiary of fund transfers must also be requested. The reasons underlying banking operations should also be ascertained when these are not consistent with the customer's line of business or profession, or otherwise seem disproportionate or suspicious, in terms of amount, frequency, etc., in accordance with international recommendations on the subject.

It is also established that financial institutions should have a procedural manual setting down guidelines to be followed by the institution to avoid becoming involved in or serving as a channel for money laundering operations.

- **- Insurance – specific evaluation areas**

The Superintendency of Securities and Insurance (SVS) exists to regulate the activities and institutions that participate in the securities and insurance markets in Chile. It is therefore responsible for ensuring that supervised persons or institutions comply with the laws, regulations, statutes and other provisions governing the functioning of these markets, from the moment of initiation of activities through to their liquidation.

In the ***securities and insurance domain, Circular 1680 of September 29, 2003*** provides ***instructions for the prevention and control of operations using illicit funds*** to all insurance firms, securities brokers, fund management companies and securities depository firms; and it requires them to take steps to store data on relevant operations on either physical or electronic media. Such operations include those carried out by private individuals or legal entities of any nature which involve a cash payment to the entity in question (either in currency of legal tender or foreign currency) in excess of US$10,000 or equivalent whether in a single amount or installments (excluding transactions carried out by institutional investors), and operations carried out by private individuals or legal entities that could be classified as suspicious (the regulations offer a conceptual description of such operations).

The Circular establishes that in such cases it should be possible to retrieve the following in particular: information on the nature of the operation, together with a copy of supporting documents or background information and customer data.

In addition to this, ***Law 19.913*** requires institutions ***to keep special records for at least five years,*** and to inform the FIU on request of any cash operations in amounts above UF450, or the equivalent thereof in other currencies. It also extends the ***obligation to report suspicious operations*** to insurance companies, requiring them to report suspicious acts, transactions or operations noticed in the course of their activities, although sanctions for noncompliance are not provided for.

- **- Securities – specific evaluation areas**

The stock market basically consists of: securities offer, brokerage, demand, and regulation and inspection.

The SVS supervises and oversees all agents operating in the insurance and securities sector, imposing similar obligations on both sectors in respect of money laundering. Accordingly, unless indicated otherwise, controls in the securities sector are the same as those imposed on insurance; and Circular 1680, referred to above, is specifically applicable.

In the securities market domain, it was also reported that stockbrokers and securities dealers have regulations on customer identification using a client record card defined by the Superintendency in *General Rule No. 12*. Entities in this sector must also maintain records of all their operations.

As the securities sector is covered by Law 19.913, all entities are required to ***report suspicious operations***, although again there is no provision for sanctioning noncompliance. The requirement to keep records for five years is also applicable.

- **Relevant sectors incorrectly regulated**

- **- Strengths and weaknesses**

Under current regulations, financial institutions supervised by the SBIF are subject to regulations aimed at the prevention of money laundering; in addition there are minimum regulations on the subject issued by the SVS covering the securities and insurance sectors. These do not cover bureaux de change, however, nor fund remittance firms (couriers).

There are no foreign exchange restrictions in force in Chile, although the most important payment and transfer operations have to be carried out exclusively in the regulated or formal foreign exchange market and/or be notified to the Central Bank of Chile. The regulations issued by the Central Bank of Chile include rules for customer identification in such operations. As a result, an international exchange operation subject to Central Bank restrictions is excluded from the principle of foreign exchange freedom, and must be carried

out through the regulated or formal foreign exchange market.

All foreign currency remittance or disposal of funds abroad by persons domiciled or resident in Chile, for the purpose of undertaking investments, making capital contributions and extending credits in amounts exceeding US$10,000, must be channeled through the formal foreign exchange market and be reported to the Central Bank. The same obligations apply to any international exchange operation relating to credits, deposits, investments and capital contributions, originating abroad, in amounts exceeding US$10,000 or the equivalent thereof in another foreign currency.

In addition, ***there is the informal*** or unregulated foreign exchange market encompassing all bureaux de change that are not in the situation described above; these are not required to fulfill the abovementioned regulation *but* ***operate within the regime of foreign exchange freedom mentioned at the start of this paragraph.*** They may therefore carry out international exchange operations, provided these are not in the category that must be exclusively channeled through the regulated or formal market. ***These institutions are not supervised or regulated by any organization***. Nevertheless, in accordance with Law 19.913, they are required to report suspicious operations to the FIU.

The Chilean authorities do not have precise knowledge of the size of the informal foreign exchange market in relation to the entire sector. *Although there are different opinions as to the relative extent of unregulated foreign exchange activity, there is consensus that it is a significant percentage that warrants attention by the authorities.*

Lack of FIU sanctioning power will impair oversight of anti-money laundering obligations in the unregulated or informal foreign exchange market and among fund remittance agents (couriers), since these sectors do not have supervisory bodies.

Summary of evaluation

Table 1. Proposed plan of action to improve compliance with FATF/GAFISUD recommendations

Reference to FATF/GAFISUD recommendation	Action recommended
40 recommendations on ML	
General framework of recommendations (FATF/GAFISUD 1-3)	On the issue of secrecy, the following actions are considered necessary: - Promote legislative reform to overcome the obstacles imposed by the Constitutional Court, so as to restore to the Financial Analysis Unit the faculties assigned to it in the Bill passed by Congress, which it needs to adequately fulfill the tasks assigned to it: (a) Establish mechanisms affording the FIU unfettered access to information protected by confidentiality rules. (b) Make it possible for the FIU to access the databases of other public bodies.
Scope of the money laundering offense (FATF/GAFISUD 4-6)	- Without prejudice to the broadening of predicate offenses for money laundering under Law 19.913, obtain the inclusion of new predicate offenses, inter alia, all human trafficking offenses in general, and extortion. - Introduce the legislative reforms needed to make it possible to sanction individuals and legal entities that fail to comply with their obligations on the prevention of money laundering.
Provisional measures and confiscation (FATF/GAFISUD 7)	- Consider introducing a law allowing for the seizure of property of equivalent value to that arising directly or indirectly from the crime.
The general role of the financial system in fighting money laundering (FATF/GAFISUD 8-9)	With regard to the structure of the financial system and its regulated and unregulated sectors: The entire foreign exchange sector should be subject to inspection and control, including unregulated foreign exchange operations (i.e., the informal foreign exchange market). This should also cover fund remittance agencies (couriers) for the purpose of verifying compliance with the obligation to report suspicious operations as required by new Law 19.913 (Article 3), since they do not fall within any specific supervision orbit and there is no provision for sanctioning noncompliance.
Customer identification and record-keeping (FATF/GAFISUD 10-13)	Effectively regulate and implement an adequate know-your-customer policy in all market segments, including the unregulated or informal foreign exchange market, together with fund remittance agents and other reporting parties covered by Article 3 of Law 19.913. Once the FIU is formed and operating: - Implementation of the requirement imposed by Article 5 (Record keeping) of Law 19.913 should be evaluated. In the case of sectors that are not within the orbit of any supervisory and control body: - Provide for their effective supervision and, in all cases, make it possible to sanction failure to comply with the regulations, given the absence of FIU sanctioning powers in the text of the new Law 19.913.

Reference to FATF/GAFISUD recommendation	Action recommended
Greater due diligence among financial institutions (FATF/GAFISUD 14-19)	Effective compliance with the obligation to report suspicious operations, by parties covered by Article 3 of Law 19.913, can be evaluated once the FIU has been set up and put into operation and the respective regulations issued (these should include a guide to suspicious transactions for each category of party and type of activity). - The FIU, or some other competent body, should have the power to sanction reporting parties for failure to comply with the obligations contained in Articles 3 through 5 of Paragraph 2 of the Law, relating to the duty to report, as envisaged in the original bill but rejected by the Constitutional Court of Chile.
Specific measures for countries with insufficient AML systems (FATF/GAFISUD 20-21)	As measures only exist for the banking sector, it is necessary: to extend specific measures for countries whose AML/CFT systems are insufficient to cover the branches and subsidiaries of nonbank financial institutions in those countries. Currently only banks have branches outside the country.
Other measures (FATF/GAFISUD 22-25)	Implement the system for reporting cash transactions in amounts greater than UF450 (equivalent to US$12,000), and the system for reporting the transport of currency or negotiable bearer instruments of equal amount, both established by Article 5 of Law 19.913.
Implementation and role of the regulatory authorities and other administrative bodies (FATF/GAFISUD 26-29).	The controls established to prevent criminals or their accomplices from taking control or acquiring major shareholdings in banks need to be extended to encompass other financial institutions; appropriate integrity standards should be put in place to prevent criminals from maintaining or controlling significant investments or holding posts as directors or senior managers in such entities.
Administrative cooperation – General information exchange (FATF/GAFISUD 30-31)	Outward or inward operations with entities located abroad are reported to the Central Bank for statistical purposes, but there are no studies on cash flows. There are also no controls or statistics on cash moving through airports and border crossings.
Administrative cooperation – Exchange of information relating to suspicious transactions (FATF/GAFISUD 32)	The FIU can only exchange information relating to the suspicious transactions that are reported to it, and may not request other information from reporting parties; a legislative reform is therefore needed to allow access to and exchange of information protected by secrecy and confidentiality laws, in order to be able to cooperate internationally on an effective basis.
Other forms of cooperation – Bases and forms of cooperation on confiscation, mutual assistance and extradition (FATF/GAFISUD 33-35).	
Other forms of cooperation – Aimed at improving mutual assistance on money laundering issues (FATF/GAFISUD 36-40)	- Expressly provide for the possibility of freezing, seizure and confiscation of the proceeds of money laundering or its predicate offenses, or other property of equal value, in response to a request from other countries. - Establish mechanisms for sharing seized assets with other jurisdictions.
Eight special recommendations on the financing	In general most of these special recommendations are expected to achieve greater compliance, once the system established by Law 19.913 comes into operation.
I. Ratification and implementation of United Nations instruments	

Reference to FATF/GAFISUD recommendation	Action recommended
II. Criminalizing the financing of terrorism and associated money laundering	
III. Freezing and confiscating terrorist assets	
IV. Reporting of suspicious transactions related to terrorism	Implement the system for reporting suspicious operations envisaged in Law 19.913.
V. International cooperation	
VI. Alternative remittance system	
VII. Wire transfers	

Table 2. Other recommended actions

Reference	Action recommended
Law enforcement and prosecution authorities, powers and duties	- Strengthen the mechanisms for coordination between the various public agencies that participate in the investigation of ML, FT and predicate offenses (e.g., the Police, Customs, FIU and/or other competent authorities).
Ongoing monitoring of accounts and transactions	Effectively regulate and implement mechanisms for monitoring operations in all market segments, including the unregulated foreign exchange market, the securities and insurance sectors, and fund remittance.
Internal controls, compliance and audit	- There should be regulation and effective implementation of the precautionary measures included in these rules (especially internal controls and audits, appointment of a compliance officer, and staff training) in all sectors of the financial system. In the case of sectors that do not fall within the orbit of any supervisory and control body: - Provide for their effective supervision and the ability to sanction regulatory noncompliance, since Law 19.913 gives no sanctioning powers to the FIU.