

# EAG



## Mutual Evaluation Report of the Kyrgyz Republic



# 2018

# EAG

ЕВРАЗИЙСКАЯ ГРУППА  
по противодействию легализации преступных доходов  
и финансированию терроризма

EURASIAN GROUP  
on combating money laundering  
and financing of terrorism

## TABLE OF CONTENTS

<b>EXECUTIVE SUMMARY</b> .....	3
Key Findings.....	3
Risks and Overall Situation .....	5
Overall Level of Effectiveness & Technical Compliance .....	6
Priority Actions.....	11
Effectiveness and Technical Compliance Ratings .....	13
<b>MUTUAL EVALUATION REPORT</b> .....	15
Preface .....	15
<b>CHAPTER 1. ML/TF RISKS AND CONTEXT</b> .....	17
General Information.....	17
ML/TF Risks and Scoping of Higher-Risk Issues .....	18
Background and Other Contextual Factors .....	22
<b>CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION</b> .....	32
Key Findings and Recommended Actions.....	32
Immediate Outcome 1 (Risk, Policy and Coordination).....	33
<b>CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES</b> .....	37
Key Findings and Recommended Actions on IO6, IO7 and IO8 .....	37
Immediate Outcome 6 (Financial intelligence).....	40
Immediate Outcome 7 (ML Investigation and Prosecution).....	50
Immediate Outcome 8 (Confiscation).....	56
<b>CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION</b> .....	62
Key Findings and Recommended Actions on IO9, IO10 and IO11 .....	62
Immediate Outcome 9 (TF Investigation and Prosecution) .....	64
Immediate Outcome 10 (TF Preventive Measures and Financial Sanctions) .....	69
Immediate Outcome 11 (PF Financial Sanctions) .....	75
<b>CHAPTER 5. PREVENTIVE MEASURES</b> .....	78
Key Findings and Recommended Actions.....	78
Immediate Outcome 4 (Preventive Measures).....	79
<b>CHAPTER 6. SUPERVISION</b> .....	90
Key Findings and Recommended Actions.....	90
Immediate outcome 3 (Supervision).....	91
<b>CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS</b> .....	109
Key Findings and Recommended Actions.....	109
Immediate Outcome 5 (Legal persons and arrangements).....	110
<b>CHAPTER 8. INTERNATIONAL COOPERATION</b> .....	116
Key Findings and Recommended Actions.....	116
Immediate Outcome 2 (International cooperation).....	117
<b>TABLE OF ACRONYMS</b> .....	123
<b>TECHNICAL COMPLIANCE ANNEX</b> .....	125
Recommendation 1 – Assessing Risks and applying a Risk-Based Approach.....	125
Recommendation 2 – National Cooperation and Coordination .....	127
Recommendation 3 – Money laundering offence .....	128
Recommendation 4 – Confiscation and provisional measures .....	130
Recommendation 5 – Terrorist financing offence .....	132
Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing .....	133
Recommendation 7 – Targeted financial sanctions related to proliferation .....	138
Recommendation 8 – Non-profit organisations .....	140
Recommendation 9 – Financial institution secrecy laws .....	142

Recommendation 10 – Customer due diligence .....	143
Recommendation 11 – Record keeping .....	147
Recommendation 12 – Politically exposed persons.....	148
Recommendation 13 – Correspondent banking .....	149
Recommendation 14 – Money or value transfer services .....	150
Recommendation 15 – New technologies.....	152
Recommendation 16 – Wire transfers.....	152
Recommendation 17 – Reliance on third parties .....	155
Recommendation 18 – Internal controls and foreign branches and subsidiaries .....	156
Recommendation 19 – High risk countries.....	157
Recommendation 20 – Reporting of suspicious transactions .....	158
Recommendation 21 – Tipping-off and confidentiality.....	159
Recommendation 22 – DNFBPs: Customer due diligence .....	159
Recommendation 23 – DNFBPs: Other measures .....	161
Recommendation 24 – Transparency and beneficial ownership of legal persons .....	162
Recommendation 25 – Transparency of beneficial ownership or legal arrangements .....	169
Recommendation 26 – Regulation and supervision of financial institutions.....	171
Recommendation 27 – Powers of supervisors .....	173
Recommendation 28 – Regulation and supervision of DNFBPs.....	175
Recommendation 29 – Financial Intelligence Units (FIU) .....	176
Recommendation 30 – Responsibilities of law enforcement and investigative authorities .....	179
Recommendation 31 – Powers of law enforcement and investigative authorities.....	180
Recommendation 32 – Cash couriers .....	181
Recommendation 33 – Statistics .....	184
Recommendation 34 – Guidance and feedback .....	185
Recommendation 35 – Sanctions.....	185
Recommendation 36 – International instruments .....	187
Recommendation 37 – Mutual legal assistance .....	188
Recommendation 38 – Mutual legal assistance: freezing and confiscation.....	189
Recommendation 39 – Extradition .....	190
Recommendation 40 – Other forms of international co-operation .....	191
<u>Summary of Technical Compliance – Key Deficiencies .....</u>	<u>197</u>

# EXECUTIVE SUMMARY

## EXECUTIVE SUMMARY

### Key Findings

1. This report represents a summary of anti-money laundering and countering the financing of terrorism (AML/CFT) measures in effect in the Kyrgyz Republic (Kyrgyzstan) at the time of the EAG assessors' mission to the country (March 27-April 7, 2017). The report analyses Kyrgyzstan's AML/CFT system for compliance with the 40 FATF Recommendations and assesses its effectiveness. The report also contains recommendations for strengthening the existing AML/CFT regime.

#### Key findings of the mutual evaluation report of the Kyrgyz Republic

1. The assessment team praised Kyrgyzstan's efforts to conduct a national risk assessment. Nevertheless, there is a limited understanding of money laundering and terrorist financing risks in the country, while ML/TF risks inherent in Kyrgyzstan are not fully defined.
2. As of the time of the on-site mission, the Kyrgyz authorities had not yet developed a national AML/CFT strategy; nor had they prepared or approved an action plan to mitigate ML/TF risks based on the findings of Kyrgyzstan's National ML/TF Risk Assessment Summary Report, adopted in March 2017. As a result, the objectives and activities of the country's competent AML/CFT authorities are determined by their own priorities, often lack coordination, and fail to take account of the actual ML/TF risks.
3. The Kyrgyz authorities, including SFIS, enjoy a broad access to various data sources, including containing real-time financial intelligence. Law enforcement authorities largely use the data collection powers of SFIS to obtain information from reporting entities and foreign FIUs. However, the quality of information in some databases (on legal entities, beneficial ownership etc.) is not sufficient to generate high-quality financial intelligence.
4. The information made available to law enforcement by SFIS spontaneously or on request is used both to launch new and pursue ongoing criminal investigations. However, it is difficult to come to a conclusion regarding the extent to which the information provided by SFIS on request was used, among others, to investigate high-risk ML/TF offences in Kyrgyzstan. The use of information provided by SFIS as part of a spontaneous dissemination for ML/TF investigations has moderate effectiveness and limited to a few isolated cases. SFIS's human and technical (analytical) resources are incommensurate to the extent and nature of its activities, particularly given the extent of its cooperation with law enforcement, which affects the speed of request execution.
5. Although law enforcement authorities are aware of their AML/CFT powers and responsibilities, they do not conduct a comprehensive review of, or develop strategies (programmes) for preventing, identifying and investigating ML and TF offences based on a risk-based approach.
6. In certain categories of criminal cases, ML is investigated as an auxiliary offence within the framework of a broader investigation into a predicate offence. The number of ML investigations and ML convictions is low.
7. Parallel financial investigations are rare, while some law enforcement bodies do not always have a clear understanding of their necessity or of the applicable procedure. A

## EXECUTIVE SUMMARY

- comprehensive national strategy for identifying and confiscating the proceeds and instrumentalities of crime and property of corresponding value is missing.
8. The value of confiscated criminal proceeds, instrumentalities and property is not commensurate with the damage caused. Representatives of the judiciary confirmed during working meetings that such mechanisms do work in practice and gave examples of cases where confiscation was used.
  9. There are no mechanisms in place in the Kyrgyz Republic for managing the value of seized/confiscated assets. Besides that, no unbiased information is available on how the seized property is being preserved and managed at the pre-trial stage in practice.
  10. Law enforcement authorities conduct investigations into terrorism-related criminal cases in compliance with their respective mandates and have legal powers to prosecute all types of TF. However, TF is not considered as a serious threat.
  11. Although TF-related sanctions are proportionate and even dissuasive, the lack of complete statistics made it impossible for the assessors to evaluate the impact of criminal prosecution of TF offences.
  12. Kyrgyzstan's legal framework allows it to properly apply targeted financial sanctions against individuals and organizations designated by the UN Security Council, as well as to compile a national list of designated individuals. Nevertheless, the mechanisms available in the country do not ensure practical application of targeted financial sanctions without delay. Kyrgyzstan does not ensure the implementation of targeted financial sanctions by all types of reporting entities listed in the FATF Recommendations. The country lacks a targeted, inter-agency coordinated risk-based approach to the NPO sector supervision aimed at identifying and mitigating TF risks. Government authorities lack the information on the size and number of unregistered NPOs.
  13. Banks demonstrated a good understanding of ML/TF risks (risk of involvement in illegal activities). Other representatives of financial institutions and DNFBPs have a limited understanding of ML/TF risks. Financial institutions and DNFBPs do not document the outcomes of their own assessments of ML/TF risks.
  14. Financial institutions have a good understanding of their AML/CFT obligations. Experts came to a conclusion that banks have the fullest understanding and ensure the best implementation of obligations to identify beneficial owners, as well as having access to beneficial ownership information. In addition, banks account for the largest number of submitted STRs and threshold transaction reports, with the latter category constituting a majority among financial institutions. Reporting entities primarily use the criteria and indicators approved by SFIS, rather than their own criteria, as the basis for filing STRs.
  15. At the time of the on-site mission, the National Bank of the Kyrgyz Republic (NBKR) was in the process of introducing a pilot risk-based supervisory regime for banks, which utilizes individual risk profiles, including compliance risks and ML/TF risks. NBKR has the necessary powers and instruments to apply proportionate and dissuasive sanctions against supervised financial institutions. Apart from NBKR's pilot project, other supervisors apply rules-based approach in their activities. Supervision over insurance institutions and

## EXECUTIVE SUMMARY

professional securities market participants is not fully consistent with the Core Principles<sup>1</sup>. Pawnshops, commodity exchanges and leasing companies are not subject to supervision.

16. Casinos are illegal in Kyrgyzstan. There are no trusts in the country. Among DNFBPs operating in Kyrgyzstan, only entities engaged in cash transactions with precious metals and precious stones have their own designated AML/CFT supervisor (Precious Metals Department/PMD), however, it does not take the steps necessary to prevent criminals and their associates from holding an interest or a management function in these entities. According to PMD, in April 2016 it started the implementation of the risk-based approach to supervision that takes into account ML/TF vulnerabilities of certain types of reporting entities and regions of the country. However, neither the mechanism for practical implementation of this approach or its practical outcomes were demonstrated to the assessors.
17. Law enforcement authorities demonstrated a fairly good understanding of the risks associated with the abuse of legal persons for ML/TF. At the same time, the Kyrgyz Republic did not analyse the vulnerabilities of various types of legal entities or conduct a relevant ML/TF risk assessment. There are no mechanisms in Kyrgyzstan to prevent the illegal use of bearer shares for ML or TF purposes (there are conflicting regulations governing the issue of bearer shares). At the same time, given the absence of this type of securities on the market, the risks posed by bearer shares can be deemed as low. Kyrgyzstan's State Register of Legal Entities lacks information on beneficial owners or effective mechanisms for monitoring the submission of reliable information by legal entities. The information contained in the State Register of Securities Holders is open to the public. Each financial institution and DNFBP collects and stores beneficial ownership information as part of its CDD obligations. Representatives of the banking sector demonstrated the fullest understanding and implementation of the obligations related to the identification of beneficial owners.
18. There are many signs and characteristics of an effective international cooperation mechanism in place in Kyrgyzstan. Kyrgyzstan's authorities can provide the widest possible mutual legal assistance in a timely manner and ensure extradition of suspects in ML/TF investigations, prosecutions and other proceedings, including those related to predicate offences. Given the rarity of ML/TF investigations and prosecutions in Kyrgyzstan, the use of international mutual legal assistance mechanisms by the country's authorities is limited.

### ***Risks and Overall Situation***

2. Kyrgyzstan is located to the north east of Central Asia. The country's geographical proximity to Afghanistan, which is home to a significant number of terrorists and terrorist organizations, as well as its position along major drug trafficking routes and the cross-border cash smuggling “Northern Route”, all have a major impact on the situation in the country. Problems associated with organized crime and drug trafficking are particularly acute in the south of the country. All this underscores the

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<sup>1</sup> Core Principles related to AML/CFT include: Basel Committee on Banking Supervision (BCBS) Core Principles 1-3, 5-9, 11-15, 26 and 29; International Association of Insurance Supervisors (IAIS) Principles 1, 3-11, 18, 21-23 and 25; International Organization of Securities Commissions (IOSCO) Principles 24, 28, and 31; and points of responsibility A, B, C and D. Experts can refer to the assessments of compliance of the country with those Core Principles where they are available

## EXECUTIVE SUMMARY

threat associated with drug trafficking and related ML risks.

3. In December 2012, the Investment Round Table public association prepared the report on shadow economy in Kyrgyzstan at the request of the Ministry of Economy of the Kyrgyz Republic under the World Bank project. According to the report, the shadow economy made up, by some estimates, 39% - 43% of the country's GDP in 2011<sup>2</sup>. The formation of the shadow economy in the country leads to, among other things, tax evasion. The presence of shadow economy and the use of cash not only increase the potential of tax evasion and money laundering, but also make it more difficult for law enforcement bodies to identify these types of criminal offences. Besides that, the cash-intensive nature of the economy facilitates the emergence of alternative remittance systems and physical transportation of money by cash couriers.

4. According to the OECD's report issued under the 3rd round of monitoring of Istanbul Anti-Corruption Action Plan, Transparency International's Corruption Perception Index placed Kyrgyzstan at 136<sup>th</sup> place out of 175 countries in 2014, meaning that corruption remains a serious problem in Kyrgyzstan.

5. Despite the fact that Kyrgyzstan is not a regional financial centre, the high level of corruption and the cash-intensive nature of its economy increase the risk of ML through the banking and DNFBP sectors. Given the size of the banking sector assets and their concentration, the level of ML risks in this sector is high.

6. Analysis of the material provided by Kyrgyzstan revealed that, among DNFBPs, persons carrying out transactions with precious metal and precious stones are best covered by AML/CFT requirements. Meanwhile, the AML/CFT law does not assign notaries and independent legal professionals engaged in the preparation of real estate transactions to the category of reporting entities, hence they are not required to comply with CDD requirements.

7. There are valid indicators pointing to the presence in Kyrgyzstan of terrorist and terrorist financing risks. Kyrgyz nationals participate in the conflict in Syria and Iraq in the capacity of foreign terrorist fighters, as well as being the target of aggressive terrorist recruitment efforts. According to the media, more than 500 Kyrgyz nationals are currently in Syria.

8. There are potential risks associated with the abuse of NPOs for terrorist financing. Despite the involvement of several government agencies in supervision over the NPO sector, the country lacks a coordinated interagency approach to the NPO sector supervision aimed at identifying and mitigating TF risks.

### ***Overall Level of Effectiveness & Technical Compliance***

#### *Assessment of risks, Coordination and policy setting (Chapter 2 – IO.1, R.1, R.2, R.33)*

9. The assessment team praised Kyrgyzstan's efforts in conducting a national risk assessment. Nevertheless, they believe that the country's understanding of ML/TF risks is limited.

10. Kyrgyzstan conducted two national-level risk assessments, in 2015 and 2017, whose findings are reflected in the ML Risk Assessment Report (2015 Report) and the ML/TF Risk Assessment Summary Report (2017 Report). The findings of the 2015 ML risk assessment were not used in future work; nor were they made available to entities covered by the AML/CFT legislation or had any impact on the understanding and mitigation of ML risks. The 2017 Report, which contained input from a

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<sup>2</sup> Report on the conducted research of the shadow economy in the Kyrgyz Republic // [http://mineconom.gov.kg/index.php?option=com\\_projects&cid=35&id=71&Itemid=113&lang=ru](http://mineconom.gov.kg/index.php?option=com_projects&cid=35&id=71&Itemid=113&lang=ru)

## EXECUTIVE SUMMARY

limited number of representatives of Kyrgyz state bodies, does not contain a complete and holistic picture of the ML/TF risks facing the country.

11. Besides the 2015 and 2017 Reports, neither the competent authorities nor the private sector conducted any ML/TF risk assessments or studies on this topic of their own. Each competent authority forms its own, independent from others, understanding of the existing ML/TF risks based on its practical experience, while the importance of commonalities tends to be either ignored or not fully taken into account.

12. Supervisors see risks in other sectors. For example, NBKR identified the cash-intensive nature of the economy as the most obvious source of the ML threat. Given the volume of cash in circulation and the concentration of assets, NBKR views banks as particularly vulnerable to ML/TF risks compared with other reporting entities. The Precious Metals Department, meanwhile, views the purchase from the population of precious metals, jewellery and scrap thereof with cash possibly obtained as a result of criminal activities, as particularly vulnerable to ML risks. According to the assessors, such views, although fully justified, do not fully reflect the situation with ML/TF risks as a whole.

13. Recognition and understanding of ML risks by law enforcement is based on the number of predicate offences committed in the country (tax evasion and drug trafficking). Law enforcement authorities do not pay attention to the in-depth assessment of ML methods/trends or the value of criminal proceeds generated through these crimes.

14. Law enforcement authorities rate TF risks as low and do not view TF as a serious threat to national security, a position not shared by experts (see IO9).

15. The country's authorities do not analyse or assess the risk of abuse of different types of NPOs for TF, nor do they conduct any TF awareness-raising activities in this sector. This approach, according to experts, is at odds with the risk profile of the country's NPO sector (see Chapter 1).

16. As of the time of the on-site mission, the Kyrgyz authorities still lacked a national AML/CFT strategy; nor had they prepared or approved an action plan to mitigate ML/TF risks based on the findings of Kyrgyzstan's National ML/TF Risk Assessment Summary Report, adopted in March 2017.

17. The findings of ML/TF risk assessments are not used in Kyrgyzstan to justify exemptions or the use of enhanced and simplified measures. Certain categories of financial institutions and DNFBPs are not subject to AML/CFT requirements. These exemptions are not made on the basis of risk assessment findings.

18. The absence of a national AML/CFT strategy means that the competent authorities pursue AML/CFT activities and objectives in line with their own priorities, often without proper coordination, and fail to take into account the existing ML/TF risks.

19. Kyrgyzstan did not provide examples of notification by the country's competent authorities of each other about the risks identified and examples of measures taken by the competent authorities based on the findings of the ML/TF risk assessment.

20. In Kyrgyzstan, the responsibility for promoting interagency cooperation is assigned to the Interagency Commission, chaired by the country's Prime Minister, which is also responsible for decisions concerning the coordination and conduct of risk assessments, as well as for the preparation and implementation of the national AML/CFT/PF strategy. Meanwhile, the responsibility for drafting a national strategy and its implementation plan for the subsequent approval by the Interagency Commission is assigned to SFIS.

21. Despite the fact that each Kyrgyz competent authority maintains its own statistics, there are no



## EXECUTIVE SUMMARY

consolidated and national-wide statistics on AML/CFT matters, a deficiency that affects the ability of government agencies to assess ML/TF risks and develop sound AML/CFT policies designed to mitigate these risks.

22. The country's competent authorities within the Interagency Commission fail to take practical steps to promote proliferation financing-related cooperation and coordination, develop and implement policies or undertake action. Throughout its existence, the Interagency Commission has never discussed issues related to the fight against proliferation financing.

23. Kyrgyzstan has not done enough to ensure that financial institutions and DNFBPs are aware of the existing ML/TF risks in the country. Representatives of institutions and organizations covered by AML/CFT requirements are largely not aware of the 2017 Report findings and failed to demonstrate how they will use them to meet their obligations.

### *Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

24. Law enforcement authorities largely use the data collection powers of SFIS to obtain information from reporting entities and foreign FIUs. SFIS's analytical findings and other intelligence passed on to law enforcement are used both in on-going investigations and to launch new ones. Nevertheless, a number of shortcomings affect the effectiveness of cooperation. It is difficult to come to a conclusion regarding the extent to which the information provided by SFIS on request was used, among others, to investigate high-risk ML/TF offences in Kyrgyzstan. The quality of information in some databases (on legal entities, beneficial ownership etc.) is not sufficient to generate high-quality financial intelligence. The use of information provided by SFIS as part of a spontaneous dissemination for ML/TF investigations is limited to just a few isolated cases. SFIS's human and technical (analytical) resources are incommensurate to the extent and nature of its activities, particularly given the extent of its cooperation with law enforcement, which affects the speed of request execution.

25. Due to the lack of a systematic approach to the identification of sectoral ML/TF risks, Kyrgyzstan's law enforcement agencies investigate ML as an auxiliary offence within the framework of a broader investigation into a predicate offence. Some law enforcement agencies lack a clear understanding of the necessity of parallel financial investigations.

26. The Kyrgyz law enforcement and judicial authorities have access to the necessary legal mechanisms needed to identify criminal proceeds (including funds and property) and seize them, in order to ensure recovery of damage caused by a crime, including ML and TF.

27. The results of confiscations do not reflect the existing ML/TF risks. A comprehensive national strategy for identifying and confiscating the proceeds of crime is missing, while legal restrictions impact the effectiveness of measures adopted.

28. There is no effective mechanism for managing the value of seized/confiscated assets; nor has Kyrgyzstan provided any objective information about how the seized property is preserved and managed in practice at the pre-trial stage.

### *Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9- 11; R.5-8)*

29. Although empowered to prosecute all types of TF offences, the competent law enforcement authorities, based on their assessment of a terrorist threat, do not consider TF a serious threat.

30. There are examples of criminal investigations into and prosecutions for TF. At the same time, due to the lack of experience among law enforcement authorities in identifying and investigating TF

## EXECUTIVE SUMMARY

offences and among judiciary authorities in hearing such cases, proving TF remains a challenge.

31. Kyrgyzstan's legislative framework allows it to properly apply targeted financial sanctions against natural and legal persons designated by the relevant UNSC resolutions. The Kyrgyz authorities take additional steps to monitor and restrict the flows of assets to/from Iran and North Korea via Kyrgyzstan in order to combat proliferating financing. Still, the existence of significant shortcomings in the application of targeted financial sanctions, as well as reporting entities' misunderstanding of their obligations, undermines the effectiveness of these steps. Kyrgyzstan does not enforce the application of targeted financial sanctions by all types of reporting entities listed in the FATF Recommendations.

32. Despite the involvement of several government agencies in the monitoring of the NPO sector, the country lacks a coordinated interagency risk-based approach to the NPO sector supervision focused on identifying and mitigating TF risks.

33. The country's authorities did not analyse or assess the NPO sector for possible risks of their abuse for TF; nor do they conduct any awareness-raising activities (trainings or publication of guidelines).

34. Government authorities lack the information on the size and number of unregistered NPOs.

35. Despite the evidence pointing towards the existence of TF in the country, there is a lack of a common understanding of the level of TF risks in Kyrgyzstan. Therefore, in view of the identified shortcomings in the system, the measures undertaken so far cannot be considered sufficient.

### *Preventive Measures (Chapter 5 - IO4; R.9-23)*

36. Financial institutions have a good understanding of AML/CFT obligations established by law. A good understanding of AML/CFT obligations was demonstrated by banks and dealers in precious metals and precious stones. However, reporting entities have a mixed understanding of ML/TF risks (the risk of involvement in illegal activities). The best understanding of ML/TF risks was demonstrated by banks. Other representatives of the financial sector and DNFBPs have a limited understanding of ML/TF risks. Financial institutions and DNFBPs do not document the outcomes of their own assessments of ML/TF risks.

37. Financial institutions adequately comply with CDD and record keeping requirements. Banks have the fullest understanding and ensure the best implementation of the obligations to identify beneficial owners, as well as having access to beneficial ownership information. Despite the absence of a statutory requirement, some financial institutions adopt certain risk mitigating measures and stricter CDD procedures in the form of enhanced transaction monitoring in respect of domestic PEPs.

38. The total number of reports (on transactions that are subject to mandatory monitoring) submitted by reporting entities in 2016 exceeded 800,000, a vast majority of which (over 99%) were mandatory monitoring reports filed by banks. It should be noted that financial institutions tend to use the indicators for the submission of STRs developed by SFIS, instead of developing their industry-specific criteria. The number of reports related to transactions that are subject to mandatory monitoring or STRs sent by DNFBPs is small. Following the meetings with the representative of DNFBPs, it was concluded that DNFBPs do not use the STR mechanism because they do not understand ML/TF risks in their sectors and ambiguously interpret the STR-related provisions of the AML/CFT law.

### *Supervision (Chapter 6 - IO3; R.26-28, R. 34-.35)*

39. Kyrgyzstan has an adequate licensing regime for all financial institutions, except for leasing

## EXECUTIVE SUMMARY

companies and commodity exchanges. However, measures to prevent criminals and their associates from holding a controlling interest or a management function in pawnshops, leasing companies, commodity exchanges and DNFBP sectors, as well as measures to prevent criminals and their associates from holding a controlling interest in insurance institutions and professional securities market entities, are neither provided for in legislation nor applied in practice.

40. The supervisory authorities did not provide any documentary evidence (e.g., reports, statements, newsletters or analytical materials in other format) demonstrating that sectoral ML/TF risks assessments were conducted.

41. Supervisors generally use the rule-based approach to AML/CFT supervision of financial institutions other than banks. Elements of a risk-based approach (other than related to ML/TF risks) are used by supervisors to determine the frequency of inspections. NBKR is currently implementing the pilot risk-based supervisory regime for banks, which utilizes individual risk profiles, including compliance risks and ML/TF risks. Pawnshops, commodity exchanges and leasing companies are not subject to AML/CFT supervision/monitoring.

42. Kyrgyzstan has gaps in supervision of DNFBPs. Real estate agents, notaries and independent legal professionals involved in the preparation of real estate transactions have no AML/CFT supervisors. The supervisory functions of the Precious Metals Department (PMD), including those related to AML/CFT supervision of dealers in precious metals and precious stones, are limited: inspections are subject to approval by the Kyrgyz Economy Ministry and prior notification of the supervised entity. According to PMD, in April 2016 they began the implementation of the risk-based approach to supervision of reporting entities that takes into account the ML/TF vulnerability of specific types of reporting entities and regions of the country. However, the supervisor has not demonstrated the mechanism of the practical implementation of this approach and its specific outcomes.

43. NBKR is authorized to apply and applies various measures and sanctions, including suspension and revocation of licenses, against the supervised entities for breaches of AML/CFT requirements. Gosfinaadzor and the SIT&CC are authorized to apply a more limited range of measures and sanctions compared to NBKR. SFIS is empowered to impose administrative sanctions against DNFBPs for breaches of the AML/CFT obligations. PMD is not authorized to impose sanctions for violation of the AML/CFT requirements. In practice, SFIS imposed sanctions for AML/CFT breaches only against the following DNFBPs: entities carrying out cash transactions with precious metals and precious stones.

44. SFIS and NBKR promote a better understanding of AML/CFT obligations in the private sector through outreach and trainings. However, not enough attention is paid to the training of representatives of the private sector and representative of some government agencies, in particular on the issue of ML/TF risk assessment.

### *Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

45. Law enforcement authorities demonstrated a fairly good understanding of the risks of abuse of legal entities for ML/TF. That said, Kyrgyzstan does not conduct an assessment of vulnerabilities of different types of legal persons and related ML/TF risks.

46. Kyrgyzstan lacks the mechanisms for preventing the illegal use of bearer shares for ML or TF purposes (there are conflicting regulations governing the issue of bear shares). That being said, given the absence of this type of securities from the country's market (not in circulation or being issued), the level of risk posed by bear shares can be deemed as low.

## EXECUTIVE SUMMARY

47. Kyrgyzstan takes certain steps to prevent the abuse of legal persons. The country operates a state Register of Legal Entities and the public state Register of Securities Holders. At the same time, there is no adequate system in place for verifying the accuracy of information submitted by legal persons.

48. When registering/re-registering a legal person, the authorities do not check the submitted documents for accuracy or timeliness (except for passports), only for completeness. The Justice Ministry is not endowed with any supervisory functions, having the powers only to register and re-register legal persons.

49. The Register of Legal Entities contains no information on beneficial owners. Each financial institution and DNFBP is required to collect and retain beneficial ownership information as part of its customer due diligence obligations. Legislative provisions relating to professional secrecy prevent competent (law enforcement) authorities from gaining timely access to beneficial ownership information.

50. Representatives of the banking sector, unlike the public and non-banking private sectors, demonstrated the fullest understanding and implementation of their obligations to identify beneficial owners. Reporting entities other than banks do not carry out the verification (sometimes even identification) of beneficial owners.

51. The sanctions provided for violation of the relevant requirements are not effective, proportionate or dissuasive.

### *International Cooperation (Chapter 8 - IO2; R. 36-40)*

52. There are many signs and characteristics of an effective international cooperation mechanism in place in Kyrgyzstan. Kyrgyzstan's authorities are able to provide the widest possible mutual legal assistance in a timely manner and ensure extradition in ML/TF investigations, prosecutions and proceedings, including those related to predicate offences. Given the rarity of ML/TF investigations and prosecutions in Kyrgyzstan, the international mutual legal assistance tools are not actively used by the country's authorities.

53. There are no legal barriers to the sharing of information with financial sector supervisors from other countries. The country's supervisory authorities have entered into a number of international agreements that allow the sharing of information. In practice, supervisory authorities exchange information on financial institutions with their foreign counterparts in the process of licensing and appointment of senior managers for financial institutions. The experience of international AML/CFT cooperation between DNFBP sector supervisors is lacking.

54. A majority of countries that submitted comments on their experience of international cooperation with Kyrgyzstan tend to rate such cooperation as satisfactory. Kyrgyzstan is also generally pleased with the level of international assistance it receives.

55. The information, including statistics, provided by the Kyrgyz authorities did not allow the assessors to evaluate the range of international AML/CFT cooperation (including on issues related to extradition).

### ***Priority Actions***

Kyrgyzstan should:

1. Conduct an in-depth risk assessment at the national level with the full participation of all stakeholders, drawing attention to the practical ML/TF methods and techniques.

## EXECUTIVE SUMMARY

2. Develop a national AML/CFT strategy and priorities, as well as implement the AML/CFT risk-based approach based on the identified ML/TF risks. Kyrgyzstan should also improve AML/CFT/PF cooperation and coordination among competent authorities.
3. With a view to boosting the effectiveness and timeliness of adopted measures, make more human resources available for SFIS and improve its technical (analytical) tools to ensure they are commensurate to the scope and nature of its activities, including with account for the extent of its interaction with law enforcement agencies.
4. Kyrgyzstan's law enforcement authorities should regularly inform SFIS on their use of spontaneously provided information and data.
5. Ensure implementation of targeted financial sanctions without delay in accordance with the UNSC sanctions regimes, and communicate them to the reporting entities and the general public in a timely manner.
6. Ensure that the competent authorities have timely access to beneficial ownership information.
7. Take steps to prevent criminals or their associates from holding a controlling interest in insurance companies, professional securities market participants (management companies and brokers), pawnshops, leasing companies, commodities exchanges and dealers in precious metals and precious stones.
8. Designate an AML/CFT supervisor (or grant supervisory powers to a SRB) for real estate agents, notaries and independent legal professionals involved in the preparation of real estate transactions, as well as extend the obligation to fully comply with the AML/CFT Law as required by FATF Recommendations to notaries and independent legal professionals involved in the preparation of real estate transactions.
9. Set up a mechanism for the effective management of frozen or confiscated assets, as well as designate an authority vested with the necessary powers.
10. Develop clear national law enforcement strategy for identifying, investigating and prosecuting all types of money laundering offences (including money laundering by third parties and money laundering as a separate offence), setting out, preferably, the AML/CFT-related responsibilities of each agency.
11. Develop a guidance document requiring law enforcement agencies investigating predicate offences, ML and TF to conduct financial investigations, including spontaneous financial investigations. In addition, use the experience of conducting financial investigations to provide training for law enforcement authorities and the judiciary.
12. Make greater use of the practice of conducting joint investigations and setting up ad hoc investigation teams.

# EXECUTIVE SUMMARY

## Effectiveness and Technical Compliance Ratings

### Effectiveness Ratings

<b>IO.1</b> Assessing risks and applying a risk-based approach	<b>IO.2</b> International cooperation	<b>IO.3</b> Supervision	<b>IO.4</b> Preventive measures	<b>IO.5</b> Legal persons and arrangements	<b>IO.6</b> Financial intelligence ML/TF
<b>Low</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>
<b>IO.7</b> ML investigation and prosecution	<b>IO.8</b> Confiscation	<b>IO.9</b> TF investigation and prosecution	<b>IO.10</b> TF preventive measures and financial sanctions	<b>IO.11</b> PF financial sanctions	
<b>Moderate</b>	<b>Low</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	

### Technical Compliance Ratings

#### AML/CFT Policies and Coordination

<b>R.1</b>	<b>R.2</b>
<b>PC</b>	<b>PC</b>

#### Money Laundering and Confiscation

<b>R.3</b>	<b>R.4</b>
<b>C</b>	<b>LC</b>

#### Terrorist Financing and Financing of Proliferation

<b>R.5</b>	<b>R.6</b>	<b>R.7</b>	<b>R.8</b>
<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>NC</b>

## EXECUTIVE SUMMARY

### *Preventive Measures*

<b>R.9</b>	<b>R.10</b>	<b>R.11</b>	<b>R.12</b>	<b>R.13</b>	<b>R.14</b>
LC	LC	LC	NC	LC	LC
<b>R.15</b>	<b>R.16</b>	<b>R.17</b>	<b>R.18</b>	<b>R.19</b>	<b>R.20</b>
LC	PC	NC	LC	LC	LC
<b>R.21</b>	<b>R.22</b>	<b>R.23</b>			
LC	PC	PC			

### *Transparency and Beneficial Ownership of Legal Persons and Arrangements*

<b>R.24</b>	<b>R.25</b>
PC	LC

### *Powers and Responsibilities of Competent Authorities and other Institutional Measures*

<b>R.26</b>	<b>R.27</b>	<b>R.28</b>	<b>R.29</b>	<b>R.30</b>	<b>R.31</b>
LC	LC	NC	LC	C	LC
<b>R.32</b>	<b>R.33</b>	<b>R.34</b>	<b>R.35</b>		
LC	LC	PC	LC		

### *International Cooperation*

<b>R.36</b>	<b>R.37</b>	<b>R.38</b>	<b>R.39</b>	<b>R.40</b>
LC	LC	PC	LC	LC

## ***MUTUAL EVALUATION REPORT***

### ***Preface***

This report summarizes the anti-money laundering and countering the financing of terrorism (AML/CFT) measures in place in the Kyrgyz Republic as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation of the AML/CFT system was based on the 2012 FATF Recommendations, and was prepared using the 2013 FATF Methodology. The evaluation was based on information provided by the Kyrgyz Republic, and information obtained by the assessment team during its on-site visit to Kyrgyzstan from March 27 to April 7, 2017.

The presented EAG 2<sup>nd</sup> round evaluation was conducted by the assessment team composed of:

- Mrs. Svetlana Bogdanova, Head of Sector for Coordination of Cooperation with International Organizations, Financial Monitoring & Foreign Exchange Control Department of the RF Central Bank (financial expert);
- Mrs. Takhmina Zakirova, Head of International Cooperation Division, Financial Monitoring Department under the National Bank of Tajikistan (legal expert);
- Mr. Mikhail Kolinchenko, Deputy Department Head, Russian Federal Financial Monitoring Service (law enforcement expert);
- Mr. Timur Kurmaniyazov, Deputy Head of Legal Department, National Bank of the Republic of Kazakhstan (financial expert);
- Mrs. Ani Melkonyan, Expert, International Relations Department, Financial Monitoring Centre of the Central Bank of the Republic of Armenia (legal expert);
- Mr. Andrei Romanovski, Deputy Division Head, General Department for Combating Organized Crime and Corruption of the Ministry of Internal Affairs of the Republic of Belarus (law enforcement expert);
- Mr. Nikita Bobryshev, Administrator, the EAG Secretariat;
- Mr. Alexander Vodyanoy, Administrator, the EAG Secretariat;
- Mr. Andrei Seleznev, Chief Administrator – EAG Deputy Executive Secretary, the EAG Secretariat.

The report was reviewed by the representatives of the EAG member countries: Mrs. Aliya Beisova, Expert, F8 Department of the Financial Monitoring Committee of the Finance Ministry of the Republic of Kazakhstan; Mr. Daniil Burda, Chief Specialist – Expert of Regulatory Division, Legal Department of the Federal Financial Monitoring Service; and the FATF Secretariat.

Kyrgyzstan previously underwent the EAG mutual evaluation in 2007, conducted according to the 2004 FATF Methodology. The report on evaluation of the Kyrgyz Republic conducted under the 1<sup>st</sup> round of the EAG mutual evaluations was adopted by the 6<sup>th</sup> EAG Plenary in June 2007. The report is publicly available at the EAG website: <http://www.eurasiangroup.org/ru/mers.php>

The 1<sup>st</sup> Mutual Evaluation rated Kyrgyzstan as not applicable in respect of 2 Recommendations; non-compliant with 16 recommendations; partially compliant with 17 recommendations; largely compliant with 9 recommendations; and compliant with 5 recommendations. The Kyrgyz Republic was rated partially compliant or non-compliant with 10 of the Core and Key Recommendations. Following the adoption of the mutual evaluation report, Kyrgyzstan was placed in the EAG enhanced follow-up process. Besides that, the Kyrgyz Republic was also placed in the monitoring process by



the FATF International Cooperation Review Group (ICRG) in 2011.

Since then, Kyrgyzstan implemented measures for improving its AML/CFT system. In summer 2014, the Kyrgyz Republic was removed from the ICRG monitoring process based on the outcomes of the FATF on-site visit which concluded that Kyrgyzstan had demonstrated political commitment and achieved some progress. In November 2014, Kyrgyzstan presented the 11<sup>th</sup> detailed follow-up report to the 21<sup>st</sup> EAG Plenary for its removal from the enhanced follow-up and placement in the regular follow-up process (providing updated reports once in three years). Following the discussion of the report, the Plenary concluded that Kyrgyzstan had eliminated the deficiencies related to all Core and Key Recommendations and could be rated largely compliant (LC) with those Recommendations in terms of technical compliance. After that, the Kyrgyz Republic was placed in the regular follow-up process. The 11<sup>th</sup> follow-up report of Kyrgyzstan is also available at the EAG website: <http://www.eurasiangroup.org/en/mers.php>

## **CHAPTER 1. ML/TF RISKS AND CONTEXT**

### **General Information**

56. The Kyrgyz Republic (Kyrgyzstan) is located in the north-eastern part of Central Asia, covering 199,900 square kilometres. Almost 90% of the territory is located higher than 1500 meters above the sea level. The mountains (Tien Shan and Pamir mountains and their systems) separate the economic and demographic centres of the country: Chuysk Valley in the north and Fergana Valley in the south. In the administrative terms, the territory of Kyrgyzstan is subdivided into seven regions. The capital of Kyrgyzstan is Bishkek city. The population of Kyrgyzstan exceeds 6 million. Kyrgyz nationals comprise over half of the population (73.2%), with Uzbeks and Russians at 14.6% and 5.8%, respectively. The Kyrgyz language is the national language, while Russian has the status of the official language. The majority of the population are Sunni Muslims, with a Christian minority (mostly Orthodox).

57. In 2016, the Kyrgyz economy continued to demonstrate a positive growth momentum. According to the preliminary estimates of the National Statistics Committee (NSC) of the Kyrgyz Republic, the GDP grew in real terms by 4.3 percent (up 3.9% from 2015). The economic growth was supported by all key sectors of the economy. In nominal terms, the GDP amounted to KGS 476.3.0 billion (USD 6.81 billion<sup>3</sup>). In 2016, exports fell by 1.5% to USD 1.6 billion, with gold accounting for the largest share of export revenues. The net volume of incoming (money) transfers reached USD 1.9 billion, up 16.9% from 2015, with remittances from migrant workers accounting for a significant portion of the current incoming transfers. In 2016, the net volume of incoming remittances sent by individuals via money transfer systems amounted to USD 1.6 billion compared with USD 1.3 billion in 2015.

58. Kyrgyzstan is a sovereign, democratic, secular, unitary and social welfare state built on the principles of secular democracy and the rule of law. The Declaration of Sovereignty of Kyrgyzstan and the Declaration of Independence were adopted on December 15, 1990 and August 31, 1991, respectively. The Kyrgyz Constitution of May 5, 1993, with amendments of June 27, 2010, and envisions the parliamentary-presidential form of governance.

59. The President of the Kyrgyz Republic is the head of state elected for a single term of 6 years, without the right of re-election. The Parliament of the Kyrgyz Republic (Jogorku Kenesh) is a representative body that exercises the legislative powers and control functions within its terms of reference. The Parliament is composed of 120 members elected for a term of 5 years according to the proportional representation system. The executive power in Kyrgyzstan is exercised by the Government headed by the Prime Minister, who is nominated by the Parliament and approved by the President, as well as by the ministries, state committees, administrative agencies and local administrative authorities subordinated to the Central Government. The State Financial Intelligence Service (SFIS) under the Kyrgyz Government is also subordinated to the Government.

60. Judicial powers are exercised through constitutional, civil, criminal, administrative and other types of judicial proceedings. Kyrgyzstan has a three-tier judicial system comprising territorial and city courts of general jurisdiction; seven regional courts of appeal and the Bishkek city court; and the Supreme Court. The Supreme Court includes the Constitutional Chamber, which is responsible for constitutional oversight.

61. The Kyrgyz Republic has a civil law system. In Kyrgyzstan, all legal acts are subdivided into laws and regulations. The hierarchical system of legal acts is as follows:

- 1) Constitution and Constitutional Amendment Laws;
- 2) Constitutional Laws;

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<sup>3</sup> One US dollar is equal to 68.85 Kyrgyzstani soms (KGS) as of June 2017.

- 3) Codes;
- 4) Laws;
- 5) Presidential Decrees;
- 6) Resolutions of the Parliament (Jogorku Kenesh);
- 7) Resolutions of the Government;
- 8) Regulations of the National Bank and the Central Election and Referendum Commission;
- 9) Regulations of the government authorities empowered to issue under-statutory acts pursuant to the legislation delegating regulatory powers;
- 10) Regulations of local administrative authorities.

62. Kyrgyzstan is a member of the United Nations (UN) since 1992. It is also a member of various regional organizations such as the Eurasian Economic Union (EAEU), Collective Security Treaty Organization (CSTO), Commonwealth of Independent States (CIS) and the Shanghai Cooperation Organization (SCO). Kyrgyzstan is also a member of more than 100 international organizations, including the Organization for Security and Cooperation in Europe (OSCE), CIS Anti-Terrorism Centre (ATC), World Bank, etc. In 2004, Kyrgyzstan was one of the founding members of the EAG. According to the Kyrgyz Republic Foreign Ministry, Kyrgyzstan maintains diplomatic relations with over 130 countries.

### ***ML/TF Risks and Scoping of Higher-Risk Issues***

#### *Overview of ML/TF Risks*

63. In December 2012, the *Investment Round Table* public association prepared a report on the shadow economy of Kyrgyzstan at the request of the Ministry of Economy of the Kyrgyz Republic as part of the World Bank project. According to the report, the shadow economy made up, by some estimates, 39% - 43% of the country's GDP in 2011. The Kyrgyz National Statistical Committee regularly publishes statistics on the size of the "non-observed economy" in the country. Since 2011, this figure has been gradually increasing and reached 23.8% of the GDP in 2015. The difference in numbers is due to the difference in the calculation methods used, according to which the term "shadow economy" is somewhat broader and includes the non-observed economy that covers only the legal (but unaccounted) sector of the country's economy. Among the factors contributing to the creation of a shadow market is tax evasion. The presence of a shadow economy and the widespread use of cash not only contribute to tax evasion and money laundering, but also make it more difficult for law enforcement to identify these types of criminal offences. In addition, the heavy reliance on cash facilitates the emergence of alternative remittance systems and physical transportation of money by cash couriers.

64. Kyrgyzstan is a transit region for illicit drug trafficking. Narcotic drugs and illicit financial flows move along the "Northern Route" towards Russia and Central Asia. The country's security forces seize significant volumes of narcotic drugs (over 110 tons from 2010 to 2014). More than one third of the identified offences related to illicit drug trafficking fall into the category of serious or mostly serious. The problem of organized crime and drug trafficking is particularly acute in the south of the country. All of this underscores the seriousness of the threat posed by drug trafficking and related money laundering.

65. The latent nature of drug trafficking means that its proceeds can be accumulated in the legal sector of the economy both inside the country and abroad, as well as be used for terrorist financing, a process facilitated by the use of modern payment methods and participation of organized crime in drug trafficking.

66. In the OECD report compiled as part of the 3<sup>rd</sup> round of monitoring of compliance with the

Istanbul Anti-Corruption Action Plan, Kyrgyzstan was ranked 136<sup>th</sup> out of 175 countries in the 2014 Corruption Perceptions Index prepared by Transparency International. This shows that corruption remains a major problem for Kyrgyzstan.

67. Although Kyrgyzstan is not a regional finance centre, the high corruption level and the cash-intensive nature of its economy increase the risk of ML through the banking and DNFBP sectors. In late 2016, the assets of the financial sector amounted to KGS 195.2 billion (USD 2.8 billion), or 42.6% of the GDP<sup>4</sup>. The assets of the banking sector account for 91.2% of the entire financial sector, while the share of the assets of non-bank financial institutions (NBFIs<sup>5</sup>) is equal to 7%. It is noteworthy that seven largest banks account for 67% of the assets of the entire banking sector. International remittance services, provided by commercial banks that act as agents of international payment systems, remain very popular in the country. When it comes to AML/CFT, the country's banking sector should act as a filter, blocking the flow of criminal capital into the legal financial sector. Given the size of assets and their concentration, Kyrgyzstan's banking sector (in comparison with other segments of the financial sector) is more exposed to ML/TF risks.

68. Kyrgyzstan did not provide information on the assets of the DNFBP sectors or volume/value of transactions carried out in these sectors. Analysis of information provided by Kyrgyzstan shows that entities engaged in cash transactions with precious metals and precious stones are best covered by AML/CFT legislation, compared with other types of DNFBPs. According to the AML/CFT Law, notaries and independent legal professionals involved in the preparation of real estate transactions do not fall into the category of reporting entities and, therefore, are not obliged to comply with CDD requirements. Furthermore, there are no designated authorities or self-regulatory bodies responsible for AML/CFT supervision (monitoring) of real estate agents, notaries and independent legal professionals involved in the preparation of real estate transactions.

69. Among the specifics of real estate services provision in Kyrgyzstan are the need for real estate agents to search for both sellers and buyers of real estate property and their non-involvement in the corresponding financial flows. ML risks in Kyrgyzstan's real estate sector are linked to investments in real estate development and purchases of new homes, which occurs without the participation of professional real estate agents. The same is true for notaries, who certify real estate transactions without acting as a mediator in the exchange of funds. In the precious metals and stones sector, transactions involving the purchase of precious metals, jewellery and scrap thereof from members of the public for cash that could have been obtained by illegal means are vulnerable to ML. Although all these factors contribute to the vulnerability of the DNFBP sectors to money laundering, the country-related specifics of the activities of certain categories of DNFBPs and supervision of the precious metals and precious stones sector reduce the impact of the relevant risks.

70. There are risks of terrorism and terrorist financing in Kyrgyzstan. Kyrgyz nationals take part as foreign terrorist fighters in the conflicts in Syria and Iraq, as well as being actively recruited by various terrorist organizations<sup>6</sup>. According to the media, more than 500 (approx. 1000 and 721 as per the Interior Ministry of the Kyrgyz Republic and NBKR, respectively), Kyrgyz nationals are currently taking part in the fighting in Syria.

71. There are currently 547 individuals and 14 entities, including Al-Qaeda, Taliban and ISIL, on Kyrgyzstan's terrorist, extremist and proliferation watch list<sup>7</sup>. The listed persons are known to be members of ISIL. Taking into account the military defeats of ISIL in Syria, there is a possibility that

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<sup>4</sup> Financial Sector Stability Report of the Kyrgyz Republic, June 2017 // <http://www.nbkr.kg/DOC/05072017/000000000047505.pdf>

<sup>5</sup> In terms of the Kyrgyz financial sector composition, NBFIs include: microfinance companies, credit unions, exchange offices, payment services providers and special-purpose financial institutions (see Table 1)

<sup>6</sup> Terrorism.kg: External and internal factors // [http://24.kg/obschestvo/29682\\_terrorizmkg\\_vneshnie\\_i\\_vnutrennie\\_faktoryi/](http://24.kg/obschestvo/29682_terrorizmkg_vneshnie_i_vnutrennie_faktoryi/)

<sup>7</sup> Kyrgyzstan's National List // <https://fiu.gov.kg/sked/1>

these Kyrgyz nationals with combat experience will return home.

72. Kyrgyzstan's geographical proximity to Afghanistan<sup>8</sup> and its position along the Northern<sup>9</sup> drug trafficking and cross-border cash smuggling route are also a major factor.

73. There is a potential risk of NPOs being involved in terrorist financing in Kyrgyzstan. Despite the involvement of multiple government agencies in the monitoring of the NPO sector, the country lacks a coordinated interagency risk-based approach to the NPO sector supervision aimed at identifying and mitigating TF risks. The Kyrgyz authorities lack accurate information about the size and number of non-registered (not registered as a legal entity) NPOs. As part of their study of the religious situation in Kyrgyzstan, the country's authorities carried out work to determine the number of unregistered religious organizations, including Islamic ones (512 mosques).

74. According to the Religious Situation Review Centre of the State Commission on Religious Affairs (SCRA) under the Kyrgyz President<sup>10</sup>, there are many problems in the religious sphere that under certain circumstances may prompt the citizens to pursue religious extremism. The factors that aggravate the situation include poor socio-economic status of the citizens, low level of religious literacy and insufficient inter-agency coordination and cooperation. All this indicates the presence of factors that give rise to potentially high risks related to both terrorist activities and financing of such activities.

### *Country's risk assessment*

75. The Working Group on Risk Assessment, composed of over 40 representatives of various government agencies and the private sector, was established at a meeting of the Commission on Combating the Financing of Terrorism (Extremism) and Money Laundering (Interagency Commission), held on June 12, 2012. From November 2012 to December 2014, the Working Group conducted a ML risk assessment in the country based on the World Bank methodology.

76. In December 2014, the Working Group completed the first phase of the ML risk assessment and presented the final report to the Interagency Commission for review. In February 2015, the Commission approved the report on the outcomes of the first phase of ML risk assessment (2015 Report) and established a TF Risk Assessment Working Group.

77. Based on the findings of the ML risk assessment (2015 Report), members of the Interagency Commission were required within a month to submit to SFIS proposals for inclusion in a Government Action Plan to mitigate ML risks in the country, while SFIS was required to publish this report on its website and within two months submit, in accordance with the established procedure, the Action Plan to mitigate ML risks in Kyrgyzstan for consideration by the Government. However, the assessment team received no evidence of compliance with these instructions, nor was it provided with any examples of the practical use by government agencies of the 2015 Report findings to manage or mitigate the risks identified.

78. The Kyrgyz Prime Minister, by Order No. 619 of December 29, 2015, established a Risk Assessment Working Group, made up of representatives of SFIS, State National Security Committee, State Border Guard Service, Interior Ministry, General Prosecutor's Office, National Bank, National Statistics Committee and representatives of the private sector. It was tasked with assessing ML/TF risks in the Kyrgyz Republic with participation of the representatives of the private sector (business community and NPOs) and to present a report on the outcomes of this assessment by 1 March 2016.

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<sup>8</sup> Kyrgyzstan 2016 Crime & Safety Report // <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=19378>

<sup>9</sup> FATF Report. Financial flows linked to the production and trafficking of Afghan opiates

<sup>10</sup> "Perception by the Kyrgyz Population of the Ideology of Religious Extremism and Its Assessment of the National Anti-Extremism Policy" //

[http://religion.gov.kg/wp-content/uploads/2016/11/%D0%A1%D0%BE%D1%86\\_%D0%B8%D1%81%D1%81%D0%BB%D0%B5%D0%B4%D1%86%D0%B8%D1%80%D1%81.pdf](http://religion.gov.kg/wp-content/uploads/2016/11/%D0%A1%D0%BE%D1%86_%D0%B8%D1%81%D1%81%D0%BB%D0%B5%D0%B4%D1%86%D0%B8%D1%80%D1%81.pdf)

In March 2017, the Commission approved Kyrgyzstan's ML/TF risk assessment report. However, 2015 and 2017 Reports are not interconnected, nor do they complement each other.

79. The 2017 Summary Report (<https://fiu.gov.kg/uploads/58eda69cc9d9e.pdf>) contains statistics on the number of registered offences, the categories of non-profit organizations, a list of financial institutions with the vulnerability ratings assigned to them, and a list of consequences without any reference to specific factors. Experts were unable to obtain a full copy of the 2017 Report due to, according to Kyrgyz officials, its classified nature.

80. The 2017 Summary Report contains information on the following: the number of crimes recorded in each region; persons who committed them; the amount of damage caused and recovered (without reference to ML); the number of registered terrorist crimes; categories of persons involved in terrorist activities; a list of vulnerabilities in financial institutions, DNFBPs and NPOs that can contribute to the emergence and increase of ML/TF risks (i.e., ML/TF methods and techniques), each of which is assigned an appropriate risk level: low, medium or high. That said, the Report fails to take into account the relevance of the above factors in the context of the actual situation with ML/TF in Kyrgyzstan.

81. According to the 2017 Report, theft, fraud, looting and drug trafficking are among the main types of predicate offences committed in Kyrgyzstan. Cattle rustling and abuse of office are classified as criminal activities at high risk of ML, with tax evasion being responsible for the greatest economic damage. With regard to NPOs, the greatest threat is posed by religious organizations. Among the Kyrgyz law enforcement agencies, the State Service for Combating Economic Crimes under the Government of the Kyrgyz Republic (Financial Police) and the Interior Ministry are rated to be most vulnerable. Meanwhile, exchange offices, commercial banks and money transfer service providers are characterized by high level of ML/TF vulnerability.

#### *Scoping of higher risk issues*

82. In identifying high-priority issues, the assessment team studied Kyrgyzstan's feedback on technical compliance and effectiveness, including its ML risk assessment report (2015 Report), as well as information from open sources. The issues listed below concern not only the areas at high risk of ML/TF (including threats and vulnerabilities), but also the issues that raised the assessors' concern or particular interest following the study of the materials provided prior to the commencement of the on-site mission:

83. *Illicit drug trafficking.* The experience of the country's law enforcement authorities and expert assessments by the Kyrgyz law enforcement officers and international experts support the conclusion that drug trafficking poses a serious problem for the country. Drug proceeds can accumulate both inside the country and beyond, posing a high ML risk (see IO1 and IO7 for more detail).

84. *Tax evasion and corruption.* Assessors involved in the on-site mission concluded that despite the country's understanding of the danger posed to it by corruption and the shadow economy, not enough is being done to identify, investigate and prosecute money laundering linked to these offences (see IO1 and IO7 for more detail).

85. *Terrorist financing.* During the on-site mission, the assessment team paid special attention to the fight against terrorist financing, concluding that the country's law enforcement authorities do not view TF as a serious threat. In this regard, assessors believe that the country's law enforcement authorities should further study the methods used to collect, move and utilize money for TF purposes, taking into account the available operational intelligence. The outcomes of this work should be used to formulate a national security strategy (see IO1 and IO9 for more detail).

86. *The NPO sector.* Based on the information provided, there are 24,814 NPOs in Kyrgyzstan (with the country's population standing at little more than 6 million people). The assessment team analysed the risks, threats and vulnerabilities existing in the NPO sector in Kyrgyzstan, as well as the measures

undertaken in this context (see IO1 and IO10 for more detail).

87. *Identification of beneficial owners and politically exposed persons.* During the on-site mission, representatives of government authorities and the private sector other than banks demonstrated a low level of understanding of the issue of beneficial ownership identification. As required by the Kyrgyz law, the relevant measures are applied to foreign public officials. In addition, based on the results of past meetings, experts noted that banks themselves also take measures against domestic politically exposed persons (see IO5 and IO4 for more detail).

88. *The banking sector.* Banking assets account for 91.2% of Kyrgyzstan's financial sector, with seven largest banks accounting for 67% of the assets of the country's entire banking sector. Given the cash-intensive nature of Kyrgyzstan's economy, the early stage of implementation of a risk-based approach to banking supervision and the popularity of remittance services, the assessment team carefully studied the oversight and monitoring mechanism in the banking sector as well as the steps taken by financial institutions and supervisors to ensure compliance with AML/CFT requirements (see IO1, IO3 and IO4 for more detail).

89. *The DNFBP sector.* Given the existing deficiencies in the regulation and supervision of the DNFBP sector – where notaries and independent legal professionals are not required to comply with CDD requirements and there are no designated authorities or self-regulatory organizations responsible for AML/CFT monitoring/oversight of real estate agents, notaries and independent legal professionals – as well as the existence of a shadow economy in Kyrgyzstan, its reliance on cash and a high level of corruption, the assessment team evaluated in detail the effectiveness of the AML/CFT regime in this sector (see IO1, IO3 and IO4 for more detail).

90. *Proliferation financing.* Kyrgyzstan has some uranium resources and, in the period under review, implemented a number of projects on extraction and processing of uranium, as well as exporting some dual-use commodities and raw materials for nuclear reactors. According to data from various specialized organizations, there are a number of risks associated with the presence of abandoned mines<sup>11</sup> in Kyrgyzstan, as well as regional risks related to possible smuggling of radioactive substances along the drug trafficking routes. The assessment team evaluated the effectiveness of targeted financial sanctions and the level of understanding by financial institutions and DNFBPs of their duties in the context of the requirements of the relevant UNSC resolutions, including coordination of efforts and cooperation between the domestic competent authorities responsible for both countering the proliferation of weapons of mass destruction and its financing (see IO1 and IO11 for more detail).

## ***Important Factors***

### ***Background and Other Contextual Factors***

#### ***AML/CFT strategy***

91. Government Resolution of the Kyrgyz Republic No.486-r of October 9, 2012 adopted an interagency plan for the implementation of the Action Plan to improve the national system for combating money laundering and terrorist (extremist) (AML/CFT) financing for 2012-2015, approved by the FATF Plenary on October 28, 2011. One of the items of the said Plan calls for the conduct of a National Risk Assessment (NRA).

92. On May 28, 2012, Government Resolution No.324 established a Commission on Combating Money Laundering and Terrorist (Extremist) Financing (AML/CFT Commission), an advisory and coordinating body under the Government of the Kyrgyz Republic tasked with coordinating the efforts undertaken by the Kyrgyz national stakeholders to combat money laundering, terrorist/extremist

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<sup>11</sup>IAEA// <https://www.iaea.org/newscenter/news/cleaning-up-a-toxic-legacy-environmental-remediation-of-former-uranium-production-sites>

financing and the financing of proliferation of weapons of mass destruction (AML/CFT/PF)

93. As of the time of the on-site mission, the Kyrgyz authorities had not developed a national AML/CFT strategy.

### *Legal and institutional framework*

#### *Ministries*

94. **Ministry of Finance (MoF)** is responsible for developing and implementing the financial policy of Kyrgyzstan, including preparation and execution of the budget.

95. **Ministry of Justice (MoJ)** is responsible providing legal and regulatory support to the State in performing its relevant functions, coordinating the legislative activities of the executive agencies, overseeing the registration of legal entities, ensuring the protection of human and citizens' rights and freedoms within its competence, and arranging and conducting forensic examinations. The MoJ maintains the Universal Government Register of Legal Entities, including non-profit organizations.

96. **Ministry of Foreign Affairs (MFA)** is responsible for exercising executive and regulatory functions in the foreign policy area and overseeing the functioning of the unified system of diplomatic service. The MFA is tasked with maintaining relations with international organizations, including the UN Security Council and its Committees. IN addition, the MFA coordinates the activities of government agencies (including SFIS) in pursuing a single foreign policy in relations with foreign countries and international organizations.

#### *Criminal justice and law enforcement agencies*

97. **Ministry of Internal Affairs (MIA)** is responsible for detecting, preventing, disrupting and exposing criminal and administrative offences, as well as for investigating criminal cases falling under the purview of law enforcement authorities, including cases related to ML/TF. As part of the ongoing reform of the law enforcement system, the MIA's powers to investigate ML cases will be delegated to the State Service for Combatting Economic Crime. Furthermore, as a result of the liquidation of the State Drug Control Service under the Government of the Kyrgyz Republic (SDCS), its functions related to combating illicit drug trafficking, including investigation into this type of criminal offences, will be transferred in their entirety to the Ministry of Internal Affairs.

98. **State Service for Combatting Economic Crimes under the Kyrgyz Republic Government (SSCEC)** is responsible for detecting, preventing, disrupting, solving and investigating economic crimes that inflict losses upon the State and white-collar crimes in the economic and financial sphere, in compliance with the Kyrgyz legislation. As part of the ongoing reform of the law enforcement system, the powers to investigate ML have been transferred in their entirety to the SSCEC.

99. **National Security Committee (NSC)** is responsible for the national security of Kyrgyzstan. To this end, the NSC undertakes preventive and investigative measures to combat terrorism, extremism, separatism, most dangerous forms of organized crime, corruption, smuggling and illegal trafficking in arms, narcotic drugs and precursors.

100. **State Customs Services under the Kyrgyz Republic Government (SCS)** is a law enforcement agency responsible for enforcing the provisions of the customs legislation in respect of goods and vehicles transported through the checkpoints at the customs border of the Eurasian Economic Union (EAEU), including goods and vehicles transported across the borders of the free economic zones. As part of the ongoing reform of the law enforcement system, the powers to conduct investigations into customs offences have been transferred from the SCS to the SSCEC.

101. **State Financial Intelligence Service under the Kyrgyz Republic Government (SFIS)** is the designated AML/CFT authority. As an administrative-type FIU, SFIS is not authorized to conduct



investigative activities.

*Prosecutorial authorities, including specialized asset confiscation agencies*

102. **General Prosecutor's Office (GPO)** is responsible for monitoring strict compliance with the Kyrgyz laws and regulations by local authorities, ministries, government committees, administrative bodies and other authorities established by the Government, local administrations, public associations, officials, business entities (irrespective of the type of ownership) and individuals. The Prosecutor's Office pursues criminal prosecutions and engages in litigation in courts. The Prosecutor's Office also supervises compliance with the legislation by the government agencies carrying out investigative activities. As part of the reform of the law enforcement system, the powers to investigate abuse of office-related offences were transferred from the prosecution authorities to the NSC and prosecution authorities have lost their powers to conduct investigations.

103. **Judicial Department under the Kyrgyz Republic Supreme Court** is responsible for ensuring full and timely (voluntary or mandatory) compliance with enacted court orders and decrees of other agencies.

104. **State Tax Service under the Kyrgyz Republic Government (STS)** represents a unified system of tax authorities responsible for exercising executive functions related to monitoring compliance with the tax legislation, correct calculation and timely collection of taxes, assisting taxpayers in fulfilling their tax obligations as required by the Kyrgyz legislation, registration of individual entrepreneurs, and government regulation and supervision of the import, production and (or) sale of ethyl alcohol, alcoholic and alcohol-containing products.

*Financial sector authorities*

105. **National Bank of the Kyrgyz Republic (NBKR)** is the Central Bank of Kyrgyzstan. According to the legislation of the Kyrgyz Republic, the main goal of the National Bank's activity is to achieve and maintain price stability through appropriate monetary policy. Major NBKR activities to achieve its' goals are to maintain the purchasing capacity of the national currency and to ensure the effectiveness, safety and reliability of the banking system and payment system of the country for facilitating long-term economic growth of Kyrgyzstan. The National Bank regulates and supervises the activities of banks and financial institutions that are licensed by NBKR.

106. **Financial Market Supervisory and Regulatory Service (Gosfinnadzor)** issues licenses to engage in professional activities in the non-bank financial market and exercise audit functions as required by the Kyrgyz Republic Law On the Designated Financial Market Supervisory and Regulatory Authority and the non-bank financial market regulations of the Kyrgyz Republic, grants licenses and conducts audits, as well as suspends and renews licenses in situations provided for in the Kyrgyz legislation. Gosfinnadzor also grants permits to operate in the capacity of a self-regulatory body in compliance with the requirements set forth in the legislation of the Kyrgyz Republic that regulates non-bank financial market and audit activities.

107. **Precious Metals Department under the Kyrgyz Republic Ministry of Finance (PMD)** prepares, in the established manner, expert judgments required for obtaining a license to export and import precious metals and precious stones. The Department also performs assay supervision and government monitoring of production, use, registration, storage and sale of precious metals and stones in the domestic and international markets and their release from the national reserve. In addition, PMD ensures compliance with the Kyrgyz AML/CFT legislation by entities engaged in transactions with precious metals and precious stones.

108. **State Information Technologies and Communications Committee (SIT&CC)** is a government executive agency responsible for regulating electrical and postal communications (postal money transfers), including the use of the radio frequency spectrum and provision of the electrical and postal communication services on a competitive basis. The SIT&CC mission is to ensure

effective management of the radio frequency spectrum, facilitate the development of communication networks and systems, and protect the legitimate interests of citizens and other users of the communication services.

### Financial Sector

109. Kyrgyzstan's reporting financing entities statistics for December 31, 2016 are shown below:

**Table 1.** Types, number and assets of financial entities of the Kyrgyz Republic

Types of financial institutions	Designated Competent authority	Entities	Assets <sup>12</sup> KGS bln (USD equivalent at exchange rate fixed for 31.12.2016)
Banks	NBKR	25	178.18 (2,575)
Microfinance organizations, including:	NBKR	162	12.38 (178.9)
- microcredit companies		(103)	
- microcredit agencies		(53)	
- microfinance companies		(6)	
Credit unions	NBKR	116	1.18 (17.1)
Exchange offices	NBKR	394	-
Payment services providers	NBKR	20	23.8 (343.9)
Specialized financial and credit institutions	NBKR	1	-
Insurance companies	Gosfinnadzor	19	2.73 (39.4)
Professional securities market participants, including:		47 <sup>13</sup>	
- brokers, dealers, management companies	Gosfinnadzor	(24)	3.49 (50.5)
- trading organizers, depositories		(3)	
- registrars		(20)	
Pension savings funds	Gosfinnadzor	2	0.341 (0.492)
Pawnshops <sup>14</sup>	Gosfinnadzor	-	-
Postal service operators	SIT&CC	1	0.779 (1.1) 0.245 (0.350)
Commodity exchanges <sup>15</sup>	No designated competent authority	-	-
Leasing companies <sup>16</sup>	No designated competent authority	-	-

110. In 2016, Kyrgyzstan's economy continued to grow, adding 3.8% year over year (compared with the growth rate of 3.9% in 2015), with the GDP totalling KGS 458 billion (USD 6.6 billion). In 2016, direct foreign investments declined by 48.3% compared with 2015 to USD 813.9 million.<sup>17</sup>

111. At year-end 2016, there were twenty five (25) commercial banks in Kyrgyzstan (see the table above), including 17 with foreign capital. At the end of 2016, foreign capital accounted for 44.0% of the entire capital of the banks, up from 42.8% in 2015.

112. Despite the increasing popularity of banks and banking services (e.g., for payroll functions), the

<sup>12</sup> Total value of transactions in 2016 for exchange offices and payment services providers; total amount of incoming and outgoing money transfers in 2016 for postal service operators.

<sup>13</sup> This figure indicates the number of persons, not licenses, since one person may hold several licenses.

<sup>14</sup> Statistics are unavailable.

<sup>15</sup> Statistics are unavailable.

<sup>16</sup> Statistics are unavailable.

<sup>17</sup> Source – official website of the National Statistics Committee of the Kyrgyz Republic [www.stat.kg](http://www.stat.kg)

level of financial inclusion is remains low, with heavy reliance on cash transactions<sup>18</sup>. Improvements in financial inclusion are made through the opening of additional bank branches and development of remote services (ATMs, Internet and mobile banking), as well as through the involvement of retail agents.

113. The banking sector is represented mainly by universal banks that provide traditional banking services (deposits, loans, wire transfers) to both natural persons and legal entities, with a limited range of wealth management services and non-existent private banking. Correspondent banking relationships are maintained mainly with banks from Russia, Turkey, Kazakhstan and China, and to a lesser extent from Pakistan, Latvia, Belarus and some Western European countries (Germany, Belgium, France and the Netherlands).

114. In 2016, international money transfers were sent and received without opening bank accounts through 17 international money transfer systems. Incoming money transfers amounted to KGS 155.3 billion (USD 2.2 billion), while outgoing transfers amounted to KGS 36 billion (USD 518.8 million). Russia accounted for 85.4% (KGS 132.7 billion) of total volume of incoming money transfers and for 64.9% (KGS 23.3 billion) of total volume of outgoing transfers. Work migrants accounted for a vast majority of incoming transfers. International and local money transfer systems operate in Kyrgyzstan through commercial banks that act in the capacity of agents of these systems. Money transfer services are also provided by Kyrgyz Post, a government-owned company which is the only postal service operator in the country. After the adoption of the Law on Payment System of the Kyrgyz Republic in 2015, payment services providers that accept payments made to services providers are subject to licensing.

115. The Kyrgyz securities market is characterized by low liquidity. In 2016, the total value of securities transactions stood at KGS 18.1 billion (USD 262 million), including KGS 8.1 billion (USD 118 million) worth transactions in the over-the-counter market. The combined market capitalization of Kyrgyzstan's Stock Exchange was KGS 18 billion (USD 260 million).

116. A total of 19 insurance institutions operate in the insurance market, of which 9 institutions have foreign capital. There are no insurance brokers operating in the market. The lion's share of collected insurance premiums and paid insurance compensations is comprised of non-life insurance services – KGS 641.6 million (USD 9.2 million) of KGS 945.5 million (USD 13.6 million) collected as insurance premiums, and KGS 78.9 million (USD 1.1 million) of KGS 125.4 million (USD 1.8 million) paid as insurance compensations. The availability of life insurance products is highly limited. According to Gosfinaadzor, no life insurance premiums were collected and no life insurance compensations were paid in 2016.

117. Kyrgyzstan is not a regional or international financial centre, hence asset management services and complex business relationships typical for such centres are not present in Kyrgyzstan. Neither nominee shareholders nor negotiable bearer instruments are available in Kyrgyzstan. Complex multilevel business relationships are rare. The practice of establishing or maintaining a business relationship without a face-to-face contact is absent, while reporting entities do not rely on third parties to undertake CDD. The vast majority of customers of financial institutions are the Kyrgyz residents.

118. The Union of Banks of Kyrgyzstan brings together representatives of Kyrgyzstan's banking community.

#### *DNFBP sector*

119. Kyrgyzstan's DNFBP sector statistics for December 31, 2016 are shown below:

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<sup>18</sup> See Kyrgyz Republic: IMF Country Report No.16/56 [www.imf.org/en/Publications/CR/Issues/2016/12/31/Kyrgyz-Republic-Selected-Issues-43721](http://www.imf.org/en/Publications/CR/Issues/2016/12/31/Kyrgyz-Republic-Selected-Issues-43721)

**Table 2.** Types and quantity of DNFBPs

Types of DNFBPs	Licensing/registration/ approval/regulation	Designated competent authority/SRB	DNFBPs
Casinos <sup>19</sup>	-	-	-
Real estate agents <sup>20</sup>	Not subject to licensing	21	131 legal entities; 417 individual entrepreneurs
Persons carrying out transactions with precious metals and precious stones	accounting registration	PMD	444
Advocates	Licensing	22	2,200 licenses issued
Notaries	Licensing	23	397 operating
Independent legal professionals <sup>24</sup>	Not subject to licensing		
Independent accountants <sup>25</sup>	-	-	-
Trust or company service providers	-	-	-

120. **Casinos** – Under Law No.191 on the Prohibition of Gambling in the Kyrgyz Republic of November 1, 2011, operation of casinos is banned in Kyrgyzstan.

121. **Real estate agents** - individuals (individual entrepreneurs) or legal entities (real estate companies) engaged in real estate activities (professional business activity carried out on a permanent basis that involves the provision to other persons of fee-based services provided for in the Law on Real Estate Business related to transactions with real estate property and ownership title thereto in compliance with the legislation of the Kyrgyz Republic).

122. In Kyrgyzstan, the activities of real estate agents are not subject to licensing. According to Article 13 of the Law on Real Estate Business in the Kyrgyz Republic, facilitating the sale of real estate property involves the provision by real estate agents of a range of services to real estate market participants to facilitate the proper execution and (or) performance of such transactions, including:

- provision of information services to transaction participants (provision of information on real estate property, their prices and other information);
- provision of consultative/ advisory services and services related to execution of documents;
- provision of services designed to ensure the proper and safe payments under the real estate sale and purchase contracts, except for services that require a banking license.

123. **Persons carrying out transactions with precious metals and precious stones** – There were 444 business entities engaged in transactions with precious metals and precious stones and covered by AML/CFT requirements in Kyrgyzstan in 2016. These business entities are involved in one or more types of the following activities: production, purchase and sales, processing of recoverable materials, purchase of alluvial gold and gold-containing concentrates. Most entities are engaged in the purchase and sale of precious metals, precious stones and jewellery made therefrom (397 entities in 2016).

<sup>19</sup> Operation of casinos is prohibited in the Kyrgyz Republic.

<sup>20</sup> Statistics are unavailable

<sup>21</sup> Association of Realtors of Kyrgyzstan is an SRB, not responsible for AML/CFT compliance

<sup>22</sup> The Bar of Kyrgyzstan is an SRB not responsible for AML/CFT compliance

<sup>23</sup> Association “Notary Chamber” is an SRB not responsible for AML/CFT compliance

<sup>24</sup> Statistics are unavailable

<sup>25</sup> Statistics are unavailable

124. Pursuant to Article 2 of the AML/CFT Law, reporting entities include persons engaged in transactions with precious metals, precious stones, jewellery made therefrom and scrap thereof when they engage in any cash transactions with customers.

125. **Lawyers** – In Kyrgyzstan, activities carried out by a lawyer include the provision, on a professional basis, of professional legal assistance by persons licensed (in a manner required by law) to practice law to natural and legal persons, government agencies, local authorities and defendants (if participation of a defence council in court proceedings is mandatory), aimed at protecting and safeguarding their rights, freedoms and legitimate interests and ensuring access to justice.

126. Lawyers may practice law both independently and in the capacity of employees/partners of law firms incorporated under the Kyrgyz law.

127. Legal assistance provided by lawyers in the course of performance by them of legal activities is considered a non-commercial (non-profit) activity.

128. Activities of a lawyer primarily involve the preparation of cases for court hearings and participation in court proceedings. Lawyers do not carry out any of the activities covered by the FATF Recommendations applicable to DNFBPs.

129. **Notaries** – Notarial activities involve the conduct of notarial actions related to the certification of indisputable facts and events of legal significance, authentication of documents, rendering documents legally binding, etc. The Kyrgyz Law on Notaries allows notaries to accept monetary and securities deposits for safekeeping. Notaries prepare real estate transactions for their customers.

130. **Independent legal professionals** – In Kyrgyzstan, independent legal professionals are the private-practice lawyers, whose activities include the provision of a wide range of consultative and other legal services which are not connected with any types of court proceedings, including preparation of real estate transactions for their customers. The activities of independent legal professionals are not subject to licensing and may be conducted by any legal person or individual entrepreneur. There is no information on the number of lawyers and law firms operating in Kyrgyzstan.

131. **Independent accountants** – According to the information provided by Kyrgyzstan for assessment of technical compliance, there are no accounting firms or independent accountants who are not employees of other types of businesses in Kyrgyzstan. During the on-site visit, the private sector representatives mentioned that private-practice accountants operate in Kyrgyzstan. However, they are not involved in activities covered by the requirements set out in the FATF Recommendations. There is no information on the number of private-practice accountants operating in Kyrgyzstan.

132. **Trust and company service providers** – There is no separate professional category of individual and/or corporate trust and company service providers in Kyrgyzstan in the meaning provided in the FATF Recommendations.

### **133. Self-regulatory organizations (SRB) of real estate agents, lawyers, notaries and accountants**

134. In Kyrgyzstan, the self-regulatory body of real estate agents is the Public Association of Kyrgyz Real Estate Agents, which brings together real estate agents and professional real estate market participants. This Association operates in compliance with the Law on Real Estate Business in the Kyrgyz Republic.

135. The professional self-regulatory association of lawyers is the Kyrgyz National Bar Association, membership in which is mandatory for lawyers of the Kyrgyz Republic.

136. The Notary Chamber, a voluntary public association of independent notaries, represents and protects the rights of private notaries.

137. The Public Association of Kyrgyz Accountants and Auditors is a non-profit, voluntary organization of the Kyrgyz certified accountants and auditors.

#### *Overview of preventive measures*

138. A list of the key AML/CFT regulations applicable to reporting entities (financial institutions and DNFBPs) includes the AML/CFT Law and Resolution No.135, which, in particular, endorsed the Regulations on General Requirements for AML/CFT Internal Control Rules, the Regulations on the Identification and Verification of Customers and Beneficial Owners for AML/CFT Purposes, the Regulations on Submission of Information and Documents to SFIS by Government Authorities and Reporting Entities, and the Regulations on Transaction Suspension and Assets Freezing and Unfreezing .

139. The requirements set out in the AML/CFT Law and Resolution No.135 apply to and are binding for all financial institutions covered by the definitions set out in the FATF Glossary, except for insurance intermediaries (insurance brokers and insurance agents) that provide life insurance services and, for some DNFBP sectors.

140. NBKR adopted the AML/CFT internal control requirements for banks, exchange offices, microfinance organizations and credit unions.

#### *Overview of legal persons and arrangements*

141. The following types of legal entities may be established in Kyrgyzstan:

142. **Commercial partnerships and companies** are for-profit entities with the authorized capital divided into shares (contributions). Commercial partnerships and companies may be incorporated in the following forms: an unlimited partnership; a limited partnership;<sup>26</sup> a limited liability company; and an extended liability company. A commercial partnership must have at least two partners. Limited liability companies<sup>27</sup> and extended liability companies may be established by, and consist of, one person, provided such person acquires the entire authorized capital of the company.

143. **Joint stock companies** are legal entities that engage in business activities with a view to deriving profit and raising funds through the issuance and placement of shares. Joint stock companies issue shares denominated in the Kyrgyz national currency irrespective of the type of their contributions. Joint stock companies may be open<sup>28</sup> or closed,<sup>29</sup> which is reflected in their articles of association and company name.

144. **Cooperatives** are voluntary associations of individuals and legal entities established to pursue their economic or other goals. Cooperatives can be for-profit, if deriving profit is their core business activity (agricultural cooperatives, financial cooperatives, etc.), and non-profit, which carry out their activities in the interest of their members for purposes other than deriving profit (housing cooperatives, building cooperatives, house management cooperatives, etc.).

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<sup>26</sup> A limited partnership is a business entity where in addition to one or more partners who are personally jointly and severally liable without limitation for the obligations of the partnership (unlimited partners), there are also one or several partners who are liable to the extent of their contributions to the authorized capital of the partnership (limited partners) and who do not take part in the business activities of the partnership.

<sup>27</sup> A limited liability company is a business entity whose members are not personally liable for the obligations of the company and bear the risk of losses associated with the company's activities only to the extent of their contributions.

<sup>28</sup> An open joint stock company has the right to administer subscription for the shares issued by it and to administer free trade of such shares according to the conditions set forth in the Law on Joint Stock Companies and other laws and regulations of the Kyrgyz Republic. The articles of association may not contain provisions restricting free trade of shares. The number of shareholders of an open joint stock company is unlimited.

<sup>29</sup> A closed joint stock company is not authorized to conduct an open subscription for issued shares or otherwise offer them to unlimited number of persons. The number of shareholders of a closed joint stock company may not exceed fifty persons.

145. **Farm (agricultural) businesses** are independent business entities which may or may not have the status of a legal entity, and whose activities are based primarily on personal labour of members of one family, relatives and other individuals who jointly produce agricultural products using a plot of land and other property owned or leased by the members of a farm business.

146. **Non-profit organizations** may be established with or without the establishment of a legal entity in the form of a **public association, foundation or institution**:

- A public association is a voluntary association of individuals united on the basis of common interests for satisfying their spiritual and other non-material needs.
- A foundation is a non-membership organization established by natural and (or) legal persons who made voluntary material contributions for pursuing social, charitable, cultural, educational and other socially useful goals.
- An institution is an organization that is established by its owner for carrying out managerial, social, cultural or other non-profit functions and which is funded by such owner in full or in part.

147. Kyrgyzstan's statistics on the number and types of legal entities registered in Kyrgyzstan as of October 2016:

**Table 3.** Types and quantity of legal entities

#	Type of legal entity/organization	Registered entities/organizations
	<b>Commercial entities:</b>	<b>55,875</b>
1	Extended liability companies	984
2	Limited liability companies	51,013
3	Closed joint stock companies	438
4	Open joint stock companies	596
5	Commercial (for profit) cooperatives	2,844
	<b>Non-profit organizations:</b>	<b>24,814</b>
6	Political parties	216
7	Public foundations	5,174
8	Public associations	7,666
9	Institutions	9,352
10	Non-profit cooperatives	828
11	Associations of legal entities	954
12	Professional (trade) unions	282

#	Type of legal entity/organization	Registered entities/organizations
12	Religious organizations	342
	<b>Total:</b>	<b>80,689</b>

148. According to the MoJ, the number of legal entities with foreign participation registered/re-registered in Kyrgyzstan from January 1, 1997 through February 2017 exceeded 15 000, or about 18.6% of the total number of the registered legal entities (see Table 3). Among the countries with the highest level of participation in Kyrgyz companies are Kyrgyzstan's key trading partners: Russia, China, Kazakhstan, Turkey, South Korea, Uzbekistan and Tajikistan.

149. The Kyrgyz Republic has not acceded to the Hague Convention on Laws Applicable to Trusts and their Recognition. The Kyrgyz legal system does permit the splitting of ownership rights. Kyrgyzstan does not have a law governing the establishment or operation of legal arrangements and, therefore, there is no statutory basis for the establishment of legal arrangements. During the on-site meetings, the assessors found no examples of the use, directly or indirectly, of the services of the Kyrgyz financial institutions and DNFBPs by foreign legal arrangements or any examples of trust management activities in Kyrgyzstan.



## **CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION**

### **Key Findings and Recommended Actions**

#### **Key Findings**

1. There is a limited understanding of money laundering and terrorist financing risks in Kyrgyzstan. The assessment team praised Kyrgyzstan for its work on the national risk assessment, while highlighting the considerable difference between the way the ML/TF risks facing Kyrgyzstan are described in Kyrgyzstan's ML/TF Risk Assessment Summary Report and the understanding of such risks by the country's competent authorities. It can be said that the inherent ML/TF risks facing the country are not fully defined.
2. As of the time of the on-site mission, the Kyrgyz authorities had not yet developed a national AML/CFT strategy. Nor have they drafted an action plan to mitigate the identified ML/TF risks based on the findings of Kyrgyzstan's ML/TF Risk Assessment Summary Report, approved in March 2017.
3. The absence of a national AML/CFT strategy means that the competent authorities pursue AML/CFT activities and objectives in line with their own priorities, often without proper coordination, and fail to take into account the existing ML/TF risks. The country's internal cooperation mechanisms are not robust enough to ensure the development and implementation of systemically coordinated policies and measures.
4. Kyrgyzstan has not done enough to inform financial institutions and DNFBPs about the existing ML/TF risks. A majority of institutions and organizations covered by the AML/CFT law are not aware of the risks facing them.
5. The country's competent authorities represented at the Interagency Commission fail to take practical steps to promote proliferation financing-related cooperation and coordination, develop and implement policies, and undertake action.
6. Kyrgyzstan does not maintain consolidated, national-wide AML/CFT statistics, a deficiency that impacts the government agencies' ability to assess ML/TF risks and develop an effective risk-mitigation strategy.

#### **Recommended Actions**

1. Kyrgyzstan should commence work, as soon as possible, on a more robust NRA, with full engagement of all relevant stakeholders, paying more attention to the practical use of ML/TF methods and trends and substantiation of its findings.
2. Kyrgyzstan should ensure that the findings of the risk assessment represent a consensus view of all national AML/CFT system participants on the existence of ML/TF risks in the country. The findings of the risk assessment should be made available to the government and the private sector.
3. Kyrgyzstan should develop and implement a coordinated national AML/CFT policy based on the findings and conclusions of the risk assessment(s), setting out a clear strategy for mitigating the identified risks, complete with deadlines, names of designated authorities, etc. This policy should contain a clear strategy to reduce the identified risks (with established deadlines, designated government bodies, etc.).
4. Kyrgyzstan should strengthen internal cooperation mechanisms, including through the use of the Interagency Commission, in order to facilitate the development and implementation of systemically coordinated policies and measures. These mechanisms should also be used to assess overall effectiveness.

5. Kyrgyzstan should ensure that its competent authorities take practical steps to promote proliferation financing-related cooperation and coordination, develop and implement policies, and undertake action.
6. Kyrgyzstan should ensure that representatives of the financial sector and DNFBPs are informed and understand the ML/TF risks they are facing.
7. Kyrgyzstan should develop mechanisms designed to assess the overall effectiveness of AML/CFT measures and to review them regularly, in order to determine which of them work in practice and which need to be improved. This should include, among others, maintenance of comprehensive ML/TF statistics.

150. This Section is dedicated to the review and assessment of the progress in achieving Immediate Outcome 1. The recommendations relevant for the assessment of effectiveness under this section are R.1-2.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Country's understanding of its ML/TF risks*

151. According to the assessment team, the Kyrgyz authorities have a limited understanding of ML/TF risks.

152. Kyrgyzstan conducted two national-level risk assessments, in 2015 and 2017, whose findings are reflected in the ML Risk Assessment Report (2015 Report) and the ML/TF Risk Assessment Summary Report (2017 Report).

153. The findings of the 2015 ML risk assessment were not used in the future risk mitigation efforts or made available to law enforcement and, hence, had no impact on the understanding and mitigation of ML risks. The 2017 Report, which was prepared by representatives of only seven Kyrgyz government agencies (see Chapter 1 for detail), does not contain a complete picture of the ML/TF risks facing the country. Kyrgyzstan's approach to conducting a risk assessment focused on gathering statistics, and did not include its further analysis to identify ML/TF risks (i.e., ML/TF trends). As a result, the 2017 Report contains little more than statistical tables whose data are categories based on the three levels of risk/vulnerability: "low", "medium" or "high". According to experts, these data were considered without taking into account the actual ML/TF risks. The 2017 Report lacks appropriate summaries and conclusions.

154. Besides the 2015 and 2017 Reports, neither the competent authorities nor the private sector conducted any ML/TF risk assessments or studies of their own on this topic. Competent authorities form their own, independent from each other understanding of the existing ML/TF risks based on their practical experience, while the important commonalities tend to be either ignored or not fully taken into account.

155. Law enforcement's understanding of risks is based on the statistics of registered in the country offences, offenders, the amount of damage caused and other criminal categories. Among the main sources of criminal proceeds are illegal drug trafficking, corruption and tax evasion. Criminal proceeds from these offences tend to be laundered but, due to their latent nature, it is not always possible for law enforcement to identify and assess the risks posed by them. Law enforcement authorities analyse criminal schemes and methods with account for the specifics of their activities in order to fulfil the objectives assigned to them. However, neither the identification nor investigation of ML and TF offences is listed among their priorities.

156. According to SFIS, banks are highly vulnerable to ML/TF risks, but the greatest ML/TF risks in the financial sector are faced by NBFIs and payment services providers. The vulnerability of

DNFBPs operating in the country, according to SFIS, is limited. It should be noted that during their meetings, assessors concluded that despite the good understanding and implementation of mitigation measures, the banking sector continues to face ML/TF risks (cash-intensive nature of the economy and high concentration of assets). That said, the small size of the non-bank financial sector (including DNFBPs) largely mitigates their impact. Given that not all categories of DNFBPs are covered by the AML/CFT law, and not all categories of entities have a designated supervisor, assessors have concluded that this sector is vulnerable to ML/TF risks. However, the specifics of certain DNFBPs' operations in Kyrgyzstan and the activities of the designated supervisor responsible for the precious metals and precious stones sector tend to mitigate the impact of ML/TF risks (see IO3 and 4).

157. Representatives of NBKR identified the cash-intensive nature of the country's economy as the most obvious source of the ML threat. As a result, NBKR views banks as particularly vulnerable to ML/TF risks (compared to other supervised entities), actively implements a risk-based approach (RBA) and accounts for the relevant ML/TF risks in conducting bank supervision. According to Gosfinnadzor, illegal gambling and lottery activities also pose a ML risk, a fact not confirmed by the assessors. The Precious Metals Department's experience in conducting inspections of supervised entities, meanwhile, shows that supervised entities' transactions involving the purchase from the population of precious metals, jewellery and scrap thereof with cash possibly obtained as a result of criminal activities are most vulnerable to ML risks. At the same time, the greatest risk is posed by transactions involving the purchase of precious metals from members of the public by illegal traders operating in the market. According to assessors, this conclusion, although fully justified, is not complete and does not reflect the situation with ML/TF risks in the country as a whole. Importantly, besides NBKR, the SIT&CC and PMD, based on their experience and understanding, also apply a RBA and account for ML/TF risks in conducting supervisory activities (see Chapter 6 of this Report).

158. Law enforcement authorities rate TF risks as low and do not view TF as a serious threat. However, given the information contained in Chapter 1, experts disagree with this assessment of the situation.

159. The country's authorities do not analyse or assess the NPO sector for possible risks of their abuse for TF, nor do they conduct any TF awareness-raising activities in this sector. This approach, according to experts, is at odds with the risk profile of the country's NPO sector (see Chapter 1).

160. The assessment team praised Kyrgyzstan for its work on the national risk assessment, while highlighting the considerable difference between the way the ML/TF risks facing Kyrgyzstan are described in the 2017 Report and the understanding of such risks by the country's competent authorities. It can be said that the inherent ML/TF risks facing the country are not fully defined.

#### *National policies to address identified ML/TF risks*

161. As of the time of the on-site mission, the Kyrgyz authorities had not yet developed a national AML/CFT strategy. Nor have they drafted a national-level action plan to mitigate the identified ML/TF risks based on the findings of Kyrgyzstan's ML/TF Risk Assessment Summary Report, approved in March 2017.

162. The 2017 Report does not prioritize ML/TF risk factors, nor does it outline approaches to mitigating these risks, complete with deadlines, designated authorities, etc. Representatives of government agencies failed to show how they plan to carry out their activities to reduce the perceived ML/TF risks in practice. During the preparation of the report, NBKR staff noted that the materials made available for the 2017 Report are used in the ongoing supervisory efforts, a fact that was not substantiated by any evidence. In addition, NBKR is currently implementing the Banking Supervision and Regulation Development Plan 2017-2019 (the plan for the implementation of a risk-based approach to banking supervision), which was approved in late 2016 and does not contain references to the Report 2017.

### *Exemptions, enhances and simplified measures*

163. The findings of ML/TF risk assessments are not used in Kyrgyzstan to justify exemptions and the use of enhanced and simplified measures. Certain categories of financial institutions and DNFBPs are not subject to AML/CFT requirements. These exemptions are not made on the basis of the risk assessment findings.

164. Kyrgyzstan allows the application of simplified identification measures in respect of individuals making money transfers without opening a bank account, carrying out currency exchange transactions and cashing cheques. Application of these simplified measures is not based on the findings of the ML/TF risk assessment.

### *Objectives and activities of competent authorities*

165. The absence of a national AML/CFT strategy means that the competent authorities pursue AML/CFT activities and objectives in line with their own priorities, often without proper coordination, and fail to take into account the existing ML/TF risks.

166. Kyrgyzstan did not provide examples of information sharing between the country's competent authorities on the risks identified and examples of measures taken by the competent authorities based on the findings of the ML/TF risk assessment. Despite this, assessors believe NBKR adequately assesses ML/TF threats and risks in the banking sector. In this regard, NBKR's efforts to implement a RBA and conduct bank supervision with account for ML/TF risks is commendable.

### *National cooperation and coordination*

167. In Kyrgyzstan, the responsibility for promoting interagency cooperation is assigned to the Interagency Commission, chaired by the country's Prime Minister, which is also responsible for decisions concerning the coordination and conduct of risk assessments, as well as for the preparation and implementation of the national AML/CFT/PF strategy. Meanwhile, the responsibility for drafting a state strategy and action plan for their subsequent approval by the Interagency Commission is assigned to the SFIS.

168. Cooperation is carried out in the form of meetings attended by representatives of the competent authorities responsible for AML/CFT, during which participants discuss the policy-related current and future tasks and activities. Representatives of the agencies responsible for AML/CFT and coordination of export control issues also take part in these meetings. However, the outcomes of such meetings do not always inform the implementation of systemically coordinated policies and activities. According to Kyrgyz representatives, although all decisions adopted by the Interagency Commission are binding, not all of them are implemented. One such example was the failure of the competent authorities to comply with the Interagency Commission's order to prepare proposals for mitigating risks based on the findings of the 2015 Report.

169. Despite the fact that each Kyrgyz competent agency maintains its own statistics, there are no consolidated and national-wide statistics on AML/CFT matters. This undermines the authorities' ability to assess ML/TF risks and develop sound AML/CFT policies designed to mitigate these risks.

170. According to the assessment team, the country's competent authorities represented at the Interagency Commission fail to take practical steps to promote PF-related cooperation and coordination, develop and implement policies or undertake action. Throughout its existence, the Interagency Commission has never addressed issues related to the fight against proliferation financing.

### *Private sector's awareness of risks*

171. Kyrgyzstan has not done enough to ensure that financial institutions and DNFBPs are aware of the existing ML/TF risks in the country. Representatives of most institutions and organizations subject to AML/CFT requirements are not familiar with the findings of the 2017 Report and failed to show how they plan to use them in their activities. No additional activities designed to inform representatives of the private sector about the existing ML/TF risks have been undertaken by the competent authorities.

### *Overall Conclusions on Immediate Outcome 1*

**172. Kyrgyzstan has achieved a *low* level of effectiveness for Immediate Outcome 1.**

## **CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES**

### **Key Findings and Recommended Actions on IO6, IO7 and IO8**

#### **Key Findings**

##### **Immediate Outcome 6**

1. Authorities, including SFIS, have broad access to various sources of information, including financial intelligence. Under the national law of criminal procedure, before a criminal case is open or as law enforcement authorities discharge their investigatory powers at pre-investigative stages<sup>30</sup>, there is no judicial mechanism to get access to information containing banking secrecy, which creates difficulties for law enforcement authorities in collecting information. Law enforcement authorities largely use the data collection powers of SFIS to obtain information from reporting entities and foreign FIUs.
2. SFIS's spontaneous and request-based disseminations to law enforcement authorities are used both in opening new and investigating existing criminal cases. However, it is difficult to come to a conclusion regarding the extent to which the information provided by SFIS on request-based disseminations was used, among others, to investigate high-risk ML/TF offences in Kyrgyzstan. SFIS spontaneous disseminations have rarely been used in ML/TF investigations, and their use has not been highly effective.
3. SFIS lacks the experience in suspending suspicious transactions for assets safekeeping, as well as for their seizure and possible confiscation.
4. SFIS does not perform strategic analysis to study and identify ML/TF trends in high-risk sectors or to identify country-specific ML/TF methods which could be of practical use for reporting entities or law enforcement authorities.
5. SFIS's human resources and technology (analytical) capability are not commensurate to the volume and nature of its activities, including the intensity of communication with law enforcement authorities, which affects the timeliness of request execution.
6. The quality of information in some databases (on legal entities, beneficial ownership etc.) is not sufficient to generate high-quality financial intelligence. SFIS lacks quick access to information on customs declarations and to data on owners of joint-stock companies. There are considerable deficiencies in the reporting of suspicious transactions and other communication by certain reporting entities.
7. The uncertainty of the status of law enforcement authorities' representatives on the SFIS Expert Council carries a potential risk of limiting SFIS' independence in making dissemination decisions.

##### **Immediate Outcome 7**

1. Law enforcement authorities identify and investigate ML as additional to predicate offences. At the same time, law enforcement authorities understand their powers and duties to combat ML, but experience difficulties in collecting evidence (elements of crime), including due to the lack of experience in identifying and investigating ML.

<sup>30</sup> The term "pre-investigation stages", as used in this document, means inspections conducted in accordance with criminal procedure legislation prior to the initiation of criminal proceedings and in the course of investigative activities

2. Parallel financial investigations are rare, as some law enforcement agencies lack a clear understanding of the need and procedure for conducting them.
3. Law enforcement authorities have a general understanding of ML risks in line with their competences. In the absence of a systemic approach to ML identification and AML strategy formulation, the Kyrgyz authorities lack experience in the investigating and prosecuting ML committed by third parties, where the predicate offence is committed in another country, or where ML is committed without a predicate offence.
4. Law enforcement authorities have sufficient data and financial intelligence to investigate ML, but experience difficulties in obtaining it at the pre-investigation stage. Where necessary, they utilize the opportunities available to SFIS for international exchange of information and obtaining information constituting bank secrecy.
5. The practice of conducting joint investigations and setting up ad hoc investigation teams specializing in ML remains underutilized.
6. Sanctions against individuals for ML are proportionate and effective, provided they are fully implemented. In the absence of evidence in support of ML, the defendant can be charged with committing a predicate offence.

### **Immediate Outcome 8**

1. The Kyrgyz law enforcement and judicial authorities have all necessary legal mechanisms that enable them to trace and seize criminal proceeds, instrumentalities and property in order to secure compensation for losses/damage inflicted by criminal offences, including ML and TF.
2. Law-enforcement bodies, as a rule, do not conduct parallel financial investigations to identify, trace or evaluate the property subject to confiscation, while the rate of recovery of damages in criminal cases is low.
3. Confiscation results do not reflect the ML/TF risks and national policy on AML/CFT. The absence of a comprehensive national strategy aimed at identifying and confiscating the assets and proceeds of crime and the existence of legal restrictions reduce the effectiveness of measures taken.
4. Confiscation of criminal proceeds, instrumentalities used to commit crimes and property does not depend on the equivalent volume of damage caused. Representatives of the judiciary confirmed during the working meetings that such mechanisms actually work and gave examples of cases for which confiscation was applied.
5. SFIS does not freeze criminal proceeds to secure their subsequent seizure by law enforcement in the course of investigation of predicate offences possibly leading to the initiation of ML-related criminal proceedings.
6. The mechanism for effectively managing the value of seized/confiscated assets and objective information on how the seized property is managed in practice at the pre-trial stage are absent.

### **Recommended Actions**

#### **Immediate Outcome 6**

1. The Kyrgyz Republic should ensure systematic use by law enforcement authorities of financial intelligence provided by SFIS to investigate ML, TF, and predicate offences.

2. Kyrgyzstan's law enforcement authorities should provide regular feedback to SFIS on their use of requested information.
3. The Kyrgyz Republic should provide SFIS with additional human resources and improve technical (analytical) tools to better reflect the volume and nature of its operations, including with account for the extent of its cooperation with law enforcement authorities.
4. SFIS should establish appropriate channels of communication with all reporting entities to ensure real-time electronic reporting of suspicious and mandatory transactions.
5. The Kyrgyz Republic should empower SFIS to suspend suspicious transactions and consider possibilities to elaborate criteria for such decision-making.
6. The Kyrgyz Republic should consider the feasibility of elaborating a mechanism for providing law enforcement authorities with access to data protected by banking secrecy to ensure that such information can be collected at pre-investigative stages, before a criminal case is open or as law enforcement authorities discharge their investigatory powers.
7. The Kyrgyz Republic should provide SFIS with direct access to the database of customs declarations and of owners of joint-stock companies.
8. SFIS should perform strategic analysis with a view to studying and identifying ML/TF trends in high-risk sectors and identifying country-specific ML/TF trends which could be of practical use for both reporting entities and law enforcement authorities.
9. SFIS, together with supervisory authorities, should take action to improve the quality of STRs, including by providing feedback, developing guidance and typologies, and organizing training and other outreach activities for reporting entities.
10. The Kyrgyz Republic should clarify the legal status of law enforcement authorities' representatives on the SFIS Expert Council in order to eliminate the risk of limiting SFIS independence in making dissemination decisions.

#### **Immediate Outcome 7**

1. Kyrgyzstan should establish a clear national law enforcement policy to detect, investigate and prosecute all types of ML offences (including third party ML and autonomous ML), specify the responsibilities of each body for combating ML and coordinate their work based on the findings of systemic analysis of the existing risks.
2. Draft and adopt guidelines for law enforcement staff tasked with investigating ML and predicate offences, conduct parallel financial investigations.
3. Kyrgyzstan should prepare practical guidance for law enforcement authorities on the conduct of ML investigations and organize appropriate training. The said guidance should be prepared with input from the judicial authorities, and should incorporate the experience of other countries in identifying ML offences committed by third parties, where the predicate offence is committed in another country, or where ML is not preceded by a predicate offence.
4. The practice of conducting joint investigations and setting up ad hoc investigation teams specializing in ML offences remains underutilized. The competent authorities should establish dedicated AML units (appoint officers) responsible for pursuing ML.
5. Kyrgyzstan should consider strengthening SFIS analytical team and automating its workflow.



### **Immediate Outcome 8**

1. Kyrgyzstan should develop a program for identifying and confiscating criminal assets and proceeds. Kyrgyzstan should define the objectives for the relevant government agencies with regard to the confiscation of criminal proceeds, instrumentalities of crime and property of the corresponding value.
2. Kyrgyzstan should enable SFIS to freeze criminal assets not only in connection with ML/TF investigations, but also in respect of predicate offences, in the course of pre-investigation checks and investigations into criminal offences.
3. Kyrgyzstan should establish a mechanism for effective management of frozen or confiscated assets designate an adequately empowered competent authority for this purpose.
4. Kyrgyzstan should conduct parallel financial investigations aimed detecting, tracking and evaluating the property subject to forfeiture. It should also consider establishing a dedicated unit for this purpose.

173. This Section is dedicated to the review and assessment of the progress in achieving Immediate Outcomes 6, 7 and 8. The recommendations relevant for the assessment of effectiveness under this section are R.3,4,29-32

### ***Immediate Outcome 6 (Financial intelligence)***

#### *Use of financial intelligence and other relevant information*

174. The Kyrgyz authorities, including law enforcement, enjoy a broad access to various data sources, including containing real-time financial intelligence. Law enforcement authorities predominantly use this data to investigate predicate offences and only occasionally ML/TF.

175. The law enforcement agencies have access to various government databases, for example: the database containing information on passports of the Kyrgyz citizens; the register of legal entities; the register of taxpayers; the register of transport vehicles and driving licenses; the register of real estate property; the database containing information on persons entering and leaving Kyrgyzstan; the database of court orders and other databases. In some cases, certain law enforcement bodies are able to access government databases through the closed sections of the website.

176. According to the country's law enforcement authorities, they are not authorized to access information protected by banking secrecy at the pre-investigation stage, which impacts the effectiveness of their operations. It relates to law enforcements' abilities to timely identify accounts owned and/or controlled by individuals and legal entities and to identify assets without tipping off their owners. The search for and identification of funds is currently carried out by SFIS. However, according to assessors, the establishment of a parallel mechanism for accessing data protected by banking secrecy at the pre-investigation stage for certain types of financial and economic crimes (e.g., based on the decision of a court or prosecution authorities) may improve the effectiveness of the system.

177. Law enforcement authorities positively assess their cooperation with SFIS and highlight the high quality of the information provided. From 2013 to 2016, SFIS received from law enforcement authorities more than 550 requests, all of which were granted. According to the statistics provided (Table 4), the number of requests sent to SFIS had increased gradually by the end of the reporting period. However, given in particular the country risk profile and problems with drug trafficking, the number of requests sent to SFIS by SDCS is very low. One of the reasons for the low level of

cooperation between the two agencies is the SDCS's inconsistency in pursuing parallel financial investigations. In 2016, following its dissolution, the SCDS's functions were transferred to the Interior Ministry. Statistics show an increase in the number of requests sent to SFIS by the Interior Ministry in 2016. However, the assessment team were not provided with adequate information about the nature of the requests or the quantity and types of offences investigated with the help of requested data. Besides the provided example of a criminal case (Case study 1), it is difficult to draw any conclusions about the extent to which the information provided by SFIS in response to requests was used, including in investigating offences posing a higher risk of ML/TF.

178. After receiving a request from law enforcement authorities, SFIS classifies it as an external signal, files a case and begins to collect and analyse the suspect's transaction data for any link to ML/TF. According to the data shown in the table below, SFIS noted that the requests marked as "ML" include predicate offences.

179. With respect to the deadlines for the execution of requests by law enforcement agencies, SFIS noted that the information contained in the databases is provided within 3 calendar days. If an analysis is required, the deadline ranges from 14 to 30 calendar days. If necessary, the deadline for the provision of information may be extended by the decision of the SFIS director. Table 4 graphically illustrates the effectiveness of cooperation between SFIS and law enforcement authorities. Requests marked as "Pending" show the number of requests that have been classified as pending in the following year due to the need to collect and process additional information from various external sources, including foreign counterparties. The assessment team believe that the resources available to SFIS are not commensurate to the tasks assigned to the agency, which affects the timeliness of request execution.

**Table 4.** Number of requests received by SFIS from law enforcement authorities

2013	Received	ML	TF	Executed	ML	TF	Pending	ML	TF	Executed as part of single response to multiple requests		Executed as part of spontaneous dissem-on	
										ML	TF	ML	TF
NSC	39	19	20	6	1	5	33	18	15	0	15	18	0
MIA	29	12	17	9	4	5	20	8	12	6	12	2	0
SSCEC	15	15	0	3	3	0	12	12	0	2	0	10	0
Prosecutor's office	28	28	0	9	9	0	19	19	0	19	0	0	0
SDCS	29	29	0	1	1	0	28	28	0	3	0	25	0
TOTAL	140	103	37	28	18	10	112	85	27	30	27	55	0
2014	Received	ML	TF	Executed	M L	TF	Pending	ML	TF	Executed as part of single response to multiple requests		Executed as part of spontaneous dissem-on	
										ML	TF	ML	TF
NSC	34	17	17	20	9	11	14	8	6	6	4	2	2
MIA	41	11	30	26	6	20	15	5	10	0	10	5	0
SSCEC	36	36	0	20	20	0	16	16	0	2	0	14	0
Prosecutor's office	12	12	0	5	5	0	7	7	0	7	0	0	0
SDCS	6	6	0	6	6	0	0	0	0	0	0	0	0
TOTAL	129	82	47	77	46	31	52	36	16	15	14	21	2

2015	Received	ML	TF	Executed	ML	TF	Pending	ML	TF	Executed as part of single response to multiple requests		Executed as part of spontaneous dissem-on	
										ML	TF	ML	TF
NSC	26	8	18	19	6	13	7	2	5	0	2	2	3
MIA	40	23	17	35	20	15	5	3	2	0	0	3	2
SSCEC	33	33	0	27	27	0	6	6	0	2	0	4	0
Prosecutor's office	22	22	0	20	20	0	2	2	0	2	0	0	0
SDCS	7	7	0	1	1	0	6	6	0	2	0	4	0
TOTAL	128	93	35	102	74	28	26	19	7	6	2	13	5
2016	Received	ML	TF	Executed	ML	TF	Pending	ML	TF	Executed as part of single response to multiple requests		Executed as part of spontaneous dissem-on	
										ML	TF	ML	TF
NSC	27	11	16	18	8	10	9	3	6	0	6	3	0
MIA	65	32	33	57	30	27	8	2	6	0	2	2	4
SSCEC	45	45	0	38	38	0	7	7	0	2	0	5	0
Prosecutor's office	11	11	0	11	11	0	0	0	0	0	0	0	0
SDCS	9	9	0	8	8	0	1	1	0	0	0	1	0
TOTAL	157	108	49	132	95	37	25	13	12	2	8	11	4

180. Kyrgyzstan provided one example of criminal proceedings involving a parallel financial investigation launched using the information requested from SFIS. In this investigation, law enforcement authorities used financial intelligence protected by banking secrecy to investigate ML where drug trafficking was a predicate offence. This type of predicate offence is rated as high risk in Kyrgyzstan (Case study 1).

### Case study 1

#### ***ML investigation launched using SFIS's intelligence submitted to law enforcement on request***

In 2012, SFIS received a request from the State Drug Control Service (SDCS) to identify financial transactions related to illegal activities of suspect A, who was found in possession of 33kg of narcotic drugs. Analysis of cash flows of suspect A conducted by SFIS revealed the history of transactions carried out through his accounts since 2007. In 2007-2009, suspect A deposited a total of USD 60,000 into his accounts opened with different Kyrgyz banks, and another USD 38,000 was deposited into his accounts in 2011-2012.

Analysis showed that, when making deposits, suspect A stated that the money originated from sale of his real estate property. However, according to the information available to the State Registration Service, suspect A had no real estate property registered in his name in Kyrgyzstan.

Apart from holding deposit accounts, suspect A also used international money transfer systems to receive money from Russia, Kazakhstan, Tajikistan and Azerbaijan and further transferred the received money to Kazakhstan, Azerbaijan and Germany. In 2008-2012, suspect A received a total of USD 96,692 and transferred USD 18,507 and EURO 1,860. SFIS sent requests to these countries for confirming this information.

Analysis conducted by SFIS enabled SDCS to identify the geographic links and channels used for laundering criminal proceeds. Based on the information gathered by SFIS, the criminal case was instituted against suspect A under Article 183(1), (2-1) and (3) (Legalization (laundering of proceeds obtain through crime)). However, the court eventually found suspect A guilty of committing offences covered by Article 247(3)(4) (Illegal production, acquisition, storage, transportation and consignment for distribution and illegal production and distribution of narcotic drugs, psychotropic substances, their analogues and precursors) and by Article 204(2)(4) (Smuggling) of the Criminal Code of the Kyrgyz Republic (hereafter Criminal Code) and sentenced him to 20 years of imprisonment.

181. Intelligence gathering is one of SFIS's key responsibilities. Among the key sources of intelligence used are SFIS's own databases and information requested from reporting entities, relevant government agencies and foreign counterparties.

182. SFIS has broad access, including direct, to data stored by other government agencies. According to Kyrgyzstan, indirect access, which is provided within the time limit established by law, to certain types of data (see Table 5), i.e., upon request, does not impede the intelligence gathering process. Given Kyrgyzstan's vulnerability to the threat posed by the proliferation of alternative remittance systems, transportation of cash and corruption, the assessment team believe that SFIS's intelligence gathering capacity may benefit from a direct access to certain types of information such as customs declarations and data on the owners of joint-stock companies.

**Table 5.** Data accessible by SFIS

<i>Date source (Name of the government agency/reporting entity)</i>	<i>Data type</i>	<i>Data access mode (direct/indirect)</i>
National Statistics Committee	Information on legal persons (administrative and classification data) <sup>31</sup> )	Direct
State Tax Service	Information on taxes and quarterly reports	Direct
State Registration Service	Information on real estate property	Direct
	Civil registration and property rights records	Indirect
Ministry of Justice	Information on legal persons (registration data)	Direct
Ministry of Internal Affairs	Police database	Indirect
Ministry of Foreign Affairs	Visa records	Indirect
State Customs Service	Information on foreign economic activities (customs declaration, contracts)	Indirect
State Border Guard Service	Information on persons crossing the border	Indirect
State Service for Regulation and Supervision of the Financial Market	Information on the owners of joint-stock companies and securities	Indirect
State Migration Service	Information on work permits issued to foreign nationals and stateless persons in Kyrgyzstan. Annual quotas for foreign labour migrants	Indirect
Social insurance fund	Information on insured persons and beneficiaries	Indirect

<sup>31</sup> Regulations "On the Unified State Register of Statistical Units of the Kyrgyz Republic", pp. 13-14

183. Although law enforcement authorities have a positive opinion about their cooperation with SFIS in information sharing, the existence of certain shortcomings could negatively impact the gathering of high-quality intelligence and its subsequent use for evidence collection and tracking of criminal proceeds linked to ML, associated predicate offences and TF.

184. Some of these shortcomings are connected with the completeness and accuracy of the information contained in databases, e.g., the information on legal persons is not always updated in a timely manner; the information provided is not subject to verification; and the lack of data on the beneficial owners of legal entities (see IO5 for more details). The data on real estate transactions carried out by reporting entities are not complete (data on buyers and beneficial owners) and not stored for 5 years (see IO4 for more details). SFIS's database of STRs and transactions subject to mandatory control is not without shortcomings: STRs submitted by reporting entities, except for banks, are of low quality (the information provided lacks transaction analysis/schemes); largely based on the criteria for suspicious transactions developed by SFIS; do not adequately reflect the ML/TF risks inherent in Kyrgyzstan (see IO4). Complete customs declarations data are provided to SFIS only once a quarter, meaning that SFIS does not have access to up-to-date information and is unable to gather real-time data.

185. The information provided by SFIS to law enforcement cannot be used as evidence in court proceedings. Upon receipt of information from SFIS, law enforcement bodies analyse such information and decide on its importance for the investigation. In order to use any information in criminal proceedings as evidence, law enforcement authorities must ensure that this information is obtained in the framework of investigative action sanctioned by a court in accordance with the Criminal Procedure Code of the Kyrgyz Republic. Given that law enforcement authorities experience no difficulties in using SFIS's information within the framework of the existing mechanism, the assessment team believe the latter does not have a negative impact on the effectiveness of the system.

#### *Suspicious transaction reports received and sent by the competent authorities*

186. SFIS acts as the central agency responsible for receiving suspicious transaction reports, information on translations subject to mandatory control and customs declarations on the movement of cash or monetary instruments. SFIS's database is used to generate financial intelligence which is then provided to law enforcement authorities either upon request or its own initiative.

187. According to SFIS, there has been a slight improvement in the past few years in the quality of STRs, especially those submitted by reporting entities from the financial sector. The reporting period saw a steady increase in the total annual number of submitted STRs and reports on transactions subject to mandatory control. The number of STRs and reports on transactions subject to mandatory control sent to SFIS in 2016 increased 2-fold to 108,413 and 1.5-fold to 808,414 reports, respectively. The assessment team were not provided with information on the number of reports used by SFIS in either spontaneous information exchange or in response to requests from the competent authorities. Only the case studies provided in the report (Cases studies 2, 3, 4, 5, 10 and statistics contained in Table 6 "Spontaneous disseminations made by SFIS to law enforcement authorities" evidenced the use by law enforcement authorities of the information provided by SFIS.

188. Kyrgyzstan did not conduct an assessment of the extent to which all reporting entities complied with its reporting obligations in respect of SFIS. However, according to the information on the identified violations by some types of reporting entities (banks, microfinance organizations, credit unions and exchange offices) made available to the assessment team, instances involving non-submission of STRs are rare, whereas the non-reporting of transactions subject to mandatory control is one of the most common violations. In the absence of complete statistics on the performance of their duties by other reporting entities, it is not possible to accurately estimate the volume of non-submitted reports (see IO3 and IO4 for more details).

189. SFIS does not maintain a complete database of executed transactions posing potential interest to the competent authorities due the inactivity of some reporting entities in report submission. The overwhelming majority of reports on both suspicious transactions and transactions over the designated threshold are submitted by banks, followed by microfinance organizations and professional securities market participants. A much smaller number of reports are also submitted by credit unions, leasing companies, insurance companies, remittance services providers and exchange offices. Among DNFBPs, only real estate agents and lottery organizers submitted reports during the reporting period. A number of reporting entities have not reported since 2012 (see Tables 16 and 17 in IO4). The intensity of reporting only partially reflects the volume of funds and the structure of risks in various sectors.

190. The nature of the reports received by SFIS is limited and does not adequately reflect ML/TF risks facing the country. STRs submitted by reporting entities are prepared largely in line with the criteria developed by SFIS and set out in the Regulations<sup>32</sup> of 2012, which are not based on the findings of 2015 and 2017 Reports. A majority of reporting entities are unfamiliar with the NRA findings and, except for banks, have a limited understanding of AML/CFT risks or do not recognize them in their activities. DNFBPs do not conduct independent ML/TF risk assessments (see IO4 for more detail).

191. TF-related STRs account only for 1 percent of the total number of STRs received by SFIS, given that the majority of reporting entities have a limited understanding of the risks in this area, with the work on the identification of TF transactions being limited to matching customers against the UN Security Council or National Lists (see IO4 for more detail).

192. STRs sent to SFIS by reporting entities upon detection of transactions (partially) matching the criteria for suspicious transactions or upon identification of listed persons mostly contain raw, unanalysed data, which has a negative impact on the quality of STRs prepared by reporting entities.

193. STRs sent to SFIS do not contain complete information on the beneficiaries of transactions due to reporting entities' (except for banks) lack of understanding of the obligation to identify the beneficial owners of their clients (legal entities and individuals). Reporting entities (except for banks) fail to carry out the verification (and sometimes even identification) of beneficial owners of their clients (see IO4 for more detail).

194. Banks and microfinance organizations connected to VIPNet Business Correspondence use this communication channel to send reports and other information to SFIS. Other reporting entities send data to SFIS either in paper or electronic format, by postal mail or courier, which potentially slows down the data transfer process and carries the risk of information leakage or loss. Reports from reporting entities (except for those sent via VIPNet Business Correspondence) are entered manually into SFIS's analytical database, which affects the timeliness of data entry into the system and adds human factor vulnerability.

195. SFIS's Training and Methodology Centre is used to hold regular AML/CFT training and skills-upgrading workshops for reporting entities. Reporting entities attend classes held annually at SFIS's Training and Methodology Centre. However, the shortcomings noted above necessitate the adoption of additional measures executed along with supervisory authorities aimed at increasing the level of understanding by reporting entities of their duties, legal responsibilities, modern typologies, and ML/TF trends and scenarios.

196. The information provided to SFIS by customs authorities includes customs declarations (statistics on declared funds are given in Table 11) and matches with SFIS sanctions list. SFIS list

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<sup>32</sup> Annex to the Regulations on the General Requirements for Internal Controls to Combat Money Laundering and Terrorist (Extremist) Financing", approved by Kyrgyz Government Decree No. 135 of March 5, 2010 (as amended by Kyrgyz Government Decree No. 324 of May 28, 2012).

features designated individuals and legal entities as well as wanted persons, including those designated as such by the SCO and CIS ATC. In addition, Kyrgyzstan described the practice of transfer by customs authorities to SFIS of information on frequent users of remittance services. Notably, rather than being sent immediately upon filing, customs declarations are transferred to SFIS once a quarter, which affects the speed of data analysis by SFIS. According to Kyrgyzstan, it is working to create a Unified Automated System, access to which may be provided to SFIS as needed (see Criterion 32.6).

197. Given the cash-intensive nature of Kyrgyzstan's economy and the problems associated with the demarcation of its borders, the assessment team are not fully convinced that the cross-border traffic is fully controlled and that the data provided by customs authorities accurately reflect the volume of funds being transported across the border. This may adversely affect the adequacy of data needed to identify ML/TF cases involving the transportation of valuables across Kyrgyzstan's border.

198. SFIS has the necessary powers and experience in requesting information from reporting entities, regardless of whether the reporting entity has submitted an STR or other type of report or not. This information may contain a banking or other secret protected by law. SFIS can also request required information from the customs authorities in a "request-response" mode. No statistics on the frequency of use of such communication method is available. The only available evidence of cooperation comes from the practical examples of ML/TF investigations detailed in the report.

199. As shown in the examples of criminal cases (see Case studies 1, 2, 3, 5) below, SFIS also successfully engages with its foreign counterparts in intelligence gathering to assist investigations (see also IO2 for more details on SFIS's international cooperation). SFIS's limited powers in respect of predicate offences to ML/TF (see Criterion 29.1) have no practical impact on its intelligence gathering capacity.

#### *Analysis findings and intelligence provided by SFIS for operational activities*

200. SFIS disseminates its analytical findings to law enforcement authorities both spontaneously and on request of the competent authorities. As noted above, the effectiveness of the use by law enforcement authorities of the analytical data requested from SFIS is only evidenced from a single case study (Case study 1). As regards the effectiveness of the use by law enforcement authorities of spontaneous disseminations prepared by SFIS, in some cases, as shown in Table 6 (Spontaneous Disseminations), such data are used effectively. Apart from its involvement in the ML/TF NRA, SFIS does not conduct strategic analysis of the data provided. Instead, SFIS is focused on conducting operational analysis.

201. SFIS's organization structure includes a sector responsible for strategic analysis and Egmont Group engagement (as per the staff list approved by SFIS order No. 65/P dated October 29, 2013, it has two employees). The sector employees are responsible for conducting strategic analysis aimed at detecting ML/TF trends, identifying ML/TF threats and vulnerabilities, and using analysis findings to formulate AML/CFTE policies. However, despite the presence of the institutional component, SFIS is not involved in the study of ML/TF trends in various high-risk sectors or detection of country-specific ML/TF typologies that could be of practical importance to both reporting entities and law enforcement.

202. As regards operational analysis, SFIS uses information received from reporting entities and customs authorities to analyse transaction data with the help of an automated analysis system. Whenever necessary, it also uses information from available sources and databases. SFIS's analytical system enables the visualization of transaction patterns. However, the quality of data comparison and analysis depends today more on the knowledge and experience of an individual analyst rather than the capabilities of information technology. SFIS's analytical systems fall short of the agency's requirements for volume and methods of data processing.

203.SFIS, after receiving STRs or threshold reports, enters these data into an automated analytical system for preliminary analysis. The system matches the data against the List of designated persons and entities as well as the database of existing offenders, and ranks the reports based on the level of risk. The criteria for assessing the level of risk posed by the report are developed by analysts and regularly updated. After completing the initial filtering of data, and depending on the risk level and profile (ML or TF), the case is assigned to the appropriate analyst.

204.During the second stage, the analyst examines the case and determines which additional information he needs for a full analysis of the case. This information is then collected from the available databases or requested from reporting entities, government agencies or foreign counterparties.

205.After analysing the obtained information, provided there are sufficient grounds to believe that the transaction may be linked to money laundering or terrorist financing, the analyst prepares spontaneous disseminations for submission to SFIS's Expert Council, which decides whether to refer them to the relevant law enforcement authority or return to the analyst for further analysis and collection of additional data.

206.Table 6 shows a gradual increase in the volume of both ML- and TF-related spontaneous disseminations made by SFIS to the relevant law enforcement authorities. From 2014 to 2016, SFIS sent a total of 102 spontaneous disseminations related to ML and 11 to TF, 40 of which led to the initiation by law enforcement of criminal proceeding into ML and predicate offences and 5 into TF.

207.Although in the overwhelming majority of cases, law enforcement bodies have confirmed the importance of spontaneous disseminations made by SFIS, the data provided show that the effectiveness of their use is moderate. In the reporting period, for example, 18 ML and 3 TF spontaneous disseminations were not confirmed or there was a refusal to initiate criminal case. One of the factors impacting the effectiveness may be the lack of proper feedback. As shown in Table 6, there have been 44 ML and 2 TF spontaneous disseminations listed as "pending" since 2014, which does not allow us to assess to what extent the quality and adequacy of these spontaneous disseminations meet the operational needs of law enforcement agencies.

**Table 6.** Spontaneous disseminations made by SFIS to law enforcement authorities

<b>2014</b>	<b>ML</b>	<b>TF</b>	<b>Outcome</b>
SNSC	0	3	3 spontaneous disseminations were not confirmed to be linked to terrorism and extremism
MIA	6	0	6 spontaneous disseminations are pending
SSCEC	18	0	2 spontaneous disseminations resulted in the opening of 1 criminal case, referred to court 4 spontaneous disseminations are pending 7 spontaneous disseminations resulted in refusals to initiate criminal proceedings In respect of 5 spontaneous disseminations, 5 criminal investigations were suspended for various reasons
SDCS	6	0	4 ML spontaneous disseminations were not confirmed 2 spontaneous disseminations were combined with other criminal investigations
Quantity	<b>30</b>	<b>3</b>	
<b>2015</b>	<b>ML</b>	<b>TF</b>	<b>Outcome</b>
SNSC	2	1	1 TF spontaneous referral resulted in the initiation of criminal proceedings and a court verdict 2 ML spontaneous disseminations were not confirmed



MIA	18	2	6 spontaneous disseminations (2 TF and 4 ML) resulted in the opening of 6 criminal cases, 14 spontaneous disseminations are pending
SSCEC	9	0	In respect of 8 spontaneous disseminations, 8 criminal investigations were suspended for various reasons 1 spontaneous dissemination resulted in the initiation of criminal proceedings and filing of charges
SDCS	2	0	1 spontaneous dissemination resulted in a refusal to initiate criminal proceedings 1 spontaneous dissemination resulted in the initiation of criminal proceedings and a court verdict
Quantity	<b>31</b>	<b>3</b>	
<b>2016</b>	<b>ML</b>	<b>F</b>	<b>Outcome</b>
SNSC	6	0	6 spontaneous disseminations are pending-
MIA	4	5	2 TF and 1 ML spontaneous disseminations resulted in the initiation of criminal proceedings 1 spontaneous dissemination and additional material (ML) resulted in the initiation of criminal proceedings 1 TF spontaneous dissemination was referred to SNSC 2 TF and 1 ML spontaneous disseminations are pending
SSCES	15	0	1 spontaneous dissemination resulted in the initiation of criminal proceedings 3 spontaneous disseminations resulted in the opening of 1 criminal case 1 spontaneous dissemination resulted in the opening of a criminal case, referred to court 2 spontaneous disseminations resulted in a refusal to initiate criminal proceedings 7 spontaneous disseminations are pending In respect of 1 spontaneous referral, the criminal investigation was subsequently suspended
SDCS	16	0	1 spontaneous dissemination resulted in the initiation of criminal proceedings 2 spontaneous disseminations were confirmed 8 spontaneous disseminations were combined with other criminal investigations 5 spontaneous disseminations are pending
Quantity	<b>41</b>	<b>5</b>	

208. Kyrgyzstan presented an example of criminal proceedings (Case study 2) initiated on the basis of spontaneous disseminations made by SFIS to SNSC, highlighting the success of a multipronged investigation into not only ML but also several predicate offences.

**Criminal investigation into ML launched on the bases of spontaneous disseminations made by SFIS**

In 2011, responding to an STR, SFIS identified a ML scheme totalling \$14 million after analysing approximately 14,000 transactions. The scheme involved the transfer of funds to country A as payment for the supply of telecommunications equipment. Then, the funds were split into smaller amounts and transferred to various accounts in countries B, C, D and D.

As a result of spontaneous information exchange between SFIS and NSC, the latter launched criminal proceedings under Art. 166 (Fraud), Art. 171 (Acquisition or sale of property that is known to have been obtained by criminal means), Art. 183 (Money laundering), Art. 221 (Abuse of authority by employees of commercial or other organizations), and Art. 224 (Corrupt business practices) of the Criminal Code.

SFIS worked closely with the FIUs of countries B, C, D and D to trace the laundered funds, freezing and eventually seizing \$2 million transferred to country B. SFIS also initiated the involvement in the investigation of the Basel Institute of Management.

On 13 October 2016, the Pervomaisky District Court of Bishkek, Kyrgyzstan, found Mr. Z guilty and sentenced him to 25 years in prison with confiscation of property.

Law enforcement officials are currently working to seize and return the rest of the criminal assets.

209. SFIS lacks experience in suspending suspicious transactions to ensure preservation of the assets involved for their subsequent seizure or possible confiscation. No requests to suspend suspicious transactions were submitted to SFIS by law enforcement authorities. According to Kyrgyzstan, the use of such powers by SFIS prior to the launch of criminal proceedings implies a short-term effect, and may impede the operational support of the case and even endanger the success of investigative activities such as criminal intelligence analysis. Such an unambiguous approach, according to the assessors, may have a negative impact, since SFIS's efforts to trace funds may lose their relevance once the identified funds are moved/transferred/transformed into other assets in the course of the investigation.

210. SFIS's Analytical department is fully staffed (11 employees). Besides analysing STRs and threshold reports, the Analytical Department is also involved in the analysis and preparation of materials in response to requests from law enforcement agencies, preparation of requests to foreign FIUs, and responses to requests from foreign counterparts. Given the diversity of functions and the range of activities, as well as taking into account the comments made by law enforcement official concerning the timeliness of information provision, the assessment team have come to the conclusion that the human resources and technical equipment available to SFIS are not sufficient for the volume and complexity of the tasks performed.

*Cooperation and information/finance intelligence sharing*

211. According to the country's law enforcement authorities and SFIS, they have intensified cooperation and information sharing in recent years on ML and TF predicate offences (see Table 4 and Table 6).

212. SFIS has signed interagency agreements with several government agencies, including law enforcement, in order to strengthen cooperation and establish the procedure and channels for information transfer.

213. SFIS cooperates closely with law enforcement authorities in the preparation of spontaneous disseminations. The Expert Council, if necessary, may include representatives of law enforcement agencies, which, until recently, were not officially allowed to be listed among its members. If such necessity arises, law enforcement authorities will be represented by liaison officers tasked with processing spontaneous disseminations under review. In this case, according to the assessors, representatives of law enforcement authorities may have an influence on the decision-making with regard to spontaneous disseminations, thereby it carries a potential risk of limiting SFIS' independence in making dissemination decisions.

214. SFIS and law enforcement authorities have demonstrated a good understanding of importance of close cooperation for effective disruption of ML, associated predicate offences and TF. However, technical deficiencies related to insufficient IT support of communication channels and the lack of direct online access to various government databases have a negative impact on effectiveness

#### *Overall conclusions on Immediate Outcome 6*

**215. Kyrgyzstan has achieved a moderate level of effectiveness for Immediate Outcome 6.**

#### ***Immediate Outcome 7 (ML Investigation and Prosecution)***

##### *ML identification and investigation*

216. Law enforcement authorities (SNSC, MIA and SSCEC), acting within their competence, identify and investigate crimes, including ML. The absence of dedicated AML units in the structures of these agencies means that the tasks related to identification and investigation of such crimes are carried out by employees conducting an inquiry or investigating predicate offences. Since 2016, the prosecutor's office does not investigate criminal cases, support the prosecution of cases in court or supervise investigative activities.

217. Kyrgyzstan provided statistics for 2013-2016 (as per Article 183 of the Criminal Code, statistics includes data for Q1 2017, Table 7) on the number of ML investigations and court cases. According to this information, of the 33 ML cases identified and investigated in the country since 2013, only 10 reached court, with the rest being either terminated or suspended in accordance with the Criminal Procedure Code of the Kyrgyz Republic.

218. According to the information provided, almost all ML cases are connected to abuses in the financial sector. Analysis of the most serious of them has shown that laundered proceeds are typically derived from corruption and illegal business activities.

**Table 7.** Procedural decisions in the context of articles of the Criminal Code

Article of Criminal Code	Decision	2013	2014	2015	2016	First quarter of 2017
Fraud (Article 166)	Initiated criminal proceedings	2322	2600	3322	4095	
	Referred to court	1847	1910	2611	3129	
	Convictions	779	836	1040	1143	
Money Laundering (Article 183)	Initiated criminal proceedings	18	3	6	6	
	Referred to court	2	3	1	1	3
	Verdicts	0	3	2	0	1
	Convictions		8	5	0	8

	<b>Exonerations</b>			3		
<b>Smuggling (Article 204)</b>	<b>Initiated criminal proceedings</b>	174	104	132	79	
	<b>Referred to court</b>	66	60	44	50	
	<b>Convictions</b>	40	49	31	30	
<b>Tax Crimes (Articles 211-214)</b>	<b>Initiated criminal proceedings</b>	101	111	107	122	
	<b>Referred to court</b>	51	51	58	72	
	<b>Convictions</b>	39	50	50	67	
<b>Organized Crime (Article 231)</b>	<b>Initiated criminal proceedings</b>	8	3	4	6	
	<b>Referred to court</b>	7	2	4	5	
	<b>Convictions</b>	15	1	6	11	
<b>Drug Trafficking (Articles 246-247)</b>	<b>Initiated criminal proceedings</b>	1764	1771	1748	1608	
	<b>Referred to court</b>	1519	1487	1523	1501	
	<b>Convictions</b>	1391	1281	1202	1348	
<b>Corruption/ Bribery (Articles 303, 313-314)</b>	<b>Initiated criminal proceedings</b>	160	142	136	104	
	<b>Referred to court</b>	66	84	91	85	
	<b>Convictions</b>	71	106	91	87	

219. All ML cases were investigated in conjunction with predicate offences. The practice of investigating ML offences separately from predicate offences is absent.

220. In 2015, the country's authorities initiated criminal proceedings (Case study 4) under Art. 183 (Money laundering) against individuals suspected of siphoning off more than KGS 6 billion (\$80 million) from Kyrgyzstan to the countries of the Middle East and the European Union with the help of shell companies. The above proceedings included investigative action, including the seizure of financial documents, identification of the suspects, search for property liable to confiscation and operational-search activities. Despite this, the investigation is still incomplete and the ML case is yet to be referred to court. A similar situation exists with the criminal proceedings instituted against a group of individuals suspected of money laundering, forgery of documents and tax evasion (Case study 5). There, despite the completion of all the necessary investigative activities, the investigation is still on-going. The main reason for the delay is the non-provision of responses to international requests for mutual legal assistance.

221. Analysis of the main reasons for the termination or suspension of criminal ML proceedings at the investigation stage allows us to conclude that law enforcement authorities, despite undertaking all the necessary investigative activities, struggle to gather enough evidence, lack experience in investigating such crimes and are hampered by the late/non-fulfilment of international requests.

222. Kyrgyzstan has experience of conducting successful international investigations involving the laundering of criminal proceeds in third countries (Liechtenstein). As a result of this investigation, illicit funds were seized outside of Kyrgyzstan (Case study 3). Spontaneous disseminations prepared by SFIS were used in law enforcement investigations into money laundering, corruption and economic crimes (Case studies 3, 4 and 5). Notably, only a small number of ML cases were referred to court after completion of criminal investigations. Instead, it is much more common for criminals to be prosecuted for predicate offences. This fact supports the conclusion that combating ML is not a priority in the activities of law enforcement agencies. Although the opportunities for detecting and investigating these types of crimes by law enforcement authorities within the framework of predicate offences do exist, they are not always used.

223. In investigating several predicate offences, SNSC and SSCEC conducted parallel financial investigations into ML. Thus, an investigation into the activities falling under Article 303 (Corruption) of the Criminal Code, investigators identified several instances of money laundering involving large and especially large amounts. The funds were laundered in Kyrgyzstan through the purchase of real estate property worth KGS \$240,000 and repayment of a mortgage loan totalling \$140,000. Investigations into both predicate offences and ML were successfully completed and resulted in convictions.

224. At the same time, parallel financial investigations remain rare, as some law enforcement agencies lack a clear understanding of their importance.

225. SDSC's approach to parallel financial investigations was not systemic in its nature. Assessors were shown one example of an investigation (Case study 1) that led to the seizure of 33 kg of drugs. Despite following the money trail, the suspects were charged only with drug trafficking, but not ML. No successful investigations or prosecution for drug-related ML have been reported in several years. In 2016, SDSC's functions were reassigned to the MIA. The MIA sends a large number of requests to SFIS (Table 4) and has received 35 spontaneous disseminations in the last 3 years (Table 6), but there are no practical results evidencing the success of ML investigations.

226. It should be noted that the conduct of parallel financial investigations directly by law enforcement authorities is hampered by the existence of legal restrictions on the use of information protected by banking secrecy at the pre-investigation stage. There is also no guidance on the conduct of parallel financial investigations by law enforcement agencies.

227. When identifying the indicators of ML or conducting investigations, law enforcement authorities use the intelligence provided by SFIS, which, in addition, responds to requests and prepares spontaneous disseminations related to ML (Table 6) for use by law enforcement authorities. Spontaneous disseminations are used as the basis for running checks. SFIS's intelligence cannot be used as evidence in criminal proceedings. Instead, it is used as reference information for officials conducting inquiries or criminal investigations, allowing them to establish a link between money laundering and the predicate offence (Case studies 3, 4 and 5).

### Case study 3

In the course of procurement of telecommunication equipment, officials of the government-owned company A withdrew USD 14 million from the company's accounts and misappropriated USD 6 million using foreign jurisdictions. After that, using the smurfing technique, they transferred the stolen funds to various jurisdictions. All stolen assets were located and seized. The investigation into this criminal offence was conducted by the NSC.

In 2011, following monitoring of suspicious transactions carried out by company A, SFIS submitted spontaneous disseminations to the NSC with recommendation to pay special attention to transfers of large amounts of funds abroad. After analysing over 14,000 transactions and discovering that USD 14 million were transferred to China, the decision was made to institute criminal proceedings. In 2012 SFIS, jointly with the FIU of Liechtenstein, located and froze the criminal assets for a period of two months, after which the Liechtenstein court seized those assets. Kyrgyz law enforcement authorities instituted criminal proceedings under Article 166 (Fraud), Article 171 (Acquisition or Sale of Property Knowingly Obtained in Criminal Manner), Article 183 (Legalization (Laundering) of Criminal Proceeds), Article 221 (Abuse of Authority by Employees of Commercial or other Organizations) and Article 224 (Commercial Bribery) of the Criminal Code. In November 2016, A was charged with offences falling under Art. 183 of the Criminal Code and sentenced to 7 years of imprisonment with confiscation of property.

#### Case study 4

Multiple wire transfers were made from Kyrgyzstan to Turkey, Dubai, China, United Arab Emirates, Lithuania, Latvia, Russia and Estonia in the period from 2014 through 2015. Those transfers were carried out through companies RP, TTV and B-ba, front entities registered in the name of the same individual. The suspicion was triggered by the fact that neither before nor after making large wire transfers the companies paid any taxes or customs duties and were not involved in any real business activities (no tax returns were filed with tax authorities). In addition, the companies were not registered with customs authorities as entities engaged in foreign trade.

Based on the outcomes of a financial investigation conducted by SFIS, GPO and MIA instituted criminal proceedings under Article 183 (Legalization (Laundering) of Criminal Proceeds), Article 221 (Abuse of Authority by Employees of Commercial or other Organizations) and other Articles of the Criminal Code. The investigation is still underway. The financial investigation was triggered by the suspicious transaction reports received from the Kyrgyz commercial banks. The total amount of funds transferred by the said companies abroad exceeded KGS 6 billion.

#### Case study 5

SFIS identified the groups of individuals who employed rural residents for transferring funds abroad. Funds were deposited into bank accounts on behalf of those rural residents for subsequent transfers abroad via instant money transfer systems. Spontaneous disseminations were made to SSCEC and the MIA. Defendants were charged with six offences falling under Article 183 (Legalization (Laundering) of Criminal Proceeds), Article 221 (Abuse of Authority by Employees of Commercial or other Organizations) and Article 350 (Forgery, Manufacture, Sale or Use of Forged Documents, State Awards, Letter-Heads, Stamps and Forms) of the Criminal Code. At the time of the on-site mission, criminal investigation were still ongoing.

228. Law enforcement authorities noted the good quality of intelligence provided by SFIS and its effectiveness in international information sharing and use of information protected by banking secrecy. However, any reduction in the time allowed for data provision may improve the effectiveness of law enforcement efforts. Whereas any increase in the number of analysts employed by SFIS and automation of their work will help shorten the response provision process.

229. The practice of conducting joint investigations and setting up ad hoc investigation teams specializing in serious and mostly serious crimes linked to ML remains underutilized. The lack of an integrated approach involving closer cooperation between various competent authorities affects the identification process as well as the quality of the investigation of cases and convictions directly for ML. Law enforcement authorities only provided information on one criminal case necessitating the establishment of ad hoc investigative teams that included representatives of SFIS. It is not possible to assess the effectiveness of joint work, as the investigation of the criminal case is not completed and there is no court verdict.

#### *Consistency of ML investigations and prosecutions with the threats and risk profile, and national AML policies*

230. During a working meeting with representatives of law enforcement authorities (GPO, MIA, SNSC, State Customs Service and SSCES), participants informed the assessment team about the existing sectoral ML risks, identifying drug trafficking, corruption, tax evasion and illegal business activities as the main source of criminal proceeds. Proceeds from these criminal activities often end

up invested in legitimate businesses. At the same time, ML offences investigated and prosecuted in Kyrgyzstan do not fully reflect the nature of the risks facing the country or its AML/CFT national policies.

231. The experience of the country's law enforcement authorities (Table 7) and expert assessments by the Kyrgyz law enforcement officers and international experts support the conclusion that drug trafficking poses a serious problem for the country.

232. Despite the adoption of measures to combat drug trafficking and a good understanding of the severity of the problem, the efforts of law enforcement authorities are primarily dedicated to cutting off supply routes for drugs and precursors. The adopted measures to combat money laundering, drug trafficking and to identify and seize financial proceeds are not commensurate with the level of risk.

233. At present, corruption and the shadow economy continue to pose a serious problem for the country. A high level of corruption, coupled with the large size of the shadow economy, which, according to various estimates, accounts for 40 - 60% of GDP (In December 2012, the public association "Investment Round Table" prepared a report on the country's shadow economy. The report, commissioned by the Ministry of Economy under the WB project, put the size of the shadow economy at 39-43% of the country's 2011 GDP), makes Kyrgyzstan vulnerable to ML risks. Although the country's leadership and law enforcement authorities understand the importance of these problems, as evidenced by the inclusion of these issues in the country's National Security Strategy, not enough attention is paid to the investigation and prosecution of ML offences related to corruption and tax evasion.

234. The size of the shadow economy and the widespread use of cash not only significantly increase the potential of tax evasion and money laundering, but also make it more difficult for law enforcement authorities to identify these types of criminal offences. In addition, the cash-intensive nature of the economy facilitates the emergence of alternative remittance systems and physical transportation of money by cash couriers.

235. Law enforcement representatives reported that, in respect of tax crimes (Art. 210-213 CC KR), criminal proceeding can be terminated at any stage of the investigation process due to the voluntary payment of the entire amount of taxes due, including fines and penalties. According to them, this fact explains the absence of ML investigations into this group of offences. The assessment team were not provided with information on the number of terminated investigations of this category, which makes it difficult to objectively analyse the situation.

#### *Types of ML cases pursued*

236. According to statistics (Table 7), 10 criminal cases were referred to courts of the Kyrgyz Republic, 6 of which resulted in convictions. It should be highlighted that 5 convictions were issued in relation to the same criminal group, which was involved in the laundering of criminal proceeds through financial institutions, with defendants being sentenced without their participation in criminal proceedings. Moreover, there is no information as to whether these sentences have entered into force or not.

#### **Case study 6**

Investigative authorities charged a group of individuals with transferring, from 2006 to 2010, and laundering large amounts of money through companies A JSC, I JSC, K JSC and other commercial institutions. In addition, Mr. N and Mr. Y, director of company V, conspired to illegally acquire the controlling stake in a bank.

On February 21, 2015, June 1, 2016, September 21, 2016, January 11, 2017, May 12, 2017, the Bishkek city court found all above mentioned persons guilty of committing criminal offences

falling, *inter alia*, under Article 183 of the Criminal Code and sentenced them to 7 and 9 years of imprisonment with confiscation of property, as well as prohibited them from holding public offices for three years.

237. The Kyrgyz authorities did not provide examples of investigations broken down by different types of cases. In the light of this, assessors conclude it experiences difficulties in identifying and investigating criminal cases where laundering is carried out by third parties; where the predicate offence is committed in a third country; and where ML does not involve a predicate offence. No such cases were identified and, hence, no convictions were recorded.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

238. When considering ML-related cases, judicial authorities focus, first of all, on predicate offences and only after that, if the criminal origin of proceeds is proven, defendant(s) may be convicted of ML. The said circumstance, as well as the difficulties in conducting financial investigations, result in a small number of ML convictions. According to the statistics provided, there have been 6 ML verdicts since 2013, with 21 persons being convicted 3 persons acquitted. The Kyrgyz law does not provide for the liability of legal persons, hence no convictions of legal persons have been recorded.

239. According to the information posted on the Supreme Court website, there have been three registered convictions for ML, one of which was appealed to the Supreme Court as part of the review procedure.

240. Apart from two cases (Case studies 3 and 6), there is no additional information on the imposition of relevant sanctions on persons found guilty of ML crimes. The size and effectiveness of sanctions against persons guilty of ML may be assessed only on the basis of legal norms and sanctions for predicate crimes, which appear to be proportionate and effective when implemented in full.

#### *Other measures of criminal proceedings*

241. During the on-site visit, representatives of the Supreme Court informed the assessors that there were no other criminal justice measures in Kyrgyzstan that could be applied where ML conviction is not possible. As a rule, if ML signs cannot be proven, a person is convicted of a predicate offence

242. According to the country's law enforcement officials, in situations where prosecution under Art. 183 of the Criminal Code for ML offences is not possible, defendants may be charged under Art. 308-1 "Illegal enrichment". At the same time, assessors were not informed about any charges filed under this article or conviction handed down, which makes it difficult to assess the effectiveness of these alternative measures.

#### *Overall conclusions on Immediate Outcome 7*

**243. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 7**



## Immediate Outcome 8 (Confiscation)

### *Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

244. Kyrgyzstan has not demonstrated that confiscation is one of the priorities in the work of law enforcement agencies and an important element of the country's criminal policies. Despite the involvement of certain state bodies in the identification and handling of seized and confiscated property, measures aimed at depriving criminals of criminal income are insufficient. Kyrgyzstan has designated authorities tasked with the confiscation of proceeds and instrumentalities of crime and property of corresponding value (criminal income).

245. When conducting criminal investigations, law enforcement authorities search for and seize criminal proceeds in order to compensate for the damage caused by the commission of the offence. When adjudicating the case, the judge decides what to do with the seized property in order to secure a civil claim or possible confiscation. The responsibility for enforcing confiscation orders issued by the court is assigned to enforcement agents. Following its confiscation, the property is transferred to tax authorities for disposal. The procedure for the disposal of confiscated property is established by applicable law. The tax authorities are responsible for monitoring the completeness and timeliness of the transfer of property to them for disposal, as well as the timeliness of the transfer of funds to the budget. The confiscated real estate property is transferred to the State Property Management Fund under the Government of the Kyrgyz Republic for placement into state ownership or other actions.

246. Kyrgyzstan provided statistics on damages paid after the completion of investigative proceedings (Table 8). Restitutions for material damage are made at the expense of the property seized during the investigation or application of subsequent confiscation measures. In this regard, depending on the value of the property seized, it is possible to assess the prospects for the effective implementation of subsequent confiscation measures already at the investigation stage. Information about all law enforcement agencies conducting investigations of predicate crimes, ML and TF is available.

**Table 8.** Compensation for material damage in criminal investigations completed in the reporting period (for all types of offences)

Name of law enforcement body	Compensation for damage				Compensation for damage caused to the state			
	2013	2014	2015	2016	2013	2014	2015	2016
Prosecutor's Office	18.2%	16.3%	35.6%	37.0%	19.0%	25.0%	36.8%	37.6%
MIA	29.9%	23.9%	19.5%	27.9%	51.7%	15.7%	10.0%	52.4%
SNSC	7.5%	51.7%	61.7%	25.6%	14.6%	54.7%	71.4%	35.9%
Financial Police	23.2%	55.6%	22.8%	40.3%	23.9%	57.4%	23.6%	42.1%
SDCS				38.7%				
State Customs Service	88.2%	40.0%	46.5%	122.3%	3.1%	40.0%	46.5%	122.3%
Penitentiary Service		21.5%	8.9%			87.7%		
<b>TOTAL COMPENSATED %</b>	<b>27.1%</b>	<b>30.4%</b>	<b>23.5%</b>	<b>35.7%</b>	<b>20.6%</b>	<b>42.1%</b>	<b>25.6%</b>	<b>41.7%</b>

247. Analysis of provided statistics shows that the level of compensation for damage in completed investigations for all law enforcement bodies is low and averages about 35% (except for the SCS). The level of compensation for damage caused to the state is also low (about 40%). Furthermore, the level of compensation has remained stagnant for many years.

248. Importantly, the level of compensation for damage in malfeasance cases (Table 9), which, according to law enforcement authorities, constitute a large source of proceeds used in ML, is also low.

**Table 9.** Compensation for material damage in malfeasance investigations completed in the reporting period

Name of law enforcement body	Compensation for damage			
	2013	2014	2015	2016
Prosecutor's Office	13.1%	33.5%	30.8%	53.9%
MIA	53.3%	64.9%	28.9%	7.3%
SNSC		99.1%	10.9%	88.0%
Financial Police	65.1%	10.6%	74.8%	44.9%
SDCS				
State Customs Service				
Penitentiary Service				
<b>TOTAL COMPENSATED %</b>	<b>15.2%</b>	<b>36.6%</b>	<b>16.4%</b>	<b>61.3%</b>

249. The data provided during the on-site mission highlight problems with the identification and seizure of property at the investigation and prosecution stage, which, in turn, affect confiscations. One of the reasons for this situation is (as noted in IO7) the lack of parallel financial investigations aimed at identifying, tracking and evaluating property that is subject to confiscation. In addition, there are no dedicated units tasked with identifying, evaluating and confiscating criminal proceeds. Instead, these responsibilities are partly split between the Prosecutor's Office and law enforcement authorities conducting criminal investigations, the effectiveness of whose efforts is low.

*Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad*

250. According to the legal mechanisms and judicial practice, confiscation of proceeds, instrumentalities and property does not depend on the corresponding value of inflicted losses/damage. The representatives of the judicial authorities met on-site confirmed that such mechanisms are actually used in practice and provided examples of the confiscation orders imposed.

251. Confiscation may be extended to assets whose value is much higher than the value of losses/damage inflicted as a result of an offence, and all property owned by the defendant, except of that required for covering the basic needs, is subject to confiscation. Kyrgyzstan provided an example where the court ordered the confiscation of the defendant's property and monetary funds totalling KGS 4,829,000.

252. No information was provided on the extent of inflicted damage estimated in relation to criminal cases where confiscation orders were issued. Representatives of the Judicial Department of the Supreme Court informed the assessors that statistics are maintained on the types of criminal cases and on the volume of confiscated criminal proceeds, but this information was not presented. Therefore, it is impossible to make a judgment about the real impact (effectiveness) of provisional measures taken by law enforcement authorities in respect of both predicate offences and ML.

253. Below are the statistics on the number of persons held criminally liable whose punishment included confiscation of property/assets (Table 10).

Table 10

Articles of the Criminal Code	Number of persons held criminally liable whose punishment included confiscation of property/assets			
	2012	2013	2014	2015
123 Kidnapping	2	2	3	5
124 Human Trafficking	2	1	2	1
164 Theft	227	192	162	150
165 Cattle rustling	37	31	35	29
166 Fraud	28	27	28	25
167 Robbery	58	26	36	37
168 Brigandage	147	106	113	128
170 Extortion	3	5	8	2
172 Unlawful Taking of an Automobile or other Motor Vehicle	11	13	11	13
177 Acquisition or Sale of Property Knowingly Obtained in Criminal Manner	1	-	-	-
180 Operating Illegal Business	1	-	-	-
182 False Enterprise	-	1	-	-
183 Legalization (Laundering) of Criminal Proceeds	-	1	1	5
204 Smuggling	4	9	5	3
208 Illegal Trade in Precious metals and Stones	1	-	-	-
210 Evasion of Customs Payments	-	1	-	-
213 Evasion of Tax and Compulsory Insurance Premiums by Executive Officers of Business Entities	1	-	1	-
226 Terrorist Act	-	-	-	1
231 Establishment of a Criminal Association (Criminal Organization)	2	4	-	3
241 Illegal Acquisition, Transfer, Sale, Storage, Transportation or Carrying of Firearms, Ammunition, Explosives and Explosive Devices	2	4	3	2
245 Theft or Extortion of Firearms, Ammunition and Explosives	1	-	-	-
247 Illegal Manufacture, Acquisition, Storage, Transportation, Transfer with Intent to Sell and Illegal Production or Distribution of Narcotic Drugs, Psychotropic Substances or their Analogues or Precursors	118	104	97	99
303 Corruption	-	2	7	-
304 Abuse of Official Powers	4	2	2	2
313 Extortion of Bribes	2	2	5	1
375 Mercenarism	-	-	-	2

254. The existing ML convictions show that criminal proceeds are indeed confiscated in practice. However, the presented statistics do not provide a clear picture of confiscations in relation to ML, since money laundering cases are tried in courts in conjunction with predicate offences and confiscation orders may be issued in relation to predicate offences and not for ML.

255. Kyrgyz law enforcement authorities, both independently and with the assistance of SFIS, take measures for tracing and identifying criminal proceeds and property to secure their confiscation. Such measures include seizure of assets in the course of criminal investigations. However, when conducting financial analysis, SFIS does not apply the freezing mechanism to secure their further seizure by law enforcement in course of investigation into predicate offences, which could result in the establishment of facts of ML. Criminal proceeds may be frozen when law enforcement investigators issue orders to institute criminal proceedings or lay charges against persons for committing one of the following criminal offences: legalization (laundering) of criminal proceeds, financing of terrorist or extremist activity, or financing the proliferation of weapons of mass destruction.

256. It should be noted that, if law enforcement authorities do not freeze property and other assets of a defendant at the preliminary investigation stage and after that a court orders confiscation of criminal proceeds, the Judicial Department of the Supreme Court, upon opening enforcement proceedings, independently takes measures for identifying and seizing property and other assets in order to enforce the confiscation order issued by the court. For this purpose, relevant requests are forwarded to the Kyrgyz competent authorities that hold information on property and other assets owned by natural persons.

257. No information was provided to the assessment team on the availability of a mechanism for preserving and managing the value of seized/confiscated assets. Besides that, assessors were not provided with objective information on how seized property is actually managed at the pre-trial stage. According to the information provided by the Judicial Department of the Kyrgyz Supreme Court, the confiscated movable and immovable property is sold by the State Property Management Fund under the Government of the Kyrgyz Republic at a price fixed at the time when such property is disposed of. This may seriously hamper the effectiveness of provisional measures, since investigation and prosecution of criminal offences may potentially take long time.

258. While the Kyrgyz authorities understand the problem related to management of seized and confiscated property, they do not take measures for development of systematic system for management of seized property liable to confiscation.

259. No examples were provided to the assessors of cases where confiscated property was shared with other countries pursuant to asset-sharing agreements. Property belonging to legal persons may not be seized and confiscated, since corporate criminal liability does not apply in Kyrgyzstan.

260. Legislative constraints that limit the ability of law enforcement to obtain information that constitute banking secrecy during pre-investigation inquiries do not promote effectiveness of the seizure and confiscation regime. Besides that, Kyrgyzstan has not adopted legislative provisions providing for the reversal of burden of proof concerning the lawful origin of alleged proceeds or other property liable to confiscation.

261. Confiscation in relation to ML cases where charges are laid against defendants under Article 183(1) of the Criminal Code and also in relation to other proceeds-generating offences that do not fall into the category of serious and mostly serious crimes remains a problem in Kyrgyzstan.

262. There are the mechanisms in place in Kyrgyzstan for confiscation of criminal proceeds at request of foreign competent authorities. However, there have been no examples of their practical application so far. Assessors were provided with just one example where law enforcement authorities, using SFIS's assistance and international regulations, identified criminal proceeds abroad and secured seizure of those proceeds for further confiscation. It should be noted that, apart from this case, there are no other positive examples of confiscation of property or other assets located abroad, and the current Kyrgyz legislation does not provide for the mechanism that would allow for managing assets seized abroad.

263. Kyrgyzstan did not provide full information on the volume and types of property confiscated for ML and TF offences on the basis of court decisions, or about the actual amount of revenue generated from its disposal by state authorities (the Tax Committee, the State Property Fund, etc.). As a result, experts concluded that such information is not available and, hence, cannot be used by the competent authorities for analysis and pursuit of the country's AML/CFT policies.

*Confiscation of falsely or undeclared cross-border transaction of currency/ BNI*

264. Customs officials do not have the capacity to restrain currency or BNIs for a reasonable time in order to ascertain whether evidence of ML/TF may be found in cases where there is a suspicion of ML/TF or predicate offence, or where there is a false declaration or false disclosure.

265. Customs officials informed the assessment team about one instance involving the confiscation of undeclared funds totalling \$1300 under administrative proceedings. In addition, no criminal proceedings were initiated by customs officials into any false/non-declaration of cash/BNIs transported across the border, which makes it difficult to analyse the effectiveness of confiscation with respect to cross-border movements of cash and BNIs.

266. Cash is commonly used in the Kyrgyz economy (from 2009 to 2015, the total amount of cash in circulation grew by 63.5% and reached KGS 58.4 billion, of which approximately KGS 53.1 billion was outside the banking system). Despite the program actively pursued by NBKR for the development of cashless payment systems, transactions involving withdrawal of cash from payment cards account for about 97%<sup>33</sup> of the total value of transactions, confirming the popularity of cash in Kyrgyzstan. The high volume of cash in circulation facilitates the emergence of alternative remittance systems and physical transportation of cash by couriers.

267. Kyrgyzstan a robust cross-border cash declaration regime in place. Since the Kyrgyz Republic is a member of the Eurasian Economic Union (EAEU), the customs regulation regime in Kyrgyzstan is governed by the relevant treaties and legislative acts adopted within the EAEU legal framework. In particular, when transporting cash and traveller's cheques in amount exceeding the USD 10,000 threshold across the customs border of the Customs Union, declarants are required to complete an additional form attached to the customs declaration, in which they must provide details of the natural person, the source of cash and monetary instruments, their owners and their intended use. Information contained in the cross-border (customs) declarations may be made available to SFIS only upon request (Table 11).

**Table 11.** Information on declared funds

<b>2016</b>				
Declarants	US dollars (USD)	Euro (EUR)	Chinese Yuan (CNY)	Declarations filed
36	7,362,744	40,645	20,557	187
<b>7 months of 2017</b>				
Declarants	US dollars (USD)	Euro (EUR)	Chinese Yuan (CNY)	Declarations filed
29	15,674 018	44,000	202,145	146

<sup>33</sup> Finances of enterprises of the Kyrgyz Republic // <http://www.stat.kg/media/publicationarchive/c8083206-2c0b-48a6-9128-5a11c238e1cb.pdf>

268. In the Kyrgyz Republic, false declaration and non-declaration is punishable both by administrative and criminal sanctions. Administrative sanctions include confiscation of undeclared assets and imposition of a fine, and if a person is held criminally liable for smuggling, the punishment includes imprisonment for up to 12 years along with confiscation.

*Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities*

269. According to experts, Kyrgyzstan lacks an integrated approach to the identification and confiscation of criminal assets and proceeds. ML/TF risks are not reflected in confiscation outcomes, given that these issues are not addressed during risk assessments.

*Overall conclusions on Immediate Outcome 8*

**270. Kyrgyzstan has achieved a *low* level of effectiveness for Immediate Outcome 8**

## **CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION**

### **Key Findings and Recommended Actions on IO9, IO10 and IO11**

#### **Key Findings**

##### ***Immediate Outcome 9***

1. In their assessment of ML and TF risks, law enforcement authorities do not consider TF as a serious threat. The country does not conduct a systemic analysis or formulate a CFT strategy based on existing risks.
2. There are examples of criminal investigations and prosecutions for TF. At the same time, due to the lack of experience among law enforcement authorities in identifying and investigating TF offences, as well as among judiciary authorities in hearing such cases, proving TF remains a challenge.
3. Law enforcement authorities have sufficient data and financial intelligence to investigate TF cases, relying where necessary on SFIS for interstate information sharing capabilities and to obtain information constituting bank secrecy.
4. Despite viewing TF as one of the constituent elements of terrorist activities, not enough attention is paid to the financial investigation of such offences.
5. Given that the assessment team were provided with statistics on TF-related convictions only for 2017, it is impossible to assess the impact of TF-related criminal prosecutions.

##### ***Immediate Outcome 10***

1. Kyrgyzstan has a legal framework in place for the proper implementation of targeted financial sanctions against persons and entities designated by the UN Security Council. Nevertheless, there are deficiencies related to the legal procedures for introducing amendments to the “International list of persons involved in terrorist and extremist activities or proliferation of weapons of mass destruction”. Reporting entities are not notified by SFIS of updates to the UN Security Council lists in a timely manner.
2. Kyrgyzstan has a legal framework in place and experience in compiling a national list of designated persons both spontaneously and on request from foreign counterparties. SFIS updates reporting entities in a timely manner on changes to the national list of designated persons. There are deficiencies pertaining to the untimely provision of judicial rulings on terrorist organizations to SFIS by the relevant Kyrgyz judicial authorities, impacting the timeliness of updating of the national list of designated persons and entities. Designations to the national list are largely subject to the existence of criminal cases or sentences. The Kyrgyz Republic has experience in identifying designated persons, freezing their assets as well as in complete and partial unfreezing of assets belonging to delisted persons. The Kyrgyz Republic did not submit any proposals to the relevant UNSC Committees for the designation of persons or entities.
3. Reporting entities (except for banks, whose assets account for 91.2% of the country's entire financial sector, and large microfinance institutions) have some deficiencies in implementing targeted financial sanctions.
4. While a number of government authorities supervise the activities of non-profit organizations (NPOs), the country lacks a targeted, inter-agency coordinated risk-based approach to the NPO sector supervision aimed at identifying and mitigating TF risks.
5. Government authorities have not conducted an assessment of the NPO sector for the risk of abuse of various categories of NPOs for terrorist financing, and have not taken CFT risk

based measures for raising awareness in the sector (i.e. provided neither training nor guidelines).

6. While certain facts point to the presence of TF risks in the country, there is no common understanding of the level of TF risks in Kyrgyzstan. In this context, and taking into account the deficiencies identified in the existing system, the measures undertaken by Kyrgyzstan at this stage cannot be considered sufficient.

#### ***Immediate Outcome 11***

1. Kyrgyzstan has a legal framework in place for the proper implementation of targeted financial sanctions against persons and entities designated by the UN Security Council. Alongside the implementation of the UNSC sanctions regime, Kyrgyzstan applies additional proliferation financing preventive measures.
2. There are deficiencies in the timely notification of reporting entities of updates to the lists and in reporting entities' understanding of their UNSC targeted financial sanctions obligations.
3. Insufficient coverage of types of reporting entities by the AML/CFT legislation, coupled with the absence of designated supervisory bodies in certain sectors of reporting entities, may impact the implementation of the UN sanctions regime in Kyrgyzstan.

#### **Recommended Actions**

##### **Immediate Outcome 9**

1. Kyrgyzstan should incorporate CFT provisions into its national law enforcement strategies (e.g., mandatory inquiry into the financial aspects of terrorist activity, automation of investigations, etc.).
2. Law enforcement authorities should continue the practice of spontaneous CFT financial investigations with due consideration of the risks identified.
3. The competent authorities should focus on identifying and investigating TF as a separate type of criminal activity.
4. Kyrgyzstan should, based on the experience of other countries in TF-related evidence gathering, develop guidelines for conducting TF financial investigations (for law enforcement) and legal proceedings (for the judiciary), as well as provide appropriate training.
5. Kyrgyzstan should draft and approve a guidance paper requiring law enforcement agencies tasked with investigating TF cases to conduct parallel financial investigations into TF.

##### **Immediate Outcomes 10**

1. SFIS should ensure implementation of targeted financial sanctions without delay in accordance with the UNSC sanctions regimes, and communicate them to the reporting entities and the general public in a timely manner.
2. Kyrgyzstan should enhance coordination between the judicial authorities and SFIS to ensure the timely communication of information on convictions of persons and entities linked to terrorist activity for their subsequent inclusion in the National List in a timely manner.
3. Kyrgyzstan is recommended to more actively initiate the listing of persons and entities to the National list on the basis of additional grounds besides the presence of criminal



procedural measures or conviction, demonstrating the link of persons and entities to the terrorist activity.

4. Kyrgyzstan should, based on the National List, initiate the submission of designation proposals to the relevant UNSC Committees.
5. The Kyrgyz authorities should, using the risk-based approach, regularly engage with the NPO sector to raise awareness.
6. Kyrgyzstan should develop a mechanism and conduct risk-based supervision of the NPO sector.

### **Immediate Outcomes 11**

1. SFIS should ensure implementation of targeted financial sanctions without delay in accordance with the UNSC sanctions regimes, and communicate them to the reporting entities and the general public in a timely manner.
2. Kyrgyzstan should continue to conduct trainings for reporting entities in the field of PF targeted financial sanctions application. In particular, to draw reporting entities' attention to the fact that verification of persons and entities against the Lists should not be limited to threshold and suspicious transactions, but should also include the identification of beneficial owners or persons controlling the assets and their matching against the Lists.
3. Kyrgyzstan should ensure supervision over the implementation of the requirements of the UNSC sanctions regime by notaries, other independent legal professions, real estate dealers.

271. This Section is dedicated to the review and assessment of the progress in achieving Immediate Outcomes 9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

### ***Immediate Outcome 9 (TF Investigation and Prosecution)***

#### *Prosecution/conviction of TF activity consistent with the country's risk profile*

272. Investigations into crimes against public security, including terrorist financing, are conducted by investigators of state national security bodies (SNSC). MIA investigators may conduct certain types of investigations into this category of offences and then refer their findings to the SNSC for further investigative work.

273. There are statistics on the number of registered terrorist offences (Article 226 of the Criminal Code "Terrorism"), court referrals and convictions (Table 12). At the same time, there is no information on investigations into TF in these cases.

274. Based on the report on the outcomes of court proceedings, there were several convictions in 2017 under Article 226-1 of the Criminal Code for TF (Case studies 7, 8 and 9).

**Table 12.** Procedural decisions on Article 226 of the Criminal Code

Article of criminal code	Decisions	2012	2013	2014	2015	2016
Terrorist Act (Article 226 of the Criminal Code)	Initiated criminal proceedings	8	2	1	5	8
	Referred to court	5	2	2	-	4
	Convictions	4	1	-	1	5

275. The assessment team came to the conclusion that Kyrgyzstan faces TF risks. Kyrgyz nationals take part as foreign terrorist fighters in the conflicts in Syria and Iraq, as well as being actively recruited by various terrorist organizations. According to the MIA, about 1000 (721 as per SNSC) Kyrgyz nationals were fighting in Syria at the time of the on-site mission. There were 547 individuals and 14 entities, including Al-Qaeda, Taliban and ISIL, on Kyrgyzstan's terrorist and extremist watch list (List) at the time of the on-site mission. The Kyrgyz authorities have information that the listed individuals were members of ISIL combat units. Considering military setbacks for ISIL in Syria, it is likely that these individuals will return home, with possible financial support from their relatives, associates and other persons.

276. Kyrgyzstan's geographical proximity to Afghanistan, which is home to a substantial number of terrorists and terrorist organizations, and its position along the Northern drug trafficking route may serve as potential sources of TF threats.

277. There is a potential risk of NPOs being involved in terrorist financing in Kyrgyzstan. Despite the involvement of several government agencies in the monitoring of the NPO sector, the country lacks a coordinated interagency approach to the NPO sector supervision aimed at identifying and mitigating TF risks.

278. Among the factors impacting the situation and raising the level of terrorist and TF risks are the socio-economic problems, low religious literacy and poor inter-agency cooperation. All this indicates that there are factors contributing to a possible high level of risks related to terrorist activity and its financing.

279. At the same time, the country's law enforcement authorities rate TF risks as low and do not view TF as a serious threat. Thus, according to law enforcement authorities, a majority of Kyrgyz nationals recruited by international terrorist organizations to fight abroad use their own funding to pay for the trip (sale of personal property, commission of common crimes such as robbery, etc.). The country's law, meanwhile, allows the prosecution of persons committing such crimes, including for raising, moving and using funds for TF purposes.

#### *TF identification and investigation*

280. Representatives of law enforcement authorities, when asked to supply information on their efforts to combat terrorism and terrorist financing, as well as in the course of discussions of related issues, cited the classified status of such data at all stages of the investigative process. After the on-site mission, the SNSC provided substantial information on CFT efforts, including examples of TF-related criminal prosecutions and convictions. Given that the investigation and judicial proceedings had ended before the departure of the on-site mission from the country, this information was included in the report.

281. TF investigations are conducted in parallel with anti-terrorist investigations. At the same time, in many criminal cases reaching courts, achieving TF convictions proves challenging. Thus, in one case heard in September 2016, all charges brought under Art. 226.1 of the Criminal Code were dismissed on the ground that the investigators had not been able to seize the funds used for terrorist financing. Notably, all the defendants were found guilty of other offences (Case study 10).

282. According to the assessment team, the challenge associated with proving a person's involvement in terrorist financing is a complex one, and may be linked both to the low quality of supporting evidence and the adjudicatory body's failure to understand the constituent elements of the TF offence. It was not possible to examine in more detail the reasons for TF-related acquittals due to the classified nature of some TF data. It should also be noted that due to the recency of TF legislation, the country's authorities lack experience in prosecuting TF offences (Article 226-1 of the Criminal Code "Terrorist financing" was enacted in May 29, 2013). In addition, every time law enforcement authorities failed

to secure a TF conviction for a defendant, he was prosecuted for other offences related to terrorism and other serious and mostly serious crimes (Case studies 10 and 11).

283. The country's law enforcement authorities for their part have confirmed challenges in collecting evidence in the course of TF investigations. In particular, they presented the example of criminal proceedings instituted by law enforcement authorities with the use, inter alia, of information presented by SFIS against persons linked to the terrorist group Zhaishul Makhdi. The charges were laid against 16 persons, some of whom were charged with committing criminal offences covered by Article 226-1 (Financing of Terrorist Activity) of the Criminal Code. However, since this Article had never been applied in practice, and due to lack of evidence, the actions of the defendants were later categorized as criminal offences covered by Article 226-2 "Inducing to Committing Crimes of Terrorist or Extremist Nature or Providing Assistance of any Kind". The court decision states that persons accused of being members of a terrorist organization did not collect funds and provide other financial services for the terrorist organization they created.

284. Kyrgyzstan also cited examples of successful TF convictions in 2017 resulting in long prison sentences and forfeiture of property (Case studies 8 and 9).

#### **Case study 7.**

In August 2016, the police opened criminal proceedings into an explosion at the Chinese Embassy in Kyrgyzstan. The ensuing investigation revealed that the organizers of the terrorist act in Kyrgyzstan had received money transfers via Hawala from Turkey and cash payments from relatives (Kyrgyz nationals M and A) totalling \$6,000 for use in terrorist financing: renting residential property and purchasing a car used in the preparation and carrying out of the terrorist act.

On February 22, 2017, the criminal case against M and A, as well as against another person involved in the case, I, was referred to court. I was sentenced to 20 years in prison, M to 12 years, and A to 15 years, including for terrorist financing, with forfeiture of property.

#### **Case study 8.**

Criminal proceedings under par. 1 of Art. 241 (Illegal acquisition, transfer, sale, storage, transportation or carrying of firearms, ammunition, explosives and explosive devices) of the Criminal Code were initiated in October 2016.

In October 2016, the court sanctioned a search of Z private residence, where the police found ammunition and thumb drives. Z was charged under par. 1 of Art. 241, par. 2 of Art. 339, par. 1 of Art. 375 and par. 1 of Art. 266-1 of the Criminal Code (Arms and ammunition trafficking, escape from a detention facility, engaging in mercenary activities and terrorist financing).

The investigation findings were referred in January 2017 to court. On 31 March 2017, Z was found guilty under par. 1 of Art. 226-1, par. 1 of Art. 241 and par. 2 of Art. 339 of the Criminal Code, and sentenced to a total of 5 years in prison with forfeiture of property.

#### **Case study 9.**

In November 2016, law enforcement authorities initiated criminal proceedings under par. 1 of Art. 226-1, par. 3 of Art. 299-1 and par. 1 of Art. 355 of the Criminal Code into the provision of monetary support by members of the illegal organization Jundulloh in Kyrgyzstan and Russia to their associates fighting in Syria and Iraq.

In the criminal case, a decision was made to bring as a defendant against a citizen of the Kyrgyz Republic N.

Charges were brought against N. In February 2017, the case was referred to court, which sentenced N to 8 years of imprisonment, with forfeiture of property.

#### Case study 10.

A criminal investigation against Kyrgyz national A, the leader of a criminal group made up of Kyrgyz nationals who raised funds for militants travelling to Syria, was launched in March 2016.

The defendants were charged with engaging in mercenary activities, participation as part of a group in activities aimed at inciting ethnic, racial and religious hatred, separatist activities and terrorist financing (par. 1 of Art. 355; par. 3 of Art. 299-1; Art. 295-1; and sub.par. 3 of par. 2 of Art. 226-1 of Criminal Code).

The case materials were referred in September 2016 to court, which dismissed all charges brought under Art. 226.1 of the Criminal Code on the ground that the investigators had not been able to seize the funds used for terrorist financing. All the defendants were found guilty of other offences.

#### Case study 11.

A criminal investigation against Kyrgyz national K., who, while fighting for ISIL in Syria, with a view to raising adding funding for this terrorist organization, recruited individuals wishing to join ISIL and directed their actions to commit serious and mostly serious crime.

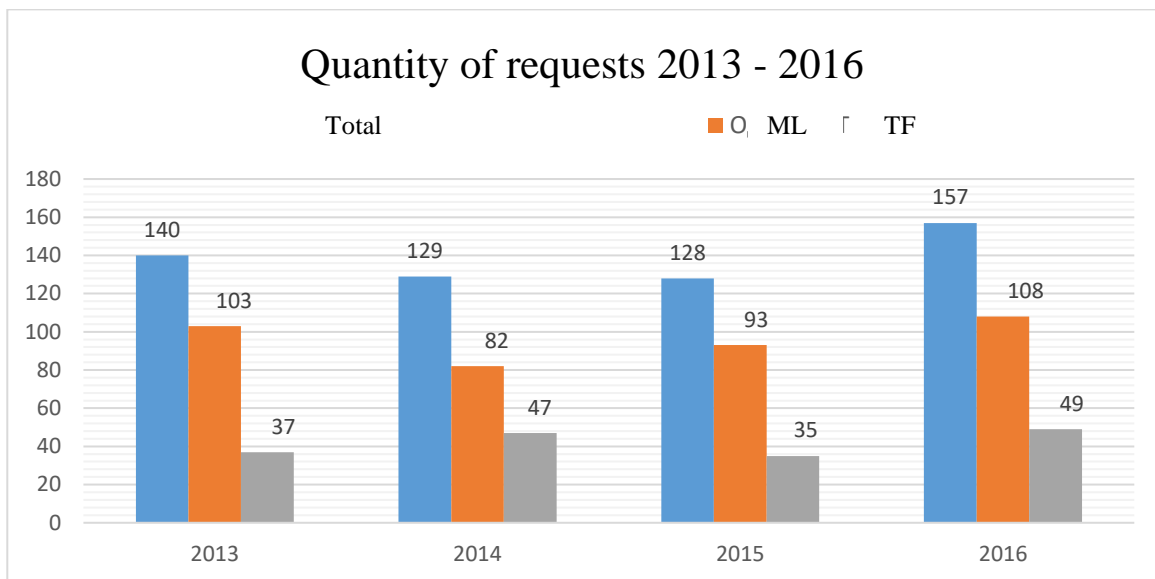
The defendants were charged with membership of an illegal armed group and participation in activities aimed at inciting ethnic, racial and religious hatred (par. 2 of Art. 229; par. 2 of Art. 230; and par. 3 of Art. 299-1 of the Criminal Code). One of the defendants was also charged under Art. 27 and sub.part 3 of par. 2 of Art. 226-1 (preparations, made as part of an organized criminal group, to engage in terrorist financing).

The case materials were referred in July 2016 to court, which, however, dismissed TF charges. The defendants were found guilty of other offences of Criminal Code.

285. In identifying TF indicators and conducting investigations, law enforcement authorities use the intelligence provided by SFIS, which both responds to TF-related requests from law enforcement authorities (Figure 1) and prepares spontaneous disseminations for use by law enforcement agencies (Table 6). In 2013-2106, TF-related requests accounted for approx. 30% of the total number of requests, underscoring the close nature of cooperation between law enforcement authorities and SFIS in combating TF. From 2014 to 2016, SFIS sent to law enforcement authorities 11 TF-related spontaneous disseminations, which are used as reference material by officers tasked with conducting inquiries or criminal investigations.

286. Representatives of the country's law enforcement authorities gave examples of successful cooperation with SFIS, including a case where the intelligence provided led to the initiation of criminal proceedings under Art. 226-1 of the Criminal Code (Case study 12).

**Figure 1.**



### Case study 12

The investigation was conducted in respect of the persons who were close relatives of the foreign terrorist fighter and who made money transfers to the Syrian residents suspected of being linked to the ISIL terrorist organization.

Spontaneous disseminations were forwarded to the MIA.

The defendants were charged with offences falling under Article 226-1 (Terrorist financing) and Article 375 (Engaging in mercenary activities) of the Criminal Code. The outcomes of the trial were not available as of the time the report preparation.

#### *TF investigation integrated with -and supportive of- national strategies*

287. At the time of the on-site mission, the assessment team concluded that investigations into terrorist financing were too narrow in focus, since the offence was seen as part of a broader fight against drug trafficking. Kyrgyzstan's National Security Strategy, approved by Presidential Decree No. 120 dated June 9, 2012, calls for the adoption of measures needed to combat drug-related money laundering, and to detect and seize the proceeds of drug trafficking and related terrorist and corruption offences. No such measures have been implemented in practice though.

288. The Government's Anti-Terrorist/Extremist Program 2017-2022, approved by Government Decree No. 394 dated 21 June 2017, identifies the work to combat TF as one of its objectives. However, due to the fact that this program was adopted after the on-site mission, it was not considered in this report.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

289. Pursuant to Article 226-1 of the Criminal Code, TF offence is punishable by imprisonment for 4 up to 8 years with confiscation of property. Where the aggravating factors are identified (such as financing of terrorism by a person abusing his/her official position or by a group of persons acting in

conspiracy), TF offence may be punished by imprisonment for 8 up to 15 years with confiscation of property.

290. Law enforcement authorities provided several examples of punishments for financing of terrorism, including penalty in the form of confiscation of property. Sanctions for this category of criminal offence are proportionate and may have the dissuasive effect, provided that they are fully implemented. However, due to the fact this article of the Criminal Code was used to convict persons only in 2017, the assessment team were not fully able to assess the impact of criminal prosecution of TF and effectiveness of sanctions and other measures applied in respect of persons found guilty of TF offences.

#### *Alternative measures used where TF conviction is not possible (e.g. disruption)*

291. No alternative prosecution measures in situations where it is impossible to secure conviction for TF, e.g. application non-conviction based confiscation mechanisms, were presented to the assessors.

292. According to Kyrgyzstan's law enforcement authorities, in the absence of a sufficient evidence in support of terrorism financing charges, the actions of criminals can be qualified as a participation in the commission of serious and mostly serious crimes provided for in other articles of the criminal code related to terrorism.

#### *Overall conclusions on Immediate Outcome 9*

**293. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 9.**

### ***Immediate Outcome 10 (TF Preventive Measures and Financial Sanctions)***

#### *Implementation of targeted financial sanction for TF*

294. Updates to the UNSC 1267/1989 and 1988 designations are added by SFIS to the Kyrgyzstan's "of persons involved in terrorist and extremist activities or proliferation of weapons of mass destruction" through issuance of an order. The order is posted on the website for communicating the updates to the reporting persons. In practice the issuing of the SFIS order may take up to 23 days<sup>34</sup> from the date of update by the UNSC.

295. Since 08.02.2016, the SFIS does not issue orders on amendments to the List of persons and entities linked to terrorist and extremist activities and proliferation on the basis of updates to the UNSC 1267/1989 and 1988 lists. The country considers SFIS Order dated 08.02.2016 No. 8/P on introducing amendments to Order dated 17.04.2015 No. 30/P as the foundation to list by default persons and entities to the List of persons and entities linked to terrorist and extremist activities and proliferation, since the date of update of the UNSC. However, the analysis of the text of SFIS Order demonstrated that it contains just links to the updates of the UNSC list of 17.01.2016.

296. SFIS website has the link to the site on which the consolidated UNSC 1267/1989 and 1988 lists is posted, and updates to the UNSC list are posted on the news page of SFIS website. Reporting entities and other stakeholders may subscribe to the automatic news dissemination system. However, it should be noted that the information on changes in the UNSC 1267/1989 and 1988 lists was updated in untimely manner.

297. Besides that, SFIS sends the information on updates to the list by the direct communication channel to banks and microfinance institutions linked with the system VIPNet Business post.

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<sup>34</sup> SFIS Order No. 8/P dated 08.02.2016 on amendments to SFIS order dated 17.04.2015 No.30/P (concerning updates the UN List dated 17.01.2016).

298. During the time period covered by this assessment, and before the aforementioned mechanism was introduced, SFIS notified all reporting entities, other organizations and government authorities of updates (inclusion and exclusion of designated persons and entities) by mailing letters in hard copy.

299. The Kyrgyz Republic has a mechanism in place for compiling and maintaining a list of persons and entities designated pursuant to UNSCR 1373 and actively uses this mechanism. Persons and entities may be included in this list based on SFIS's decisions made upon receipt of relevant information from the competent authorities and in the presence of the grounds for designation specified in the Regulation on the List and also on SFIS's own initiative when it uncovers facts indicating that persons and entities are linked to terrorist activity. Conviction by court is one of the grounds for designations. However, due to insufficient coordination between SFIS and judicial authorities, in some cases the court decrees banning the activity of certain terrorist organizations in the Kyrgyz Republic were not timely communicated to SFIS in the prescribed manner for inclusion of those organizations in the Kyrgyzstan's National List<sup>35</sup>.

300. SFIS is also authorized to exclude a person or an entity from the national list in the presence of the grounds for de-listing specified in the Regulation on the List, upon receipt of relevant information from other national authorities or on its own initiative.

301. From 2013 to 2016, the Kyrgyz Republic listed in the National list overall 94 persons and entities on its own initiative based on the judgments of conviction rendered by Kyrgyz courts that came into force. Analysis of the foundations for listing persons and entities to the Kyrgyzstan's National list demonstrated that they are either court convictions in force or criminal case decisions. During the same period, the Kyrgyz Republic de-listed 5 persons and entities after the documents that constituted the grounds for their designation became invalid and after the criminal records are cancelled or the criminal term expired.

302. Kyrgyzstan has the necessary mechanism in place for international cooperation as well as for sending requests and executing foreign requests. For example, 152 persons linked to terrorist and extremist activities were included in the national lists of Kyrgyzstan and Russia as a result of cooperative efforts undertaken jointly by SFIS and Rosfinmonitoring. Besides, on the basis of the request from Australia 2 physical persons linked to terrorist activity were listed in the Kyrgyzstan's National list.

303. At the same time, it should be noted that despite the fact of active work on listing persons and entities in the National list there are no cases of Kyrgyzstan proposing to list persons and entities to the UNSC relevant Committees. The country representatives said that they were planning to propose to the UNSC and explained that it did not do it before due to lack of human resources.

304. Information on updates to the list formed by Kyrgyzstan including the information on exclusions from the list, is immediately posted on the news part of SFIS website. The updates are timely. Moreover, the information on updates to the list is communicated to the reporting entities, other organizations and state authorities in the procedure stated mentioned above.

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<sup>35</sup> **Unification Church (Moon's Church)** – pursuant to the ruling of Sverdlovsk district court of Bishkek city of February 22, 2012, activities of this organization are prohibited in Kyrgyzstan.

**Jabhat an Nusra** – pursuant to the ruling of Oktyabrsky district court of Bishkek city of June 23, 2015, this religions organization was recognized as terrorist and extremist, and its activities are prohibited in Kyrgyzstan.

**Katibat al-Imam al-Bukhari (Imam Burkari Battalion)** - pursuant to the ruling of Osh city court of May 13, 2015, this organization was recognized as terrorist and extremist, and its activities are prohibited in Kyrgyzstan.

**Jannat Oshiklari (Heaven Worshippers)** - pursuant to the ruling of Osh city court of May 13, 2015, this organization was recognized as terrorist and extremist, and its activities are banned in Kyrgyzstan.

**Jammat at-Tawhid wal-Jihad** - pursuant to the ruling of Osh city court of March 17, 2016, this organization was recognized as terrorist, and its activities are banned in Kyrgyzstan.

305. As for understanding and implementation of the sanctions regime, the situation varies across different types of reporting entities.

306. Among the reporting entities, banks and large micro-financing organizations have the highest level of understanding of the sanctions obligations and possess relevant mechanisms and technical facilities for their implementation. They use the databases of designated persons and entities that are updated on a daily basis. The IT technologies applied by banks and large micro-financing organizations allow them to immediately detect matches to the lists in course of providing services to customers. There were instances in the banking sector when funds were frozen upon detection of matches to the list of designated persons and entities. Information on identified matches was transmitted to SFIS via the direct communication channels.

307. As for other reporting entities, including DNFBPs, the latter, for the most part, have no access to automated systems for updating designation databases. Some reporting entities use copies of the list printed, at intervals determined at their discretion, to manually match the details of individuals and corporate customers against the list. A majority of reporting entities (except for banks and some microfinance entities linked to the VIPNet Business post) rely on telephone and fax to report matches and assets freezes, followed by the submission of an STR.

308. Lack of shared and proper understanding by the majority of reporting entities of the obligations related to checking customers against the lists of designated persons and entities also has a negative impact on effectiveness of implementation of the sanctions regime. Exchange offices cross-check data only when carrying out above-threshold transactions above KGS 50,000. Some reporting entities cross-check customer data with designated persons and entities only when the client's behaviour causes suspicion. In a single case when using the service of submitting a "bonus" card identification and cross-checking of the client with the lists is done only at the time of handing the card.

309. The reporting entities (except banks) suffer a deficiency related to identification of beneficial owners. Reporting entities (except for banks) demonstrated very low level of understanding of their obligations and lack of mechanisms for identifying beneficial owners. This has a negative effect on adequate implementation of the freezing requirements, since reporting entities do not identify designated persons and entities that indirectly own or control assets belonging to other persons and entities.

310. With a view to rectifying the current situation and improving compliance with implementation of the UN sanctions, SFIS's Training and Methodology Centre organizes trainings for the employees of reporting entities from among financial institutions and DNFBPs

#### *Targeted approach, outreach and oversight of at-risk non-profit organizations*

311. Kyrgyzstan does not apply targeted and proportionate measures based on a risk-based approach to non-profit organizations at risk of abuse for TF.

312. As of February 2017, there were 27,782 non-profit organizations registered with the MoJ, of which approx. 15,359 fall under the FATF definition. The table below shows a breakdown of NPOs falling under the FATF definition by category.



**Table 13.** Number of NPOs in Kyrgyzstan falling under the FATF definition (by category)

#	Non-Profit Organizations	Number
1	Institutions <sup>36</sup>	9,774
2	Public associations	8,067
3	Public foundations	5,450
4	Associations (unions) of legal entities	989
8	Religious associations	364

313. However, pursuant to Article 6 of the Kyrgyz Law "On Non-Profit Organizations", the establishment of an NPO does not have to be accompanied by the incorporation of a legal entity. NPOs established without incorporation are not required to be registered either with the Ministry of Justice or any other state authority. Government authorities and representatives of registered NPOs lack accurate information about the size and number of unregistered NPOs. At the same time, as part of their study of the religious situation in Kyrgyzstan, the country's authorities carried out work to determine the number of unregistered religious organizations. According to the study findings, there were 512 unregistered mosques in the country.

314. During the meetings with representatives of both government authorities and the private sector, it was noted that only 1/3 of registered NPOs falling under the FATF definition are active. The rest are not active and, accordingly, do not file any reports with authorities, meaning that they, despite legally existing and having registered addresses and bank details, are outside the reach of the only mechanism that can be used to monitor their activities. It should be noted that according to the amendments to the Law on State (Government) Registration of Legal Entities (that are effective since 2012) a court order on forced liquidation of a legal entity (when tax authority or authority of the Social fund submits an appropriate letter on the forced liquidation) constitutes the grounds for issuing an order on registration of the termination of activity of such legal entity by the registration authority. Besides that, according to the amended Law all legal entities registered (re-registered) before January 1, 1997 were subject to mandatory government re-registration or registration of termination of activity in the prescribed manner before the prescribed date. Those legal entities that failed to undergo government re-registration or registration of termination of activity before January 1, 2015 are subject to forced liquidation by a court at the request of the relevant local office of the Social Fund and/or tax authorities. Kyrgyzstan provided the following information on forced liquidation of NPOs (by a court order, Table 14).

**Table 14.** Number of liquidated NPOs (by a court order)

Year	Number of liquidated NPOs (by a court order)
2012	51
2013	91
2014	213

<sup>36</sup> According to the Kyrgyz authorities, 95% of this category are public institutions, schools, kindergartens, healthcare institutions.

2015	368
2016	121
<b>Total:</b>	<b>844</b>

315. The presented data and explanations show that measures taken to “clean” the sector from non-active NPOs are not sufficient or effective enough.

316. In 2016, the Kyrgyz authorities together with the NPO sector conducted work to analyse the entire sector to determine what segment is covered by the FATF definition of the NPO for identifying those NPOs that may potentially pose enhanced TF risk.

317. At the same time, in the ML/TF Risk Assessment Summary Report (2017 Report), there is just one table showing the levels of vulnerability assigned to entities in the for-profit and non-profit sectors. The report contains no description of risks. The Kyrgyz authorities were not able to fully demonstrate the extent to which they identified, assessed and understood risks of abuse of NPOs for TF purposes.

318. The Kyrgyz authorities have a general idea of the areas of NPOs’ activities – for registration of legal entities with the MoJ it is necessary to provide information of types of activities and the charter (articles of organization). However, as mentioned above, NPOs may be established as entities without corporate status and, therefore, are not obliged to undergo the government registration procedure.

319. While a number of government authorities supervise the activities of non-profit organizations, there is no targeted, inter-agency coordinated risk-based approach to supervising the whole NPO sector for identifying and mitigating TF risks.

320. The government authorities have not provided the NPO sector with any guidelines regarding exposure to TF risks, and no regular training is delivered to the sector. In the reporting period, SFIS held just a few meetings with the representatives of the NPO sector (8 workshops and meetings, of which 6 were held in 2016-2017) and signed the memorandum of cooperation<sup>37</sup> with one NPO (“Civic Participation” public foundation).

321. The NPO sector is featured by the extended self-regulation: the “internal rules of the sector/market”, although not adopted formally, are observed by the NPOs for receiving grants; there is no SRB or single association in the NPO sector; there is the code on conduct<sup>38</sup> in the sector; NPOs are required to undergo legal review for receiving large grants; large NPOs strive to ensure transparency of their activities (post detailed information of their websites), etc. However, the measures taken by the sector should, by no means, substitute government regulation.

322. One case of misuse of NPO for TF purposes was registered in Kyrgyzstan.

### *Deprivation of TF assets and instrumentalities*

323. According to SFIS and information provided by reporting entities, there have been identified matches with the lists of designated persons and entities. After further investigation by SFIS, the matches with the UNSC lists were deemed false positive and, therefore, no funds/ assets were frozen.

<sup>37</sup> Lines of cooperation: joint risk assessment of TF and extremist activity in the NPO sector; support for working groups and expert councils established in the framework of TF and extremist activity risk assessment in the NPO sector; joint work on the development and implementation of a state strategy (policy) for CFTE in the NPO sector; increasing the potential of NPOs in CFTE; conducting other work by mutual agreement of the Parties.

<sup>38</sup> Developed by The Association of Centers for Support of Civil Society (ACSCS)

However, some matches with Kyrgyzstan's national list were found positive. In 2016, commercial banks identified two positive matches in respect of two individuals whose names matched the names of parties on the list and whose assets totalling KGS 378,315 were subsequently frozen.

324.SFIS also informed the assessors about one instance where a part of the frozen funds was unfrozen (Case study 13).

### Case study 13

#### ***Partial unfreezing of funds of the legal entity included in the Kyrgyzstan's national list***

By SFIS order dated ..., legal entity A was included in the Kyrgyz national list after it was found to be linked to terrorist activity

The Kyrgyz bank B froze the funds of legal entity A after it identified the positive match with the Kyrgyz national list.

At the time when its funds were frozen, legal entity A had certain obligations related to payment of taxes, social security benefits and utility bills (electricity, water and heating). Besides that, legal entity A supported and sponsored the orphanage and, therefore, it needed funds for covering food and medical drug expenses and for paying wages to the teachers and nurses.

Legal entity A requested SFIS to unfreeze part of its funds needed for covering the aforementioned expenses. SFIS collected and verified the supporting information, made the favourable conclusion and permitted to unfreeze a portion of the funds.

The issued order was sent to the relevant financial institutions.

In order to monitor the proper use of the unfrozen funds and minimize the risks of their potential misuse, SFIS disseminated information on partial unfreezing of funds of legal entity A to law enforcement.

Legal entity A regularly reports on the use of the unfrozen funds.

325.According to the provided information, SFIS has the experience of delisting natural persons designated by the Kyrgyz Republic and unfreezing their funds. As noted above, the Kyrgyzstan excluded 5 persons linked to terrorism from the National list, but due to absence of the corresponding freezing, the issue of unfreezing did not arise. Nevertheless, Kyrgyzstan has the experience of delisting natural persons linked to extremist activities designated by the Kyrgyz Republic in relation to whom de-freezing was applied. Taking into account that Kyrgyzstan applies the same mechanism to persons linked to terrorism and to extremist activity, the data demonstrate that the mechanism is successfully used. (see Table 15).

**Table 15.** National delisting and unfreezing statistics

Year	De-listed individuals	Unfrozen funds
2014	7	KGS 111,091 (equivalent USD 1,613)
2015	1	KGS 6,064 (equivalent USD 88)
2016	8	KGS 171,207 (equivalent USD 2,486)

326. Given the significant number of terrorism-related offences identified in Kyrgyzstan and taking into account the fact that hundreds of citizens of the Kyrgyz Republic stay in Syria, the assessors consider that the adopted measures to deprive the persons linked to terrorist activity of their assets are not sufficient. SFIS has legal basis for adopting preventive measures to initiate in relation to relevant persons the measures of criminal procedural pressure the use of which may contribute to a more active search and freezing of assets. Due to lack of information on number of instituted criminal proceedings and judgments of conviction rendered by courts, it difficult to conclude that the criminal procedural measures taken by Kyrgyzstan for depriving persons of assets and instrumentalities related to TF activities are effective (see also IO9).

#### *Consistency of measures with overall TF risk profile*

327. There is no common understanding of TF risks in Kyrgyzstan (see also analysis of IO1), however, it is recognized that the Kyrgyz citizens stay in Syria and are involved in terrorism-related activities. One case of abuse of NPO for TF purposes was registered in Kyrgyzstan. In light of the above, taking into consideration the aforementioned shortcomings of the system in preventing the collection, movement and use of funds as well as the abuse of the NPO sector, the Kyrgyz Republic should take additional steps to promote a common understanding of TF risks present in Kyrgyzstan, as well as improve the system for identifying terrorists, terrorist organizations and their financiers and depriving them of funds and assets.

#### *Overall conclusions on Immediate Outcome 10*

**328. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 10.**

#### *Immediate Outcome 11 (PF Financial Sanctions)*

329. The Kyrgyz Republic boasts some uranium deposits and has, in the period under review, completed various uranium extraction and treatment projects<sup>39</sup>, as well as being an exporter of dual-use products and raw materials for nuclear reactors<sup>40</sup>. Kyrgyzstan cooperates with the UNSC 1540 Committee. The Action Plan on implementation of UNSC 1540 contains requirements for compliance with FATF R. 7.

330. The country is not the member of the international export control regimes, but participates in joint international and bilateral activities aimed at mitigating the risk of illegal export of goods. Kyrgyzstan harmonizes its lists of controlled goods with international lists. Kyrgyzstan uses diplomatic communication channels to regularly request data on granted and denied licenses for controlled goods.

331. The Kyrgyz competent authorities led by the International Commission do not cooperate and do not develop and coordinate implementation of the CPF strategy.

#### *Implementation of targeted financial sanctions related to proliferation financing without delay*

332. The State Financial Intelligence Service (SFIS) ensures the implementation of UNSC targeted financial sanctions related to proliferation financing through the issuance of SFIS orders and publication and communication of the relevant information to reporting entities, other stakeholders and government authorities. The deficiencies related, in particular, to untimely notification of reporting entities of updates to the UNSC lists and the inadequate process of communicating updates

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<sup>39</sup> <http://www.world-nuclear.org/information-library/country-profiles/countries-g-n/kyrgyzstan.aspx>

<sup>40</sup> <http://www.tradingeconomics.com/kyrgyzstan/exports/nuclear-reactors-boilers-machinery>

to reporting entities may have a negative impact on implementation by Kyrgyzstan of targeted financial sanctions related to combating PF (the process is described in detail in IO10).

#### *Identification of funds and other assets held by designated persons/entities*

333. According to the provided information, no positive matches with persons and entities designated under the relevant UNSC Resolution have been identified and no funds and assets have been frozen so far.

334. Although the Kyrgyz Republic maintains diplomatic relations with the DPRK<sup>41</sup> and the visa-free regime is established between them, the Kyrgyz authorities assured the assessor that there are no trade or financial flows between the two countries. There has been a large increase in the volume of Kyrgyzstan's trade with Iran in recent years<sup>42</sup>. As explained by Kyrgyzstan payment for the goods from Iran is done through third countries.

335. In addition to the UNSC sanctions regime, Kyrgyzstan adopted a broader range of additional preventive measures to combat PF. The new requirements apply to persons residing or registered in DPRK or Iran. Pursuant to SFIS Order No.1/NPA of 23.01/2017, reporting entities should develop and apply countermeasures when establishing business relationships with natural and legal persons residing or registered in DPRK. They are further recommended to refrain from establishing correspondent relationships with financial institutions registered in DPRK. In relation to Iran, reporting entities should apply measures proportionate to the high risk clients. In practice, at the time of the on-site visit, Kyrgyz financial institutions had no established correspondent relationships with entities registered in these countries. Majority of reporting entities explained that they refuse to deal with persons related to Iran.

#### *FIs and DNFBPs' understanding of and compliance with obligations*

336. SFIS publishes on its official website, in the news section, updates to the consolidated list of persons and entities designated by the UN for PF. In addition, SFIS website contains a direct link to the UNSC consolidated list, enabling interested persons to promptly access the most up-to-date information. However, the transposition of the UN lists into the National list of persons and entities linked to terrorist and extremist activities or proliferation, as well as informing the reporting entities on updates has deficiencies of legal and timeliness character. Banks, whose assets account for 91.2% of the country's entire financial sector, and major microfinance institutions exhibit a high level of understanding of their sanctions-related obligations, and possess relevant mechanisms and technical facilities for their implementation. They use the databases of designated persons and entities that are updated on a daily basis. IT technologies available to banks and major microfinance institutions allow them to promptly match their customer data against the relevant databases. Other reporting entities have demonstrated a low level of understanding and implementation of their PF sanctions-related obligations, applying the threshold approach or other measures only when there is a suspicion in relation to the client (see IO10 for more details).

337. Reporting entities suffer a systemic deficiency related to identification of designated persons and entities that indirectly own or control assets of other persons and entities, which is attributable to insufficient compliance with the beneficial owner identification requirement. This issue is especially relevant, since according to the information provided to the assessors there are one individual entrepreneur-dentist who was a citizen of the DPRK was registered in Kyrgyzstan and one legal entity with participation of two DPRK residents activity of which was bulk trade in consumer goods.

338. Kyrgyzstan does not ensure proper compliance with the financial sanctions requirements by all categories of reporting entities listed in the FATF Recommendations, since notaries and other

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<sup>41</sup> <http://www.mfa.gov.kg/contents/view/id/216>

<sup>42</sup> <http://knews.kg/2017/04/tovarooborot-mezhdu-kyrgyzstanom-i-iranom-sostavil-14-8-mln/>

independent legal professionals are not the reporting entities under Kyrgyzstan's AML/CFT legislation.

339. In order to ensure that reporting entities understand their priorities, timelines and obligations for the implementation of UNSC financial sanctions, SFIS has prepared the following guidance paper: Regulations on the Procedure for Suspending Transactions and Freezing and De-freezing Funds No. 135, setting out in detail the grounds and procedure for freezing and de-freezing assets. In addition, SFIS regularly delivers training in order to raise awareness of reporting entities of the measures they have to take for implementing the UN targeted financial sanctions. Mandatory training is provided for newly hired staff of reporting entities, while other personnel of reporting entities undergo training once in six months.

#### *Competent authorities ensuring and monitoring compliance by FIs and DNFBPs with obligations*

340. According to the data made available by the Kyrgyz authorities, checking the process of implementation of the obligations on identification of persons and entities and freezing of assets is the integral part of on-site inspections conducted by respective supervisory bodies. As a result of conducted inspections, there were discovered solitary cases of non-implementation of respective obligations by reporting entities, which related to sanctions against persons linked to extremist activities. Sanctions (fines) were applied in these cases. There were no facts of breaking the requirements of UN PF sanctions. This shows the understanding and knowledge by supervisors of the requirements to implement UN sanctions regimes. At the same time it shows that the reporting entities need further improvement of mechanisms used for ensuring proper implementation of the UN sanctions.

341. In Kyrgyzstan there is no supervision over implementation of the AML/CFT requirements by notaries other independent legal professionals, real estate dealers and other persons selling real estate. This fact has a negative impact on effectiveness of implementation of the sanctions regime in the Kyrgyz Republic.

#### *Overall conclusions on Immediate Outcome 11*

**342. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 11.**

## CHAPTER 5. PREVENTIVE MEASURES

### Key Findings and Recommended Actions

#### **Key Findings**

1. The country's banks demonstrated a good understanding of ML/TF risks existing in the sector. The level of understanding of ML/TF risks by non-bank financial institutions (NBFIs)<sup>43</sup> and DNFBPs is limited. DNFBPs<sup>44</sup> view their activities as vulnerable to ML, but failed to demonstrate understanding of the nature and level of risks they are exposed to. Representatives of DNFBPs do not see any TF risks in their activities.
2. Financial institutions, including banks, and DNFBPs are insufficiently aware of the 2017 Report findings and country risks detailed therein. As a result, the Report findings are not accounted for in the internal risk mitigation policies of these entities. That said, banks take steps to mitigate ML/TF risks based on their own understanding of such risks, by applying more rigorous customer identification/transaction monitoring procedures and pre-adoption product assessment. DNFBPs do not take measures to mitigate ML/TF risks in their activities.
3. FIs and DNFBPs have a good understanding of their statutory AML/CFT obligations (CDD, internal controls and record-keeping). Despite difficulties in verifying the veracity of beneficial ownership data, banks demonstrated the fullest understanding and fulfilment of the relevant obligations.
4. Banks demonstrated a good understanding and application of enhanced and specific measures. Banks take action in respect of domestic PEPs despite not being directly required to by law. NBFIs and DNFBPs demonstrated a good understanding of enhanced measures to be taken in respect of PEPs and high risk countries. Small NBFIs and DNFBPs are not consistent in their compliance with the requirement to check the list of persons subject to targeted financial sanctions.
5. FIs demonstrated a good understanding of their obligations regarding suspicious transactions reporting (STR) and mandatory transactions reporting (MTR). The overwhelming majority of STRs originate from the banking sector, whose quality, according to SFIS, has improved. DNFBPs understand their reporting responsibilities and disseminate MTRs to the designated authority, however the mechanism for reporting STRs by DNFBPs is not implemented in practice. The number of TF-related STRs submitted by FIs is negligible.
6. FIs take adequate internal control measures based on their size. There are difficulties with the application of AML/CFT internal controls and information sharing at the financial group level, including in conducting CDD.

#### **Recommended Actions**

1. Kyrgyzstan should take steps to bring its legislation in line with the FATF Recommendations (2012) and to establish appropriate mechanisms to comply with CDD requirements.
2. FIs and DNFBPs should assess inherent risks and take them into account in developing

<sup>43</sup> Non-bank financial institutions (NBFIs) are all types of financial institutions, other than banks, operating in Kyrgyzstan, except for categories not supervised by the competent authorities (see Table 1).

<sup>44</sup> Persons carrying out cash transactions with precious metals and precious stones, and real estate agents.

policies and procedures, as well as adopt robust measures to mitigate the identified risks.

3. Kyrgyzstan should take steps to inform NBFIs and DNFBPs about the ways to identify suspicious transactions/activities, as well as to continue the work aimed at improving the quality of STRs in general.
  - DNFBPs should review the existing suspicious transaction criteria (indicators) in the sectors, assess the effectiveness of the application of threshold values and, if necessary, update them. DNFBPs should be encouraged to develop their own suspicious transaction identification criteria.
4. Kyrgyzstan should take steps to raise FIs and DNFBPs' awareness of the latest trends and typologies, particularly with respect to TF, high-risk jurisdictions and ways to identify beneficial owners, which can be achieved through training.

#### ***Immediate Outcome 4 (Preventive Measures)***

343. This Section is dedicated to the review and assessment of the progress in achieving Immediate Outcome 4. The recommendations relevant for the assessment of effectiveness under this section are R.9-23.

#### *Understanding of ML/TF risks and AML/CFT obligations*

##### *Financial Institutions*

344. The level of risk understanding among different financial institutions is uneven. Banks demonstrated a good understanding of ML/TF risks and their vulnerabilities, as well as their ability to adopt risk mitigation measures (in respect of online banking, remittances, correspondent relationships, business relationships with PEPs, etc.). In particular, when sending remittances, banks perform customer identification by requiring customers to present their ID regardless of the amount involved. Such stringent requirements may impede access to financial services. However, given the importance of migrant workers' remittances to the Kyrgyz economy, a wide availability of these services and their vulnerability to TF (see Chapter 1), such approach is deemed justified.

345. Banks assess their products and services for possible ML/TF vulnerability at the adoption stage, as well as taking into account customer and country risks. However, neither banks nor other financial institutions conduct regular documented ML/TF risk assessments.

346. NBFIs demonstrated a limited understanding of ML/TF risks. All NBFIs whose representatives attended meetings with the assessment team assess their vulnerability to ML/TF risk as low. In support of this view, NBFIs cite the small size of their sectors and total value of transactions (compared with the banking sector), a limited range of available services, and the almost complete absence of non-resident clients and international transactions.

347. According to assessors, although the small size of the banking sector<sup>45</sup> does reduce its exposure to ML/TF risks, the majority of financial institutions are not familiar with the 2017 Report findings, nor do they integrate them into their internal policies. NBFIs tend to underestimate their exposure to certain risk factors inherent in the country. In particular, representatives of insurance companies, professional securities market participants, exchange offices, microfinance organizations and payment services providers hardly mentioned during the meetings such important for Kyrgyzstan risk factors as the shadow economy, reliance on cash and corruption, while citing TF risks only in the context of blacklist-related obligations<sup>46</sup>. In this regard, it appears that NBFI, in addition to

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<sup>45</sup> See section "Financial Sector" in Chapter 1 of the report.

<sup>46</sup> See section "ML/TF Risk Mitigation Measures" below



meeting the basic AML/CFT requirements, should pay more attention to the adequate assessment of their ML/TF risk exposure.

348. Financial institutions and DNFBPs properly understand and implement their statutory AML/CFT obligations (CDD, internal controls and appointment of designated officials). Large banks, in particular subsidiaries of foreign financial institutions, fulfil these requirements to the fullest extent.

349. According to the representatives of financial institutions, legal persons pose a greater risk than natural persons. Customers who are foreign nationals are also considered to pose higher risk compared to the Kyrgyz residents. Besides that, increased attention is paid to unusual transactions which are subject to enhanced scrutiny. Representative of the financial sector are aware that the level of risk of a customer may change once a business relationship has been established.

### *DNFBP*

350. Persons carrying out cash transactions with precious metals and precious stones and real estate agents met by assessors during the on-site mission, despite considering their activity to be vulnerable to ML, have only a general idea of ML risks and a poor understanding of the nature and level of such risks. For example, according to persons carrying out transactions with precious metals and precious stones, their sector is most vulnerable to ML risk when customers use cash to purchase jewellery items.

351. During the meetings, real estate agents noted that real estate services provided in Kyrgyzstan included property searches and authentication of the relevant documents, but not intermediary services in the transfer of funds. Customers are not legally required to use the services of real estate agents. Real estate agents consider all transactions involving the purchase or sale of real estate to be vulnerable to ML risks due to the absence of the requirement to ascertain the legitimacy of the source of the customer's funds. Representative of DNFBPs do not see any TF risks in their activities.

352. Lawyers, accountants, notaries and other legal professionals met during the on-site mission also cited the absence of ML/TF risks in their activities. In their opinion, legal services become vulnerable to ML when they are offered by individual entrepreneurs who are not legal professionals and who provide these services on the basis of a patent. According to accountants, their activity is not vulnerable to ML/TF risks due to the fact that it does not involve either preparation or execution of financial transactions on behalf of the client. Instead, its prime purpose is to prepare and file financial statements. In practice, notaries certify real estate transactions, but do not act as intermediaries in the transfer of funds.

353. As noted in the technical compliance assessment (see technical compliance with Recommendations 22 and 23), some of Kyrgyzstan's DNFBP sectors are subject to a full set of AML/CFT requirements (such as persons carrying out cash transactions with precious metals and precious stones and real estate agents), while others are only covered by the STR submission requirement (such as lawyers, auditors, accountants, notaries and other independent legal professionals and legal consultants). Meanwhile, a close study of the activities of the latter group revealed that lawyers, accountants, auditors and legal consultants do not prepare or conduct transactions for their clients in areas covered by the FATF Recommendations. Due to the absence of casinos and trusts in Kyrgyzstan, the focus of the AML/CFT effectiveness assessment was on the following DNFBP sectors:

- persons carrying out cash transactions with precious metals and precious stones;
- real estate agents;

- notaries and independent legal professionals<sup>47</sup> involved in the preparation of real estate transactions.

354. As regards DNFBPs, persons carrying out cash transactions with precious metals and precious stones demonstrated the best understanding of their AML/CFT obligations. See below for more information on DNFBPs' compliance with AML/CFT requirements.

### *Application of ML/TF mitigation measures*

#### *Financial Institutions*

355. Banks undertake ML/TF risk mitigation action based on their own understanding of such risks. Due to the insufficient awareness on the 2017 Report and on its outcomes, the results of the said Report don't affect day to day operations. Banks mitigate risks by applying enhanced CDD measures which include more thorough identification of customers and/or enhanced monitoring of their transactions. It should be noted that banks rarely apply such measure a refusal to establish a business relationship with certain types of customers (customer acceptance policy), however during the meetings it was noted that there was a mechanism to "force" the client to refuse from the bank's services.

356. Banks typically grade their business relationships with customers as presenting low, medium or high risk in accordance with the Internal Control Rules. Enhanced due diligence is undertaken for high risk relationships. This entails the application of measures such as requesting the customer to provide additional documentation, obtaining senior management approval for the establishment of a business relationship, obtaining information on source of wealth and conducting enhanced scrutiny of transactions. Some banks extend enhanced due diligence measures to medium risk customers.

357. The mitigation measures undertaken by NBFIs primarily include the verification of the client's identity and requests, where necessary, for the production of documents (such as financial documents) needed to better understand the nature of such client's activities.

358. TF mitigation measures chiefly include compliance with the regime established by UNSC Resolutions and monitoring the relevant lists of designations. Reporting entities do not consider TF risks in a broader sense (outside the scope of list matching responsibilities) nor do they provide for any other mitigation measures other than those mentioned above.

#### *DNFBPs*

359. DNFBPs do not conduct a self-assessment of ML/TF risks, including with respect to different clients and specifics of service provision (transaction execution), hence no risk mitigation measures are undertaken. Persons carrying out transactions with precious metals and precious stones and real estate agents rely solely on the legally mandated typical criteria for assessing the risk of the customer's involvement in ML/TF transactions<sup>48</sup>. This state of affairs was confirmed during the assessment of the samples of DNFBPs' AML/CFT internal regulations. Notably, these DNFBP sectors were not officially instructed by the state designated authority (or supervisor) to conduct a self-assessment of ML/TF risks inherent in their activity and undertake appropriate mitigation measures.

360. Some DNFBP representatives participated in SFIS AML/CFT workshops, where the need to conduct self-assessments of ML/TF risks inherent in each sector was emphasized, they lack a full understanding of how it should be done. During these workshops, DNFBP representatives heard

<sup>47</sup> Private lawyers engaged in the provision of a wide range of consulting and other legal services (other than advocacy).

<sup>48</sup> Regulation on the General Requirements for Internal Controls to Combat Money Laundering and Terrorist (Extremist) Financing", approved by Kyrgyz Government Decree No. 135 of March 5, 2010.

about the on-going national risk assessment, but its outcomes were not communicated to them. The self-regulatory organizations of persons carrying out cash transactions with precious metals and precious stones and real estate agents reported that they had participated in the 2017 Report and were aware of its outcomes.

### *Application of CDD and record keeping requirements*

#### *Financial Institutions*

361. Most of the interviewed financial institutions displayed good knowledge of customer identification and verification requirements set out in the AML/CFT Law. Prospective customers, whether natural or legal persons, are required to be physically present for verification purposes and have to complete an application form. A vast majority of customers reside in Kyrgyzstan. Verification of the individual customers' identity is carried out on the basis of their identity document (passport). To verify the identity of resident legal persons, the following are used: the certificate of state registration, the constituent documents (the charter and the founding agreement) and the Kyrgyz Justice Ministry's electronic database of legal persons.

362. Banks are well aware of beneficial ownership requirements and use questionnaires to identify individual(s) ultimately responsible for the legal person. Where legal persons are involved, financial institutions request the customer to provide information on every level of the corporate structure down to the natural persons controlling the structure. According to the representatives of financial institutions, they rarely encounter customers that have a complex ownership structure. The vast majority of customers are legal persons that are registered in Kyrgyzstan and are owned by Kyrgyz nationals. Persons acting on behalf of customers are also verified.

363. NBFIs also use questionnaires to identify beneficial owners of legal persons. At the same time, the accuracy of the provided data is rarely verified based on the type of identified risks. Notably, the Kyrgyz Finance Ministry's database does not contain information on beneficial owners of legal persons. In this regard, it would be useful to conduct training and outreach activities on the identification of beneficial owners based on the level of identified risk.

364. Banks apply adequate measures to understand the purpose of business relationships or transactions and the source of funds of a transaction. As a rule, the information on the source of funds is verified on the basis of contracts (purchase-sale, loan, rental, and service contract), VAT invoices, customs declarations, inheritance documents, etc. Banks request information on the source of funds as part of their on-going monitoring procedures.

365. Banks conduct an ongoing monitoring of customer relationships. Monitoring arrangements vary across banks, with some banks engaging in daily transaction monitoring in response to the relevant triggers. In addition, the level of on-going monitoring is dependent on the level of risk. In those cases where the customer refuses to provide clarifications, a STR is submitted to SFIS. NBFIs monitor business relations by periodically updating their customer information.

366. All financial institutions keep records and documents for more than five years from the date of termination of the business relationship or completion of the transaction. Financial institutions submit to SFIS customer and transaction data upon request. SFIS confirmed that information is available to it on a timely basis when a request is made (the timeline for responding to request is 10 days, however, this time period may be extended on request of a financial institution). Financial institutions indicated that the informal nature of inquiries made by SFIS (a single request may include petitions for a large volume of data on several persons and over a long period of time), as well as the unavailability of all required information in electronic format, affects the timeliness of responses to SFIS requests.

## *DNFBP*

367. In accordance with AML/CFT requirements, persons carrying out cash transactions with precious metals and precious stones and real estate agents must undertake CDD measures and retain customer and transaction data. There are difficulties with verifying the authenticity of data on beneficial owners. There is also some misunderstanding on the part of real estate agents regarding CDD measures and record keeping (in particular, full CDD measures are applied mainly in respect of sellers of real estate, but not buyers, and customer data is stored for no more than 2-3 years, while the legally mandated period is 5 years). DNFBPs are of the view that refusing a business relationship in a situation where information obtained through the CDD process is incomplete is not relevant to them, since those customers who are reluctant to provide necessary information themselves refuse to deal with DNFBPs. However, should such situation occur in practice, representatives of DNFBP stated that they would not accept a customer in respect of whom they are not able to conduct CDD. This approach is confirmed by the procedure for refusing to establish a relationship with, or carry out the instructions of, the customer, as set out in the internal regulations.

368. The AML/CFT law does not require notaries and independent legal professionals involved in the preparation of real estate transactions to perform CDD (identify beneficial owners) and retain customer and transaction data.

## *Application of enhanced or specific CDD*

### *Financial Institutions*

#### **PEPs**

369. Only few banks indicated that they have business relationships with foreign politically exposed persons (PEPs). Representatives of NBKR and banks confirmed that foreign PEPs rarely use the country's financial system (such clients mainly include high-level staff of foreign embassies, foreign companies operating in Kyrgyzstan or other persons in one way or another connected to the country). Application forms require customer to confirm whether or not the customer is a foreign PEP or a family member or close associate of a PEP. The Internet, commercial databases and local resources are also used for identifying PEPs. While the Kyrgyz legislation contains only requirements concerning foreign PEPs, many banks also apply more stringent CDD measures in respect of domestic PEPs by conducting enhanced monitoring of their transactions.

370. Domestic customers are dominant in other financial institutions met by the assessors. In a few cases there appeared to be a lack of systematic process to identify foreign PEPs. This might be attributable to the very small number of foreign PEPs use the financial system and banks in particular rather than any other service provider. During the meetings, representatives of microfinance companies noted that they use open information sources to verify the identity of domestic PEPs, hence the measures adopted by NBFIs in respect of domestic PEPs are limited in range.

#### **Correspondent banks**

371. Awareness and compliance with the standards on correspondent banking is satisfactory. The quality of potential correspondent banks is assessed and potential correspondents that do not meet the standards have been rejected. Correspondent banking arrangements have not been established with shell banks. Correspondent banks are subject to periodic reviews. However, insurance institutions and professional securities market participants do not apply the required CDD measures to relationships that are similar to corresponded banking relationships.

## **New technology and wire transfers**

372. With regard to new technologies, there is internet banking activity, including banking through mobile telephones in Kyrgyzstan. In order to mitigate the risk of fraud and ML/TF related to customer identification (inaccurate information, false identification data, etc.), access to Internet and mobile banking services is only granted to customers who have had face-to-face meetings with bank officials or have existing accounts. The assessment of risks arising from new products and services is covered by banks' procedures. The products and services outside Internet and mobile banking are simple. The assessment of the risk posed by new products takes place at the product development stage, with its findings being included in reports submitted for approval to the board of directors. Among NBFIs the introduction of new technologies, for example, distanced servicing is reported only in professional securities market participants. At the same time, as in the banking sector, the business relations with NBFIs clients are established only after face-to-face meetings.

373. There is a good level of compliance with wire transfer requirements, including the requirements to collect information on recipients of remittances. Checks are undertaken on whether incoming transfers contain all necessary information to identify all persons involved in wire transfers and to establish whether or not they are designated by the relevant UNSC Resolutions. In addition, attention is paid by banks to the payment receiver when considering the risks of transactions.

## **Targeted financial sanctions (TFS)**

374. The measures aimed at ensuring compliance with targeted financial sanctions for TF are implemented by checking whether the relevant persons<sup>49</sup> are designated under applicable UNSCRs (and relevant successor resolutions). There have been a few "false positives", but no persons designated in accordance with UNSC lists have been identified in Kyrgyzstan. There were, however, some positive matches with the National List. Major financial institutions demonstrated high level of understanding of the importance of checking customers for possible designations and do so in practice, a task made easier by the dominance of Kyrgyz residents within the customer base of reporting entities. At the same time, small financial institutions lack consistency in complying with the requirement for checking their customers for possible designations (see IO10).

## **High-risk countries**

375. Banks are aware of the FATF lists of countries that fail or do not adequately comply with the FATF Recommendations. Banks take steps to mitigate such risks, including by terminating the relationships with customers from high risk countries and refusing to establish the relationship with them. During the meeting, representatives of the banking sector noted that they were aware of the information published on the FATF website, as well as that banks have access to SFIS secure communication channel used to send updates to the FATF website. NBFIs are aware of the lists of high risk jurisdictions. Insurance companies and professional securities market participants use them in their work. At the same time the NBFIs representatives said they had no clients from high risk jurisdictions. However, the lists posted on SFIS official website at [fiu.gov.kg](http://fiu.gov.kg) (under section "Lists", subsection "List of High-Risk Countries & Territories) are not regularly updated (last update was on November 3, 2015).

### *DNFBP*

376. Persons carrying out cash transactions with precious metals and precious stones and real estate agents are aware of their obligation to use national and international lists of foreign public officials to identify among their clients persons involved in terrorist activities and extremism, as well as to

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<sup>49</sup> More information on dealing with designations can be found in the section on Immediate Outcome 10.

pay special attention to business relationships and transactions with organizations and persons from countries and territories that do not apply or insufficiently apply the FATF recommendations, and undertake these measures in practice. At the same time, DNFBP representatives noted that no foreign PEPs or persons from high risk countries have been identified by them. There are some shortcomings in dealing with the lists of persons involved in terrorist activities and extremism. For example, one real estate agent attending the meeting informed assessors that he only checks customers for possible designations as terrorists or extremists only if there is a suspicion, while one entrepreneur carrying out transactions with precious metals and precious stones said he only does it when issuing loyalty cards, but not in respect of customers who use a loyalty card to carry out a transaction (see IO10).

377. As noted earlier, the AML/CFT law does not require notaries and independent legal professionals involved in the preparation of real estate transactions to perform CDD.

378. DNFBPs do not undertake special measures in respect of new technologies given the absence of such a requirement in the law and regulations (see technical compliance with Recommendation 22).

### *Reporting obligations and tipping off*

379. Under the AML/CFT Law, reporting entities shall report to the designated state body (SFIS) all suspicious transactions, by submitting a suspicious transaction report (STR), as well as transactions with funds and property subject to mandatory controls in accordance with the criteria established by law.

### *Financial Institutions*

380. Financial institutions are obliged to submit STRs electronically to SFIS. However, it was impossible to verify compliance with this obligation by some types of financial institutions, since they had actually filed no STRs. According to the statistics provided, more than 99% of STRs are submitted by banks (see Tables 16 and 17).

381. NBFIs pay insufficient attention to suspicious transactions that do not match the indicators of suspicion transactions established by SFIS since the majority of these signs have been developed for banks. In this regard, in order to enhance the capability of NBFIs to identify suspicious transactions, it would have been useful to develop and make available to them the relevant typologies, scenarios, trends and indicators.

382. Reports of TF-related suspicious transactions make up less than 1% of the total number of STRs. TF reports are compiled based on the relevant lists of the UN and Kyrgyzstan's National designations lists. Financial institutions are aware of their obligations related to the monitoring of the designations lists. At the same time, there is a need to conduct additional work to clarify to financial institutions their obligations related to the submission of TF suspicion reports, apart from work with the lists.

383. SFIS noted that the quality of STRs filed by banks has improved. Further improvements in the quality of reports is possible through improved analysis of unusual transactions and activities of FI customers.

384. There have been no issues in connection with tipping off. Financial institutions were familiar with the legal requirement related to the tipping off of customers and third parties, although not all of them had formal procedures to reflect this requirement. Protection from tipping off includes the requirement for internal reports of suspicion to be provided to designated officers. The training programs include the tipping off prevention issues. Besides that, SFIS and NBKR provide training in relation to tipping off in the sector.

**Table 16.** Financial institutions. Quantity of suspicious transaction reports and mandatory transaction reports

Reporting entities	2012		2013		2014		2015		2016	
	STR	MTR <sup>50</sup>	STR	MTR	STR	MTR	STR	MTR	STR	MTR
	Banks	49,666	529,662	44,696	593,391	97,630	653,816	80,900	691,734	107,750
Microfinance organizations	115	3,438	278	7,009	103	1,127	69	1,020	124	2,764
Credit unions	28	107	14	209	10	61	6	47	-	41
Insurance companies	-	12	2	9	-	6	-	2	-	88
Professional securities market participants	1	169	56	92	-	292	94	223	530	537
Exchange offices	-	-	-	-	-	3	-	12	-	3
Payment services providers	-	-	-	-	-	-	-	-	-	-
Pension savings funds	-	-	-	-	-	-	-	-	-	-
Leasing companies	-	-	-	-	1	30	14	36	9	13
Pawnshops	-	-	-	-	-	-	-	-	-	-
Commodities exchanges	-	1	-	-	-	-	-	-	-	-
Postal operators	-	7	-	-	-	-	28	28	-	-
<b>Financial sector</b>	<b>49,810</b>	<b>533,396</b>	<b>45,046</b>	<b>600,710</b>	<b>97,744</b>	<b>655,335</b>	<b>81,111</b>	<b>693,102</b>	<b>108,413</b>	<b>808,411</b>

### DNFBP

385. According to SFIS 2012-2016 statistics, DNFBPs submitted only few STRs (total of 12), by real estate agents. The director of one real estate firm attending a meeting conducted as part of the on-site mission informed appraisers about a single case of STR submission involving a very large sum. No STRs were submitted by persons carrying out transactions with precious metals and precious stones or representatives of other DNFBP sectors (lawyers, auditors, accountants, notaries, independent legal professionals and legal consultants). According to the information received during the on-site meetings, DNFBPs are focused on compliance with the obligation related to reporting transactions that are subject to mandatory monitoring. However, since the threshold established in the AML/CFT Law is high, there were only few instances of filing such reports with the designated AML/CFT agency, which was confirmed by SFIS.

386. DNFBPs lack their own criteria for identifying suspicious transactions, as confirmed both during the on-site mission meetings and provided samples of internal regulations. In their work they are guided by the criteria for identifying suspicious transactions established by SFIS. It seems that the use of this approach is due to the ambiguity of the interpretation by DNFBPs of the AML/CFT regulations governing the submission of STRs. On the one hand, reporting entities are required to submit STRs to the designated authority when they suspect that funds or property are the proceeds

<sup>50</sup> Mandatory transaction reports

of a criminal activity or related to terrorist/extremist financing, or can be used for such activities. On the other, reporting entities must identify suspicious transactions based on the criteria of suspicious transactions established by the designated authority and report them to the latter not later than the business day following the date of classification of the transaction as suspicious (par. 1 of Art. 4). Thus, DNFBPs may understand its obligation to report STRs only when the criteria for identifying suspicious transactions established by SFIS is met. This situation, coupled with the absence of ML/TF self-assessments and the criteria for identifying suspicious transactions in the DNFBP sector, has meant that the mechanism for the submission of STRs by DNFBPs is not functioning.

387. Persons carrying out cash transactions with precious metals and precious stones and real estate agents are aware of their obligation to withhold information about the submission of STRs. Among the practical steps used to prevent possible leaks, for example, are the following. (1) information on suspicious transactions is stored in secure electronic files at the workplace of a designated official; (2) all paper-based and electronic documents relating to the activities of the designated official are kept in a safe separate from other documents; (3) it is prohibited to make any notes about the measures undertaken in relation to specific transactions on the documents stored in customer files.

**Table 17.** DNFBPs. Quantity of suspicious transaction reports and mandatory transaction reports

Reporting entities	2012		2013		2014		2015		2016	
	STR	MTR	STR	MTR	STR	MTR	STR	MTR	STR	MTR
Casinos/lotteries	-	-	-	-	-	-	-	-	-	3
Real estate agents	9	92	2	91	-	8	1	17	-	-
Persons carrying out transactions with precious metals and precious stones	-	-	-	-	-	-	-	-	-	-
Lawyers	-	-	-	-	-	-	-	-	-	-
Notaries	-	-	-	-	-	-	-	-	-	-
Independent legal professionals	-	-	-	-	-	-	-	-	-	-
Accountants	-	-	-	-	-	-	-	-	-	-
Trust and company service providers	-	-	-	-	-	-	-	-	-	-
<b>DNFBP sector</b>	<b>9</b>	<b>92</b>	<b>2</b>	<b>91</b>	<b>0</b>	<b>8</b>	<b>1</b>	<b>17</b>	<b>0</b>	<b>3</b>

### *Internal controls and legal/regulatory requirements impeding implementation*

#### *Financial Institutions*

388. Financial institutions adopt adequate internal control measures based on their size. Banks have demonstrated a good level of AML/CFT commitment at senior management level with consideration by boards of the effectiveness of AML/CFT measures. All banks have internal control units, which monitor compliance with AML/CFT requirements. Generally, they tend to be adequately staffed. At the same time, some banks met during the on-site mission noted that it would be expedient to establish a regulatory requirement for adequate staffing of the AML/CFT compliance unit. Banks have procedures in place and have established annual internal audit programmes. Training programs are embedded within banks with a combination of training for newly recruited staff after their appointment and further training. Training is a combination of the cascading of information within the bank, e-learning, group training, third party providers and seminars by SFIS.



389. Other financial institutions have demonstrated similar characteristics in relation to internal controls, although to a lesser degree compared with banks. Not all NBFIs appoint AML/CFT compliance officers from among senior staff members. Internal monitoring units, internal procedures and senior management controls are in place in NBFIs. Almost all small financial institutions lack internal audit units/ functions and AML/CFT audit procedures. Assessors believe that small financial institutions undertake adequate internal control measures according to their size and types of activities.

390. AML/CFT internal controls have not been found in such entities as pawnshops, leasing companies and commodity exchanges, which can be explained by the fact that they are actually not subject to AML/CFT supervision.

391. Although the level of training across various types of financial institutions differs, it correlates with the size of FIs. The lowest level is typically demonstrated by smaller financial institutions, which might be attributable to their smaller size and financial capabilities. In this context, the role of the supervisors in raising AML/CFT awareness and knowledge of this category of financial institutions should be increased.

392. There are no legal or regulatory requirements which impede the implementation of internal controls and procedures to ensure compliance with AML/CFT requirements by individual financial institutions and their branches. However, financial institutions that are part of the same group (e.g., in Kyrgyzstan, there are banks and insurance institutions within the same group) do not apply group-wide internal controls and do not exchange AML/CFT information, including information obtained during the CDD process. The absence of such cooperation between institutions within the same group is due to unclear statutory requirements governing the exchange of customer data or other information obtained through CDD.

#### *DNFBP*

393. Persons carrying out cash transactions with precious metals and precious stones and real estate agents exercise AML/CFT internal controls in accordance with their internal regulations. As evidenced from the samples of internal regulations applied in the above DNFBP sectors, internal control procedures have been developed in accordance with the AML/CFT Law and the Regulation on the General Requirements for Internal Controls to Combat Money Laundering and Terrorist (Extremist) Financing", approved by Kyrgyz Government Decree No. 135 of March 5, 2010. Corporate DNFBPs, unlike individual entrepreneurs (whose internal regulations include requirements for customer and beneficial owner identification, record keeping, STR submission and no tipping off), apply highly detailed internal control procedures that include, inter alia: (1) the procedure for identifying and verifying customers and beneficial owners; (2) the procedure for assessing the risk of the customer's involvement in ML/TF transactions; (3) the procedure for recording information and documents obtained in the course of internal controls; (4) the procedure for training of AML/CFT personnel; (5) the procedure for refusing to establish a business relationship with customer; and (6) the procedure for suspending transactions. At the same time, the procedures applied are not based on the self-assessment of ML/TF risks and do not contain self-developed criteria for detecting suspicious transactions.

394. To facilitate the implementation of internal controls, corporate DNFBPs set up internal compliance units staffed with 2 to 3 employees, including a designated official. DNFBPs that are individual entrepreneurs act themselves as designated officials.

395. Persons carrying out cash transactions with precious metals and precious stones and real estate agents are not members of financial groups and, accordingly, are not subject to the FATF Recommendations for the implementation of AML/CFT group programmes.

396. The AML/CFT law does not require notaries and independent legal professionals involved in the preparation of real estate transactions to have AML/CFT internal controls in place (see technical compliance with R.22).

*Overall conclusions on Immediate Outcome 4*

397. **Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 4.**

## CHAPTER 6. SUPERVISION

### Key Findings and Recommended Actions

#### Key Findings

##### Financial Institutions

1. Kyrgyzstan's licensing requirements apply to all financial institutions other than leasing companies and commodity exchanges. No unregistered MVTs providers were identified in Kyrgyzstan. NBKR demonstrated successful efforts in identifying unlicensed exchange offices.
2. NBKR and the SIT&CC take adequate steps to prevent criminals and their accomplices from penetrating reporting financial institutions as shareholders/directors/officials. No appropriate measures are taken in respect of pawnshops, shareholders of insurance companies or professional securities market participants.
3. Supervisors' understanding of ML/TF risks is based on practical experience. NBKR views the banking sector as the most vulnerable to ML/TF risks. The RBA, which is in the process of implementation, allows NBKR to better understand and assess ML/TF risks faced by banks at an individual level. SIT&CC takes sufficient measures to assess ML/TF risks faced by the country's only postal operator, Kyrgyz Pochtasy. Gosfina's supervisory activities do not include analysis of ML/TF factors.
4. As part of RBA implementation to bank supervision, NBKR takes account of ML/TF risks in supervisory activities (on-site and off-site inspections), by assigning individual risk profiles and then determining the depth of supervision. When monitoring financial institutions' compliance with AML/CFT requirements, the designated authorities tend to rely on a rules-based approach. In conducting inspections (except for RBA bank inspections), more attention is paid to compliance with AML/CFT requirements than to the assessment of ML/TF risks by financial institutions.
5. NBKR has the powers and experience in applying a range of different proportionate and dissuasive remedial actions and sanctions against reporting entities for non-compliance with AML/CFT requirements, including suspension and revocation of licenses. The range of tools available to Gosfina and SIT&CC is less broad.
6. Measures undertaken by supervisors have a positive impact on AML/CFT compliance by financial institutions.

##### DNFBP

7. Only persons carrying out cash transactions with precious metals and precious stones have a designated AML/CFT supervisor, however, PMD lacks the necessary powers to prevent criminals and their associates from holding a controlling interest or management function in reporting entities.
8. PMD has a general understanding of ML risks based on the outcomes of its supervisory activities. No understanding of TF risk was demonstrated.
9. In April 2016, PMD began the implementation of RBA with account for ML/TF risks. At the same time, the assessment team were presented with no proof of its practical implementation.
10. PMD lacks the powers to apply sanctions for non-compliance with AML/CFT requirements. The SFIS have the powers to take administrative actions against persons

engaged in transactions with precious metals and precious stones for non-compliance with AML/CFT requirements. Supervisory response measures undertaken by PMD have a positive impact on compliance with AML/CFT requirements by persons carrying out cash transactions with precious metals and precious stones, while sanctions applied by SFIS in 2015 contributed to a decline in the number of AML/CFT violations in this sector in 2016.

11. SFIS and PMD promote a better understanding of AML/CFT obligations by persons carrying out transactions with precious metals and precious stones. Still, more needs to be done to inform these reporting entities about ML/TF risks.

### **Recommended Actions**

1. FI Supervisory authorities should take steps to introduce (Gosfinnadzor) or further develop (NBKR, SIT&CC) mechanisms for identifying and assessing sectoral ML/TF risks and the risks faced by their reporting entities. PMD should identify (including based on the NRA findings) ML/TF risks inherent in the activities of reporting entities and evaluate them, taking into account the specific factors of their activities.
2. NBKR, PMD and SIT&CC should intensify the implementation of a RBA to supervision, taking into account ML/TF risks, while other supervisors should develop a methodology and initiate the implementation of a risk-based AML/CFT supervision.
3. Supervisors, in monitoring compliance by financial institutions and DNFBPs, should pay attention to the issue of understanding by reporting entities of ML/TF risks inherent in their business and take steps to mitigate them.
4. Kyrgyzstan should extend legislative AML/ CFT requirements and supervisory practice to all categories of DNFBPs in line with the FATF Recommendations.
5. Kyrgyzstan should take steps to bring its legislation in line with the FATF Recommendations (2012) with respect to the measures designed to prevent criminals or their accomplices from holding a controlling or management function in DNFBPs and certain categories of financial institutions. Kyrgyzstan should consider introducing a licensing, registration or self-regulatory regime for leasing companies and commodity exchanges.
6. Gosfinnadzor and the SIT&CC should be empowered to impose financial sanctions against reporting entities.
7. Kyrgyzstan should strengthen AML/CFT cooperation between the supervisors and SFIS.
8. Kyrgyzstan should organize targeted AML/CFT trainings, particularly with respect to understanding and assessment of ML/TF risks, for all reporting entities.

### ***Immediate outcome 3 (Supervision)***

398. This Section is dedicated to the review and assessment of the progress in achieving Immediate Outcome 3. The Recommendations relevant for the assessment of effectiveness under this section are R26-28 & R34 & 35

#### *Overview of supervisory arrangements*

399. NBKR is responsible for licensing/ registration, regulation and supervision of banks, other financial and credit institutions (exchange offices, microfinance organizations and credit unions) and payment services providers. NBKR enjoys full operational independence, including budget and human resources policy, under the laws governing its activities<sup>51</sup>. Several departments within the NB

<sup>51</sup> Law No.206 of 16.12.2016 on the National Bank of the Kyrgyz Republic, Banks and Banking Activity came into force on 22.06.2017 and substituted Law No.59 on the National Bank of the Kyrgyz Republic dated 29.07.1997.

are involved in AML/CFT matters. NBKR has sufficient powers to perform its supervisory functions. NBKR's AML/CFT unit has all necessary personnel, financial and technical resources. NBKR's staff are properly qualified and well trained (see Table 18). In particular, the Supervision Methodology and Licensing Department is responsible for licensing banks and other financial and credit institutions and develops AML/CFT regulations for these institutions. The Inspection Department conducts on-site inspections of banks and other financial and credit institutions. It has the Transaction Expert Analysis Division which activities are focused on detection and analysis of dubious transactions carried out by banks and other credit and financial institutions. The External Oversight Department is involved, in compliance with its mandate, in supervision of banks and other credit and financial institution, which includes application of remedial actions and imposition of sanctions for breaches of the AML/CFT requirements. The Payment Systems Department issues licenses and exercises AML/CFT regulation and supervision of payment services providers.

400. Gosfinnadzor is responsible for licensing, regulation and supervision of insurance institutions, professional securities market entities and pension savings funds. According to Kyrgyz Law No87 on Pawnshops dated 22.06.2016 and Kyrgyz Government Resolution No.353 on Issues Pertaining to Pawnshop Operation dated 08.06.2016 (not in force yet) Gosfinnadzor is the designated agency in charge of licensing and supervising activities of pawnshops. At the time of the on-site visit, no licenses have been actually issued by Gosfinnadzor to pawnshops. According to the Law on Gosfinnadzor<sup>52</sup>, its operation is funded from the national budget, and the staffing plan is developed and approved by the Kyrgyz Government. According to the assessment team, Gosfinnadzor's human resources are limited as, in addition to financial institutions, it is responsible for the licensing and supervision of lottery and audit activities, which affects both the intensity and quality of its supervision. At the same time, Gosfinnadzor lacks dedicated AML/CFT units. Gosfinnadzor's independence is limited due to the requirement for it to coordinate its plans for inspections of supervised financial institutions, with the Kyrgyz Ministry of Economy.

401. SIT&CC is responsible for licensing, regulation and supervision of postal communication operators. The only entity that is supervised by SIT&CC for AML/CFT purposes is Kyrgyz Post, a government-owned company. SIT&CC is funded from the budget, and its staffing plan is developed and approved by the Kyrgyz Government. SIT&CC is equipped with the necessary human, financial and technical resources. Licensing and supervisory functions are discharged by the State Communications Oversight and License Control Department

402. In Kyrgyzstan, there are no designated competent authorities responsible for supervision of non-bank leasing companies or microfinance organizations and commodity exchanges. According to Regulation No.135 on List of Supervisory Authorities and their Powers, Gosfinnadzor is the designated authority responsible for supervision of these entities. However, the relevant laws governing activities of Gosfinnadzor, commodity exchanges and leasing companies<sup>53</sup>, do not vest any powers in Gosfinnadzor to supervise these entities.

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<sup>52</sup> Law No.249 on the Designated State Authority for Financial Market Supervision and Regulation dated 24.07.2009.

<sup>53</sup> Law No.915-XII on Commodity Exchange and Exchange Trade of 29.06.1992 and Law No.323 on Financial Leasing of 23.07.2012

**Table 18.** Human resources of FI and DNFBPs supervisors

Supervisor	Total staff <sup>54</sup>	Staff involved in licensing/ authorization	Staff involved in AML/CFT supervision
<b>Financial Institutions</b>			
NBKR <sup>55</sup> (banks)		6	26 (18+8) <sup>56</sup>
NBKR (NBFIs)		5	49 (7+15+27) <sup>57</sup>
NBKR (payment services providers)		7	7 <sup>58</sup>
Gosfinnadzor	62	4	16 (10+6) <sup>59</sup>
SIT&CC	236	17	17 <sup>60</sup>
<b>DNFBPs</b>			
PMD	16	4	4

403. Casinos or trusts are prohibited in Kyrgyzstan. Lawyers and accountants do not prepare or conduct transactions for their clients in areas covered by the FATF Recommendations. Real estate agents, notaries and independent legal professional do not have a designated AML/CFT supervisor (monitoring body) or a self-regulating body (SRB) tasked with exercising such supervisory (monitoring) functions. As a result, a review of compliance by persons carrying out cash transactions with precious metals and precious stones with AML/CFT requirements is under way.

*Licensing, registration and controls preventing criminals and associates from entering the market*

*Financial institutions*

404. Kyrgyzstan has an integrated licensing regime for all financial institutions subject to the Core Principles (Basel Committee on Banking Supervision; International Association of Insurance Supervisors; International Organization of Securities Commissions), as well as for other financial institutions. The only exception are leasing companies that are not banks or microfinance organizations, as well as commodity exchanges, whose activities in Kyrgyzstan are not subject to licensing.

405. The designated authorities (NBKR, Gosfinnadzor and SIT&CC) rely on approval and vetting measures for shareholders and directors of financial institutions to prevent criminals and their accomplices from entering the market.

406. In financial institutions subject to the Core Principles, approval and vetting measures are applied by the designated authority (NBKR/Gosfinnadzor) to the key officials (directors, board members and executive bodies) of banks and professional securities market participants, as well as to major shareholders of banks, both at the licensing stage and in the event of replacement of such officials. Similar procedures in relation to auctioneers/participants of insurance companies and professional securities market participants are not implemented.

<sup>54</sup> Including staff of local (regional) offices

<sup>55</sup> Besides that, the NBKR has the Supervision Methodology Department staffed with 12 employees responsible for developing AML/CFT regulations for banks and non-bank financial and credit institutions, 2 persons are engaged in the development of normative legal acts on AML / CFT issues.

<sup>56</sup> Staff of the off-site supervision and inspection Departments

<sup>57</sup> Staff of the off-site supervision and inspection Departments and staff of 6 regional offices of the NBKR

<sup>58</sup> One Department within the NR National Bank is responsible for licensing and supervision of payment services providers.

<sup>59</sup> Staff of the Reporting and Monitoring Department and Staff of the Southern regional office

<sup>60</sup> One Department within the Communications Agency is responsible for licensing and supervision.

407. Approval and vetting measures at the licensing stage and upon replacement are also applied by NBKR to the key officials and major shareholders of microfinance companies. With respect to other financial institutions (microcredit companies and microcredit agencies, credit unions, exchange offices, payment/e-money system operators and payment services providers), the vetting of officials is conducted at the time of licensing/registration of such institutions. Shareholders of microfinance companies, microcredit agents and credit unions are vetted at the time of their licensing/registration with NBKR and their subsequent re-registration. The licensing procedure applicable to exchange offices, payment and e-money system operators, and payment services providers, includes the verification of the information on the origin of the founders' funds.

408. Kyrgyz Pochtasy, a state-run postal operator established by the Kyrgyz Government, is the only postal operator in the country licensed to provide postal remittance services. Among the requirements applicable to the Kyrgyz Pochtasy officials (CEO, his deputies, chief accountant, directors, their deputies and chief accountants of regional branches) is the absence of a criminal record.

409. The assessment team were not informed about the existence of similar procedures in respect of pawnshops

410. The designated authorities typically verify the absence of a criminal record or other negative circumstances (the status of a suspect/accused in a criminal case, bankruptcy of a financial or non-financial institution, etc.) by, among others, checking for matches against the databases of the MIA, SNSC and Prosecutor General's Office, etc. Shareholders, meanwhile, are additionally checked for financial solvency and the legal origin of their funds. The relevant information is kept up to date thanks to the requirement for prior approval and periodic notifications, as well as regular on-site inspections and review of annual reports provided by financial institutions. The assessment team received examples of refusals to approve the appointment of officials of financial institutions subject to the Core Principles, to purchase shares because the company was registered in an offshore jurisdiction, and to issue a license to engage in currency exchange transactions because it was impossible to determine the origin of funds used for equity capital.

411. NBKR engages in international cooperation (in respect of banks) based on the agreements concluded with foreign central banks/bank regulators. During the on-site mission and preparation of NBKR report, the assessment team were provided with examples of cooperation with foreign supervisors in vetting the candidates for senior positions in banks and on the issue of participation in the bank capital of persons registered in offshore jurisdictions, as well as an example of issuance of a remedial instruction to a bank for failure to disclose the sources of the bank shareholders' funds. These examples allow the assessment team to rate the level of AML/CFT cooperation as good.

412. NBKR takes active steps to identify among reporting entities the companies operating without a license. At the same time, due to the adoption in 2015 of the Law "On the Payment System of the Kyrgyz Republic", NBKR was working on the identification and licensing/registration of payment system operators and payment services providers. Based on the information received in the course of the on-site mission from the Kyrgyz authorities and representatives of the private sector, assessors concluded that unlicensed providers of money value transfer services operating in Kyrgyzstan are not identified. As for exchange offices, NBKR, jointly with law enforcement authorities, takes regular action to track down unlicensed services providers. The assessment team were provided examples of such cooperation and prosecution of unlicensed providers of foreign cash exchange services.

#### *DNFBPs*

413. AML/CFT supervision over the activities of persons carrying out cash transactions with precious metals and precious stones is carried out by the Finance Ministry's Precious Metals Department.

414. PMD is responsible for entry into a special register of entities and individual entrepreneurs carrying out transactions with precious metals and precious stones. To this end, Kyrgyzstan has established a list and defined the format of documents required for submission to PMD, as well as setting out the registration procedure to be followed by PMD, including the grounds for refusal. Entities (individual entrepreneurs) that fail to register (undergo accounting registration) with PMD may become liable to an administrative penalty. There are not special requirements applicable to entities (individual entrepreneurs) registering with PMD that are designed to prevent criminals and their associates from accessing the precious metals and precious stones market. Therefore, no practical steps to prevent criminals or their accomplices from exercising an ownership or management function over persons carrying out cash transactions with precious metals and precious stones are taken by the supervisor.

### *Understanding and identification of ML/TF risks by supervisors*

#### *Financial institutions*

415. Supervisors did not conduct their own (sectoral) ML/TF risk assessments or research on this topic, but participated in the national-level risk assessment by providing statistics and supervisory information to SFIS (sector size, number of participants/inspections/supervisory response measures, etc.). However, as indicated in Chapter 1 of this Report, the supervisors do not use the findings of national risk assessments in their future activities.

416. Each supervisor forms its own understanding of the existing ML/TF risks based on its practical experience. The most comprehensive approach to ML/TF risk assessment was displayed by NBKR as part of its implementation of a RBA to bank supervision<sup>61</sup>. The model of the RBA to bank supervision presented for review to the assessors calls for the use of an on-going ML/TF risk assessment for banks and assignment of individual ratings based on banks' ML/TF risk profile. ML/TF profile ratings are assigned independently from risk profile ratings for prudential risks based on a 4-tier system (low, moderate, substantial and high). The procedure for assessing each bank's ML/TF risks and developing its risk profile involves identifying the inherent and net (residual) ML/TF risk. In assessing the inherent risk, one must take into account the structural (size of assets, existence/absence of a parent foreign bank/financial group/subsidiaries) and business risk factors (customer risk, PEP risk, country risk, service and distribution channel risk, and currency risk). In assessing the net (residual) risk, it is important to take into account the inherent risk and quality of its management (strategies and policies, processes and procedures, control procedures and personnel). Individual risk profiles of banks affect the depth and scope of supervision. The frequency and intensity of periodic supervision is determined on the basis of the level of ML/TF risk faced by the sector and individual banks.

417. This approach is sufficiently justified, given that banks account for 91.2% of the total assets of the country's financial sector. The introduction of a RBA to bank supervision underscores NBKR's understanding of the banking sector as the most vulnerable to ML/TF risks compared to other segments of the financial sector. One of the factors contributing to higher ML/TF risks in the banking sector, according to NBKR, is the cash-intensive nature of the Kyrgyz economy. With respect to other reporting entities (microfinance institutions, payment services providers, exchange offices and payment system operators), NBKR did not implement any special supervision techniques based on ML/TF risks. Supervision of microfinance institutions involves a certain type of ML/TF risk-based analysis of their activities. In practice, however, NBFIs supervised by NBKR are subject to the same type of AML/CFT supervision, in terms of depth and scope.

418. Gosfinnadzor's supervision over insurance companies and professional securities market participants does not include analysis of ML/TF factors (customer risk, services and distribution

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<sup>61</sup>A transition to a risk-based supervision is provided for by the Banking Supervision and Regulation Development Plan 2017-2019, approved by the NB Board Resolution of December 21, 2016.



channel risk, and country risk). Gosfinnadzor representatives deem ML/TF risks in the insurance sector and the securities market to be low, due to the small size of these sectors and also because cash transactions are made through banks. According to the assessment team, although such circumstances are important, they do not constitute a sufficient ground for refusing to use a RBA to supervision over the insurance sector and professional securities market, since other contextual factors (corruption level, reliance on cash, emergence of new technologies, etc.) must also be taken into account.

419. The state-run postal operator Kyrgyz Pochtasy remains the sole reporting entity in the postal services sector licensed to provide remittance services, a fact that affects the nature of supervisory activities conducted by SIT&CC. At the same time, SIT&CC, as part of its efforts to implement a RBA, has developed the risk assessment criteria for determining the frequency of AML/CFT inspections of postal facilities (Kyrgyz Pochtasy branches). In conducting risk assessments, SIT&CC takes into account the volume of international and domestic postal remittances (incoming and outgoing) along with the location of the postal facility. A higher risk rating is assigned to postal facilities located in the country's southern regions (due to higher TF risks), as well as to postal facilities with the largest volume of international postal remittances. According to the assessment team, given the specifics of SIT&CC's supervisory activities, this approach to ML/TF assessment seems adequate.

#### *DNFBP*

420. A documented assessment of ML/TF risks in the supervised sector as a whole or in individual reporting entities is absent. In the course of their meetings with the assessors, PMD representatives noted that, from the supervisory point of view, all transactions with precious metals and precious stones that involve cash payments and, accordingly, are covered by AML/CFT requirements, are vulnerable to ML. During the meetings, the representatives of PMD noted that they did not see TF risks in their activity.

421. The activities of persons carrying out cash transactions with precious metals and precious stones are divided by PMD into the following four types: (1) manufacture of jewellery made of precious metals and precious stones; (2) purchase (including scrap and waste of precious metals) and sale of jewellery made of precious metals and precious stones; (3) recycling of recoverable materials (scrap and waste of precious metals), and (4) the purchase of slag gold and gold concentrate (see Table below)

**Table 19.** Persons carrying out cash transactions with precious metals and precious stones, by activity type and location, 2012-2016.

#	Type of activity	2012	2013	2014	2015	2016
1	<b>Manufacturing, including:</b>	<b>40</b>	<b>40</b>	<b>41</b>	<b>36</b>	<b>32</b>
	Bishkek	38	38	40	35	31
	Chuy region	1	1			
	Naryn region					
	Issyk-kul region					
	Talas region					
	South region	1	1	1	1	1
2	<b>Purchase and sale, including:</b>	<b>466</b>	<b>496</b>	<b>501</b>	<b>432</b>	<b>397</b>

	Bishkek	314	343	321	280	255
	Chuy region	38	38	38	38	26
	Naryn region.	13	13	13	13	11
	Issyk-kul region	34	29	29	26	22
	Talas region	14	16	15	15	12
	South region	53	57	85	60	71
3	<b>Recycling of recoverable materials:</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>5</b>
	Bishkek	1	2	3	4	2
	Chuy region					
	Naryn region					
	Issyk-kul region	3	3	3	2	2
	Talas region					
	South region					1
4	<b>The purchase of slag gold and gold concentrate:</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>
	Bishkek					10
	Chuy region					
	Naryn region					
	Issyk-kul region					
	Talas region					
	South region					
	<b>Total</b>	<b>510</b>	<b>541</b>	<b>548</b>	<b>474</b>	<b>444</b>

422. As evidenced from PMD's experience in conducting inspections of reporting entities, transactions involving the purchase of precious metals, jewellery and scrap thereof with cash possibly obtained as a result of criminal activities tend to be most vulnerable to ML. At the same time, the greatest risk is posed by transactions involving the purchase of precious metals from members of the public by illegal traders operating in the markets. According to PMD, Kyrgyzstan is currently in the process of implementing Jewellery Industry Development Strategy<sup>62</sup>, which requires officials to legalize the illicit market in precious metals and precious stones by combating illegal production and sale. To this end, PMD inspectors, jointly with other supervisors, conducted in March 2017 outreach activities targeting entrepreneurs engaged in illegal operations with precious metals and precious stones in the cities of Osh, Jalal-Abad and Kyzyl-Kiya. As a result of this work, many illegal traders registered with PMD and received a license to engage in business activities.

423. To implement a risk-based approach to supervision, as required by Government Decree No. 135 dated March 5, 2010 No. 135 "On Combating Money Laundering and Terrorist Financing" of April 18, 2016, PMD, through its order No. 12/1-p dated April 18, 2016, approved the criteria for assessing the level of risk in the precious metals and precious stones market. The risk assessment criteria utilizes a points system whereby the points affecting the ML/TF risk posed by a person carrying out cash transactions with precious metals and precious stones are assigned depending on the following criteria: sector, region of activity, results of previous checks.

<sup>62</sup> The Strategy for the development of the Jewelry industry of the Kyrgyz Republic until 2018, approved by the Government of the Kyrgyz Republic on August 11, 2016,

424. Therefore, the above PMD order lays down the approach to ML/TF risk assessment in the supervised sector as a whole, whereby the number of reporting entities engaged in a given type of activity in the precious metals and precious stones market, as well as the level of their compliance with applicable law, determines the level of ML/TF risk. No information on the existence of any approaches to the assessment and identification of ML/TF risks in specific reporting entities (e.g., with account for the nature of their activities or types of customer service) has been provided

425. According to the assessors, PMD is in the process of developing approaches to ML/TF risk assessment of reporting entities. The findings of the national risk assessment could contribute to the success of this work.

### *A risk-based approach to the monitoring of compliance with AML/CFT requirements*

#### *Financial institutions*

426. NBKR, as part of the implementation of a risk-based approach<sup>63</sup> to AML/CFT bank supervision, uses a differentiated, in terms of the frequency of supervision, including the scope and depth of inspections, approach to inspections targeting five banks whose cumulative assets account for 20% of Kyrgyzstan's banking system. Quantitative and qualitative data are used to create a risk profile and develop a supervisory strategy for each and every bank. A RBA is also applied during inspections and outside supervision.

427. During inspections and remote supervision, NBKR inspectors collect and analyse data on certain risk categories of the bank, and use the rating matrix to assess the inherent risk, the quality of risk management and net risk for each risk category. The risk assessment process is fluid. The bank ML/TF risk matrix is subject to on-going updating, in particular, after completion of the on-site inspection and remote supervision-based analysis. The findings of the bank ML/TF risk assessment are used to create a matrix that determines the intensity and frequency of supervision.

428. As part of its implementation of a RBA, NBKR applies three levels of AML/CFT supervision. A low level of supervision frequency and intensity involves a remote oversight analysis, or in response to certain events. Remote oversight analysis relies on questionnaires filled out by banks, and usually includes the assessment of ML/TF risks inherent in the bank along with the assessment of the quality of risk management. The "low intensity" strategy does not rule out the conduct of comprehensive inspections of banks of this category from time to time. The average level of supervision frequency and intensity involves remote oversight analysis coupled with regular (annual or biennial) inspections. The high level of frequency and intensity means that banks are subject to the most robust AML/CFT supervision in the form of regular interviews of the bank's key personnel, including its management, AML/CFT officers, compliance officers and front office staff, as well as a detailed inspection of the bank's AML/CFT systems and controls.

429. The application of a RBA allows NBKR to improve the use of its resources, while the intensity (frequency, scope and depth of inspections) of bank supervision depends on their systemic significance and each bank's individual risk profile.

430. With respect to NBFIs and banks supervised without the use of a RBA, NBKR use comprehensive prudential supervision. AML/CFT monitoring, meanwhile, is carried out within the framework of overall prudential supervision. The risk factors taken into account in the drafting of annual audit plans are based primarily on information obtained through prudential supervision. NBKR takes into account the statistics on submitted STRs and reports on transactions subject to

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<sup>63</sup> A transition to a risk-based supervision is provided for by the Banking Supervision and Regulation Development Plan 2017-2019, approved by the NBKR Board Resolution of December 21, 2016.

mandatory control, as well as the findings of previous inspections. Representatives of the private sector noted the regularity of inspections and the decent size of the assessment team conducting them (usually 5-7 people). Given the size of the non-banking sector, the depth and quality of inspections (on-site and desk), and the resources available to NBKR, the quality of inspections was deemed by the assessment team to be good.

431. When monitoring NBFIs' compliance with AML/CFT requirements, supervisors tend to rely on a rules-based approach. There are certain elements of a risk-based approach that can be used to determine the timing of inspections. Thus, for example, Gosfinnadzor and SIT&CC determine the frequency of inspections according to the Law of the Kyrgyz Republic "On the Procedure for Conducting Inspections of Business Entities" and the criteria for assessing the level of risk in the conduct of business activities, approved by Government Decree No. 108 dated February 18, 2012. At the same time, these criteria do not take into account the specific aspects of ML/TF risks, focusing instead solely on the size of the institution and the findings of the previous inspection. As a result, ML/TF risks have no actual impact on the frequency of inspections carried out by authorised bodies. At the time of the on-site mission, the SIT&CC lacked any experience in conducting inspections in line with the endorsed risk assessment criteria (see section "Understanding and identification of ML/TF risks by supervisors") due to the fact that the said criteria had been approved on the eve of the on-site mission (Mar. 22, 2017).

432. With the exception of banks subject to RBA supervision, the information submitted to supervisors by FIs in the framework of off-site supervision concerns chiefly prudential issues unrelated to AML/CFT. In general, this information does not result in the adoption of any AML/CFT measures or inspections. SIT&CC does not conduct off-site supervision similar to that exercised over major financial institutions (banks, insurance companies and professional securities market participants). However, according to assessors, given the specifics of the postal money transfer industry (a single reporting entity and a limited range of financial services), the level of supervision by SIT&CC seems to be adequate.

433. AML/CFT inspections are conducted at regular intervals and take the form of so-called "integrated audits", during which prudential and AML/CFT matters are considered. The duration of AML/CFT inspections is approximately the same for all types of financial institutions, averaging between two weeks (for NBFIs) and up to one month (for banks).

434. Although inspections focus on compliance with all AML/CFT requirements, they don't take into account the aspects of certain institutions' activities, e.g., their client databases (i.e. the number of customers posing different levels of risk), or the types of products/services offered, etc. the exceptions are the banks in respect of which risk-oriented approach is implemented. In respect of other banks, NBKR, when monitoring banks' compliance with AML/CFT requirements, also studies the list of high-risk customers and resident customers of offshore jurisdictions, along with reports of AML/CFT compliance officers and audit findings. When inspecting Kyrgyz Pochtasy, SIT&CC studies the volume of postal transfers carried out through a given territorial branch, an approach that affects the depth of such inspections.

435. Financial groups are present in Kyrgyzstan (in the shape of a parent bank and a subsidiary insurance company, etc.). The assessment team were provided proof of cooperation between NBKR and Gosfinnadzor in exercising consolidated AML/CFT supervision, in the form of information exchange, over this financial group. At the same time, no evidence of such cooperation on AML/CFT matters is available. No evidence of financial groups' cooperation with foreign central banks and financial market regulators has been provided either.

## *DNFBPs*

436. PMD's supervisory functions are limited: only routine inspections carried out in line with a quarterly plan approved by PMD director, sanctioned by Kyrgyzstan's, Economy Ministry, and conducted after the notification of the reporting entity, are allowed. Unscheduled inspections are only allowed in response to complaints. In practice, no unscheduled inspections of compliance with AML/CFT requirements were conducted due to the absence of complaints constituting the grounds for them. All scheduled inspections include a full check of compliance by the reporting entity with AML/CFT requirements. During such inspections, auditors check reporting entities, inter alia, for the existence of AML/CFT internal regulations and their compliance with the procedures for the identification and verification of the identify of customers and beneficial owners; record keeping; submission of reports to SFIS; avoidance of tipping off; appointment of a designated official; undergoing AML/CFT trainings; and use of the lists of persons involved in terrorist and extremist activities. No remote AML/CFT monitoring is conducted by PMD.

437. According to the Guidance on AML/CFTE Inspections, approved by PMD Order No. 10/1-p dated March 17, 2017, the frequency of scheduled inspections shall be determined depending on the level of risk assigned to the reporting entity based on the criteria approved by Government Decree No. 108 dated February 18, 2012 "On Approval of the Risk Assessment Criteria for Business Activities" (hereinafter "Decree No. 108"). These criteria do not take into account ML/TF risks posed by reporting entities (the frequency of scheduled inspections can be affected by the type and scope of activity as well as by the outcomes of previous inspections).

438. According to PMD, in line with PMD Order No. 12/1-p dated April 18, 2016, it began in April 2016 to implement a risk-based approach that takes into account the vulnerability of certain types of reporting entities and country's regions to ML/TF risks in carrying out transactions with precious metals and precious stones (see section "Understanding and Identification of ML/TF Risks by Supervisors" above for more information on these criteria). Depending on the number of assigned points, reporting entities can be classified as high (inspections conducted once a year), medium (once in three years) and low (once every 5 years) risk. However, neither the mechanism for the practical implementation of a risk-based approach that takes into account ML/TF risk nor the specific outcomes of such implementation have been provided. In particular, it is not clear how the criteria established by Decree No. 108 and the criteria introduced by PMD Order No. 12/1-p are taken into account and how they affect the frequency of inspections. Nor is there any clarity as to the difference between the inspections of reporting entities conducted on the basis of their risk level (high, medium or low).

439. The available results of the inspections did not allow the assessors to confirm the use of a risk-based approach to supervision that takes into account ML/TF risks. According to PMD and SFIS, similarly to the previous years, the absence of approved AML/CFT internal regulations was the chief violation of the AML/CFT law identified in 2016. ML/TF risks posed by reporting entities are not taken into account in allocating supervisory resources given that scheduled inspections provide for the same scope and depth of inspections of reporting entities.

**Table 20.** Statistics of inspections conducted during 2015, 2016 and 6 month 2017

Reporting entities	Total	Inspections conducted			Remedial instructions issued following inspections			Fines imposed		
		2015	2016	6 mo. 2017	2015	2016	6 mo. 2017	2015	2016	6 mo. 2017
Commercial banks	25	31 (incl. 11 targeted)	14 (1 targeted)	8 (2 targeted)	47	28	12	11/KGS 61,000 (\$897) <sup>64</sup>	3/KGS 137,000 (\$2014)	-
Microfinance organizations	159	91	82	25	161	111	33	11/KGS 42,000 (\$617)	3/KGS 105,000 (\$1544)	-
Exchange offices	384	230	114	29	58	8	2	3/KGS7,000 (\$103)	-	-
Credit unions	114	82	68	30	91	63	31	1/KGS 1,000 (\$15)	1/ warning	1
Leasing companies (financial)		-	-	-	-	-	-	-	1/ warning	-
Insurance/reinsurance companies	18	13	10	10	-	-	-	4/KGS 8,000 (\$118)	-	1/ warning
Professional securities market participants	105	3	2	5	-	-	1	-	-	-
Lottery organizers	25	11	10	2	-	-	-	-	-	-
Organizations managing investment funds or private pension funds	1	-	-	1	-	-	-	-	-	-

<sup>64</sup> US dollars equivalent

<b>Persons engaged in transactions with precious metals and precious stones, jewellery made therefrom or scrap thereof, where they carry out any cash transactions with customers</b>	<b>468</b>	329	327	127	-	-	-	7/KGS 24,000 (\$353) 6 warnings	5/KGS 35,000 (\$515) 5 warnings	-
<b>Postal and telegraph organizations providing money transfer services</b>	<b>1</b>	19	10	-	3	-	-	1/KGS 1,000 (\$15)		

## *Remedial action and effective, proportionate and dissuasive sanctions*

### *Financial sector*

440. Supervisors take remedial action and apply sanctions for non-compliance with AML/CFT requirements against the majority of supervised financial institutions (see Table 20). The frequency of remedial actions and sanctions undertaken by financial sector supervisors vary.

441. NBKR applies various types of measures and sanctions for non-compliance with AML/CFT requirements based on the findings of its inspections, with remedial action letters being the most common of such measures. Remedial instructions, issued following the completion of the inspection, are quite effective, given that they contain a list of specific measures for eliminating the identified violations and shortcomings, as well as the names of the financial institution's officials responsible for their elimination. Members of the Supervisory Committee<sup>65</sup>, at its monthly meetings, monitor progress in the elimination of the identified violations and shortcomings. Failure to eliminate the identified violations and shortcomings within the stipulated timeframe may entail the application of more serious measures and sanctions. Inspectors may initiate administrative proceedings for non-compliance with AML/CFT requirements, following which NBKR will levy administrative fines against both financial institutions and officials. Meanwhile, the application of more severe measures and sanctions, in the form of a request for the dismissal of an official<sup>66</sup>, the imposition of monetary penalties calculated as a percentage of the paid-in statutory capital, or the suspension or revocation of licenses, falls under the purview of the Supervisory Committee. Of the said measures and sanctions, violations of AML/CFT requirements were typically punished by NBKR with monetary penalties<sup>67</sup>. As shown in the examples provided, monetary penalties were imposed by the Supervisory Committee for deficiencies in internal control and risk management systems and for unsafe banking practices (1 penalty solely for AML/CFT deficiencies and 2 penalties for complex violations, including AML/TF violations), whose size amounted to KGS 3.85 million (USD 65,000), KGS 1.6 million (USD 27,000) and KGS 6.4 million (USD 86,000), respectively. Measures and sanctions for non-compliance with AML/CFT requirements were applied by NBKR against all types of reporting entities, except for payment services providers.

442. Gosfinnadzor and SIT&CC apply remedial actions and sanctions against reporting financial institutions for non-compliance with AML/CFT requirements less often than NBKR. Neither Gosfinnadzor nor SIT&CC has independent powers to impose administrative fines (see below). Remedial actions and sanctions for non-compliance with AML/CFT requirements are not applied against pawnshops, commodity exchanges and leasing companies. Notably, the licensing and supervision regime for pawnshops has only been implemented recently (the Law of the Kyrgyz Republic "On Pawn Shops" was adopted in 2016). Meanwhile, Gosfinnadzor cannot apply remedial actions and sanctions against these financial institutions for non-compliance with AML/CFT requirements. Therefore, no AML/CFT monitoring/supervision over these types of financial institutions is carried out.

443. A majority of violations committed by financial institutions relate to non-compliance with the established AML/CFT requirements and internal procedures. According to the information provided by supervisors, a majority of recorded violations generally relate to inadequate compliance with the requirements of the AML/CFT Law, in particular for keeping internal regulations and procedures up to date; identification of customers carrying out occasional transactions over the designated threshold; identification and reporting of threshold transactions; submission of regular reports to the

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<sup>65</sup> The Supervisory Committee is a SFIS collegial body that discharges its functions on the basis of the Regulations on the SFIS Supervisory Committee approved by NB Board Resolution No. 6/2 dated March 19, 2005

<sup>66</sup> See par. 446 of the Technical Compliance Annex for more detail on the size of administrative penalties.

<sup>67</sup> The size of administrative penalties may reach up to 10% of the value of the bank's authorized capital.



supreme governing body; and training of managers and relevant personnel. Uncommon detection of non-compliance with STR reporting requirements is due to difficulties in proving the presence of the suspicious indicators of transactions.

444. In Kyrgyzstan, only NBKR has a full set of dissuasive and proportionate sanctions tools, including the power to revoke or suspend licenses. Neither Gosfinnadzor nor the SIT&CC has the powers to independently initiate and examine cases of administrative offences relating to non-compliance by accountable financial institutions with AML/CFT requirements (case files are forwarded to SFIS), or to revoke their licenses (the prerogative of the court). The powers to impose administrative fines for non-compliance with AML/CFT requirements are vested only in NBKR and SFIS. Administrative fines for non-compliance with AML/CFT requirements are imposed on both financial institutions and their officials. In practice, sanctions in the form of a requirement to replace an official of a financial institution, or to suspend or revoke a license for non-compliance with AML/CFT requirements, were imposed only by NBKR (the assessor team were provided examples of bank official dismissal and revocation of license of and credit union) When considering the application of restrictive remedial actions or sanctions against reporting entities, NBKR, among others, takes into account the nature, frequency and scope of the activity or transaction (s) found to be in breach of AML/CFT requirements. Due to the absence of similar powers in the arsenal of Gosfinnadzor or the SIT&CC, it is not possible to evaluate the proportionality of remedial actions /sanctions.

**Table 21.** Statistics on fines applied in 2013-2016 against reporting entities for AML/CFT violations by type of financial institutions and violations

Type of reporting entity	Type of AML/CFT violation	2013		2014		2015		2016	
		quantity	amount	quantity	amount	quantity	amount	quantity	amount
Commercial banks	CDD	3	20,000 (\$294)	1	2,000 (\$29)	3	14,000 (\$206)	0	0
	Non-submission of STR	1	2,000 (\$29)	0	0	0	0	0	0
	Non-freezing	0	0	2	40,000 (\$588)	0	0	2	130,000 (\$1911)
	Non-reporting of transactions subject to mandatory controls	3	6,000 (\$88)	5	13,000 (\$191)	8	47,000 (\$691)	1	7,000 (\$103)
	<b>Total</b>	<b>7</b>	<b>28,000 (\$412)</b>	<b>8</b>	<b>55,000 (\$809)</b>	<b>11</b>	<b>61,000 (\$897)</b>	<b>3</b>	<b>137,000 (\$2014)</b>
microfinance organizations	CDD	2	10,000 (\$147)	0	0	2	10,000 (\$147)	0	0
	Non-submission of STR	0	0	0	0	3	6,000 (\$88)	0	0
	Non-freezing	0	0	0	0	0	0	1	100,000 (\$1470)
	Non-reporting of transactions subject to mandatory controls	7	18,000 (\$265)	3	4,000 (\$59)	6	26,000 (\$382)	2	5,000 (\$74)
	<b>Total</b>	<b>9</b>	<b>28,000 (\$412)</b>	<b>3</b>	<b>4,000 (\$59)</b>	<b>11</b>	<b>42,000 (\$617)</b>	<b>3</b>	<b>105,000 (\$1544)</b>

<i>credit unions</i>	<i>CDD</i>	3	12,000 (\$176)	1	10,000 (\$147)	0	0	0	0
	<i>Non-submission of STR</i>	0	0	0	0	0	0	0	0
	<i>Non-freezing</i>	0	0	0	0	0	0	0	0
	<i>Non-reporting of transactions subject to mandatory controls</i>	0	0	1	10,000 (\$147)	1	1,000 (\$15)	1	<i>warning</i>
	<b>Total</b>	<b>3</b>	<b>12,000 (\$176)</b>	<b>2</b>	<b>20,000 (\$294)</b>	<b>1</b>	<b>1,000 (\$15)</b>	<b>1</b>	<b>0</b>
<i>Exchange offices</i>	<i>CDD</i>	5	6,000 (\$88)	7	22,000 (\$323)	2	5,000 (\$74)		0
	<i>Non-submission of STR</i>	0	0	0	0	0	0		0
	<i>Non-freezing</i>	0	0	0	0	0	0		0
	<i>Non-reporting of transactions subject to mandatory controls</i>	0	0	2	2,000 (\$29)	1	2,000 (\$29)		0
	<b>Total</b>	<b>5</b>	<b>6,000 (\$88)</b>	<b>9</b>	<b>24,000 (\$353)</b>	<b>3</b>	<b>7,000 (\$103)</b>	<b>0</b>	<b>0</b>

#### DNFBP

445. Since the powers to impose administrative sanctions against persons carrying out transactions with precious metals and precious stones for violations of the AML/CFT law identified by PMD in the course of its inspections are vested in SFIS, PMD lacks the information needed to draw conclusions about the proportionality and dissuasiveness of imposed penalties. At the same time, PMD representatives noted that reporting entities who committed violations for the first time tend to face preventive measures in the form of warnings or remedial instructions, which are often sufficient to prompt remedial action from a reporting entity. In other cases, the information about the identified violations is forwarded to SFIS for further administrative action.

446. In practice, SFIS applied administrative penalties in the DNFBP sectors only against persons carrying out transactions with precious metals and precious stones (see Table 20). According to the statistics provided by SFIS, 7 fines totalling KGS 24,000 (equivalent to \$US 353) were imposed in this sector in 2015, and 5 fines totalling KGS 35,000 (equivalent to \$US 515) in 2016. After reviewing the available economic data, expert assessors concluded that these penalties are dissuasive. For example, officials found guilty of violating the legal requirement for the development of internal regulations and procedures for their implementation are liable for a fine of 70 standard units<sup>68</sup> (KGS 7,000, equivalent to \$US 103). Such a sum is comparable to a day's income of an entrepreneur selling items of jewellery. It is also significant when compared with the size of the average monthly salary in Kyrgyzstan: KGS 13,649 (equivalent to \$US 200) as of 2016<sup>69</sup>. According to PMD, repeated inspections of fined offenders showed progress in the elimination of identified violations.

<sup>68</sup>Part 1 of Article 505-18 of the Code of Administrative Liability

<sup>69</sup><http://knews.kg/2016/07/natsstatkom-srednyaya-zarplata-v-kyrgyzstane-za-god-vyroslo-na-11-2/>

447. To showcase the dissuasive effect of sanctions applied by PMD against reporting entities, we may examine PMD's practice of taking preventive action, in the form of clarifications and remedial orders, against first-time offenders, which tends to be sufficient to rectify the violations.

448. According to the statistics provided, the results of the measures applied demonstrate positive changes; meanwhile, it should be noted that the practice of application of enforcement measures for AML/CFT violations in the precious metals and precious stones market has a short history, with the first fines handed down to persons carrying out cash transactions with precious metals and precious stones only in 2015. In 2015, PMD reported 197 AML/CFT violations to SFIS, resulting in 7 fines and 6 warnings. In 2016 PMD reported to SFIS on 20 violations. Based on materials provided by PMD, SFIS issued 5 fines and 5 warnings in 2016 (see Table 20).

### *Impact of supervisory action on compliance with established requirements*

#### *Financial institutions*

449. Representatives of some financial institutions met by expert assessors in the course of the on-site mission believe that the outreach activities carried out by SFIS in the public sector, coupled with remedial action, inspections and sanctions from authorised bodies (in particular NBKR), have a certain positive impact on the level of compliance of the private sector organizations and institutions. A positive assessment by the private sector was reserved for the AML/CFT efforts undertaken by SFIS and NBKR. NBKR enforces compliance with applicable requirements through the use of supervisory response measures such as remedial instructions. If the offender fails to remedy the violation, NBKR takes more stringent measures. At the same time, due to the lack of appropriate requirements and dedicated efforts in this area from both government agencies and professional associations of the private sector, not all financial institutions carry out a documented assessment of their ML/TF risks.

#### *DNFBP*

450. According to PMD, it consistently monitors reporting entities for compliance with its remedial instructions, a fact confirmed at a meeting with representatives of reporting entities see Figures 2, 3). According to PMD's statistics on the outcomes of supervisory activities, 329 inspections of reporting entities for compliance with AML/CFT requirements were conducted in 2015, resulting in 197 identified violations. In 2016, 327 similar inspections were carried out, resulting in a much lower number of AML/CFT violations in the activities of reporting entities (only 20). At the same time, these inspections covered all reporting entities with history of AML/CFT violations. According to PMD, the supervisory response measures undertaken in 2016 by PMD have a positive impact on compliance with AML/CFT requirements by persons carrying out transactions with precious metals and precious stones. PMD also presented a case where the application of enforcement measures improved compliance by reporting entities with the AML/CFT requirements.

Figure 2.

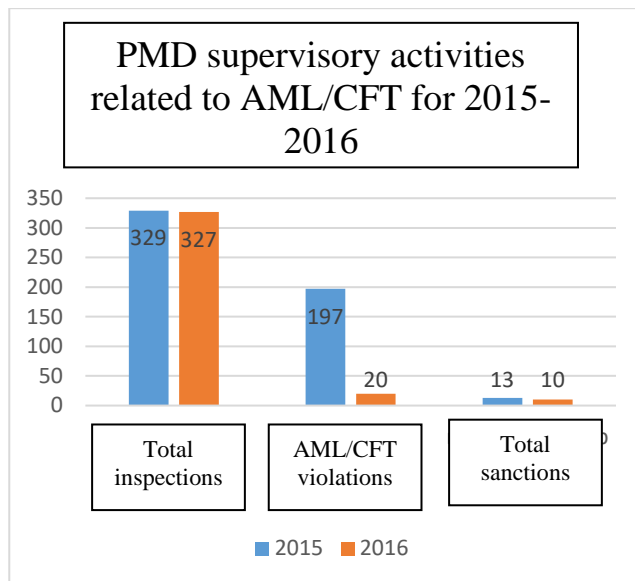
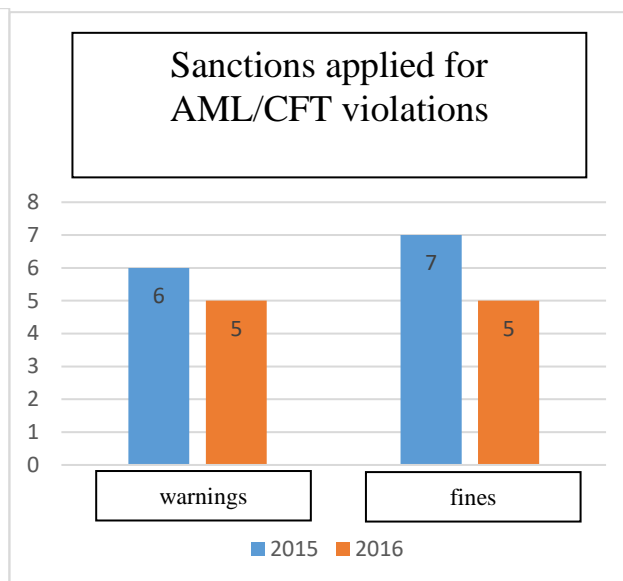


Figure 3.



*Promoting a clear understanding of AML/CFT commitments and ML/TF risks*

*Financial sector*

451. SFIS and NBKR contribute to a better understanding of AML/CFT obligations in the private sector through outreach and trainings. However, the level of outreach activities targeting representatives of the private sector carried out by other authorised bodies over financial institutions is insufficient.

452. SFIS publishes relevant statistics on AML/CFT issues on its website and maintains regular contact with the private sector. NBKR holds regular meetings with representatives of banks and other financial institutions, where participants, besides prudential issues, also discuss and consider AML/CFT matters. The SIT&CC pays sufficient attention to AML/CFT matters in its communications with the national postal operator, Kyrgyz Pochtasy. Gosfinnadzor does not conduct regular AML/CFT meetings with representatives of the private.

453. SFIS, jointly with NBKR, organizes trainings for representatives of the private sector. Trainings are conducted both annually and as required, such as when the AML/CFT Law is amended. However, additional training activities focused on the specifics of different sectors are also called for, along with trainings in ML/TF risk assessment. This necessity was also identified during meetings and interviews with representatives of the private sector. Among representatives of the private sector, there is a different level of awareness and understanding of AML/CFT issues and ML/TF risks. At the same time, almost all representatives of the private sector have demonstrated a limited awareness of the NRA.

454. No AML/CFT-centric guidelines and papers for the private sector have been published in Kyrgyzstan since the last mutual evaluation. Materials on legislative AML/CFT amendments are published regularly.

*DNFBP*

455. AML/CFT trainings, according to PMD and representatives of reporting entities, are organized by SFIS with PMD's participation. At the same time, as noted during the meetings with the private

sector, such trainings are mainly focus on clarifying legal requirements, rather than ML/TF matters, as confirmed by a copy of the minutes of a AML/CFT workshop for persons carrying out cash transactions with precious metals, held on 21 February 2017, provided by PMD as an example. Reporting entities were not notified by PMD about the identified ML/TF risks and factors influencing the level of such risks.

*Overall conclusions on Immediate Outcome 3*

**456. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 3.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### Key Findings and Recommended Actions

#### Key Findings

1. Kyrgyzstan did not conduct an assessment of vulnerabilities of different types of legal persons or ML/TF risks. At the same time, the country's law enforcement authorities demonstrated a fairly good understanding of legal persons' related vulnerabilities and risks.
2. Kyrgyzstan lacks the mechanisms for preventing the illegal use of bearer shares for ML or TF purposes (there are conflicting regulations governing the issuance of bearer shares (see criterion 11 R.24)). That being said, given the absence of this type of securities from the country's market (not in circulation or ever been issued), the level of risk posed by bearer shares can be deemed as low.
3. Kyrgyzstan undertakes a number of measures to prevent the abuse of legal entities. The country maintains a state Register of Legal Entities<sup>70</sup>. At the same time, there is no adequate system in place for monitoring the accuracy of information submitted by legal persons. The country also maintains a publically accessible state Register of Securities Holders<sup>71</sup>.
4. When registering/re-registering a legal person, the check of the submitted documents for accuracy or timeliness is not conducted (except for passports). Instead, authorities make sure that a full package of documents required for registration has been submitted. The Justice Ministry is not endowed with any supervisory functions, having the powers only to register and re-register legal persons.
5. The Register of Legal Entities, maintained by the MoJ, contains no information on beneficial owners. Every financial institution and DNFBP collects and retains beneficial ownership information as part of its customer due diligence obligations. Legislative provisions related to professional secrecy prevent competent (law enforcement) authorities from gaining timely access to beneficial ownership information.
6. Representatives of state bodies and the private sector (except for banks) demonstrated a low level of understanding of the issues of beneficial ownership identification. Reporting entities (except for banks) fail to carry out the verification (and sometimes even identification) of beneficial owners.
7. Penalties provided for violation of the relevant requirements are not effective.

#### Recommended Actions

1. Kyrgyzstan should identify and assess the vulnerabilities and risk of ML/TF abuse related to legal persons established in the country.
2. Kyrgyzstan should make sure that its competent (law enforcement) authorities have timely access to beneficial ownership information.
3. Kyrgyzstan should address the issue of bearer shares and develop mechanisms to prevent the misuse of bearer shares for ML or TF.
4. The Justice Ministry's powers should be expanded (additional mechanisms introduced), by introducing at a legislative level/strengthening the existing sanctions (penalties) for non-provision or late provision of basic information or non-provision of any additional information required to perform its functions, as well as for provision of false or misleading

<sup>70</sup> Maintained by the Ministry of Justice

<sup>71</sup> Maintained by Gosfinaadzor

information.

5. To promote a better understanding of legal persons' vulnerabilities, the country's supervisors should maintain detailed statistics on violations detected during on-site inspections and correspondent remedial actions.

457. This Section is dedicated to the review and assessment of the progress in achieving Immediate Outcome 5. To assess effectiveness under this Section, Recommendations 24 and 25 are used.

### ***Immediate Outcome 5 (Legal persons and arrangements)***

#### *Accessibility of information on the establishment and types of legal persons and arrangements*

458. The information on the establishment, types and characteristics of legal persons is publicly available in Kyrgyzstan. It is posted on the website of the MoJ<sup>72</sup> and can be accessed online at no extra cost. The said website contains detailed information on the registration procedure and applicable regulations, along with samples of standard charters and other useful information. Notably, both the regulations and the electronic database of legal persons posted on the aforementioned website are also available in Russian.

459. The Justice Ministry's website, under section "Legal Persons Database", contains information on legal persons, including their name, form of business ownership, registration details, registration number, OKPO and TIN codes, information on foreign participation, founders and director, core business activity, as well as information about whether the legal person is undergoing liquidation proceedings. The access to the passport details of the legal person's founders and senior managers is restricted and only available in the form of an extract issued free of charge.

460. The establishment of legal arrangements, including trusts, within the meaning of the FATF Recommendations is prohibited under the Kyrgyz law. As a result, no publically available information on legal arrangements is available. Given the absence of the relevant legislation<sup>73</sup>, the operation in Kyrgyzstan of foreign trusts, including the use of reporting entities, is practically impossible. In addition, when establishing business relationships and carrying out transactions involving foreign legal persons, reporting entities are required by law to comply with the established requirements for customer due diligence, including, inter alia, the obligation to verify the credentials and authenticity of individuals who have the right to dispose of funds or property.

#### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal persons*

461. The Kyrgyz authorities (except for law enforcement) failed to demonstrate that they identified, assessed and understood the risks and vulnerabilities faced by the country's legal persons, as well as the extent to which they are or may be abused for ML/TF purposes.

462. The ML risk assessment (The 2015 Report) did not include an analysis of the vulnerabilities of legal persons and a correspondent risk assessment. The ML/TF Risk Assessment Summary (The 2017 Report) only contained tables of assigned vulnerability levels in the commercial and non-profit sector. The report lacks any description of either the vulnerabilities of legal persons or the resultant risks.

463. Despite the total absence (2015 Report)/the absence of an analytical part (2017 Report) of vulnerabilities and risks of legal entities in NRA reports, law enforcement bodies have a fairly good practice-based understanding of the vulnerabilities of legal persons. According to law enforcement agencies, limited liability companies (LLCs) top the list of entities open to abuse, which is due to

<sup>72</sup>Ministry of Justice: <http://minjust.gov.kg>

<sup>73</sup> There is also no evidence of reporting entities having clients who are foreign trusts.

the simplicity and low cost of their establishment. In addition, law enforcement officials also identified the simplicity of the establishment of legal persons, failure to verify the accuracy of data submitted during registration/re-registration and the lack of appropriate supervision as the reasons for the prevalence of illegal business activities and creation of shell companies.

464. Although the MoJ was involved in both national risk assessments, it does not use Report findings in its activities. In addition, the MoJ employees showed a lack of understanding of ML/TF risks faced by legal persons.

465. According to the Kyrgyz authorities (including Gosfinnadzor) and representatives of the private sector, despite the existence of legal discrepancies regarding the use of bearer shares (see analysis of R.24), there is no practice of issuing, using and circulating this type of securities in the country (Table 22). As a result, the level of risk posed by bearer shares can be deemed as low. The Kyrgyz authorities have provided detailed statistical data on the issuance of all types of securities in Kyrgyzstan.

**Table 22.** Types of securities issued in Kyrgyzstan

Year	Total emissions	Non-documentary registered shares	Bonds	Investment units	Housing certificates
2012	2720.6 mln. som	2542.3 mln. som	105.95 mln. som	0	72.6 mln. som
2013	2939.4 mln. som	2669.6 mln. som	269.8 mln. som	0	0
2014	3184 mln. som	2874 mln. som	310 mln. som	0	0
2015	6277.8 mln. som	6001.6 mln. som	276.2 mln. som	0	0
2016	15,144.95 mln. som	14,505.95	525 mln. som	0	114 mln. som

#### *Actions to prevent abuse of legal person and arrangements*

466. The Kyrgyz authorities have taken steps to prevent the abuse of legal persons. These steps (described in more detail below) include ensuring the transparency of basic information, by registering all legal persons with the MoJ and putting the state register of legal persons in the public domain; putting in place a mechanism designed to monitor the timeliness of provision of information on legal persons to the MoJ; introduction/implementation of CDD obligations for reporting entities; and non-issuance of bearer shares.

467. The responsibility to register with the MoJ<sup>74</sup> applies to all types of legal persons. Upon registration, a legal person shall provide to the registering authority a set of documents evidencing transparency of such legal person's activities (the founders' decision to establish a legal person) as well as its management and leadership structures (including the presentation of personal data such as copies of the founders' and managers' passports).

468. The MoJ uses a checklist to ensure that all required documents have been provided, including checking the submitted documents for any discrepancies or omissions. Importantly, upon registration/re-registration of a legal person, the Justice Ministry officials also check that the persons involved are not subject to the UN TF and PF sanctions.

469. The Kyrgyz authorities provided the following statistics on state registration of legal persons and denials thereof:

<sup>74</sup> Basic information on legal persons is accessible via Ministry of Justice website, under section "Database of legal persons" (see review of Recommendation 24).



**Table 23.** Number of denials of state registration of legal persons

Action	2014	2015	2016
State registration of legal persons and their branches (representatives offices)	8,236	8,536	9,078
Denials of state registration of legal persons and their branches (representative offices)	3,645	4,416	4,796

470. A legal person can be denied state registration in the following circumstances: failure to submit the required documents; inclusion in the state register of a legal person with an identical company name; discovery of any discrepancies or omissions in the information contained in the submitted documents; submission of documents to the wrong registration authority; existence of a court ruling prohibiting the registration of a legal person, etc. A vast majority of denials (about 95%) of state registration stem from the failure to provide the required documents and discovery of discrepancies or omissions in the information contained in the submitted documents.

471. To some extent, the outlined scope of checks accompanying the registration process conducted by the MoJ is designed to ensure the accuracy of the information provided and to prevent abuse of legal persons. However, additional measures are needed to increase the value of the available information in terms of its accuracy and relevance.

472. Kyrgyzstan lacks effective tools and mechanisms needed to ensure that the information on legal persons is up to date. Under the Kyrgyz law, legal persons shall notify the MoJ of any changes in their registration details (whether such changes necessitate a re-registration of a legal person or not) within 30 calendar days from the date of the relevant decision. Upon receipt of the said notice, the MoJ shall, within 7 business days, enter the necessary information into the state register, of which it shall notify the tax authorities, the statistical office and the Social Fund. According to the representatives of the MoJ, it is not uncommon for legal persons to miss the established deadlines.

473. Kyrgyzstan is consistently working to put in place a monitoring mechanism designed to ensure that the information contained in the state register of legal persons is accurate and up to date. Thus, the country's Administrative Code was amended in November 2016 to provide punishment for failure to notify of changes in the legal person details not entailing its re-registration (Article 297), as well as for engagement by for-profit and non-profit organizations in activities without appropriate state registration and re-registration (Article 402). The Kyrgyz authorities reviewed 164 offences falling under Article 297 and issued fines totalling 160,500 som (\$2,365.77) and 5 offences under Article 402 with fines totalling 5000 som (\$73.7). At the same time, the size of the fines used (see analysis of R.24) can be seen as neither effective nor dissuasive.

474. In respect of a more detailed shareholder information, it should be said that Gosfinnadzor, which maintains a unified state register of securities, may, upon request, provide information, among others, on stock issues and owners of more than 5% of shares, which also contributes to the transparency of information on legal persons.

475. At the same time, the requirement to provide information on beneficial ownership upon registration/re-registration of a legal person is absent. Although reporting entities are required to carry out the identification of beneficial owners as part of their CDD procedures, representatives of the private sector (other than banks) have displayed a poor understanding of their obligations and the lack of effective enforcement mechanisms.

476. Reporting entities (mostly credit institutions) use information contained in the state register of legal entities and the register of securities owners, as well as the data from other sources (e.g., online search, state registers of foreign legal persons (where shareholders or founders are foreign legal

persons). Checking the information contained in the state register of legal entities is only one element of the CDD process. Supervisors make a substantial contribution to the prevention of abuse of legal persons, both by providing clarifications and a list of additional information sources, and by overseeing the activities of reporting entities and issuing remedial notices. The effectiveness of the country's supervisory regime is reviewed in the subsection under Immediate Outcome 3.

477. Although the country's supervisors monitor the implementation by reporting of the CDD procedures (including the identification of beneficial owners), they don't maintain separate statistics on identified violations in identifying beneficial owners. In addition, the existing systemic problem in understanding the issues of beneficial ownership (the term "beneficial" is understood to mean a director, an owner or a major shareholder) can significantly impact the effectiveness of the measures taken.

478. Kyrgyzstan lacks the mechanisms for preventing the illegal use of bearer shares for ML or TF purposes (there are conflicting regulations governing the issuance of bearer shares (see analysis of R.24)). However, such securities are absent from the country's market (not in circulation or been ever issued).

479. In Kyrgyzstan, securities market participants such as a depository and a broker may act as a nominal holder of securities. At the same time, the practice of using nominee shareholders is almost non-existent in Kyrgyzstan. The requirement to conduct CDD, as well as to disclose their status, when carrying out transactions applies to persons acting on behalf of the customer, including trust management<sup>75</sup> (see analysis of R.25).

480. In addition, reporting entities are under the obligation to ascertain whether the customer is acting on behalf of another person, while the customer is required to provide such information. Should a reporting entity suspect that the customer has failed to fulfil this obligation, it must notify its supervisor by means of an STR (one of the criteria of the list drafted by SFIS). Financial institutions and DNFBPs have demonstrated a good understanding of their obligation to perform specified CDD procedures, along with the responsibility to submit STRs in line with the list drafted by SFIS (see IO4). See below for information on STRs with the specified indicator of suspicious activity submitted to SFIS.

**Table 24** Number of BO STRs

Name of reporting entity	2013	2014	2015	2016
Commercial banks	0	0	2	3

*Timely access to reliable, accurate and up-to-date basic information on beneficial ownership of legal persons*

481. The state register of legal entities is open, hence all competent authorities receive prompt access to the data contained therein. Meanwhile, the register of securities, which, among others, contains details of owners of more than 5% of the shares of legal persons, is also open to the public, with information therefrom being provided upon the competent authority's request. The registers contain basic information on legal ownership of legal persons. The information contained in the state register of legal entities is regularly updated. Companies are required to notify the relevant authorities of their changes within 30 days. The data contained in the registers are, according to the representatives of both the Kyrgyz private sector and the competent authorities, accurate and reliable, and regularly

<sup>75</sup> Trust (asset) management of investment assets is a type of professional activity in the stock market subject to licensing. This business means the management company carries out the trust (asset) management of the client's investment assets, including pension assets. The management company is not the owner of the clients' assets.

used by them in the performance of their duties. However, given the absence of an effective mechanism for ensuring the relevance of information, relying on such information in practice is not justified.

482. There is no register of beneficial owners in Kyrgyzstan. The beneficial ownership data available to reporting entities (typically financial institutions) are the main source of information for government agencies in Kyrgyzstan. In other words, information on beneficial owners can be obtained only if the legal person is among the customers of a reporting entity subject to AML/CFT requirements. These institutions receive information on beneficial ownership in the course of customer due diligence. However, the rights and powers of law enforcement agencies to gain access to this information are limited, given that they are only allowed to access this information as part of a criminal investigation (before the criminal case is instituted – only through FIU). In other words, competent authorities do not have timely access to the information on beneficial ownership, and have to rely on data contained in the state registers. At the same time, there is a systemic problem of understanding, including among government agencies, of both the definition of beneficial ownership and the mechanism for beneficial owners identification.

483. After meeting representatives of financial institutions, expert assessors came to the conclusion that only banks have a clear understanding of the obligation to identify beneficial owners and access to reliable beneficial ownership information. This conclusion was corroborated by the findings of on-site missions conducted by NBKR, which did not reveal any instances of non-compliance with the requirements related to beneficial ownership. At the same time, it should be noted that Kyrgyzstan does not maintain separate statistics on this type of violation.

484. DNFBPs have a limited understanding of the CDD requirements (including the obligation to identify beneficial owners), which is further exacerbated by deficiencies in the supervision of their activities.

485. The legislative requirement for legal persons to retain up-to-date information on their beneficial owner is absent.

#### *Timely access to reliable, accurate and up-to-date basic information on beneficial ownership of legal arrangements*

486. Given the specifics of the country's legal system, legal arrangements, in the sense in which these terms are used in the FATF Recommendations, cannot be established in Kyrgyzstan

487. Reporting entities may access the relevant information on the beneficial owners of foreign legal arrangements – when establishing business relationships and carrying out transactions involving foreign legal persons, reporting entities are required by law to comply with the established requirements for customer due diligence, including, inter alia, the obligation to verify the credentials and authenticity of individuals who have the right to dispose of funds or property (see analysis of R.25). However, the competent authorities' timely access to this information will be limited for the same reasons as indicated in the previous subsection.

488. In addition, such access may also be negatively impacted by the inadequate understanding of their obligations by financial institutions (other than banks) and DNFBPs, as well as by any shortcomings in their supervision.

489. At the same time, it should be noted that the reporting entities whose representatives met expert assessors do not have business relationships with legal persons. In addition, it is highly unlikely that foreign legal persons will find Kyrgyzstan's financial system appealing any time soon.

### *Effectiveness, proportionality and dissuasiveness of sanctions*

490. Starting 17 November 2016, the Kyrgyz law provides for administrative liability for failure to notify authorities of changes in the details of a legal person not resulting in its re-registration in accordance with the procedure established by law: a fine ranging from 5 to 10 standard units<sup>76</sup>, which is currently equivalent to KGS500 (US\$7.37) and KGS1,000 (US\$14.64). In addition, officials of businesses face a fine of 10 standard units, which is equivalent to KGS1000 (US\$14.64), for engaging in activities without appropriate state registration or re-registration.

491. The Kyrgyz authorities noted that in the six months of 2017 the competent authorities reviewed 164 offences and imposed fines totalling KGS 160,500 (\$US 2,365.77) for failure to notify of changes in the legal person details not entailing its re-registration in accordance with the established procedure; 5 offences and fines totalling KGS 5000 (\$US 73.7) for engagement by businesses and non-profit organizations or their branches (representative offices) in activities without appropriate state registration or re-registration (vs. 7 offences and fines of KGS 7000 in the same period of 2016). No information about previous measures (number of violations, amounts recovered) has been provided.

492. The size of the fines used cannot be seen as dissuasive. In addition, no penalty is provided for the provision of inaccurate or false information. The effectiveness of the Justice Ministry's efforts is undermined by the lack of any legal powers to enforce compliance with applicable legal requirements.

493. NBKR, in addition to being vested with powers to take remedial action, can impose a range of effective and dissuasive sanctions for non-compliance with the established CDD requirements (including in acidifying beneficial ownership) and the obligation to report to SFIS. At the same time, it has never found itself in a situation where it had to impose sanctions for failure to provide basic information (to SFIS) or data on beneficial ownership. It should be noted that Kyrgyzstan does not maintain separate statistics on sanctions imposed for shortcomings pertaining to the reliability and completeness of beneficial ownership information, even though such information could be used by the Kyrgyz authorities to keep track of the existing risks and assess the adequacy of measures aimed at preventing the abuse of legal persons.

494. The rest of the country's supervisors (Gosfinnadzor and SIT&CC), the Finance Ministry's Precious Metals Department have access to a range of effective and dissuasive sanctions for AML/CFT violations.

### **495. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 5.**

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<sup>76</sup>One standard unit is equivalent to KGS100.

## CHAPTER 8. INTERNATIONAL COOPERATION

### Key Findings and Recommended Actions

#### **Key Findings**

1. There are attributes and characteristics of effective international cooperation mechanisms in place in Kyrgyzstan. The country's authorities can provide the widest possible mutual legal assistance in a timely manner and ensure extradition of suspects subject to investigations, prosecutions and other proceedings into ML/TF and predicate offences.
2. Competent authorities do not quite actively submit MLA requests on ML/TF criminal cases to their foreign counterparts.
3. Kyrgyzstan has not fully demonstrated the effectiveness of the measures taken by the competent authorities to freeze, seize, confiscate and assets division within the framework of international AML/CFT cooperation, as well as in respect of high-risk predicate offences (offences associated with high ML/TF risks).
4. Of the country's supervisory bodies, international cooperation on AML/CFT is pursued by NBKR, with its main focus being on licensing- and senior officials appointment-related information sharing. The level of Gosfinnadzor's AML/CFT cooperation with foreign supervisors is limited due to lack of necessity. Supervisors (except for NBKR) do not maintain incoming and outgoing request statistics.
5. In general, CIS FIUs assess their cooperation with SFIS as positive. However, particular FIUs noted the unsatisfactory quality of SFIS responses, particularly, non-provision of beneficial ownership information, which is largely due to Kyrgyzstan's systemic deficiencies (see IO. 5 for more detail).
6. The statistics provided by authorities and MLA data are not sufficient to fully assess the extent of international AML/CFT cooperation (including on issues related to extradition, timeliness of provision of mutual legal assistance, and outcomes of information use).

#### **Recommended Actions**

1. The competent authorities should make an intensive use of various MLA mechanisms in conducting investigations and pre-trial inquiries into ML/TF, as well as in investigating high-risk predicate offences.
2. Kyrgyzstan should ensure that international assistance provided is commensurate with the level of ML/TF risks identified. In this regard, Kyrgyzstan should make a more systemic use of international cooperation mechanisms to submit international MLA requests in support of investigations, prosecutions and other activities in line with the ML/TF risks identified. MLA outcomes should be used in conducting risk assessments.
3. Competent authorities should utilize different types of MLA in searching for, seizing and freezing criminal assets.
4. SFIS should improve the quality of foreign FIUs requests execution.
5. Kyrgyzstan should do more to assess the effectiveness of its international cooperation mechanisms, including through the collection of statistical data (especially on the types of offences and the timeliness of request execution) Kyrgyzstan should also monitor the execution of its MLA requests in order to assess the usefulness of the information provided

and the effectiveness of received replies, as well as set up a system of MLA request prioritization.

## ***Immediate Outcome 2 (International cooperation)***

### *Providing constructive and timely mutual legal assistance and extradition*

496. Kyrgyzstan provides mutual legal assistance in support of ML/TF investigations, prosecutions and other proceedings related to ML/TF predicate offences.

497. The country's Prosecutor General's Office is a central designated authority responsible for the provision of all types of mutual legal assistance. MLA is provided on the basis of international treaties and agreements, or on the basis of the principle of reciprocity.

498. Kyrgyzstan, acting in compliance with the international laws and principles, strictly abides by the terms and conditions of the international interagency agreements signed by. In practice, newly submitted mutual legal assistance requests are marked by the Kyrgyz Prosecutor General's Office as under control, which assists MLA prioritization. Officials responsible for implementing MLA requests marked as under PGO control are required to keep the latter informed about the progress in MLA request implementation. International requests have priority over domestic ones and must be fulfilled within the timeframe set out in a given request. At the same time, Kyrgyzstan did not provide examples of how requests are prioritized.

499. Neighbouring countries (Russia, Kazakhstan, other EAEU countries and Turkey) are ranked among Kazakhstan's key international partners, especially when it comes to the provision of mutual legal assistance and extradition. Countries that commented on their experience of international cooperation with Kyrgyzstan (17 countries) did not report any problems in this field.

500. Upon receipt of a MLA request from a foreign country, the country's competent authorities may, if necessary, request additional information needed for the fulfilment of the request.

### **Case study 14**

As part of its investigation No. ... into money laundering, the German Federal Criminal Police Office sent a MLA request to the Kyrgyz authorities for registration/re-registration details of Abdyraz LLC and criminal convictions of its founders and directors. That said, the request from the German Federal Police contained a minimum amount of information, including no description of the crime and no serial number of the criminal case, as well as minimum verification requirements needed to ensure a full and objective investigation of the circumstances of the case No. ... Additional information was requested during the execution of this international request.

501. The majority of incoming MLA requests concern such offences as smuggling and drug trafficking, while the majority of outgoing MLA requests, fraud and violent crimes.

502. Kyrgyzstan maintains statistics on incoming and outgoing international investigative requests for legal assistance in criminal cases, with money laundering and terrorism grouped into separate categories.

503. More detailed statistics on MLA requests, disaggregated by type of the information requested (e.g., information on beneficial owners, accounts, etc.), as well as on extradition requests, are not available.

504. The number of international requests for MLA in criminal cases related to terrorism has been increasing since 2013 (from 3 requests in 2013 to 22 in 2016). Information on the total number of incoming, pending, denied and granted MLA requests is shown in Table 25.

**Table 25.** International investigative requests for mutual assistance in criminal matters received in 2013-2016

Mutual legal assistance requests	2013	2014	2015	2016	Total
Received	359	461	630	472	1,922
Pending	0	0	9	86	95
Denied	28	4	13	3	48
Granted	331	457	608	383	1,779

505. Kyrgyzstan provides mutual legal assistance in combating TF (Table 26). The growing number (2013-2016) of received and sent international requests may point to recent criminal investigations into cross-border terrorist financing. However, the expert assessors failed to assess level of international cooperation on TF, since information on criminal investigations is not public.

**Table 26.** International MLA requests in ML and TF criminal cases, 2013-2016

Indicator	2013		2014		2015		2016	
	ML	TF	ML	TF	ML	TF	ML	TF
Received MLAs	3	2	1	4	1	10	3	22
Sent MLAs	3	1	2	2	3	3	0	6
Denied MLAs			1					

506. The Kyrgyz authorities observe the confidentiality of MLA requests, taking all steps provided by the Criminal Procedure Code to protect information. In particular, inquiries, inspections, searches, seizures, examinations and other procedural actions provided by the CPC are carried out in accordance with its international treaties and in the manner stipulated by these treaties and the Criminal Procedure Code.

507. In Kyrgyzstan, money laundering and terrorist financing are classified as extraditable offences. Kyrgyzstan may refuse to extradite its citizens to third countries. In this case, however, the Kyrgyz competent authorities may use the case materials submitted to the GPO by the relevant foreign competent authority to initiate and pursue criminal proceedings against such Kyrgyz national.

508. At the same time, it was not possible to assess the effectiveness of the country's request fulfilment and prioritization process due to the lack of the relevant information. Moreover, despite the continued use of international cooperation mechanisms, such work is not taking into account the ML/TF risks.

#### *Submission of requests for timely mutual legal assistance*

509. The number of MLA requests sent by Kyrgyzstan has been growing steadily since 2013. That said, Kyrgyzstan noted that in some cases it did not receive replies to the questions contained in its MLA requests, resulting in some investigations being delayed (Example 5).

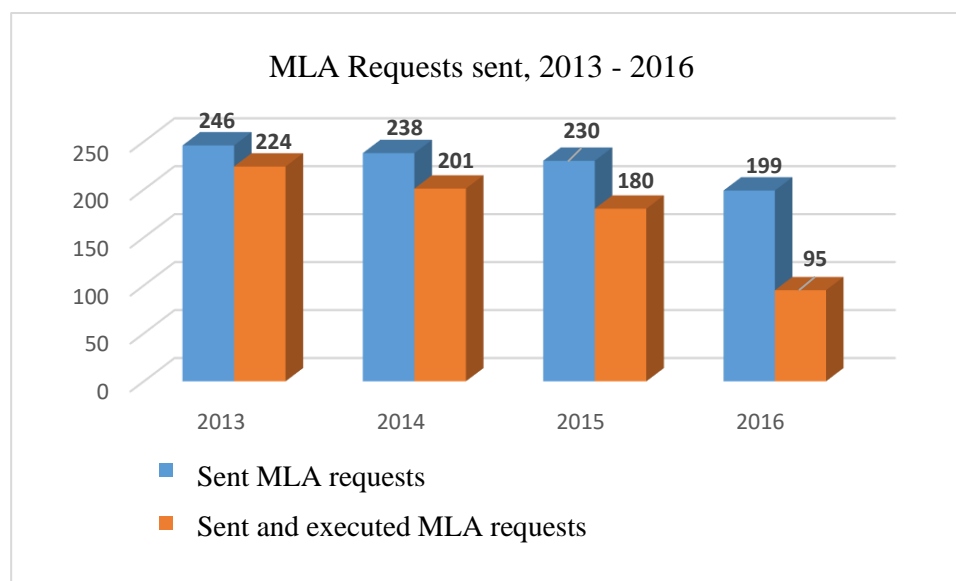
510. Since ML/TF investigations and prosecutions are rare in Kyrgyzstan, the main focus of MLA requests tends to be on predicate offences.

511. Table 27 and Figure 4 contain statistics on the total number of MLA requests sent to foreign counterparts.

**Table 27.** International investigative requests for mutual assistance in criminal matters sent in 2013-2016

Mutual legal assistance requests	2013	2014	2015	2016	Total
Sent	246	238	230	199	913
Pending	0	32	45	99	176
Denied	22	5	5	5	37
Granted	224	201	180	95	700

**Figure 4.** International investigative requests for mutual assistance in criminal matters sent in 2013-2016



#### *Submission of requests for other types of AML/CFT assistance*

512. Kyrgyzstan's legal framework is sufficient for international cooperation on mutual legal assistance, extradition and execution of AML/CFT requests.

513. The country has practical experience of international cooperation in investigating money laundering and predicate offences, as well as limited experience in CFT-focused engagement. The country's law enforcement authorities work closely with their foreign colleagues (Russia, Kazakhstan, other EAEU countries and the EU) but mainly in respect to the exchange of information on predicate offences.

514. Another example of successful engagement relates to the involvement of law enforcement officials from other countries, as well as experts from international organizations, including those specializing in the seizure of criminal proceeds abroad, in international investigations.



515. There are examples of successful FIU's and law enforcement agencies' engagement in new types of international cooperation. In particular, acting in compliance with the UN Convention against Corruption, a foreign court ordered the seizure of funds constituting the proceeds of crime deposited in the accounts outside Kyrgyzstan. Among the key factors contributing to the successful resolution of the above case was the effective cooperation between SFIS and its law enforcement authorities, as well as the involvement of international experts in the seizure of criminal assets.

516. SFIS is a member of the Egmont Group since 2009. Although the AML/CFT Law allows SFIS to engage in information sharing with its foreign counterparts both on the basis of agreements and the principle of reciprocity, SFIS has entered into memoranda of understanding with 24 foreign FIUs with the goals of strengthening bilateral relations. According to the information provided by Kyrgyzstan, SFIS received over 150 requests from foreign FIUs in the reporting (See Table 28).

517. SFIS actively uses its authority in the area of international cooperation to collect operational data needed for a full picture of the identified suspicious transactions.

518. According to the information provided by Kyrgyzstan, a total of over 270 requests were sent to foreign countries in the reporting period. The data also includes spontaneous information exchanges (see Table 28).

**Table 28.** Exchange of Information with Foreign FIUs

Year	2012	2013	2014	2015
Received requests	26	39	37	48
Sent requests	64	36	129	50

519. As shown above, Kyrgyzstan maintains active engagement with its foreign counterparts both in receiving and sending requests. Based on the responses received from SFIS's foreign colleagues, the assessors concluded that the quality and speed of information sharing depends on the region. Thus, representatives of the CIS countries noted the timeliness and high quality of both the requests sent to foreign FIUs and replies prepared in response to foreign requests. As for the rest of the countries that provided information on the timeliness and quality of the request handling process, it was noted that it takes SFIS on average one month to reply to a request. There were cases when SFIS neither communicated its refusal to grant a foreign request nor provided the requested information for more than a year. Respondents noted the low quality of responses and failure to provide information on beneficial ownership, which is largely due to the systemic shortcomings of the Kyrgyz Republic (see IO5 for more details).

520. The AML/CFT Law guarantees the confidentiality of information received from foreign competent authorities. SFIS prohibits the disclosure to third parties of information received or requested from a foreign competent authority without the prior consent of such foreign competent authority. To strengthen the security of information sharing, SFIS maintains close contact with the FIUs of countries that are members of the Egmont Group, using the Egmont Secure Web. Information sharing with the FIUs outside the Egmont Group is carried out using other communication channels. The confidentiality regulations in effect in Kyrgyzstan apply to data received from foreign parties.

### *Supervisory authorities*

521. The legislation of Kyrgyzstan endows supervisory authorities (for financial institutions) with the necessary powers to exchange information and conduct other interaction with foreign supervisors. There are no obstacles to the exchange of non-confidential information. NBKR and Gosfinnadzor have the right to exchange confidential information and conduct other interaction (conduct inspections etc.) with foreign supervisors on the basis of concluded agreements. NBKR entered into cooperation agreements in the field of bank supervision with Central (National banks and supervisory authorities of Cyprus, Belarus, Ukraine, the Russian Federation. Gosfinnadzor concluded agreements on cooperation in supervision of financial institutions with supervisors of Russia, Kazakhstan, and Turkey. Besides, the exchange of confidential information with foreign supervisors, including the AML/CFT issues, is possible also on the basis of the Agreement on exchange of information, including confidential, in the financial sphere with the objective of creating conditions for in the financial markets to ensure free capital movement dated 23.12.2014, whose parties are the Russian Federation, Belarus, Kazakhstan, Armenia and Kyrgyzstan. Communications Committee does not have any agreements with foreign supervisors. At the same time, the Communications Committee has the right to conduct international cooperation, including exchange of information and inspections on request, on the basis of legislation.

522. In practice, NBKR exchanged information for AML/CFT purposes. Assessors were provided with an example of AML/CFT information sharing between NBKR and the Central Bank of one of the EAG countries (CB), to whom NBKR proactively submitted data on suspicious transactions involving companies residents of this country detected during an inspection, and on the use of accounts opened with the banks of this country and Kyrgyzstan. NBKR showed examples of interaction with foreign supervisors in the form of requests and on receiving information in the process of reviewing applications to obtain a license for banking activity (checking the source of the assets) and appointment of bank managers (checking business reputation).

523. Gosfinnadzor demonstrated one example of information sharing in the insurance sector, where Gosfinnadzor sent a request to the insurance sector regulator in one of the EAG countries and received data on the origin of the promissory note used by such insurance company in calculating its equity capital. On the basis of the information (confirming that the promissory note was fake) received from the said regulator, Gosfinnadzor initiated legal proceedings to revoke the license of the insurance company. There were no other examples of cooperation of Gosfinnadzor with foreign supervisors shown to assessors. There is no practical AML/CFT cooperation for Communications Committee and Precious Metals Department.

Figure 5



*arrangements*

524. Assessors were provided with no information on the Kyrgyz authorities' requests, whether sent or received, for cooperation in identifying and sharing basic information on legal persons registered in the Kyrgyz Republic, as well as information on their beneficial owners. In part, according to the majority of Kyrgyzstan's law enforcement agencies, this may be due to the fact that predicate offences and related money laundering tend to take place inside the country, hence there is very little need for local authorities to request such information from their foreign counterparts.

525. Assessors noted the unsatisfactory quality of sent requests and failure to provide beneficial ownership data, which is largely due to Kyrgyzstan's systemic deficiencies (see IO. 5 for more detail).

**526. Kyrgyzstan has achieved a *moderate* level of effectiveness for Immediate Outcome 2.**

## **TABLE OF ACRONYMS**

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism (also used for Combating the financing of terrorism)
SFIS	State Financial Intelligence Service under the Government of the Kyrgyz Republic (FIU)
BNI	Bearer-Negotiable Instrument
CDD	Customer Due Diligence
CFT	Countering the financing of terrorism
DNFBP	Designated Non-Financial Business or Profession
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GPO	General Prosecutor's Office
GOSFINNADZOR	Financial Market Supervisory and Regulatory Service
IO	Immediate Outcome
IN	Interpretive Note
ML	Money laundering
MOU	Memorandum of Understanding
MVTS	Money or Value Transfer Service(s)
NBKR	National Bank of the Kyrgyz Republic
NBFI	Non-bank financial institutions
NPO	Non-Profit Organization
NRA	National Risk Assessment
OKPO	Common identification code of enterprises, organizations and individual entrepreneurs
Palermo Convention	The United Nations Convention against Transnational Organized Crime 2000
PEP	Politically Exposed Person
PMD	Precious Metals Department under the Kyrgyz Republic Ministry of Finance
PWMD	The financing of proliferation of weapons of mass destruction
R.	Recommendation
RBA	Risk-Based Approach
SRB	Self-Regulatory Body
STR	Suspicious Transaction Report
SSCEC	State Service for Combating Economic Crime under the Kyrgyz Republic Government
SIT&CC	State Information Technologies and Communications Committee
TCSP	Trust and Company Service Provider
TIN	Tax individual number
Terrorist Financing Convention	The International Convention for the Suppression of the Financing of Terrorism 1999
FT	Terrorism Financing
UN	United Nations
UNSCR	United Nations Security Council Resolution

Vienna Convention	The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988
AML/CFT/PWMD	Anti-money laundering and countering the financing of terrorism and the financing of proliferation of weapons of mass destruction

## ***TECHNICAL COMPLIANCE ANNEX***

1. This Annex provides a detailed analysis of the level of technical compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous EAG Mutual Evaluation in 2007. This report is available from <http://eurasiangroup.org/ru/restricted/eagkyrgyz.pdf>.

### ***Recommendation 1 – Assessing Risks and applying a Risk-Based Approach***

3. The requirements of Recommendation 1 were added to the FATF standards in 2012 and were, therefore, not assessed during the 1st Round of EAG Mutual Evaluations.

4. **Criterion 1.1** – According to Government Resolution No.182 of April 8, 2016 SFIS is authorized to conduct assessment of risks of money laundering, financing of terrorism and extremism and financing of proliferation of weapons of mass destruction in the prescribed manner and is tasked with arranging for implementation of the government AML/CFT strategy (policy).

5. Kyrgyzstan has conducted two national risk assessments in 2015 and 2017. In February 2015, the Anti-Money Laundering and Combating the Financing of Terrorism and Extremism Committee (Interagency Committee) approved the AML/CFT Risk Assessment Report (2015 Report).

6. In March 2017, Kyrgyzstan approved the ML/TF Risk Assessment Summary (2017 Report).

7. Besides this, the Kyrgyz competent authorities did not conduct their own risk assessments in the areas under their purview.

8. **Criterion 1.2** – Government Decree No. 324 dated May 28, 2012 approved the Regulation on the AML/CFTE Committee, assigning it the responsibility for conducting and coordinating risk assessment, as well as for developing and implementing a national AML/CFT strategy based on the risks identified. An assessment of ML/TF risks was conducted by an ad hoc working group comprising representatives of the key ministries and agencies responsible for combating money laundering and terrorist financing.

9. **Criterion 1.3** – One of the functions of SFIS involves collection and analysis of information for assessing risks (threats, vulnerabilities and consequences) of money laundering, financing of terrorism and extremism and proliferation financing and preparation of reports based on the outcomes of this assessment as well as development of draft government AML/CT strategy (policy) and draft Action Plan of its implementation.

10. The final provisions of the 2017 Report state that the next risk assessment is to be conducted in two years.

11. **Criterion 1.4** – One of the tasks of the Interagency Committee is to make decisions on conducting and coordinating assessment of risks of money laundering, financing of terrorism and extremism and financing of proliferation of weapons of mass destruction and decisions on adoption and publication of reports on the outcomes of such assessment.

12. Risk assessment findings are published on SFIS official website. The 2015 Report was not made available via the said website; nor was it communicated to reporting entities subject to AML/CFT requirements. The 2017 Report Summary was posted on the FIU official website.

13. **Criterion 1.5** – As of now, Kyrgyzstan does not apply a risk-based approach to allocating resources and implementing measures to prevent or mitigate ML/TF. The AML/CFT efforts undertaken by the designated authorities and private sector are implemented without consideration for the risk assessment findings and/or magnitude of ML/TF in the country.
14. **Criterion 1.6** – The existing AML/CFT regulations applicable to financial institutions and DNFBPs do not provide for exemptions from the requirement to apply some of the FATF Recommendations.
15. **Criterion 1.7** – Specific measures for managing or mitigating risks based on the 2015 and 2017 risk assessment findings have not been developed or implemented in Kyrgyzstan. Financial institutions and DNFBPs are not required to take into account information on existing risks when undertaking self-assessment of risks.
16. **Criterion 1.8** – According to clause 17 of the Regulation on Identification and Verification of Customers and Beneficial Owners adopted by Resolution No.135 simplified measures may be applied for identification of natural persons when they make money transfers without opening bank account, carry out currency exchange transactions and cash cheques. Application of these simplified measures is based on a mere assumption of low risk rather than on a robust assessment of ML/TF risks.
17. **Criterion 1.9** – The supervisory authorities have necessary powers to ensure compliance with the AML/CFT requirements. However, compliance with this criterion is affected by the deficiencies identified under criteria 1.10 and 1.11.
18. At the same time, the Regulation on General Requirements for AML/CFT Internal Control Rules (ICR Regulation) requires reporting entities to conduct an annual assessment of customer risks. The main risk assessment mechanisms are determined by SFIS.
19. **Criterion 1.10** – The responsibility of financial institutions and DNFBPs to take appropriate steps to identify, assess and understand their ML/TF risks (for countries or geographic; products, services or delivery channels) is not provided for by laws or regulations, except for individual elements covered by the Kyrgyz Government and NBKR regulations.
20. Clause 8(2) of the Regulation on General Requirements for AML/CFT Internal Control Rules adopted by Kyrgyz Government Resolution No.135 requires reporting entities to assess ML/TF risks of their customers against various criteria. According to clause 25 of the Regulation on Minimum Requirements for AML/CFT Internal Controls in Commercial Banks adopted by KRN Board Resolution No.96/2 of 29.12.2010 banks are obliged to provide the board of directors with quarterly written reports that, among other things, must contain information on high-risk transactions carried out by bank's customers and information on risks associated with introduction of new products.
21. However, there are no requirements to (a) document their risk assessment; (b) consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied; (d) have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs.
22. **Criterion 1.11** – The applicable Kyrgyz regulations do not require financial institutions and DNFBPs to have policies, controls and procedures, which are approved by senior management, to enable them to manage and mitigate the risks that have been identified.
23. Financial institutions and DNFBPs are not required to monitor the implementation of those controls and to enhance them if necessary and take enhanced measures to manage and mitigate the risks where higher risks are identified, except for application of simplified measures in respect of customers identified as high risk. According to clause 8(1)(2) of the Regulation on General

Requirements for AML/CFT Internal Control Rules and clause 16 of the Regulation on Identification and Verification of Customers and Beneficial Owners adopted by Resolution No.135 entities are obliged to update information on high-risk customers at least once a year and pay special attention to transactions carried out by such customers.

24. **Criterion 1.12** – The applicable laws and regulations do not permit financial institutions and DNFBPs to take simplified measures to manage and mitigate risks, if lower risks have been identified.

#### *Weighting and conclusions*

25. Kyrgyzstan has complied, or largely complied, with the country's risk assessment requirements. Risk mitigation requirements for financial institutions and DNFBPs have not been complied with, or have been complied with partially. The identified shortcomings concern the inadequacy of measures undertaken so far in the context of the work on risk assessment.

26. **Kyrgyzstan is rated *partially compliant* with Recommendation 1**

#### ***Recommendation 2 – National Cooperation and Coordination***

27. In the 2017 report, technical compliance under the same recommendation of the previous round (R.31) was rated as largely compliant. The main shortcomings related to the fact that the Interagency Committee was still not functioning at the time of the assessment, as well as the impossibility to assess the implementation of bilateral agreements due to their novelty.

28. **Criterion 2.1** – Simultaneously with the approval of the 1st evaluation of ML risks, the AML/CFTE Committee requested the drafting of the Government Action Plan for mitigating the identified ML risks. According to the minutes of the AML/CFTE Committee's meeting of March 2017, a similar request was made to SFIS following the approval of the revised report on ML/TF risks. The said documents were not been provided to the assessors as of the time of the on-site mission.

29. These tasks and functions are assigned to SFIS (which collects and analyses information for assessing risks (threats, vulnerabilities and consequences) of money laundering, financing of terrorism and extremism and proliferation financing and prepares reports based on the outcomes of this assessment as well as develops draft government AML/CT strategy (policy) and draft Action Plan of its implementation) and to the Interagency Committee (that arranges for development and implementation of the government strategy (policy) based on the AML/CFT/CPF risks identified in the Kyrgyz Republic).

30. **Criterion 2.2** – Pursuant to paragraph 1 of the Regulation on the Anti-Money Laundering and Combating the Financing of Terrorism and Extremism Committee, the Committee is a consultative and coordination body under the Government of the Kyrgyz Republic tasked with coordinating the activities of the relevant government bodies in combating money laundering, terrorist/extremist financing and the financing of the proliferation of weapons of mass destruction.

31. According to the Regulation on SFIS, SFIS is responsible, *inter alia*, for implementing the national AML/CFT strategy (policies). SFIS coordinates the activities of government bodies responsible for monitoring the activities of reporting entities.

32. **Criterion 2.3** – The Anti-Money Laundering and Combating the Financing of Terrorism and Extremism Committee, approved by Government Decree No. 324 dated May 28, 2012, consists of



the heads of Gosfinnadzor and the MoF<sup>77</sup>. SFIS has entered into AML/CFT cooperation agreements with the PMD and Gosfinnadzor. Therefore, the country has established government- and operational-level mechanisms for AML/CFT cooperation involving DNFBP sector supervisors. In addition, SFIS has entered into interagency cooperation agreements with the following government agencies: the Prosecutor General's Office, the NSC, MIA, SDCS and other concerned competent authorities.

33. **Criterion 2.4** – Pursuant to paragraph 4 of the Regulation on the Anti-Money Laundering and Combating the Financing of Terrorism and Extremism Committee, the Committee is also responsible for promoting effective cooperation and coordination of the activities of the Kyrgyz government bodies in combating PWMD. However, no Committee's resolutions aimed promoting cooperation between government agencies in combating PWMD have been provided.

### *Weighting and conclusions*

34. Kyrgyzstan has established and is operating the AML/CFTE Committee, tasked with coordinating the AML/CFT efforts of the government agencies at the national level. However, no practical steps to develop a national AML/CFT strategy based on the risks identified were presented.

35. **Kyrgyzstan is rated *partially compliant* with Recommendation 2.**

### *Recommendation 3 – Money laundering offence*

36. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country's technical compliance under this recommendation was rated partially compliant, with the partial compliance with the Vienna and Palermo Conventions and non-criminalization of certain types of offences that are predicate for ML being cited among the main shortcomings. Kyrgyzstan has made significant progress in improving its legal framework, by making amendments to the Criminal Code.

37. **Criterion 3.1** – Article 182 of the country's Criminal Code (as amended by Law No. 83 of May 29, 2013) criminalizes ML in line with Article 3 (1) (b) and (c) of the Vienna Convention and Article 6 (1) of the Palermo Convention.

38. **Criterion 3.2** – The Criminal Code covers all categories of predicate offences (Arts. 226.1, 131, 124, 194.1 and 194-2, or 21 categories in total) referred to in the 40 FATF Recommendations, including those not covered by the 1st Mutual Evaluation Report of Kyrgyzstan 2007.

39. **Criterion 3.3** – A list of predicate offences for ML includes all types of offences listed in the Criminal Code.

40. **Criterion 3.4** – Pursuant to paragraph 3 of the Note to Article 183 of the Criminal Code, "property" means assets of any kind, whether tangible or intangible, corporeal or incorporeal, movable or immovable, as well as legal documents or instruments in any form, including electronic or digital, evidencing title thereto or interest or participation therein, including bank loans, travellers' checks, bank checks, money orders and securities. In addition, as stated in paragraph 2 of the Note to Article 183 of the Criminal Code, "proceeds of crime" means any economic benefit or property received or derived, directly or indirectly, through the commission of a criminal offence.

41. **Criterion 3.5** – Pursuant to Article 183 of the Criminal Code, when proving that property is

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<sup>77</sup> The Finance Ministry's Precious Metals Department and Gosfinnadzor are responsible for monitoring the activities of DNFBPs, which are classified as reporting entities under the AML/CFT Law.

the proceeds of crime, it should not be necessary that a person be convicted of a predicate offence.

42. **Criterion 3.6** – Pursuant to Article 6 of the Criminal Code, Kyrgyz national, as well as stateless persons permanently residing in Kyrgyzstan, who committed an offence in another country shall be liable under the Criminal Code, unless they were punished by a court of a foreign state. At the same time, despite the absence of an express provision in Kyrgyz law, all offences designated by the FATF as predicate are criminalized in the Criminal Code as predicate for ML.

43. **Criterion 3.7** – Pursuant to Article 183 of the Criminal Code, the offence of money laundering may apply to persons who committed the predicate offence; that is, criminal liability extends to persons engaged in self-laundering.

44. **Criterion 3.8** – The intent and purpose required to prove the offence of money laundering can be inferred from objective factual circumstances. Pursuant to Article 82 of the Criminal Code, in pursuing a criminal inquiry, a preliminary investigation or holding a court hearing, the defence shall prove the event of crime. The intent and purpose are the elements of the event of crime. In this regard, the investigator, the prosecutor or the judge shall, without fail, single out these circumstances during the investigation or trial. Exceptions apply to offences classified as of low or minor severity, given that preparation for the commission of such offences is not criminalized.

45. **Criterion 3.9** – Article 183 of the Criminal Code provides for proportionate and dissuasive sanctions against persons convicted of ML, including imprisonment for a term of 2 to 10 years, plus forfeiture of property for aggravating circumstances (pars. 2 and 3).

46. **Criterion 3.10** – The Kyrgyz law provides for civil and administrative liability of legal persons.

47. Civil liability (Article 96 of the Civil Code) takes the form of a possible liquidation of a legal person by a court for engaging in activities prohibited by law, or for repeat or gross violations of the law. Administrative liability: Article 505-22 of the Kyrgyz Administrative Code makes legal persons liable for participating in money laundering or terrorist/extremist financing. This provision was introduced by Law No. 200 of July 28, 2015 "On Amendments to Certain Regulations of the Kyrgyz Republic".

48. The criminal liability of legal persons is not provided for in the legislation of the Kyrgyz Republic. Criminal liability is not applicable to legal entities, as according to the fundamental principles of Kyrgyzstan, only natural persons can be subject to criminal liability.

49. In particular, according to the article 15 of the Constitution of Kyrgyzstan the accused in the criminal case is not obliged to prove his innocence, and no one is obliged to testify against himself, his (her) spouse(s) and close relatives, the circle of which is determined by law. In addition, in accordance with this article, any actions that impose responsibility on a person for a crime are inadmissible before the sentence is pronounced by the court, and are grounds for compensation to him through the court of material and moral harm. Thus, the totality of the above characteristics allows us to conclude that the accused in the criminal case can only be an individual.

50. **Criterion 3.11** – Pursuant to Article 183 of the Criminal Code, ancillary offences to the offence of money laundering may include conspiracy to commit, or commission of, a crime by an organized criminal group. An attempt to commit an offence, including ML, is covered by Article 28 of the Criminal Code.

### *Weighting and conclusions*

51. **Kyrgyzstan is rated *compliant* with Recommendation 3.**

#### ***Recommendation 4 – Confiscation and provisional measures***

52. In the 1st Round Mutual Evaluation Report of Kyrgyzstan, the country's technical compliance under this recommendation was rated non-compliant. Among the key shortcoming cited by the assessors were the absence in the Criminal Code of the requirement for confiscation of assets related to TF and some other predicate offences, as well as the lack of clearly articulated legislative safeguards for the rights of bona fide third parties. Kyrgyzstan has made significant progress in improving its legal framework by making amendments to the Criminal Code.

53. **Criterion 4.1** – Pursuant to Article 52 of the Criminal Code, confiscation of property is a compulsory gratuitous seizure by the state of the following:

- the property of the convicted person and (or) income from it, as well as equipment, tools and other instrumentalities of the crime;
- the property of the convicted person that has been transferred to another person, where the recipient of such property is aware of its criminal origin;
- criminal proceeds or any income (profit) therefrom derived from the commission of the crime of money laundering;
- the property or part thereof whose value corresponds to the estimated value of the derived criminal proceeds, where the criminal proceeds have been added to the property acquired from legitimate sources.

54. Pursuant to paragraph 4 of the said article, "a confiscation order can be issued by the court only for serious and very serious crimes committed for personal gain.

55. At the same time, confiscation cannot be used under paragraph 1 of Article 183 of the Criminal Code "Money Laundering", pars. 1 and 2 of Article 166 "Fraud" and as punishment for other acquisitive offences.

56. Pursuant to Article 52 (sub.par. 2 of par. 1) of the Criminal Code, confiscation of property is a compulsory gratuitous seizure by the state of the property of the convicted person that has been transferred to another person, where the recipient of such property is aware of its criminal origin. Pursuant to par. 3 of Article 52 of the Criminal Code, if it is not possible to confiscate a certain item included in the property at the time of issuance of the court order to this effect due to its use, sale, or for any other reason, the court shall order to confiscate a sum of money that corresponds to the value of this item.

57. **Criterion 4.2** – The legal grounds for the implementation by law enforcement and other competent authorities of sufficient measures aimed at identifying and searching for the property subject to confiscation are established by Articles 142 and 248 of the Criminal Procedure Code, according to which the body of inquiry, investigator, prosecutor and the court are charged with the enforcement of confiscation orders issued in accordance with the law.

58. Pursuant to paragraph 9 of the Regulation on the State Financial Intelligence Service under the Government of the Kyrgyz Republic, approved by Government Decree No. 130 of February 20, 2012, the Financial Intelligence Unit has the right to:

- request, in accordance with the established procedure, and receive, free of charge, any information and documents (references, copies of documents, etc.), including those constituting bank, trade or other secrets, from reporting entities, state and local authorities, the

National Bank of the Kyrgyz Republic and other organizations, regardless of the form of ownership;

- acting in accordance with international treaties of the Kyrgyz Republic or on the principles of reciprocity, request from foreign competent authorities information required to fulfil the assigned AML/CFT duties.

These functions of SFIS can be used to identify, track and evaluate property that is subject to confiscation.

59. Pursuant to paragraph 1 of Article 119 of the CPC, in order to enforce the judgment in civil proceedings, other property sanctions or possible confiscation of property, the prosecutor, or the investigator acting with the approval of the prosecutor, shall seize the property of the suspect, accused or any other persons legally responsible for their actions.

60. The Law "On Operative-Search Activity" defines a complex of operational-search activities that can be used to identify, prevent, suppress and solve crimes, and identify persons who prepare, commit or committed them. In carrying out such activities, property subject to confiscation may be established.

61. No evidence or copies of regulations confirming the existence of mechanisms designed to prevent or cancel the adoption of actions that impede the country's ability to freeze, seize or return the property subject to confiscation were provided.

62. **Criterion 4.3** – Pursuant to Article 26 of the Kyrgyz Law "On Prosecution Authorities of the Kyrgyz Republic", the prosecutor, acting in accordance with the Kyrgyz Criminal Procedure Code, may seek redress of an infringed right and protection of the interests of citizens, society and the state in court.

63. Article 33 of the Kyrgyz Criminal Procedure Code grants the prosecutor the right to bring civil actions in court against the accused (defendants) or persons materially liable for their actions, relating to the redress of the infringed rights of third parties, in cases affecting interests of the state or the victims who are in a helpless or dependent state or for other reasons unable to independently exercise their rights. Citizens who do not fall under this category, as well as legal persons entitled to seek redress of their infringed rights in court in accordance with civil law.

64. **Criterion 4.4** – The country lacks the mechanics for the management for utilization of frozen or seized property. The confiscated movable property is transferred to the tax authorities for sale. The procedure for recording, assessing and selling confiscated property is defined in the Regulations on the procedure for accounting, evaluation and realization of confiscated, ownerless and passed by right of inheritance to the state of property, approved by Resolution No. 575 of the Government of the Kyrgyz Republic on October 3, 2014. In this connection, confiscated property management, such mechanisms for frozen and seized property have not been determined.

#### *Weighting and conclusions*

65. Kyrgyzstan's law allows confiscation of various types of assets and property, as well as facilitating the identification and search for confiscated property. However, no information or copies of regulations were provided to confirm the existence of the mechanisms designed to prevent or abolish actions that impede the country's ability to freeze, seize or recover the property subject to confiscation. No mechanisms for managing frozen or seized property have been developed either

66. **Kyrgyzstan is rated *largely compliant* with Recommendation 4.**

### ***Recommendation 5 – Terrorist financing offence***

67. In the 1st Round Mutual Evaluation Report of Kyrgyzstan, the country's technical compliance with the FATF's TF requirements was rated non-compliant. Kyrgyzstan has not criminalized TF; nor has it established liability of legal persons for TF.

68. **Criterion 5.1** – Article 226-1 "Terrorist Financing" of the Criminal Code criminalizes the financing of terrorist activities, i.e. the illegal provision of funds, financial services or the raising of funds by any methods or means, directly or indirectly, with the intention or knowledge that the funds are intended to or will be used, in whole or in part, to finance a terrorist and (or ) a terrorist organization, or to finance the organization, preparation or commission of terrorist acts in the Kyrgyz Republic or abroad, or to cover the cost of individuals' travel to countries that are not the country of their residence or citizenship, for the purpose of committing, planning, preparing or participating in terrorist acts, or for the training of terrorists or undergoing such trainings.

69. The above article only criminalizes the illegal provision of funds or financial services. In this regard, it may be difficult to classify the actions related to terrorist financing where funds or financial services are provided legally.

70. **Criterion 5.2** – Pursuant to Art. 226-1 of the Criminal Code, any person who intentionally provides or raises funds in any way, directly or indirectly, may be the perpetrator of the crime. The funds may be used, in whole or in part, to finance a terrorist and (or) a terrorist organization, or to prepare or commit terrorist activities. At the same time, it is not required that these funds be used to commit a specific terrorist act.

71. **Criterion 5.2 bis** – Pursuant to Art. 226-1 of the Criminal Code, terrorist financing includes paying the travel costs of persons who commit terrorist activities in Kyrgyzstan or traveling to the country other than their country of residence or citizenship for the purpose of committing, planning, preparing or participating in the commission of terrorist acts, or for training of terrorists, or undergoing such training.

72. **Criterion 5.3** – Pursuant to paragraph 2 of the Note to Article 226-1 of the Criminal Code, the term "funds" is defined in Article 1 of the Law "On Combating Terrorism". "Funds" means assets of any kind, whether tangible or intangible, movable or immovable, however acquired (including derived from a legitimate and illegitimate source), as well as legal documents or instruments in any form, including electronic or digital, evidencing title to such assets or interest therein, including, but limited to, bank loans, travellers' checks, bank checks, money orders, shares, securities and pecuniary benefits.

73. Terrorist financing offences extend to any funds or other assets, whether from a legitimate or illegitimate source. In addition, the choice of funds is not limited to monetary funds only, and includes other assets.

74. **Criterion 5.4** – Article 226-1 of the Criminal Code does not require that the funds or other assets to have been actually used to carry out, or used in the attempt to carry out, a terrorist act, or being linked to a specific terrorist act.

75. **Criterion 5.5** – The intent and knowledge required to prove the offence of money laundering may be inferred from objective factual circumstances (see Criterion 3.8).

76. **Criterion 5.6** – Pursuant to Article 226-1 of the Criminal Code, a terrorist financing offence is punishable by imprisonment for a term of 4 to 8 years with confiscation of property. In addition, if committed in aggravating circumstances, such as terrorist financing committed by a person through the abuse of his official position, by a group of persons acting in collusion, or by an organized

criminal group, it may carry a sentence of 8 to 15 years' imprisonment with confiscation of property. The sanctions provided for this category of offences are proportionate and dissuasive.

77. **Criterion 5.7** – The Kyrgyz law provides for civil and administrative liability of legal persons.

78. Civil liability (Article 96 of the Civil Code) takes the form of a possible liquidation of a legal person by a court for engaging in activities prohibited by law, or for repeat or gross violations of the law. Administrative liability: Article 505-22 of the Kyrgyz Administrative Codey makes legal persons liable for participating in money laundering or terrorist/extremist financing. This provision was introduced by Law No. 200 of July 28, 2015 "On Amendments to Certain Regulations of the Kyrgyz Republic".

79. Criminal liability of legal persons is not provided for under the Kyrgyz law (see Criterion 3.10).

80. **Criterion 5.8** – Art. 30 of the Criminal Code lists different types of accomplices. Kyrgyzstan has criminalized the following: an attempt to commit an offence of TF, complicity, participation as an accomplice in an offence, providing leadership or guidance to the efforts to commit an offence.

81. **Criterion 5.9** – Any criminal activity, including TF, can be considered as a predicate offence for ML (see Criteria 3.2-3.3).

82. **Criterion 5.10** – Pursuant to Articles 5, 6 and Article 226-1 of the Criminal Code, charges of terrorist financing against a natural person shall be brought regardless of the location of the terrorist or terrorist organization, or of the place of commission of a terrorist act.

#### *Weighting and conclusions*

83. Kyrgyzstan's criminalization of TF is fully in line with the relevant FATF recommendation, but there are certain shortcomings in its criminalization of TF in accordance with the Convention for Combating Terrorism, given that criminal liability is only provided for illegal provision of funds or financial services.

84. **Kyrgyzstan is rated largely compliant with Recommendation 5.**

#### ***Recommendation 6 – Targeted financial sanctions related to terrorism and terrorist financing***

85. Kyrgyzstan was rated non-compliant with SR III in the 1st Round of AML/CFT Mutual Evaluations. Among the key shortcomings cited by the assessors was the absence of the following: the asset freezing mechanisms and procedures; the mechanism for compiling, communicating and applying the List of designated persons; the guidance on funds freezing for reporting and other entities; and the liability for non-compliance with AML/CFT requirements regarding the freezing of funds.

86. Since its last mutual assessment, Kyrgyzstan has made significant progress in bringing its legislation into line with the requirements of SR III. Kyrgyzstan was rated largely compliant with SR III in the 11th Follow-Up Report.

87. **Criterion 6.1** As regards the designations under UNSCR 1267/1989 and 1988 sanctions regime:

- a) Pursuant to pars. 21-22 of the Regulation on the List of persons involved in terrorist and extremist activity or proliferation of weapons of mass destruction, approved by Government Decree No. 135 dated March 5, 2010 (hereinafter "Regulation on the List No. 135"), SFIS is an

authorized state body responsible for taking decisions and submitting proposals for the inclusion of individuals or entities on the lists of persons designated by the UN Security Council Committees 1267/1989/2253 and 1988.

b) Pursuant to paragraph 21 of the Regulation on the List No. 135, SFIS shall identify individuals and entities involved in terrorist activities in accordance with the criteria and subject to the procedure established by the relevant resolutions of the UN Security Council.

c) Pursuant to par. 22 of Regulation on the List No. 135, SFIS, subject to the existence of reasonable grounds and sufficient evidence needed to meet the criteria established by the UN Security Council resolutions, shall submit proposals for designations of individuals and entities by the UN Security Council. Regulation on the List No. 135 does not make the submission of proposals for UNSC designations conditional upon the launch of criminal proceedings.

d) Pursuant to pars. 21 and 23 of Regulation on the List No. 135, SFIS shall submit proposals for the designation of individuals or entities in accordance with the procedure and standard form set out in the relevant UNSC resolutions.

e) Pursuant to par. 23 of Regulation on the List No. 135, SFIS, in submitting designations to the UNSC committees, shall provide sufficient identification information about the person or entity, as required by the relevant UNSC committee.

**88. Criterion 6.2** Inn respect of the designations under UNSCR 1373:

a) Pursuant to par. 4 of Regulation on SFIS No. 130, SFIS is responsible for compiling (amending) and approving the lists of individuals and entities based on the grounds listed in Regulation on List No. 135. Pursuant to par. 4 of Regulation on the List No. 135, an official international request may serve as one of the grounds for placing an individual or entity on the national list.

b) Pursuant to par. 6 of Regulation on the List No. 135, upon the emergence of grounds for the designation of individuals or entities provided for in Regulation on the List No. 135, the competent authorities shall send documents and information, including identification data, to SFIS for a decision on designation. SFIS may also launch, at its own initiative or at a request of a foreign country, the designation process if there is sufficient proof of the person's involvement in terrorist financing. However, the grounds for designating individuals and entities do not include affiliation to terrorist organizations or their support, as set out in the criteria of UNSC Resolution 1373.

c) Pursuant to pars. 4, 9 and 10 of Regulation on the List No. 135, SFIS may make changes to the List in response to an official international request, subject to the provision of the necessary documents evidencing the involvement of a natural or legal person in terrorist activities. SFIS may, in necessary, request additional information.

d) The principle of reasonableness of grounds is applied in pars. 4 and 6 of Regulation on the List No. 135 through the establishment of the grounds for initiating the process and requirements for the identification of individuals and entities. Designations of individuals and organizations are not conditional upon the existence of a criminal proceeding

e) According to Freezing Regulation No. 135, SFIS, acting on the basis of the international treaties of the Republic of Kyrgyzstan, the principles of reciprocity and UNSC resolutions, shall engage in international cooperation with the competent authorities of foreign countries and international organizations in identifying and freezing funds.

**89. Criterion 6.3**

a) According to Regulation on the List No. 135, upon the emergence of grounds for designations, the competent authorities involved in compiling the national list shall send documents and information, including identification data, to SFIS for a decision on designation. SFIS may receive and, in the case of submission of incomplete or inaccurate information by the competent authorities, additionally request the necessary information in accordance with the established procedure. The competent authorities, acting within their scope of authority and in accordance with the established procedure, shall provide all necessary information. Pursuant to paragraph 24 of Regulation on the List 135, SFIS, when submitting proposals to the relevant UNSC committees, may request state bodies, individuals, private entrepreneurs, organizations and legal entities, regardless of the form of ownership, to provide any information, including information constituting bank, trade or other secrets, required to identify individuals and entities that meet the UNSC designation criteria.

b) The Kyrgyz law does not require SFIS to notify the person or entity considered for designation in advance. Pursuant to par. 6 of Regulation on the List No. 135, competent authorities are prohibited from notifying the person of the submission of documents and information to SFIS for its designation.

90. **Criterion 6.4** – According to Regulation on the List No. 135, amendments to the list of the Kyrgyz Republic are made on the basis of the lists of UN Security Council committees within one business day from the date of their publication on the official UN website.

91. With regard to the national list, SFIS is required to amend the list not later than three business days from the date of receipt of documents and information from the competent authorities.

92. Following each modification, an updated version of the list is published. Pursuant to Chapter 6 of Regulation on the List No. 135, SFIS, not later than the business day following the day of its approval, shall send the list via the established communication channels to reporting entities in the form of information letters or an electronic database.

93. The list in the form of an electronic database is posted on the official SFIS website. No deadline is set for the posting of the updated list, which calls into question the timeliness of notification of state, including customs, authorities, individuals and legal entities (in addition to reporting entities) of the changes made thereto.

94. **Criterion 6.5.** - Kyrgyzstan has established the following legal mechanisms and procedures for enforcing targeted financial sanctions:

a) Pursuant to paragraph 6 and 9 of Freezing Regulation No. 135, if a natural or legal person, client, counterparty or beneficial owner is included on the List of persons, including those designated by the relevant resolutions and committees of the UNSC, the reporting entity, or any other natural or legal person carrying out the transaction, shall decide on the suspension of the transactions and (or) blocking of the funds of the customer, and notify SFIS within 3 hours, followed by the prompt suspension of the transaction, blocking of funds or refusal of service. Upon receipt of the notice of suspension of a transaction or blocking of funds, SFIS, after conducting a preliminary analysis of the validity of such notice, shall issue a freezing order not later than two business days from the date of receipt of such notice, and send it to the reporting entity or any other natural or legal person carrying out the transaction within one business day.

b) According to Freezing Regulation No. 135, the requirement to freeze funds and assets applies to 1) funds in full or joint ownership, or under direct or indirect (through a third party) control, of persons included on the List, or funds of persons acting in the name or on behalf of persons included on the List; 2) funds received or derived from funds owned or controlled directly or indirectly (through a third party) by persons included on the List; 3) funds used, or intended to



be used, in the financing of terrorist or extremist activities, terrorists, or terrorist organizations or individuals. In view of some differences in the requirements of the UNSC resolutions, the Regulation extends the requirement for freezing to funds and assets designated by the relevant UNSC resolutions.

c) The AML/CFT Law extends legal requirements for the freezing of funds to both authorized state bodies and reporting entities, as well as to all individuals and legal entities. Freezing Regulation No. 135 establishes a common procedure for freezing funds and assets for both reporting entities and individuals/entities. In Kyrgyzstan, the term "freezing of assets" means a ban on the disposal, conversion, alienation and movement of funds on the basis and for the duration of the freezing order. The Kyrgyz law provides for administrative and criminal liability both for failure to apply preventive measures prescribed by the AML/CFT Law and for terrorist financing.

d) Following each modification, an updated version of the list is published. SFIS, not later than the business day following the day of its approval, shall send the list via the established communication channels to reporting entities in the form of information letters or an electronic database. The list in the form of an electronic database is posted on the official SFIS website. No deadline is set for the publication of the updated list, which calls into question the timeliness of notification of state, including customs, authorities, individuals and legal entities (in addition to reporting entities) of the changes made thereto. The requirement and procedure for freezing funds are established by Freezing Regulation No. 135. In addition, SFIS, if necessary, provides clarifications on the use of the List, suspension of transactions and freezing of funds, and also publishes these clarifications on its official website.

e) Pursuant to paragraph 6 of Freezing Regulation No. 135, if a natural or legal person, client, counterparty or beneficial owner is included on the List of persons, including those designated by the relevant resolutions and committees of the UNSC, the reporting entity or any other natural or legal person carrying out the transaction shall decide on the suspension of the transaction and (or) blocking of the funds of the customer, and notify SFIS thereof within 3 hours. Pursuant to paragraph 9 of Freezing Regulation No. 135, reporting entities or any other natural or legal person carrying out the transactions shall notify SFIS of any attempt to carry out a transaction involving persons included on the List.

f) The AML/CFT Law (par. 6 of Art. 3) offers reporting entities and their employees protection against legal liability for acting within the law. However, the law does not offer protection against liability for freezing funds to individuals and entities who, although not reporting entities, are covered by the AML/CFT law.

95. **Criterion 6.6** – Kyrgyzstan has the following publically known delisting and de-freezing procedures for persons and entities no longer meeting the designation criteria:

a) Pursuant to par. 25 of Regulation on the List No. 135, the delisting of persons and entities who do not meet, or no longer meet, the UNSC designation criteria is carried out in accordance with the procedure established by the relevant UNSC resolutions.

b) Pars. 12 and 13 of Regulation on the List No. 135 define the powers and grounds for delisting – which include the invalidation (modification) of documents, termination of criminal cases that served as grounds for the listing decision, or death of the designated person, which must be confirmed in accordance with the procedure established by law – on the basis of which SFIS makes delisting decisions. However, neither the mechanism for notifying SFIS of the emergence of grounds for delisting nor the procedure for the removal of persons from the national list is present. Pursuant to paragraph 20 of Freezing Regulation No. 135, the delisting

of a natural or legal person constitutes the grounds for the de-freezing of funds. Pursuant to paragraph 21 of the same regulation, SFIS shall make de-freezing decisions upon the emergence of grounds and submission of the relevant documents.

c) Pursuant to par. 14 of Regulation on the List No. 135, any listing decision may be appealed to the Financial Intelligence Unit, the prosecutor's office or court, in accordance with the procedure established by the Kyrgyz law. If the designation was made on the basis of documents provided by foreign competent authorities or international organizations, an appeal against the decision to accept such documents may be filed with the relevant bodies and organizations.

d) Pursuant to par. 15 of Regulation on the List No. 135, the delisting of persons and entities who do not meet, or no longer meet, the UNSC designation criteria is carried out in accordance with the procedure established by the relevant UNSC resolutions.

e) Regulation on the List No. 135, posted on SFIS website, provides for a public platform for appealing against designation decisions to the relevant bodies of the UN Security Council. No other procedures for communicating information to designated persons and entities are provided by the Kyrgyz law.

f) Pursuant to sub.par. 5 of par. 20 of Freezing Regulation No. 135, erroneous freezing constitutes the grounds for a de-freezing decision, made on the basis of an application from a person or entity. The verification of such an application is carried out by SFIS, in conjunction with law enforcement and other government agencies. If the validity of the application is confirmed, SFIS shall issue a de-freezing order and send it to the applicant, reporting entity, supervisors and law enforcement agencies as per their competence, together with the relevant information.

g) Pursuant to par. 20 of Regulation on the List No. 135, the list in the form of an electronic database is published on SFIS official website. However, no deadline is set for the publication of the list following its amendment. Pursuant to paragraph 22 of Freezing Regulation No. 135, SFIS, within one business day after the adoption of a de-freezing order, shall send this order, together with the relevant information, to the reporting entity, any other natural or legal person carrying out the transactions, and the supervisory authorities.

96. **Criterion 6.7** – Pursuant to paragraph 18 of Freezing Regulation No. 135, where the funds or other assets of designated persons and entities are necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, a court may authorize access to such funds or other assets in accordance with the procedures set out in Security Council resolution 1452 (2002) and any successor resolutions.

#### *Weighting and conclusions*

97. Kyrgyzstan's legal mechanisms are largely compliant with Recommendation 6. At the same time, there are minor shortcomings as regards the following: measures for enforcing targeted financial sanctions do not apply to affiliated persons, as required by UNSC Resolution 1373; the procedure for the publication of amendments to the lists does not ensure the timeliness of communication of listing and delisting decisions; protection of the rights of all categories of bona fide third parties is not ensured.

98. **Kyrgyzstan is rated *largely compliant* with Recommendation 6.**

## ***Recommendation 7 – Targeted financial sanctions related to proliferation***

99. Given that the requirements for the implementation of targeted financial sanctions related to proliferation were added to the FATF Recommendations when they were revised in 2012, their implementation was not evaluated in the previous round of mutual evaluations of Kyrgyzstan.

100. **Criterion 7.1** – The legal framework for implementing targeted financial sanctions pursuant to UNSCR 1718 and 1737 and their successor resolutions was established by paragraph 5 or Article 3 of the AML/CFT Law and Regulation on the List No. 135. According to this regulation, amendments to Kyrgyzstan's Designation List are made on the basis of the lists of UNSC committees within one business day from the date of their publication on the official UN website. SFIS amends the list not later than three business days since the day of receiving documents and data from competent authorities. Thus, while the FATF Recommendations do not require countries to maintain a national list of persons and entities involved in proliferation, Kyrgyzstan has established put in place a range of broad measures designed to prevent, deter and suppress proliferation and its financing.

101. Following each modification, an updated version of the list is published. Pursuant to Chapter 6 of Regulation on the List No. 135, SFIS, not later than the business day following the day of its approval, shall send the list via the established communication channels to reporting entities in the form of information letters or an electronic database.

102. The list in the form of an electronic database is posted on the official SFIS website. No deadline is set for the posting of the updated list, which calls into question the timeliness of notification of state, including customs, authorities, individuals and legal entities (in addition to reporting entities) of the changes made thereto.

103. **Criterion 7.2** – Kyrgyzstan has established the following legal mechanisms and procedures for enforcing targeted financial sanctions:

- a) Pursuant to paragraph 6 of Freezing Regulation No. 135, if a natural or legal person, client, counterparty or beneficial owner is included on the List, including designated under the relevant UNSC resolutions and committees, the reporting entity or any other natural or legal person carrying out the transaction shall decide on the suspension of the transactions and (or) blocking of the funds of the customer, and notify thereof SFIS within 3 hours, followed by the prompt suspension of the transaction, blocking of funds or refusal of service. Upon receipt of the notice of suspension of a transaction or blocking of funds, SFIS, after conducting a preliminary analysis of the validity of such notice, shall issue a freezing order not later than two business days from the date of receipt of such notice, and send it to the reporting entity or any other natural or legal person carrying out the transaction within one business day.
- b) According to the Freezing Regulation No. 135, the requirement to freeze funds and assets applies to 1) funds in full or joint ownership, or under direct or indirect (through a third party) control, of persons included on the List, or funds of persons acting in the name or on behalf of persons included on the List; 2) funds received or derived from funds owned or controlled directly or indirectly (through a third party) by persons included on the List; 3) funds used, or intended to be used, in the financing of persons or entities involved in proliferation of weapons of mass destruction. The Regulations extend the requirement for freezing to funds and assets designated by the relevant UNSC resolutions.
- c) The AML/CFT Law extends legal requirements for the freezing of funds to both authorized state bodies and reporting entities, as well as to all individuals and legal entities. Freezing Regulations No. 135 establishes a common procedure for freezing funds and assets for both reporting entities and individuals/organizations. In Kyrgyzstan, the term "freezing of assets"

means a ban on the disposal, conversion, alienation and movement of funds on the basis and for the duration of the freezing order. The Kyrgyz law provides for administrative and criminal liability both for failure to apply preventive measures prescribed by the AML/CFT Law and for financing the proliferation of weapons of mass destruction (collectively).

- d) Following each modification, an updated version of the list is published. SFIS, not later than the business day following the day of its approval, shall send the list via the established communication channels to reporting entities in the form of information letters or an electronic database. The list in the form of an electronic database is posted on the official SFIS website. No deadline is set for the publication of the updated list, which calls into question the timeliness of notification of state, including customs, authorities, individuals and legal entities (in addition to reporting entities) of the changes made thereto. The requirement and procedure for freezing funds are established by Freezing Regulation No. 135. In addition, SFIS, if necessary, provides clarifications on the use of the List, suspension of transactions and freezing of funds, and also publishes these clarifications on its official website.
- e) Pursuant to paragraph 6 of Freezing Regulation No. 135, if a natural or legal person, client, counterparty or beneficial owner is included on the List of persons, including those designated by the relevant resolutions and committees of the UNSC, the reporting entity, or any other natural or legal person carrying out the transaction, shall decide on the suspension of the transaction and (or) blocking of the funds of the customer, and notify thereof SFIS within 3 hours. Pursuant to paragraph 9 of Freezing Regulation No. 135, reporting entities, or any other natural or legal person carrying out the transactions, shall notify SFIS of any attempt to carry out a transaction involving persons included on the List.
- f) The AML/CFT Law (par. 6 of Art. 3) offers reporting entities and their employees protection against legal liability for acting within the law. However, the law does not offer protection against liability for freezing funds to individuals and entities who, although not reporting entities, are covered by the AML/CFT Law.

104. **Criterion 7.3** – Pursuant to Articles 505-21 and 546-3 of the Administrative Code, SFIS has the powers to review cases and impose administrative penalties for non-use of the List and failure to comply with the legislative requirements for freezing funds and other assets of designated persons.

105. **Criterion 7.4** – Kyrgyzstan has the following publically known delisting and defreezing procedures for persons and entities that do not meet, or no longer, meet the designation criteria:

- a) According to Regulation on the List No. 135, the delisting of persons and entities who do not meet, or no longer meet, the UNSC designation criteria is carried out in accordance with the procedure established by the relevant UNSC resolutions, including by submitting a request directly to the Contact Centre, established in accordance with UNSCR 1730 (2006). Regulation on the List No. 135, which establishes the procedure for appealing against designation decisions to the relevant bodies of the UN Security Council, is published in the publically accessible section of SFIS website. No other procedures for communicating information to designated persons and entities are provided for by the Kyrgyz law.
- b) Pursuant to sub.par. 5 of par. 20 of Freezing Regulation No. 135, erroneous freezing constitutes the grounds for a defreezing decision, made on the basis of an application from a person or entity. The verification of such application is carried out by SFIS, in conjunction with law enforcement and other government agencies. If the validity of the application is confirmed, SFIS shall issue a defreezing order and send it to the applicant, reporting entity, supervisors and law enforcement agencies as per their competence, together with the relevant information.

- c) Pursuant to paragraph 18 of Freezing Regulation No. 135, where the funds or other assets of designated persons and entities are necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, a court may authorize access to such funds or other assets in accordance with the procedures set out in Security Council resolution 1452 (2002) and any successor resolutions.
- d) Pursuant to par. 20 of Regulation on the List No. 135, the list in the form of an electronic database is published on SFIS official website. However, no deadline is set for the publication of the List following its amendment. Pursuant to par. 22 of Freezing Regulation No. 135, SFIS, within one business day after the adoption of a defreezing order, shall send this order, together with the relevant information, to the reporting entity, any other natural or legal person carrying out the transactions, and supervisory authorities.

#### 106. **Criterion 7.5**

- a) Paragraph 19 of Freezing Regulation No. 135 permits the addition to the frozen accounts of interests or other earnings due on those accounts or payments due under contracts, agreements or obligations, provided that any such interest, other earnings and payments continue to be blocked and frozen. However, the Regulation does not state that these contracts, agreements and obligations must predate the application of sanctions against such accounts.
- b) Kyrgyzstan lacks the mechanisms needed to implement this sub-criterion.

#### *Weighting and conclusions*

107. Kyrgyzstan's measures for enforcing financial sanctions do not apply to affiliated persons; the procedure for the publication of amendments to the lists does not ensure the timeliness of communication of listing and delisting decisions; protection of the rights of all categories of bona fide third parties is not ensured; adequate mechanisms for crediting funds to frozen accounts are missing.

108. **Kyrgyzstan is rated *partially compliant* with Recommendation 7.**

#### *Recommendation 8 – Non-profit organisations*

109. Kyrgyzstan was rated non-compliant with SR.VIII in the 1 Round Mutual Evaluations, including due to the lack of the following: engagement with the NPO sector in combating terrorist financing; a system of oversight, monitoring and sanctions targeting the NPO sector; and regular review of the sector for terrorist financing risks.

110. No changes have been made to Kyrgyzstan's AML/CFT regulatory framework for the NPO sector since the completion of the 1st Round Mutual Evaluations.

#### 111. **Criterion 8.1**

- a) Kyrgyzstan took measures to identify entities that fit the definition of the “NPO” as formulated by the FATF, but has not used all relevant information sources to determine the characteristics and types of NPOs that, due to their activities or specificities, are likely to be at risk of abuse for terrorist financing.
- b) Kyrgyzstan has not defined the types of threats posed to vulnerable NPOs by terrorist organizations or ways in which terrorists abuse these NPOs.

- c) Kyrgyzstan has not assessed the sufficiency of measures, including laws and regulations, affecting the NPOs vulnerable to abuse for terrorist financing, to enable it to take proportionate and effective measures against the risks identified.
- d) Kyrgyzstan has not conducted a second analysis of the NPO sector by reviewing new information on its potential vulnerability to abuse by terrorist, which is needed to ensure effective implementation of the measures.

112. **Criterion 8.2 (a-d)** – Despite being required to do so by law (pars. 2-3 of Article 3 of the AML/CFT Law), the FIU has not been involved in the drafting of regulations for the NPO sector to prevent their abuse for terrorist financing. Kyrgyzstan does not conduct awareness training for NPOs and the donor community about terrorist financing risks and NPOs' potential vulnerability to terrorist financing abuse. The events held during the assessed period (8 events, including 2 workshops and 6 meetings) were not the targeted ones or were focused, to a large extent, on informing the participants about upcoming mutual evaluation of the country.

113. Kyrgyzstan does not engage NPOs in developing and improving best practices for addressing terrorist financing risks and vulnerabilities; nor does it encourage NPOs to carry out transactions through regulated financial channels, where possible. That said, self-regulation plays a major role in the NPO sector, as manifested, *inter alia*, in major NPOs' exclusive reliance on non-cash settlements.

114. **Criterion 8.3** – Kyrgyzstan does not apply a risk-based approach to supervision or control over the activities of NPOs.

115. **Criterion 8.4** – The lack of supervision means that an appropriate system of sanctions for violations by NPOs or persons acting on behalf of these NPOs is also missing.

116. **Criterion 8.5**

- a) Cooperation, coordination and information exchange between the competent authorities or organizations can be carried out based on the general principles of cooperation between agencies.
- b) Kyrgyzstan has not provided evidence of sufficient investigative expertise and capability to vet the NPOs suspected of being exploited for terrorist financing purposes or by terrorist organizations, or of actively supporting such terrorist organisations.
- c) Under the Law on State Registration of Legal Entities, NPOs must be registered with the MoJ, as well as with the tax and statistical authorities and the social fund. Accordingly, upon registration, each NPO must present its charter, containing information on the type of its activities and other characteristics. The electronic database of legal persons is accessible from the Justice Ministry's website (<http://minjust.gov.kg>). At the same time, the Kyrgyz law enforcement authorities are limited in gaining full access to financial information (access is only available within the framework of an open criminal case; as well as within the framework of operational search activities – only through the FIU).
- d) Kyrgyzstan has not established appropriate mechanisms to ensure, when there is suspicion or reasonable grounds referred to in sub. criterion d), a prompt sharing of information with competent authorities, in order to take preventive and investigative action.

117. **Criterion 8.6** – Assistance in the framework of international cooperation is provided regardless of whether requests concern ML, TF or predicate offences related to any types of legal persons, including NPOs. The Financial Intelligence Unit handles the processing and execution of requests from foreign FIUs (Art. 7 of the Law "On Combating Money Laundering and Terrorist/Extremist Financing"); the State NSC conducts operational search activities (Art. 13 of the Law "On National Security Bodies of the Kyrgyz Republic"; Arts. 5 and 51 of the Law "On Combating Terrorism").

## *Weighting and conclusions*

118. It appears the country has failed to eliminate the main shortcomings identified in the first round. Kyrgyzstan has not defined the nature of threats posed to vulnerable NPOs by terrorist organizations, or how terrorists can abuse these NPOs. No regulations designed to prevent the abuse of NPOs for TF purposes have been developed for the NPO sector. A system of supervision and sanctions for violations committed by NPOs or persons acting on their behalf is missing. Law enforcement agencies' access to financial intelligence is limited.
119. **Kyrgyzstan is rated *non-compliant* with Recommendation 8.**

## *Recommendation 9 – Financial institution secrecy laws*

120. In the 1st Round of MEs, Kyrgyzstan was rated largely compliant with the requirements of this Recommendation. Assessors noted the existing contradictions in the secrecy laws that may create legal difficulties for the FIU in obtaining additional information from financial institutions, and recommended Kyrgyzstan to eliminate the existing contradictions between various regulations. Amendments made to the AML/CFT Law and Law No. 122 of July 23, 2002, "On Bank Secrecy" eliminated the legal barriers that prevented SFIS from obtaining information from financial institutions. At the same time, barriers to the provision to the National Bank of information constituting bank secrecy and to the sharing of AML/CFT intelligence between financial institutions remain.
121. **Criterion 9.1** – In accordance with the AML/CFT Law, reporting entities, including financial institutions, shall submit to the designated state body (SFIS) the following:
- information on transactions with funds or property subject to mandatory controls, and on suspicious transactions (Art. 4, par. 1);
  - additional information and documents on transactions that have become the subject of mandatory control, and on suspicious transactions, including those that constitute official, trade, bank or other secrets (Art. 4, par. 4).
122. The submission to the designated state body (SFIS), including upon request, of information and documents by state authorities, local self-government bodies, the National Bank and other supervisors, as well as by legal persons, for the purpose and according to the procedures provided in the AML/CFT Law does not constitute a breach of official, bank, tax, trade or statistical secrets or the secrecy of communication (par. 3 of Article 8-1 of the AML/CFT Law).
123. Kyrgyzstan's Civil Code; Laws No. 27 of March 30, 1998 "On Commercial Secrets", No. 59 of July 29, 1997 "On the National Bank of the Kyrgyz Republic" and No. 249 of July 24, 2008 "On the Financial Market Supervisory and Regulatory Authority"; sector-specific laws governing the activities of the country's various financial institutions ("On Banks and Banking", "On the Securities Market" and "On Insurance") contain no provisions restricting the designated state body from gaining access to the information of financial institutions required for AML/CFT action or decisions.
124. The provision by banks of information constituting bank secrecy to investigative authorities, the court and other state bodies is carried out on the basis of a court order issued in accordance with procedural law (Article 10 of the Law "On Bank Secrecy"). The submission by the designated state body of proactive AML/CFT materials to the court (judge), the prosecutor's office and investigative and inquiry bodies is carried out on the basis of formal written requests therefor connected with initiated criminal proceedings. Spontaneous disseminations may be provided to law enforcement bodies and courts on the initiative of the designated state body (par. 2 of Article 5 of the AML/CFT

Law).

125. The Law "On Bank Secrecy" contains a provision that may be seen as restricting access to bank secrecy for the National Bank for AML/CFT purposes. Pursuant to Article 12 of this law, the National Bank has the right, in the course of exercising its supervisory functions, to receive and get acquainted with information about bank customers, even where it constitutes bank secrecy, if this information is necessary for the valuation of assets and liabilities.<sup>78</sup> At the same time, according to the National Bank, no barriers to obtaining bank customer information constituting bank secrecy for AML/CFT purposes exist in practice.

126. In addition, the Law "On Bank Secrecy" limits the banks' room for sharing customer information: pursuant to par. 1 of Article 12 of this law, banks may share customer information with each other for the purpose of protecting the security of their operations, repayment of loans and return of investment. This creates legal barriers to banks' compliance with the requirements of Recommendation 17<sup>79</sup>.

127. The AML/CFT Law (par. 2 of Art. 5, Art. 7 and Art. 8-1) establishes the necessary legal framework for the sharing of information for AML/CFT purposes, including the information protected by law, both at the national and international level.

#### *Weighting and conclusions:*

128. Kyrgyzstan has largely eliminated the existing shortcomings in Recommendation 9. However, the Law "On Bank Secrecy" limits the NB's access to information subject to bank secrecy. There are also certain obstacles to the sharing of AML/CFT information between financial institutions.

129. **Kyrgyzstan is rated *largely compliant* with Recommendation 9.**

#### ***Recommendation 10 – Customer due diligence***

130. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 5 (pp. 52-61). Assessors pointed to the lack of beneficial ownership identification procedures and the requirement to apply enhanced CDD against high-risk customers. In addition, except for the banking sector, there were no requirements for data verification, establishing the purpose and nature of business relationships, conducting CDD on an on-going basis, conducting CDD on existing customers, refraining from establishing business relationships with customer who did not undergo CDD, and submitting an STR on such customers.

131. In the period since the previous mutual evaluation, Kyrgyzstan has passed amendments designed to address technical deficiencies relating to CDD. The 11th Follow-Up Report of 2014 noted significant progress in bringing national legislation into line with the requirements of Recommendation 5 (pp. 5-10). At the same time, Kyrgyzstan was recommended to further improve its legal framework.

132. **Criterion 10.1** – The AML/CFT Law prohibits banks and other financial institutions from

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<sup>78</sup> According to Kyrgyzstan, the President of Kyrgyzstan signed on December 16, 2016 the Laws "On the National Bank of the Kyrgyz Republic, Banks and Banking" and "On the Enactment of the Law of the Kyrgyz Republic 'On the National Bank of the Kyrgyz Republic, Banks and Banking'", which changes the way bank secrecy operates in the country. In particular, it requires banks to provide to the National Bank any information constituting bank secrecy. These changes are scheduled to come into effect in June 2017.

<sup>79</sup> The initiated legislative changes to bank secrecy (see the previous footnote) will grant banks the power to share with each other information constituting bank secrecy on a mutual contractual basis. At the same time, the provision of such information by banks must be made only with the customer's consent.



opening anonymous bank accounts (deposits) and bearer accounts (invoices), as well as from carrying out any transactions without identifying counterparties and/or customers. This prohibition directly concerns the opening of anonymous accounts, but fails to address the keeping of the already opened anonymous accounts or the opening/keeping of accounts in fictitious names (if any). This prohibition does not apply to insurance companies and professional securities market participants. According to the information provided, insurance companies and professional securities market participants do not open accounts. At the same time, business relationships, similar to the keeping of accounts, are inherent, in particular, in depository activities.

133. **Criterion 10.2** – Article 3 (1) of the AML/CFT Law requires reporting entities to conduct CDD, including customer identification measures. Identification and verification of the identity of customers are carried out in accordance with the Regulation on the Identification and Verification of Customers and Beneficial Owner (beneficiary) for AML/CFT Purposes, approved by Government Decree No. 135 dated March 5, 2010 (hereinafter the "Identification and Verification Regulations"), in the course of establishing business relationships and carrying out occasional transactions, as well as in the event of doubt as to the veracity of the previously obtained information.

134. Although there is no direct requirement to carry out identification in the event of suspected ML/TFin the Identification and Verification Regulations, it can be inferred from the requirements of Article 4 (1) of the AML/CFT Law.

135. **Criterion 10.3** – Articles 2 and 3 (1) of the AML/CFT Law require reporting entities to verify the identity of the customer (a natural or legal person) on the basis of the originals or duly certified copies of the documents provided by it, in accordance the procedure established by applicable regulations. At the same time, there exists inconsistency between the AML/CFT Law and the Identification and Verification Regulations, according to which the verification procedure, to be conducted when necessary, consists in the verification of the submitted documents, and not of the individual.

136. **Criterion 10.4** – The AML/CFT Law does not require reporting entities to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. This requirement is expressed in the Identification and Verification Regulations in the form of reporting entities' responsibility to identify the customer's representative and verify his authority, if he acts on behalf of an individual or legal entity. At the same time, there is no direct requirement to verify the identity of the customer's representative.

137. **Criterion 10.5** – Article 3 (1) of the AML/CFT Law requires reporting entities to take available and necessary measures to identify and verify the identity of the beneficial owner (beneficiary). The procedure for identifying beneficial owners is established by the Identification and Verification Regulations. However, there is a discrepancy between the language used in the AML/CFT Law and the Identification and Verification Regulations (beneficial owners (beneficiaries)), as well as in the Securities Transactions Regulations, approved by Government Decree No. 647 (beneficial owners) dated October 17, 2011 . (See also paragraphs of Criteria 10.8-10.10).

138. **Criterion 10.6** – Neither the AML/CFT Law nor the Identification and Verification Regulations requires reporting entities to define the purpose and intended nature of the business relationship. This requirement is implied by the Customer Questionnaire Standard Form, approved by SFIS Order No. 1/npa dated January 23, 2017 (hereinafter the "Customer Questionnaire Standard Form"), where, in one of the columns, the customer is required to indicate the purpose and intended nature of the business relationship.

139. **Criterion 10.7** – Article 3 (1) of the AML/CFT Law requires reporting entities to keep information on customers and beneficial owners up-to-date. The frequency and procedure for

updating information on customers and beneficiary owners are set out in the Identification and Verification Regulations and Customer Questionnaire Standard Form. The requirement to conduct an on-going review of the customer's transactions, articulated by the Instruction on Dealing with Bank Accounts and Deposit Accounts (Deposits), approved by the Board of the National Bank Resolution No. 41/12 dated October 31, 2012 (hereinafter the "Instruction on Dealing with Bank Accounts and Deposits"), and the Regulation on the Minimum Requirements for Implementing Internal Controls in Commercial Banks for AML/CFT Purposes, approved by the Board of the National Bank Resolution No. 96/2 dated December 29, 2010 (hereinafter the "Regulation on Internal Control Requirements for Commercial Banks"), applies only to banks. In the Regulation on General Requirements for the Rules of Internal Controls for AML/CFT, approved by Government Decree No. 135 dated October 5, 2010 (hereinafter the "Regulation on ICR General Requirements for AML/CFT"), this requirement takes the form of a right of the Internal Control Unit to conduct a daily analysis of all transactions, which is not fully consistent with Recommendation 10.

140. **Criterion 10.8** – The AML/CFT Law does not require reporting entities to understand the nature of the corporate customer's business and ownership and control structure. This requirement is built into Annex 2 to the Identification and Verification Regulations and in the Customer Questionnaire Standard Form as a duty to obtain information about the legal person's governing bodies (ownership structure and personal composition), types of activities, including those subject to licensing, and the need to fill in the appropriate columns in the questionnaire.

141. The requirement to define the corporate customers' ownership structure is indirectly provided for in the Beneficial Owner Standard Form, approved by SFIS Order No. 1/npa dated January 23, 2017 as the need to fill in the column on the size of the beneficial owner's share in the authorized capital of a legal person. Banks' requirement to specify the corporate customer's ownership structure is also built into the Instruction on Handling Bank Accounts and Deposits.

142. **Criterion 10.9** – The responsibility of reporting entities to properly identify and verify customers that are legal persons is set out in the AML/CFT Law and described in detail in the Identification and Verification Regulations, including the need to obtain the information required by Recommendation 10.

143. To verify this information, reporting entities must collect copies of the relevant documents, including a certificate of state registration of a legal person and its incorporation documents.

144. **Criterion 10.10** – (See paragraphs on Criteria 10.5, 10.8 and 10.10). The obligation of financial institutions to record the personal data of the beneficial owner identified using the cascade method (controlling interest, other type of control, senior manager) is built into the Beneficiary Owner Standard Form and Annexes thereto in the form of the possibility of recognition as the beneficial owner of a natural person(s) who is/are able to control the actions of the customer that is a legal person through the positions occupied in the legal person's management structure (responsibility for making strategic decisions, exercise executive control, decide on financial matters), where it is not possible to identify beneficial owners with a share of direct/indirect ownership of more than 25%.

145. **Criterion 10.11** – The term "legal arrangements" as it is understood in the FATF Recommendations is absent in Kyrgyzstan.

146. **Criterion 10.12** – The Kyrgyz law does not contain any separate requirements for the identification of beneficial owners using investment related insurance policies not later than the time of the pay-out. At the same time, according to the Beneficiary Questionnaire Standard Form, one of the criteria for the recognition of a natural person as the beneficial owner of a customer is the situation where a natural person is the recipient (beneficial owner) of funds under a life insurance policy or

other insurance related investment policy. In relation to such persons, reporting entities are required to obtain and verify the relevant identification data.

147. **Criterion 10.13** – (See paragraphs on Criteria 10.12 and 10.17). The Kyrgyz law does not establish clear requirements for the implementation of enhanced CDD measures on the beneficiary of a life insurance policy where such beneficiary presents a higher risk.

148. **Criterion 10.14** – According to the Notes to the Customer Questionnaire Standard Form and the Beneficial Owner Standard Form, reporting entities shall verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship with the customer or conducting transactions for occasional customers.

149. **Criterion 10.15** – (See paragraph on criterion 10.14.) Kyrgyzstan's existing legal framework does not allow the establishment of a business relationship with the customer prior to verification.

150. **Criterion 10.16** – The obligation of financial institutions to apply CDD requirements to existing customers is built into paragraph 8 of the Regulation on ICR General Requirements for AML/CFT, according to which reporting entities shall incorporate into their customer/beneficial owner identification and verification procedures the requirement for the periodic update of information obtained in the course of identification of the customer/beneficial owner (at least once a year for persons with a high level of risk, and at least once every three years for the rest), as well as for the periodic revision of the level (category), to reflect any changes in the identification information or the level (category) of risk (category of customer, place of its registration, products and services used by it).

151. **Criterion 10.17** – The terms "enhanced due diligence" / "extended due diligence" / "in-depth due diligence" are not used in Kyrgyzstan's existing legal framework. A regime similar to enhanced due diligence is intended for cross-border correspondent relationships and foreign politically exposed persons. The relevant requirements are established by pars. 2-1 and 2-2 of Art. 3 of the AML/TF Law, pars. 14 and 19 of the Identification and Verification Regulations, sub.par. 2) of par. 8 of the Regulation on ICR General Requirements for AML/CFT, par. 32 and 35 of the Regulations on Internal Control Requirements for Commercial Banks, and par. 7 of Annex 3 to the Instruction on Handling Bank Accounts and Deposits. The Regulation on ICR General Requirements for AML/CFT also contain a number of requirements for performing enhanced due diligence on customer transactions and high risk transactions. Meanwhile, the requirement to perform due diligence on high-risk customers is incorporated into par. 28 of the Regulation on Internal Control Requirements for Commercial Banks.

152. **Criterion 10.18** – Paragraph 17 of the Identification and Verification Regulations allows reporting entities to apply simplified CDD with natural persons using the identity document when: making money transfers on behalf of natural persons without opening a bank account, engaging in foreign or domestic currency (cash) exchange transactions with natural persons, and cashing checks (including travellers' checks) whose nominal value is expressed in foreign currency. The use of simplified identification measures in respect of natural persons is subject to the simultaneous presence of certain conditions, including the lack of suspicion among reporting entities that the customer or transactions being carried out by is/are linked to money laundering or terrorist financing. The requirement prohibiting the application of simplified identification measures in situations involving high ML/TF risks is missing from the country's legal framework. Nor does the country's law allow the application of other simplified CDD measures, such as monitoring of transactions.

153. **Criterion 10.19** – Article 3 (1) of the AML/CFT Law requires banks and other financial institutions not to open a bank account (deposit) or perform an account transaction without the presentation of the necessary customer identification documents. In these cases, banks and other

financial institutions authorized to open and maintain bank accounts may terminate the contracts entered into with customers (account holders) and depositors. The Notes to the Customer Questionnaire Standard Form contain more detailed requirements applicable to all reporting entities in situations where it is not possible to perform customer identification and verification, including refusal to open an account, establish a business relationship, perform a transactions and terminate a business relationship. The Note to Annex 3 to SFIS Order No. 1/npa dated January 23, 2017 requires reporting entities to send a suspicious transaction report to SFIS in situations where it is not possible to identify and verify the identity of the customer/beneficial owner.

154. **Criterion 10.20** – The AML/CFT Law does not permit reporting entities to refrain from pursuing the CDD process (and file an STR instead) in cases where financial institutions form a suspicion of ML/TF and they reasonably believe that performing the the CDD process will tip-off the customer.

#### *Weighting and conclusions*

155. Kyrgyzstan has complied or largely complied with the requirements of Criteria 10.1-10.6, 10.8, 10.9, 10.10, 10.14, 10.16, 10.19, and has not complied or partially complied with the requirements of Criteria 10.7, 10.12, 10.13, 10.17, 10.18 and 10.20. Given the small size and low importance of the life insurance sector, the shortcomings identified under criteria 10.12 and 10.13 are not significant. The requirements of Criteria 10.11 and 10.15 are not applicable to Kyrgyzstan due to the absence of the concept of "legal arrangements" in the country's legal framework and the possibility of establishing a business relationship with the customer prior to verification.

156. **Kyrgyzstan is rated *largely compliant* with Recommendation 10.**

#### *Recommendation 11 – Record keeping*

157. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated largely compliant due to the lack of a clear requirement for financial institutions to ensure that the necessary information is available swiftly to competent authorities upon appropriate authority, along with a specific requirement for financial institutions (other than banks) pertaining to the types of records that need to be retained. Currently, the requirements for the types of records to be stored are defined for all financial institutions. At the same time, analysis of the country's legal framework has revealed deficiencies in technical compliance with Recommendation 11.

158. **Criterion 5.1** – According to criterion 11.1, transaction records should be maintained for five years following completion of the transaction. According to Criterion 11.2, the records obtained through CDD measures should be kept for five year following the termination of the business relationship or after the date of the occasional transaction. According to the AML/CFT Law, Kyrgyz reporting entities shall keep customer identification records, as well as records on transactions with funds or property, for at least five years from the date of closure of the account (par. 4 of Art. 3). At the same time, the terms used in the record keeping regulations better reflect the meaning and content of Recommendation 11 (e.g. for at least five years "after the termination of obligations," "after the termination of the relationship," "following the completion of the transaction").

159. **Criterion 11.2** – According to the Regulation on ICR General Requirements for AML/CFT, the procedure for retaining records obtained in the course of exercising internal controls shall provide for the maintenance of the following records:

- originals or certified copies of documents containing information about the customer, beneficial owner and their representatives, or other transaction participants);

- originals or certified copies of documents pertaining to the relevant customer transactions and transaction reports;
- a digital report that, to the extent the information recorded and stored electronically needs to be presented as evidence in any proceeding, is signed in accordance with the established procedure to give it legal force;
- questionnaires drawn up based on the outcomes of the identification and verification processes, as well as a close study of the customer;
- other documents, including business correspondence.

160. The retention period for records may be extended in accordance with internal regulations.

161. **Criterion 11.3** – According to the AML/CFT Law, information about the records to be maintained should be sufficient to permit reconstruction of individual transactions so as to provide evidence for review and investigations (par. 4 or Art. 3) . According to Regulation No. 135, reporting entities shall keep records in such conditions as to enable them being used as evidence in criminal and civil proceedings (sub.par. 6 of par. 8).

162. **Criterion 11.4** – The requirement for financial institutions to ensure that all CDD information and transaction records are available to domestic competent authorities upon appropriate authority is absent. This requirement is partly addressed by the following regulations.

163. In accordance with the AML/CFT Law, reporting entities shall notify the designated state body of any suspicious transactions and transactions subject to mandatory controls in accordance with the criteria established by the AML/CFT Law, as well as provide additional transaction data and documents upon request of the designated state body (par. 4 of Art. 4, pars. 1 and 4 of Art. 4), According to the Regulation on the List of Supervisors and Their Powers, approved by Government Decree No. 135 dated March 5, 2010, supervisors may accept from reporting entities information needed to discharge their supervisory functions (par. 8). Regulation No. 135 requires the internal control unit to assist the authorized representatives of supervisors in monitoring compliance with AML/CFT requirements (sub.par. 10 of par. 8).

164. Law enforcement authorities, within their competence, must seek a court order to access transaction records and information obtained by reporting entities in the course of identification.

#### *Weighting and conclusions:*

165. Kyrgyzstan has largely complied with Recommendation 11. However, the requirement for financial institutions to ensure that all CDD information and transaction records are available to domestic competent authorities upon appropriate authority is absent.

166. **Kyrgyzstan is rated *largely compliant* with Recommendation 11.**

#### ***Recommendation 12 – Politically exposed persons***

167. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated not compliant due to the absence in the AML/CFT law of any PEP-related requirements. The AML/CFT Law places several requirements on reporting entities carrying out transactions with funds and property and involving politically exposed persons (par. 2-1 of Art. 3). However, the provisions of Recommendation 12 have largely not been implemented into the AML/CFT Law.

168. **Criterion 12.1** – The obligation of reporting entities to comply with the following requirements has not been established:

- a) put in place risk management systems to determine whether a customer or the beneficial owner is a PEP;
- b) obtain senior management approval before continuing a business relationship with a customer who is a foreign PEP, or a customer whose beneficial owner has been identified as a foreign PEP;
- c) take reasonable measures to establish the source of wealth and the source of funds of beneficial owners identified as PEPs; and
- d) conduct enhanced on-going monitoring of the business relationship. In part, this requirement is complied with through the imposition on reporting entities by the AML/CFT Law of a duty to regularly update information on their existing customer who are foreign PEPs.

169. Furthermore, senior management of foreign corporations are not included among foreign PEPs, as recommended in the glossary of the FATF Recommendations. According to the AML/CFT Law foreign PEPs are individuals who have been or are entrusted with prominent public and political functions by a foreign country (Heads of State or of government, senior politicians, senior government, judicial, military, law enforcement and tax officials, leaders/heads and officials of political parties and religious organizations), including former ones.

170. **Criterion 12.2** – Financial institutions are under no legal obligation to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation.

171. **Criterion 12.3** – The absence of requirements applicable to domestic PEPs and persons entrusted with important functions by international organizations means the requirements of criteria 12.1 and 12.2 are not applied to their family members and close associates of such PEPs.

172. **Criterion 12.4** – The requirement appears to have not been complied with due to the identified shortcoming under criteria 12.1-12.3.

#### *Weighting and conclusions:*

173. Kyrgyzstan has partially complied with Recommendation 12 as regards foreign PEPs, and not complied as regards domestic PEPs and persons entrusted with important functions by international organizations and members of their families and close associates. Given the country risks, including the corruption factor, the said deficiencies are material.

174. **Kyrgyzstan is rated *non-compliant* with Recommendation 12.**

#### ***Recommendation 13 – Correspondent banking***

175. In the MER of 2007, Kyrgyzstan was rated largely compliant with Recommendation 7 (pp. 56-61). Among the main shortcomings were the unclear requirement for the allocation of responsibilities for AML/CFT between correspondent banks, absence of the requirement to check respondent banks for past violations of the AML/CFT regulations, absence of the requirements applicable to "payable-through accounts", and application of the relevant requirements solely to the banking sector. No significant changes have been made to Kyrgyzstan's legislative framework since the previous mutual evaluation to facilitate compliance with Recommendation 13.

176. **Criterion 13.1** – The obligation of banks involved in establishing cross-border correspondent relationships are set out in Article 3 (2-2) of the AML/CFT Law and Annex 3 to the Instruction on Handling Bank Accounts and Deposits, and include measures required under Recommendation 13,

except for gathering information about any regulatory action or ML/TF investigations undertaken against a correspondent institution.

177. The Kyrgyz law does not provide for similar requirements applicable to reinsurers (reinsurance agreements with foreign insurers/assignors) and professional securities market participants (service agreements with the opening and maintenance of depot accounts for foreign brokers/management companies), or for any other cases of establishing correspondent-like relationships with foreign financial institutions.

178. **Criterion 13.2** – According to the information provided, the practice of establishing correspondent relationships involving the use by Kyrgyzstan's correspondent banks of "payable-through accounts" is absent in the country. The requirements for banks dealing with correspondent accounts, as set out in the Instruction on Dealing with Bank Accounts and Deposits (approved by Kyrgyz NB Board Decree No. 41/12 dated November 31, 2012), do not allow the opening or maintenance of "payable-through" correspondent accounts.

179. **Criterion 13.3** – The banks' responsibilities with respect to shell banks, as set out in Article 3 (2) of the AML/CFT Law and Annex 3 to the Instruction on Dealing with Bank Accounts and Deposition, meet the requirements of Recommendation 13.

#### *Weighting and conclusions*

180. Kyrgyzstan has complied with the Criterion concerning the prohibition from entering into, or continuing, correspondent banking relationships with shell banks. The requirements of Criterion 13.2 are not applicable to Kyrgyzstan due to the absence of "payable-through accounts". At the same time, the responsibilities of banks involved in establishing correspondent relationships with foreign financial institutions do not cover the gathering of information about any regulatory action or ML/TF investigations undertaken against a correspondent institution. In addition, the relevant requirements apply solely to the banking sector and not to insurance companies and professional securities market participants in the event of establishment by them of correspondent-like relationships. Given the size and importance of the banking sector, this shortcoming is not significant.

181. **Kyrgyzstan is rated *largely compliant* with Recommendation 12.**

#### *Recommendation 14 – Money or value transfer services*

182. In the MER of 2007, Kyrgyzstan was rated non-compliant with Special Recommendation VI (p. 85). Among the factors influencing the rating under this recommendation were the lack of regulatory or other measures required in accordance with Special Recommendation VI in respect of PEPs operating outside the formal financial system, as well as other AML/CFT-related shortcomings in the banking system that are equally applicable to remittances. The Law "On the Payment System of the Kyrgyz Republic" (hereinafter the "Law on the Payment System") along with a number of by-laws of the National Bank adopted by Kyrgyzstan since the last mutual evaluation have largely addressed the technical shortcomings relating to MVTs.

183. **Criterion 14.1** – Article 3 (1) of the Law on the Payment System requires all non-cash settlements in Kyrgyzstan to be carried out by licensed banks. Payment organizations may engage in the provision of services related to the acceptance of payments from natural and legal persons in favour of third parties in accordance with the terms of the agreement between the payment organization and services providers and the agreement between the payment organization and the bank. According to the Laws "On the Payment System" (Articles 3 and 26) and "On the Licensing and Authorization System of the Kyrgyz Republic" (paragraphs 27, 28 of Article 15), the National

Bank is responsible for licensing payment system operators and payment organizations; registering money transfer systems (domestic and international); registering international settlement systems that use bank payment cards; licensing financial institutions to issuance electronic money; and registering international operators of electronic money systems/issuers of international electronic money systems. The procedure for licensing the activities of payment system operators and payment organizations is set out in the Regulation "On Licensing the Activity of Payment System Operators and Payment Organizations" (approved by the Board of the National Bank Resolution No. 71/11 dated November 25, 2015) .

184. **Criterion 14.2** – Article 3 (4) of the Law on the Payment System prohibits the provision of money or value transfer services without a license. Pursuant to Article 180 of the Criminal Code, engaging in illegal business activities without a registration or special permit (license) constitutes a criminal offence.

185. **Criterion 14.3** – Pursuant to Article 2 of the AML/CFT Law, a list of reporting entities includes, among others, persons engaged in the provision of money or value transfer services on a professional basis, including using specialized money transfer systems without opening an account. Therefore, the requirements of the AML/CFT Law apply to MVTS providers. Pursuant to Article 3 (8) of the AML/CFT Law and Article 26 (1) of the Law on the Payment System, the responsibility for monitoring MVTS providers for compliance with AML/CFT regulations lies with the National Bank (See paragraph on Criterion 27.2).

186. **Criterion 14.4** – Pursuant to Article 26 (1) of the Law on the Payment System, the National Bank issues licenses to issuers of electronic money and maintains a register of issued licenses, as well as issues licenses to payment system operators and payment organizations. Paragraph 11 of the Regulation "On Licensing the Activities of Payment System Operators of Payment Organizations" stipulates the type of subagent-related records licensees are required to maintain.

187. Similar requirements apply to banks involved in the provision of retail banking services and distribution of electronic money through agents (paragraph 70 of the Regulation on the Basic Requirements for the Conclusion of Agency Contracts for the Provision of Retail Banking Services by Commercial Banks No. 36/7 dated May 26, 2010 and paragraph 48 of the Regulation on Electronic Money in the Kyrgyz Republic).

188. **Criterion 14.5** – Paragraph 44 of the Regulation "On the Regulation of the Activities of Payment System Operators and Payment Organizations" (approved by the Board of the National Bank Resolution No. 19/10 dated March 25, 2015), paragraph 32 of the Regulation on Basic Requirements for the Conclusion of Agency Contracts for the Provision of Retail Banking Services by Commercial Banks, and paragraph 54 of the Regulation on Electronic Money in the Kyrgyz Republic (approved by National Bank Decree No. 27/8 dated May 12, 2015) establish different requirements relating, among others, to the provision of AML/CFT training for agents/sub-agents and monitoring of their activities. At the same time, in addition to the fact that the nature of these requirements is not identical, there is no a direct requirement for MVTS providers to monitor their agents' compliance with AML / CFT programmes.

#### *Weighting and conclusions*

189. Kyrgyzstan's AML/CFT Law applies to MVTS providers. In addition, the country has established appropriate licensing and registration requirements for MVTS providers, and applies sanctions for non-compliance therewith. Meanwhile, payment system operators and payment organizations are subject to licensing requirements. That said, the Kyrgyz law does not establish a direct requirement for MVTS providers to monitor their agents' compliance with AML/CFT



programmes.

190. **Kyrgyzstan is rated *largely compliant* with Recommendation 14.**

### ***Recommendation 15 – New technologies***

191. In the MER of 2007, Kyrgyzstan was rated non-compliant with Recommendation 8 (pp. 58-61) due to the lack of regulatory or other measures required under this recommendation. In the period since the previous mutual evaluation, the Government of the Kyrgyz Republic and its National Bank have adopted a number of by-laws.

192. **Criterion 15.1** – Paragraph 34 of the Regulation on Internal Control Requirements for Commercial Banks and paragraph 6.7. of the Regulation on Internal Control Requirement's for Microfinance Organizations and Credit Unions require these entities to follow the procedures designed to adequately manage ML/TF risks related to the use of new technologies (new products) that involve carrying out non face-to-face transactions. No special requirements for assessing ML/TF risks when introducing new and / or providing existing products / services that utilize new technologies are imposed on financial institutions by the Kyrgyz law.

193. **Criterion 15.2** – Paragraph 39 of the Regulation on Internal Control Requirements for Commercial Banks requires banks to undertake ML/TF risk assessments prior to the launch or use of new services or transactions. The Kyrgyz law does not establish a similar requirement for other types of financial institutions. The obligation of financial institutions to take steps to manage and mitigate these risks is built into the Regulation on ICR General Requirements for AML/CFT, according to which financial institutions should pay extra attention, including through the on-going monitoring of the customer's transactions, to online and other remote access system-based transactions, as well as transactions involving non face-to-face contact. Banks are also required to comply with the special requirements set out in the Annex to the Instruction on Dealing with Bank Accounts and Deposits when establishing relationships with customers for the purpose of carrying out non face-to-face transactions.

### ***Weighting and conclusions***

194. The responsibility to assess ML/TF risks posed by new and existing products that use new technology prior to their launch/use, as well as to take steps to control and mitigate risk, is best articulated for commercial banks. At the same time, given the size and importance of the banking sector, this shortcoming is not significant.

195. **Kyrgyzstan is rated *largely compliant* with Recommendation 15.**

### ***Recommendation 16 – Wire transfers***

196. In the MER of 2007, Kyrgyzstan was rated non-compliant with Special Recommendation VII (pp. 63-65). Assessors pointed to the absence of a statutory requirement for cross-border or domestic wire transfers to be accompanied by the information about the originator. Other requirements of Special Recommendation VII, other than those related to identification, were not complied with either. In addition, there were no risk management procedures for incoming wire transfers which are not accompanied by complete information about the originator. In the period since the previous mutual evaluation, Kyrgyzstan has adopted the Law on the Payment System and a number of by-laws of the National Bank.

197. **Criterion 16.1** – In Kyrgyzstan, the requirement for cross-border wire transfers to be accompanied by required originator and recipient information fully applies only to wire transfers sent via remittance systems without the use of a bank account (par. 5 of Art. 5 of the Law on the Payment System and pars. 2.7 and 4.9 of the Remittance Guidelines). However, this requirement does not apply to cross-border wire transfers made using a bank account, given that the Payment Documents Completion Guidance (approved by the Board of the National Bank Resolution No. 36/5 dated July 25, 2007) only applies to wire transfers made in the territory of the Kyrgyz Republic in the national currency (par. 1.4 of the Guidance).

198. **Criterion 16.2** – A legal requirement for financial institutions to enclose the required originator and recipient information when bundling individual wire-transfers in a batch file is absent. (See paragraphs on Criterion 16.1).

199. **Criterion 16.3** – Kyrgyzstan does not apply a threshold approach to the implementation of the requirement for cross-border wire transfers to be accompanied by required originator and recipient information.

200. **Criterion 16.4** – The non-application of a threshold approach to the implementation of the relevant requirements means that all wire transfers in Kyrgyzstan must be accompanied by the verification of customer information. The requirement to verify customer information when suspecting ML/TF is built into paragraphs 1 and 2 of Article 4 of the AML/CFT Law. (See paragraphs on Criterion 16.1).

201. **Criterion 16.5** – Kyrgyzstan has fully complied with the requirement for domestic wire transfers to be accompanied by required originator and recipient information. (See paragraphs on Criterion 16.1).

202. **Criterion 16.6** – The Kyrgyz law allows the National Bank to request required information from remittance/payment system operators and participants (sub.par. 3 of par. 6 of Art. 31 of the Law on the Payment System and par. 6.6 of the Remittance Guidelines). At the same time, paragraph 81 of the Regulation on Bank Payment Cards in the Kyrgyz Republic also establishes the responsibility of processing centres to reconstruct the information on transactions carried out using bank payment cards. The Kyrgyz law does not set any deadlines for the provision by the ordering financing institution of the wire transfer details requested by the recipient financial institution or competent authorities. (See also paragraphs on Criteria 9.1, 11.1-11.4).

203. **Criterion 16.7** – (See paragraphs on Criteria 11.1-11.4.) Pursuant to Article 3 of the AML/CFT Law, reporting entities shall keep customer identification records, as well as records on transactions with funds or property, for at least five years from the date of closure of the account.

204. **Criterion 16.8** – Pursuant to Article 4 (8) of the Law on the Payment System, the bank may refuse the customer's request to carry out a non-cash payment or settlement transaction, among other things, in the following cases:

- if the form and content of payment documents do not meet the requirements established by the regulations of the Bank of Kyrgyzstan, or where the payment document is not genuine;
- failure of the customer to provide the documents required to carry out a transaction and perform his positive identification, as well as in cases where the customer is known to have been involved in terrorist or extremist activities.

205. However, the above requirement is formulated as a right, not an obligation, which is not fully consistent with Recommendation 16. In addition, this criterion is affected by the shortcoming under Criterion 16.1.

206. **Criterion 16.9** – There are not provisions in the Kyrgyz law that require the intermediary financial institution to retain all originator and recipient information that accompanies a wire transfer.
207. **Criterion 16.10** – There are no provisions in the Kyrgyz law that require the intermediary financial institution to keep records, for at least five years, of all the information received from the ordering financing institution or another intermediary financial institution, where technical limitations prevent the required originator or recipient information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer.
208. **Criteria 16.11, 16.12** – There are not provisions in the Kyrgyz law that require the intermediary financial institution to take reasonable measures to identify cross-border wire transfers that lack required originator information or required recipient information, as well as to have risk-based policies and procedures for determining when to execute, reject or suspend such wire transfers.
209. **Criterion 16.13** – The obligation of the recipient financial institution to conduct monitoring in order to identify cross-border wire transfers that lack required information is implied by the requirement to retain required information that accompanies a wire transfer. Pursuant to par. 4.9 of the Remittance Guidelines, the system participant shall keep a record of each remittance transaction and store originator and recipient information (full name, year of birth, home address, passport or ID details), the purpose of the transfer, the amount of the transfer in figures and words, and other information in accordance with Kyrgyzstan's requirements for the storage of payment documents.
210. **Criterion 16.14** – (See paragraphs on Criteria 10.3, 11.1-11.4, 16.3, 16.7.). The bank, upon crediting of funds to the account, shall identify, as well as regularly update the information on, the customer who is the holder of the account, in accordance with the general due diligence requirements. Pursuant to paragraph 4.8 of the Remittance Guidelines, when paying out the remittance to the recipient, the system participant shall ensure that details of the electronic order formed by the remittance system fully match the recipient's identification documents.
211. **Criterion 16.15** – There are not provisions in the Kyrgyz law that require the beneficiary financial institution to have risk-based policies and procedures for determining when to execute, reject or suspend such wire transfers. Pursuant to paragraphs 4.8. and 4.10. of the Remittance Regulations, if remittance details do not match, the system participant shall notify the recipient thereof and refuse to make the payment. System participants shall take steps to block remittances linked to illegal trading activities and money laundering.
212. **Criterion 16.16** – (See paragraphs on Criteria 14.1 и 14.4) In Kyrgyzstan, international remittance systems operate through banks under agency agreements, while all domestic remittance systems are owned by banks, which, in turn, must comply with the requirements of Recommendation 16.
213. **Criterion 16.17** – The provisions of the AML/CFT Law, which contain general requirements for the identification of potentially suspicious transactions (transactions) and submission of STRs, apply to MVTS providers. (See paragraphs on Criterion 16.16).
214. **Criterion 16.18** – The requirements of the Regulation on the Procedure for the Suspension of Transactions, Freezing and Unfreezing of Funds apply to financial institutions (see also paragraphs of Criteria 6.1-6.7).

### *Weighting and conclusions*

215. Kyrgyzstan has complied, or largely complied, with the requirements of Criteria 16.5, 16.6, 16.7, 16.14, 16.16, 16.17 and 16.18, and has not complied or partially complied with the requirements of Criteria 16.1-16.4, 16.8-16.13 and 16.15.

216. **Kyrgyzstan is rated *partially compliant* with this Recommendation.**

***Recommendation 17 – Reliance on third parties***

217. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated not applicable due to fact that financial institutions are not allowed to rely on third parties to perform CDD measures. Intermediaries operating in the insurance and securities sectors are subject to all requirements of the AML/CFT Law. The practice of entering into agency agreements for CDD measures (outsourcing) is absent. That said, analysis of the situation in Kyrgyzstan has revealed the necessity of implementation of the requirements of Recommendation 17 into national legislation.

218. **Criterion 17.1** – According to Kyrgyzstan, financial institutions are not allowed to rely on third parties to perform the CDD measures set out in Recommendation 10. However, according to the Regulation on Basic Requirements for the Conclusion of Agency Contracts for the Provision of Retail Banking Services by Commercial Banks, approved by National Bank Decree No. 36/7 dated May 26, 2010, banks may use a resident legal person or individual entrepreneur as a retail agent to provide retail banking services to the public. Retail agents may provide an expanded or limited range of banking services (including, in particular, acceptance of payments to the budget and for utilities; payment of pensions and benefits; money transfers; acceptance of loan repayments from bank customers; withdrawal of funds from (deposit) accounts of bank customers; issuance and acceptance, upon demand, of bank account opening forms and their transfer to the bank; transactions with electronic money and its conversion into cash; acceptance of payments from e-wallets). At the same time, the retail agent, based on the agency contract concluded with the bank, provides retail banking services to customers on its own behalf and on behalf of the bank, at bank's / or at its own expense, through the agency network. The terms and conditions for the acceptance of payments and meeting payment deadlines, as well as the requirements for the identification of the originator, are set out in the agreement between the bank and the retail agent. The bank, acting in accordance with the "know your customer" principle, is responsible for ensuring that the retail agent's activities comply with the AML/CFT regulations as regards the identification of originators and recipients, while applying a more flexible approach to low-income consumers.

219. Therefore, Regulation No. 36/7 sets out the grounds for financial institutions' reliance on the third party (in particular, a resident retail agent who provides services on its own behalf and at its own expense) to perform CDD measures. Meanwhile, the responsibility for the CDD measures remains with the financial institution. At the same time, the requirement for financial institutions relying on the third party to comply with the criteria set out in Recommendation 17, paragraphs (a) to (c), is not provided for under the Kyrgyz law. At the same time, according to the information made available to the on-site mission participants by the representatives of the country's banking community, including the National Bank, the practice of banks' reliance on retail agents to perform CDD measures is absent.

220. **Criterion 17.2** - No laws or regulations supporting the notion that financial institutions can rely on the third party in another country and / or that is part of the same financial group to perform CDD measures were provided by Kyrgyzstan as part of the assessment of its technical compliance with the FATF recommendations.

221. **Criterion 17.3-** Analysis of the possibility of reliance on third parties to perform CDD measures conducted during the on-site mission revealed that in practice, there are cases where Kyrgyz financial institutions rely on CDD measures performed by a resident third party that is part of the same financial group. However, no requirements applicable to financial institutions that rely on CDD measures performed by the third party that is part of the same financial group have been

established.

*Weighting and conclusions:*

222. The country's regulations establish legal grounds for the use by financial institutions of a retail agent acting on its own behalf and at its own expense to perform CDD measures. However, there is no requirement for financial institutions to comply in this case with paragraph a) of Recommendation 17. There are also cases of involvement in the performance of CDD measures of a third party which is part of the same financial group. The regulatory framework designed to ensure compliance in this case with Recommendation 17 is missing.

223. **Kyrgyzstan is rated non-compliant with Recommendation 17.**

***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

224. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 15 and non-compliant with Recommendation 22 (pp. 73-75). Among the main shortcomings in Recommendation 15 were the lack of detailed requirements for exercising internal controls in financial institutions (except for the banking sector), appointing a compliance officer, conducting an internal audit of the AML/CFT measures taken, holding AML/CFT staff trainings and undertaking screening procedures when hiring employees (except for drawing up a list of positions in the banking, insurance and securities sector). In relation to Recommendation 22, assessors cited the lack of any legislative measures for its implementation as one of the shortcomings. In the period since the previous mutual evaluation, Kyrgyzstan has made a number of changes to the AML/CFT Law and the country's by-laws.

225. **Criterion 18.1** – The AML/CFT Law (Article 3, paragraph 4) and the Regulation on ICR General Requirements for AML/CFT (paragraph 3) require reporting entities to develop the rules of internal control for AML/CFT and apply required procedures, except for the requirement to have regard to the size of the business in implementing AML/CFT programmes and to have an independent audit function to test the AML/CFT system. In addition, the ML/TF risk assessment procedure established by the Regulation on ICR General Requirements for AML/CFT (sub.par. 1) and 2) of par. 7) is used to conduct due diligence rather than the overall ML/TF risk assessment of financial institutions. At the same time, the requirement for an independent audit function to test the AML/CFT system is built into the Regulation on Internal Control Requirements for Commercial Banks (Chapter 5) and the Regulation on Internal Control Requirements for Microfinance Organizations and Credit Unions (paragraph 5.2).

226. **Criterion 18.2** – The Regulation on Internal Control Requirements for Commercial Banks (pars. 5, 10 and 13) requires banks to monitor their branches and subsidiaries (both in Kyrgyzstan and abroad) for compliance with internal control requirements for AML/CFT. At the same time, the said Regulation establishes no requirements and / or mechanisms for the exchange of information necessary for CDD and ML/TF risk management between members of the group. There are no provisions in the Kyrgyz law that require the application of AML/CFT policies and procedures at the group level to other types of financial institutions.

227. **Criterion 18.3** – The AML/CFT Law, the Regulation on ICR General Requirements for AML/CFT and other by-laws (except for the regulations for commercial banks specified in Criterion 18.2) place no requirement on financial institutions to ensure that their foreign branches and subsidiaries apply AML/CFT measures consistent with the home country requirements, or, if the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements, for the parent company to apply

appropriate additional measures to manage the ML/TF risks, and inform their home supervisors. At the same time, according to the information provided by the Kyrgyz supervisors, Kyrgyz financial institutions do not have branches / subsidiaries abroad.

### *Weighting and conclusions*

228. Financial institutions' obligation to apply AML/CFT programmes does not include the requirement to have regard to ML/TF risks and the size of a business in implementing such programmes; nor does it include an audit function to test the AML/CFT system (except for banks and microfinance organizations). There are not provisions in the Kyrgyz law that require financial institutions (other than banks) to apply AML/CFT policies and procedures at the group level, including to foreign branches and subsidiaries. At the same time, given the size and importance of the banking sector, as well as the fact that Kyrgyz financial institutions do not have branches or subsidiaries abroad, this shortcoming is not significant.

229. **Kyrgyzstan is rated largely compliant with Recommendation 18.**

### *Recommendation 19 – High risk countries*

230. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 21 (pp. 66-68). Among the main shortcomings under this Recommendation is the failure to make the lists of countries and territories that do not comply with the FATF Recommendations available to financial institutions. Recommendation 19 has established new requirements for measures to be taken against high-risk countries, whose implementation was not assessed under the 2004 Methodology. In the period since the previous mutual evaluation, Kyrgyzstan has made a number of changes to the AML/CFT Law and the country's by-laws.

231. **Criterion 19.1** – Pursuant to Article 3 (7) of the AML/CFT Law, reporting entities should apply enhanced due intelligence to business relationships and transactions with natural and legal persons from countries that do not apply, or insufficiently apply, the FATF Recommendations, as well as with branches and subsidiaries of parent companies registered in such countries or territories, whose list is approved by SFIS Order No. 1/npa dated January, 2017 (Annex 4).

232. **Criterion 19.2** – Kyrgyzstan is capable of applying countermeasures when called upon to do so by the FATF, and independently of any call by the FATF to do so. Pursuant to paragraph 1 of the Notes to the List, in addition to the measures listed in the paragraph on Criterion 19.1, reporting entities, as part of internal control procedures, should

- prepare and apply appropriate countermeasures when establishing a business relationships with natural or legal persons residing or registered in Iran or North Korea;
- refrain from establishing correspondent relationships with financial institutions (legal entities) registered in Iran or North Korea.

233. SFIS Order No. 1/npa dated January 23, 2015 (Annex 5) also approved the List of high-risk countries and territories (with strategic deficiencies in national AML/CFT systems and posing a risk to the international financial system) whose nationals, when they are customers of reporting entities, should also be targeted by enhanced due diligence measures undertaken by reporting entities.

234. **Criterion 19.3** – Pursuant to sub.par. 6) of par. 3 of SFIS Order No. 30 / P dated April 17, 2015, (has ceased to be in force in accordance with the order of the State Financial Service dated 01/01/2017 No. 1 / npa) SFIS shall make the updated versions of the lists (in the form of an electronic database and accompanying letters) available to reporting entities not later than one business day

from the date of their updating, using SFIS secure communication channel. However, SFIS secure communication channel is not available to all financial institutions.

#### *Weighting and conclusions*

235. Kyrgyzstan has complied with the requirements of Criteria 19.1 и 19.2. However, the measures designed to ensure that financial institutions are advised of concerns about the AML/CFT systems of other countries fail to ensure that relevant information is brought to the attention of all financial institutions.

236. **Kyrgyzstan is rated *largely compliant* with Recommendation 19.**

#### ***Recommendation 20 – Reporting of suspicious transactions***

237. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 13 and largely compliant with Special Recommendation IV(pp. 68-72). Among the main shortcomings under Recommendation 13 were the lack of a clear requirement to report to the FIU all attempts to carry out suspicious transactions (other than those related to TF), and insufficient attention paid by financial institutions to STRs on ML as compared to STRs on TF. One of the shortcomings under Special Recommendation IV cited by the assessors was the lack of the requirement for financial institutions to submit STR in relation to the provision of funds to terrorists / terrorist organizations for purposes other than carrying out a terrorist act, since such activities are not covered by the term TF.

238. **Criterion 20.1** – The obligation of reporting entities to submit STRs to SFIS when they suspect that funds or property are the proceeds of a criminal activity or related to terrorist/extremist financing, or will be used for these purpose, is provided by Articles 3 (4) and 4 of the AML/CFT Law. Financial institutions are required to submit STRs in accordance with the criteria for suspicious transactions (Annex 3 to SFIS Order No. 1/npa dated January, 2017) not later than the business day following the day of the classification of the transaction as suspicious. Apparently, this is not an exhaustive list, given that it contains such attributes as "other circumstances suggesting that the transactions are being carried out for ML/TF purposes" (See paragraph on Criterion 3.2).

239. **Criterion 20.2** – The requirement for reporting entities to report all suspicious transactions, regardless of the amount of the transaction, is provided for in Article 4 (2) of the AML/CFT Law. The AML/CFT Law does not contain a direct requirement on financial institutions to file an STR in cases of attempted suspicious transactions but these norms are contained in the annex 3 to SFIS Order No.1/npa dated 23.01.2015. This obligation can be indirectly inferred from sub.par. 2) of par. 8 of the Regulation on ICR General Requirements for AML/CFT, according to which in case of suspicion that the customer is carrying out, or attempting to carry out, transactions linked to ML/FT, an employee of the reporting entity shall report it to the internal control unit, which shall decide whether to classify such transaction as suspicious and report it to SFIS.

#### *Weighting and conclusions*

240. Kyrgyzstan has established a requirement for financial institutions to report suspicious transactions. However, the AML/CFT Law does not contain a direct requirement for financial institutions to file an STR in cases of attempted suspicious transactions.

**Kyrgyzstan is rated *largely compliant* with Recommendation 20.**

### ***Recommendation 21 – Tipping-off and confidentiality***

241. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated compliant with Recommendation 14 of the FATF Recommendations 2003. However, analysis of the tipping-off and confidentiality provisions of the AML/CFT Law have revealed some gaps in compliance with the revised in 2012 Recommendation 21.

242. **Criterion 21.1** – Pursuant to paragraph 6 of Article 3 of the AML/CFT Law, reporting entities and their employees shall be exempted from liability for any losses, loss of profit or moral damage caused to natural and legal persons through compliance with the requirement established by the AML/CFT Law to report in accordance with the established procedure any suspicious transactions; provided, however, there was no violation of the established reporting procedure. In addition, none of the following shall give rise to civil or any other liability of reporting entities: suspension of the transaction, refusal to open a bank account (deposit) or carry out a transaction through an account, termination of the contract of bank account or closure of the account.

243. However, the wording of the said provision of the AML/CFT Law does not make it clear whether this exemption from liability covers directors and officers of financial institutions, as provided for in Recommendation 21.

244. **Criterion 21.2** – In accordance with the AML/CFT Law, reporting entities are prohibited from disclosing the fact of sharing of information with the designated state body. Reporting entities may only disclose the fact of sharing such information with the designated state body in cases specifically provided for by the Kyrgyz law. Employees of entities carrying out transactions with funds and property may not disclose the fact of sharing of information with the designated state body to the customers of these entities or other persons (par. 4 of Art. 3).

245. However, the wording of the said provision of the AML/CFT Law does not make it clear whether the prohibition against the disclosure of the fact of sharing of information with the designated state body to customers or other persons covers the directors and officers of financial institutions, as provided for in Recommendation 21.

246. Analysis of these matters during the on-site mission revealed that financial institutions understand that the tipping-off and confidentiality requirements of Recommendation 21 should apply to all employees of the financial institution, including its directors and officers.

### ***Weighting and conclusions***

247. Kyrgyzstan's AML/CFT Law establishes mechanisms for protecting financial institutions against liability when sending STRs to the designated authority, as well as prohibiting the disclosure of information on the submission of STRs or related information. However, it is not clear from the wording of the AML/CFT Law whether the requirements of the Recommendation apply to directors and officers of financial institutions.

248. **Kyrgyzstan is rated *largely compliant* with Recommendation 21.**

### ***Recommendation 22 – DNFBPs: Customer due diligence***

249. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated non-compliant due to the following: AML/CFT measures did not cover lawyers, notaries and persons providing services related to establishment of trusts and companies; adequate application of AML/CFT measures to traders in precious stones and metals was lacking; many components of the CDD procedure, along with many other requirements of the FATF Recommendations (i.e. relating to PEPs, record keeping



and new technology), pertaining to DNFBPs had no basis in law. Application of CDD measures in Kyrgyzstan does not currently extend to all DNFBP sectors that are subject to the FATF Recommendations.

250. **Criterion 22.1** – The requirements of the AML/CFT Law, including the obligation to implement CDD, apply to the following DNFBPs that fall under the category of reporting entities:

- organizations and agents (brokers) engaged in real estate transactions or providing intermediary services concerning the buying and selling of real estate (real estate agents);
- persons engaged in transactions with precious metals and precious stones, jewellery made therefrom or scrap thereof, where they carry out any cash transactions with customers;;
- persons engaged in the provision of trustee services, including trust companies (except for a professional securities market activity):

251. A list of reporting entities also includes persons organizing and holding lotteries.

252. **22.1(a)** – In accordance with Law No. 191 of November 1, 2011 "On the Prohibition of Gambling in the Kyrgyz Republic", all activities related to the organization and offering of, as well as the provision of access to, gambling services in casinos, including electronic (virtual) casinos, are prohibited. A ban on the activities of betting terminals and bookmakers went into effect in Kyrgyzstan on April 8, 2015. The only gambling business allowed in the country are lotteries.

253. **22.1 (b)** – Real estate agents are not required to conduct CDD in accordance with the requirements of Recommendation 10 on both buyers and sellers of real estate property.

254. **22.1(c)**- Under the AML/CFT Law (Art. 3 (1), 4 (1) and 6), persons carrying out transactions with precious metals and precious stones shall comply with CDD requirements in accordance with Recommendation 10 (see a description of technical compliance with Recommendation 10).

255. **22.1 (d)** – Lawyers, notaries, other independent legal professionals engaged in the provision of a wide range of consulting and other legal services (hereinafter "independent legal professionals") and accountants are all present in the country. Advocacy work primary pertains to the preparation of cases for trial in courts and participation in litigations. According to the information provided by the Kyrgyz authorities and the private sector during the on-site mission, lawyers and accountants do not carry out any activities falling under the requirements of the FATF Recommendations.

256. According to the Law "On Notaries" of May 30, 1998, private notaries are permitted to perform notarial actions related to the certification of transactions. In practice, notaries certify real estate transactions. However, the requirement to implement CDD at the time of performance of the above notarial actions is not provided for under the Kyrgyz law.

257. According to the representatives of the private sector, independent legal professionals provide services related to the preparation of real estate transactions. However, they are not required to implement CDD when preparing such transactions.

258. **22.1(e)** - There are no natural or legal persons in Kyrgyzstan engaged in the provision of trust services and establishment of companies, as specified in the FATF Recommendations; nor are there any regulations governing the provision of trust services. Except for professional securities market participants, the AML/CFT Law mentions no other reporting entities engaged in the provision of trust management services. Inclusion of these entities in the category of reporting entities, according to Kyrgyz authorities, was driven by the desire to create a legal framework for future monitoring of trust activities for compliance with AML/CFT requirements. Furthermore, in the Regulation on the List of Supervisors and Their Powers, approved by Government Decree No. 135 dated March 5,

2010, Gosfinnadzor is designated as the supervisory authority for entities engaged in the provision of trust services and establishment of companies.

259. The AML/CFT Law does not require reporting entities from among DNFBPs to refrain from establishing business relationships, to terminate business relationships or to refrain from carrying out a transaction if it cannot perform CDD measures.

260. **Criterion 22.2** - (see description of technical compliance with **Recommendation 11**).

261. **Criterion 22.3** - (see description of technical compliance with Recommendation 12).

262. **Criterion 22.4** - There are no provisions in the provided laws and regulations requiring DNFBPs to identify and assess ML/TF risks that may arise in connection with the development of new products and the use of new technologies for both new and existing products.

263. **Criterion 22.5** - Not applicable to DNFBPs in the context of the Kyrgyz law.

#### *Weighting and conclusions:*

264. Notaries and independent legal professional involved in the preparation of real estate transactions are not required to conduct CDD on customers participating in these transactions and retain information about them. The requirement for real estate agents to perform CDD is only partially implemented, given that there no provisions requiring real estate agents to conduct CDD both on sellers and buyers of real estate property. The requirement for DNFBPs to refrain from establishing business relationships, terminate business relationships or refrain from carrying out transactions if they cannot perform CDD measures is absent.

265. **Kyrgyzstan is rated *partially compliant* with Recommendation 22.**

#### ***Recommendation 23 – DNFBPs: Other measures***

266. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated non-compliant due to the following: the absence of the requirement to report suspicious transactions, including attempted transactions (linked to ML), and internal control requirements; failure to communicate the lists of countries that do not comply with FATF requirements; and the absence of the requirement for DNFBPs to scrutinize transactions with such countries. Kazakhstan has by now eliminated all of the above shortcomings in respect of real estate agents and persons carrying out transactions with precious metals and precious stones, jewellery made therefrom and scrap thereof.

267. **Criterion 23.1** – In accordance with the AML/CFT Law, reporting entities shall submit STRs (detailing their suspicions) to the designated state body if they suspect, or have reasons to suspect, that the funds or property are the proceeds of crime or related to terrorist/extremist financing, or will be used for this purpose (par. 4 of Art. 3), as well as use the suspicious transaction criteria to identify suspicious transactions and report them to the designated state body not later than the business day following the date of classification of the transaction as suspicious (par. 1 of Art. 4). If a lawyer, auditor, tax consultant, notary, or any person engaged in an entrepreneurial activity related to the provision of legal or accounting services, has any reason to believe that transactions with funds or property subject to mandatory control are being carried out, or may be carried out, for money laundering or terrorist/extremist financing purposes, they shall report them to the designated state body without tipping off the customer (par. 6 of Art. 8-1, par. 2 of Art. 6). Submission by the above persons of information on suspicious transactions to the designated state body does not constitute disclosure of professional or any other secrecy.

268. Therefore, the requirement of Recommendation 23 to report suspicious transactions is only

partially implemented for notaries and independent legal professionals.

269. **Criterion 23.2** – The requirement for the implementation of internal controls does not apply to notaries and independent legal professional.

270. **Criterion 23.3** – The requirements of Recommendation 19 do not apply to notaries and independent legal professionals.

271. **Criterion 23.4** – see description of technical compliance with Recommendation 21 and description under Criterion 23.1.

*Weighting and conclusions:*

272. The requirement of Recommendation 23 for notaries and independent legal professional involved in the preparation of real estate transactions to report suspicious transactions is only partially implemented by Kyrgyzstan. These persons are under no obligation to implement internal controls and conduct enhanced CDD on transactions with persons from high-risk countries.

273. **Kyrgyzstan is rated *partially compliant* with Recommendation 23.**

***Recommendation 24 – Transparency and beneficial ownership of legal persons***

274. In the EAG 1st Round Mutual Evaluations, Kyrgyzstan was rated partially compliant with Recommendation 33. No mechanisms for verifying information on the beneficial owners of legal persons were provided for in the Kyrgyz law or the existing registration procedure for legal persons; nor were there any mechanisms for preventing the use of bearer shares for ML/TF.

**Criterion 24.1**

275. **(a). Types, forms and basic features of legal persons** – Article 85 of the Civil Code specifies the types of legal persons: businesses and non-profit organizations. Legal persons that are businesses can take the form of business partnerships and corporations, cooperatives, farms, state and municipal enterprises. Legal persons that are non-profit organizations can take the form of cooperatives, political parties and other public or religious organizations (associations), institutions financed by their owner, charitable and other public funds, as well as other forms provided by law. The basic rules applicable to legal persons are set out in Chapter 5 of the Civil Code of the Kyrgyz Republic, while other regulations<sup>80</sup> describe in detail the requirements governing the activities of the aforementioned types of legal persons.

276. **(b) The processes for the creation of legal persons** – Pursuant to Article 87 of the Civil Code, a legal person may be created by one or several founders. A list of founders of a legal person may include owners of the property or bodies or persons authorized by them, as well as other organizations and citizens in cases specifically provided for by law. A legal person shall act on the basis of a charter, or a founding agreement and a charter, or solely on the basis of a founding agreement. The founding agreement of a legal person shall be entered into, and the charter shall be ratified, by its founders (shareholders). In the founding agreement, the parties (founders) assume the obligation to create a legal person, establish the procedure for joint activities dealing with its creation, define the terms of transfer of their property to the legal person, and the terms of participation in its activities. The agreement shall also define the terms and procedure for the distribution of profits and losses among founders, the terms of the management of the legal person's activities, and the terms

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<sup>80</sup>"On State Registration of Legal Entities, Branches (Representative Offices)", "On Business Partnerships and Companies", "On Joint-Stock Companies", etc.

of the founder's withdrawal from the legal person. Article 86 of the Civil Code contains provisions relating to the state registration of legal persons. The detailed requirements governing the state registration of legal persons are set out in the Law "On State Registration of Legal Entities, Branches (Representative Offices)".

277. Pursuant to Article 86 of the Civil Code, a legal person shall be subject to state registration by the designated state body (the Minister of Justice) in accordance with the procedure established by the Law on State Registration of Legal Entities. The procedure for submitting documents for state registration of legal persons is set out in Article 6 of the Law "On Registration of Legal Entities, Branches (Representative Offices)". More information on the registration procedure and applicable regulations, along with samples of standard charters and other useful information, is posted on the MoJ official website at ([http://minjust.gov.kg/?page\\_id=213](http://minjust.gov.kg/?page_id=213)).

278. The MoJ maintains a unified state register of legal persons and their branches (representative offices), which contains details of registered (re-registered) and closed down legal persons and their branches (representative offices). Pursuant to Article 20 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)", the information contained in the State Register shall be accessible to the public. The information contained in the state register can also be made available to interested persons in the form of an extract. Information contained in the state register is provided on a non-gratuitous basis. Provision of information from the state registry to state institutions is made on a gratuitous basis. At the same time, according to the Unified Register of public services provided by executive authorities, their structural subdivisions and subsidiaries, approved by Government Decree No. 85 dated February 10, 2012, provision of extracts from the Unified State Register of Legal Entities, Branches (Representative Offices) is made on a gratuitous basis.

279. The state register contains the following information: the full and abbreviated (if available) name in the state and official languages; date and serial number of the registration order; date of primary state registration; organizational or legal status or form of ownership; form of incorporation of a legal person (creation and reorganization); registration number, TIN, OKPO code; registered address (principle place of business); telephone and fax number, e-mail; information about the founders of the legal person; the size of the authorized capital (share fund), the number of shares held by the founders (shareholders), except for joint-stock companies; information about any on-going bankruptcy proceedings involving the legal person; information confirming the liquidation of the legal person; information about the director; information about the legal person that established a branch (representative office).

280. Starting February 2012, the regularly updated electronic database of legal persons has been available from MoJ website (<http://minjust.gov.kg>) at no extra cost.

281. Article 20 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)" specifies the information contained in the state register. The list does not contain information on beneficial owners (real beneficiaries), only on the founders and director. In addition, the register does not contain information about the shareholders of joint-stock companies.

282. Pursuant to Article 33 of the Law "On Joint Stock Companies", companies shall maintain a register of shareholders. The register of shareholders of the company shall contain information about the following: the number and categories (types) of outstanding shares issued by the company; each registered person, specifying whether they are the owner or nominal holder of shares; each registered share and the time of its purchase; the number of such shares held by each shareholder, specifying their details (location and settlement account for corporate shareholders; and passport details and place of residence for private shareholders); details of persons who, according to the information made available to the company or independent registrar, holds the right of lien over the shares, specifying whether the pledge holder has the right to vote on such shares; other grounds for the

purchase of the rights to shares and the fact of encumbrance of shares with collateral obligations; splitting and consolidation of shares; and payment of income on securities.

283. The position of registrar of a company may be held by a registrar pursuing the activity of maintaining the register on the basis of an appropriate license and an agreement with the company. The position of registrar of an open joint-stock company shall be held by an independent from the company register that meets the requirements of the law on the securities market.

284. Under the Kyrgyz law, an independent registrar is a professional securities market participant responsible for maintaining the register of the holders of registered securities. Pursuant to Article 39 of the Law "On the Securities Market", the activities of an independent registrar related to the maintenance of a register of the holders of securities of the issuer and registration of the rights of securities holders shall be carried out on the basis of an agreement concluded with the issuer of these securities. The Register of the Operating Independent Securities Registrars ([http://www.fsa.kg/?page\\_id=852](http://www.fsa.kg/?page_id=852)) is posted on the website of the supervisory authority (the State Service for Regulation and Supervision of Financial Markets under the Government of the Kyrgyz Republic). Article 33 of the Law "On Joint Stock Companies" states that a person registered in the company's shareholder register shall promptly notify the registrar of any changes in its registration details.

285. Besides that, pursuant to Article 8 of the Law on Securities Market the designated securities market regulator (Gosfinnadzor) maintains the Single State Register of Securities in the Kyrgyz Republic.

286. **Criterion 24.2** – Kyrgyzstan does not assess the ML/TF risks associated with all types of legal persons created in the country.

287. **Criterion 24.3** – Pursuant to Article 20 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)", the information contained in the state register maintained by the MoJ shall be accessible to the public. The basic information referred to in this criterion is contained in the state register and accessible to the public. See also Criterion 24.1.

288. **Criterion 24.4** – In accordance with the Civil Code (Article 87), the charter and other founding documents of a legal person shall include: the name of the legal person, its location, the procedure for management of its activities, as well as other information as required by the law on legal entities of the corresponding type. Pursuant to Article 20 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)", the MoJ, which maintains the state register, has access to this information.

289. As regards joint-stock companies, Pursuant to Article 33 of the Law "Joint-Stock Companies", the register of company shareholders shall contain information about the following: the number and categories (types) of outstanding shares issued by the company; each registered person, specifying whether they are the owner or nominal holder of shares, etc. The position of registrar of an open joint-stock company shall be held by an independent from the company register that meets the requirements of the law on the securities market. Pursuant to Article 49 of the Law "On the Securities Market", the professional activity related to the maintenance of a register of securities holders is the activity of an independent registrar related to the maintenance of a register of the holders of securities of the issuer and registration of the rights of securities holders on basis of the agreement concluded with the issuer of these securities. A public company and, in cases provided by the Kyrgyz law, a securities issuer that is not a public company shall transfer the responsibility for maintaining the register of securities holders to an independent registrar.

290. Pursuant to paragraph 2 of the Regulation on Maintaining a Register of Securities Holders in the Kyrgyz Republic, approved by Government Decree No. 536 dated September 7, 2011, the

register shall contain, among others, information about the securities holders (location and settlement account for corporate securities holders; and identity document: series, number, date and place of issue, and place of residence for private securities holders), as well as about the type, number and state registration number of the issues of securities held in their personal accounts, transactions carried out through the personal accounts, and other information provided by the Kyrgyz law on securities. The registrar, starting from the date of the first issue, shall receive and retain complete information on all transactions with the issuer's securities, including all necessary documentation for these transactions.

291. **Criterion 24.5** – The Kyrgyz law lacks clear provisions ensuring the accuracy of information and its timely updating. However, as stipulated in Article 12 of the Law on State (Government) Registration of Legal Entities and Branches (Representative Offices), a legal entity shall submit, within 30 calendar days from the date when the relevant decision was made, to the MoJ all documents necessary for state (government) re-registration in the situations specified in this Article (e.g. reorganization involving transformation, separation or accession; change of chartered capital or authorized fund; change of name; modification of statutory documents, etc.).

292. Besides that, pursuant to Article 8 of the aforementioned law a legal entity is obliged to notify, within 30 calendar days from the date when the relevant decision was made, the MoJ of change of: composition of a governing body; replacement of CEO (director); location (legal address); telephone and fax numbers and e-mail address; passport or other ID document data of individual founder (member) of business partnership and corporation (except for joint stock companies), public foundation, institution and pension savings fund; registration data of corporate founder (member) of business partnership and corporation (except for joint stock companies), public foundation, institution and pension savings fund; and passport or other ID document data of CEO (director).

293. As for the timeliness of records (updates) made in the state (government) register of legal entities by the MoJ, this process is governed by the Regulation on Procedure of State (Government) Registration, Re-registration and Registration of Termination of Activities of Legal Entities and Branches (Representative Offices) adopted by Government Resolution No.144 of October 5, 2011. According to Section 2 of this Regulation the process of entering data following acceptance of documents takes, on average, 2 business days in case of for-profit entities, 7 calendar days in case of non-profit organizations and financial and credit institutions, 6 business days in case of registration of termination of activity, and 21 calendar days in case of political parties.

294. **Criterion 24.6 – 24.7** – The Law "On State Registration of Legal Entities, Branches (Representative Offices)" requires legal persons to receive and retain information on founders and managers; the Law "On Joint-Stock Companies", on each registered person, specifying whether they are the owner or nominal holder of shares; on each registered share and the time of its purchase, the number of such shares held by each shareholder, specifying their details (location and settlement account for corporate shareholders; and passport details and place of residence for private shareholders); on details of persons who, according to the information made available to the company or independent registrar, holds the right of lien over the shares. At the same time, the Kyrgyz law establishes no requirement for either legal persons, or for the MoJ (or any other authority) or for independent registrars to receive and retain information required to identify the ultimate beneficiary. The requirement for legal persons to take reasonable measures to receive and retain up-to-date information on beneficial owners of the company is absent. Accordingly, beneficial ownership information will be registered only if the role of the beneficiary is played by the founders of the legal person or the actual owner of the shares. In addition, there are no mechanisms for verifying such information and, therefore, mechanisms for ensuring its accuracy. Although the competent authorities are able to use the data available to financial institutions and DNFBPs, they are not guaranteed a timely access to such data (see Criterion 24.10). Some categories of DNFBPs are not

covered by the CDD regulations (see R.22). In addition, the Kyrgyz law does not require legal entities to have an account with a financial institution: pursuant to par. 2 of Article 7 of the Law "On State Registration of Legal Entities and Their Branches (Representative Offices)", the certificate of state registration (re-registration) serves as the basis for opening accounts with financial institutions. Accordingly, beneficial ownership data will only become available if the legal entity is a client of a reporting entity covered by AML/CFT requirements. See also paragraphs on compliance with Recommendations 10 and 22.

295. **Criterion 24.8** – Kyrgyzstan has addressed this issue only partially (24.8 b). Pursuant to Article 56 of the Law "On the Securities Market", professional securities market participants shall notify the securities market regulator of any changes in the documents submitted as part of the license application process; as well as, upon request of the designated state body, provide all required information not prohibited by law. Besides that, clause 3(60) of the Regulation on Information Disclosure in the Securities Market requires a securities holder to disclose information on ownership of any issued securities, including 5 or more percent of any type of securities of a particular issuer, by notifying the designated securities market regulator thereof within 5 days following acquisition of securities.

296. **Criterion 24.9** – Pursuant to Article 13 of the Law on State (Government) Registration of Legal Entities, for registration of termination of activity of a legal entity, an applicant shall submit to the MoJ, among other documents, a certificate of the government archival agency (fund) indicating the place of storage of the archival documents of the liquidated legal entity. According to the "List of standard administrative documents generated by institutions, organizations and business entities and their retention period" (adopted by Government Resolution No.346 of December 31, 2010) instruments of association/ incorporation (registration file (registration order, dissolution/ liquidation order, charter (statute); statistical card; registration/ re-registration certificate; registration application; minutes of a general meeting; memorandum of association/incorporation; deposit account opening certificate; premises lease agreement; balance sheet reports; resolutions (on acquisition and cessation of membership, distribution of equity interest among founders); equity interest transfer agreement; founder resignation application; dissolution/ liquidation statement; dissolution/ liquidation announcement in mass media; dissolution/ liquidation notice; final audit certificate; liquidation balance sheet) are retained by the justice authorities on a permanent basis. In furtherance of these regulatory provisions, the MoJ adopted the "List of documents generated by the Kyrgyz Republic justice institutions and their retention period" according to which instruments of association/ incorporation (charters, memoranda of association/ incorporation, statutes) of finance and credit institutions and other institutions licensed and/or registered by NBKR, non-profit organizations and branches (representative offices) of financial and credit institutions, foreign and international organizations as well as archive files related to state (government) registration, re-registration and registration of termination of activities of legal entities and branches (representative offices) are retained in the MoJ on a permanent basis.

297. According to the AML/CFT Law (Article 3(4)(2)) reporting entities are obliged to retain customer identification data and records on transactions with funds or other assets for at least five years following closure of account. There is only a general legal provision that requires joint stock companies to retain all their documents in a manner consistent with Kyrgyz legislation (Article 80 of the Law on Joint Stock Companies).

298. It should be noted that not all relevant entities and government authorities are covered by the record keeping requirements. However, a broad enough coverage of entities and government authorities by this criterion assumes that records and documents are kept.

299. **Criterion 24.10** – The paragraphs on Recommendations 27 and 28 contain an analysis of the

supervisors' powers to obtain information. According to the Regulation on the List of Supervisory Authorities and Their Powers, approved by Government Decree No. 135 dated March 5, 2010, supervisory authorities may request accountable entities to provide information necessary for the performance of their oversight functions (par. 8).

300. In general, financial sector supervisors are vested with considerable authority to gain timely access to basic and beneficial ownership information. At the same time, in the Law on Insurance in the Kyrgyz Republic (Article 26), the extent of this authority is curtailed by the wording used (request reports and information on the financial situation of insurers). Limitations on the supervisors' powers to obtain information (only in relation to financial activities) are also provided in the Law on Pension Savings Funds (Article 36). Meanwhile, the laws governing the activities of pawnshops and on financial leasing lack similar provisions.

301. As regards the supervisors' powers over DNFBPs, it should be noted that not all types of DNFBPs have a designated competent authority responsible for their supervision. A list of other professions lacking their own designated competent authority or an SRB responsible for monitoring compliance with AML/CFT requirements includes real estate agents, lawyers, notaries and other independent legal professionals. The country's FIU does not perform such functions. Kyrgyzstan has not provided information on SRBs.

302. Since the Register of Legal Entities does not contain beneficial ownership information, while credit institutions collect this information as part of the CDD process, the powers of law enforcement agencies to obtain this information from credit institutions are limited (only as part of criminal proceedings).

303. **Criterion 24.11** – Pursuant to par. 1 of Art. 47 of the Civil Code, a share is a security which certifies the right of its holder (shareholder) to receive a part of a joint-stock company's profit in the form of dividends, to participate in managing the joint-stock company, and to own part of its property left after its liquidation. A list of allowed shares includes bearer shares (stocks) or registered shares, freely circulated shares or shares limited in circulation. Besides that, Article 4 of the Law on Securities Market provides that bearer securities are issued in a documentary form (i.e. are certified securities). However, this provision contradicts Article 22 of the Law on Joint Stock Companies which stipulates that all shares of a joint stock companies are registered shares issued in a book-entry form.

304. Kyrgyzstan lacks the mechanisms designed to prevent the illegal use of such shares for ML or TF purposes.

305. **Criterion 24.12** – Pursuant to Article 33 of the Law "On Joint-Stock Companies", the register of company shareholders shall contain information about each registered person, specifying whether they are the owner or nominal holder of shares. Registrars responsible for maintaining a register of the issuer's shareholders shall disclose information on shareholders, nominal holders of shares of the company and other information required under applicable law.

306. In addition, pursuant to Article 53 of the Law "On the Securities Market", a depository and a broker (a licensed type of activity) may act as a nominee holder of securities. A non-resident (foreign) depository with a license (or a substitute document) to carry out depository activity in his country, and who meets the requirements established by the regulations governing the activities of depositories in the Kyrgyz Republic, may act as nominee holder of securities.

307. The nominee holder, upon request of the registrar, the depository or the securities market regulator, shall disclose information on the owners of securities within the timeframe set by applicable regulations.



308. At the same time, the Kyrgyz law makes no provisions for the appointment of nominee directors/managers.

309. **Criterion 24.13** – Pursuant to Article 22 of the Law "On State Registration of Legal Entities, Branches (Representative Offices)", the applicant, founder, manager, legal person and the branch (representative office) shall be liable for failure to submit, or untimely submission of, information required for inclusion in the state register, as well as for providing false information, in accordance with applicable law.

310. Pursuant to Article 65 of the Law "On the Securities Market", persons shall be liable for violation of this Law and other regulations of the Kyrgyz Republic governing activities in the securities market in cases and in the manner prescribed by applicable law.

311. Chapter 24 of the Administrative Liability Code provides for administrative liability for administrative offences relating to securities transactions:

- maintenance of the register of securities holders in violation of the established procedure, or the absence of a register of securities holders; unreasonable refusal to make an entry in the register of securities holders; and failure to maintain a register of securities holders with the involvement of a specialized registrar in cases and within the timeframe prescribed by applicable law – is punishable with an administrative fine for officials in the amount of twenty to fifty standard units.

312. Besides that, pursuant to the Code of Administrative Offences failure to provide updates on legal entities which results in evasion of their re-registration in a manner prescribed by the law is punishable by administrative fine in amount of 5 to 10 calculated indices, while operation of business entities and non-profit organizations and their branches (representative offices) without state (government) registration (record registration) and/or re-registration in the situations and manner established by the Kyrgyz legislation entails imposition of administrative fine on executive officers in amount up to 10 calculated indices (Articles 297 and 402, respectively).

313. Furthermore, not all financial sector supervisors are authorized to deal with administrative offences. Meanwhile, the laws governing the activities of pawnshops and on financial leasing do not grant Gosfinnadzor powers to apply measures/sanctions. No evidence of the SIT&CC's powers to apply measures/sanctions in respect of postal operators (in connection with postal remittance) was found.

314. It is not possible to accurately assess the proportionality of measures/sanctions that can be applied by Gosfinnadzor and the SIT&CC. Nevertheless, the measures/sanctions that can be applied by Gosfinnadzor and the SIT&CC are more limited than those available to the NB.

315. **Criterion 24.14** – The basic information stored in the State Register of Legal Entities is publicly accessible from the Justice Ministry's website.

316. Given that legal persons, similarly to the MoJ (maintains the State Register of Legal Entities) and independent registrars (JSCs), do not collect and retain beneficial ownership information, this information cannot be made available to foreign competent authorities (see also the analysis of Recommendations 37 and 40).

317. **Criterion 24.15** – There is no information on how Kyrgyzstan controls the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information, or requests for assistance in locating beneficial owners residing abroad.

### *Weighting and conclusions*

318. Kyrgyzstan's compliance with Recommendation 24 has significant shortcomings. The country has not conducting an assessment of ML/TF risks posed various categories of legal entities. The requirement for legal entities to take reasonable steps to obtain and maintain up-to-date information on the beneficial owners of companies is missing. The State Register of Legal Entities does not contain information on beneficial owners. There are no proportionate and dissuasive sanctions against legal or natural persons for failure to properly comply with the requirements of the Recommendation.

319. **Kyrgyzstan is rated *partially compliant* with Recommendation 24.**

### ***Recommendation 25 – Transparency of beneficial ownership or legal arrangements***

320. In the 1st Round Mutual Evaluations, Kyrgyzstan was rated not applicable in relation to Recommendation 34.

321. No legal entities, including trusts, in the sense in which these terms are used in the FATF Recommendations may be established in Kyrgyzstan. This is due to the fact that Kyrgyzstan's legal framework, similarly to other countries of the continental legal tradition, does not permit the splitting of ownership, when the legal title to the property passes to the trustee along with the right to control the property, while the equitable title is transferred to the beneficiary.

322. Although trust management is legal in Kyrgyzstan, it should be distinguished from trusts established in countries with the Anglo-Saxon legal system, since it is merely a type of contractual relationship. Thus, pursuant to Article 850 of the Civil Code, "transfer of a property to trust management shall not result in assignment of the title to the property to the trust manager". The management of a trust can be carried out by a business or an individual entrepreneur. Enterprises and other property complexes and other exclusive rights may be the objects of trust management. Movable property, including money, may not act as independent objects of trust management. Persons engaged in the trust management of securities are required to be licensed. At the same time, given their status as professional securities market participants, they, similarly to other financial institutions, are covered by the AML/CFT Law.

323. Kyrgyzstan's law does not directly prevent foreign trusts (legal entities) from operating in the country's financial system. However, they are covered by the AML/CFT Law, in accordance with the provisions of Article 2 of the AML / CFT Law, pursuant to Art. 2 of which, a list of reporting entities includes persons who provide trust management services, including trust companies (except for professional activities in the securities market).

324. Kyrgyzstan does not recognize foreign trusts and is not a party to the Hague Convention on the law applicable to trusts and their recognition.

325. **Criterion 25.1** – This criterion is not applicable due to the fact that the country's law does not provide for the creation of trusts, hence the absence of the legislation governing the creation and operation of trusts.

326. Reporting entities are required perform establish due diligence measures in respect of their customers, including the identification and verification of the beneficial owner, as well as to maintain the relevant information for a certain period.

327. In addition, the standard beneficiary form, approved by SFIS Order dated January 23, 2017, shows that the customer is acting for the benefit of another person when carrying out a transaction with funds or property. Meanwhile, the fact that an individual acts as the trustee (manager) of a particular trust constitutes the grounds for classifying a natural person as the beneficiary owner of the customer.

328. **Criterion 25.2** – this criterion can be applied solely in cases of establishment of business relationships between foreign trustees and Kyrgyz financial institutions or DNFBPs. In this case, pursuant to Article 3 of the AML/CFT Law, reporting entities shall verify the credentials and authenticity of persons who have the right to dispose of money or property, as well as to systematically update customer and beneficial ownership information. At the same time, according to representatives of Kyrgyzstan, no such cases were recorded in the country.

329. **Criterion 25.3** – Article 3 of the AML/CFT Law requires reporting entities to: identify the customer (natural or legal person) and record the data obtained; verify the identity of the customer (natural or legal person); verify the credentials and authenticity of persons who have the right to dispose of money or property; as well as to systematically update customer and beneficial ownership information.

330. **Criterion 25.4** – There are no provisions in the Kyrgyz law that prevent trustees from providing information to competent authorities.

331. **Criterion 25.5** – The requirements of this criterion are applicable to the situation when foreign trustees establish business relationships with the country's reporting entities (financial institutions and DNFBPs).

332. As regards the powers of the supervisors (the State Service for Regulation and Supervision of the Financial Market under the Government of the Kyrgyz Republic, the State SIT&CC under the Government of the Kyrgyz Republic, the Finance Ministry's Precious Metals Department and the National Bank of the Kyrgyz Republic) and the State Financial Intelligence Service to obtain information, see also paragraphs on compliance with Recommendations 27, 28 and 29.

333. At the same time, law enforcement authorities lack the powers to access data held by FIs and DNFBPs, which is only granted within the framework of a criminal investigation (before that through the FIU).

334. **Criterion 25.6** – The issues relating to international cooperation in combating money laundering and terrorist financing are governed by Chapter IV of the AML/CFT Law.

335. The Kyrgyz authorities responsible for combating money laundering and terrorist/extremist financing make, upon request or on their own initiative, the relevant information available to foreign competent authorities in the manner and on the grounds consistent with the international treaties of the Kyrgyz Republic, or on the basis of the principle of reciprocity.

336. In order to combat money laundering and terrorist/extremist financing, the supervisory authority for the banking and financial sectors may request, receive and provide relevant information to foreign banking industry supervisors both upon request and on its own initiative.

337. SFIS, acting in compliance with the international treaties of the Kyrgyz Republic or on the basis of the principle of reciprocity, cooperates with foreign competent authorities at the stages of data gathering, preliminary investigation, judicial proceedings and enforcement of judgments, as well as in providing other types of legal assistance in combating money laundering and terrorist financing.

338. See also relevant paragraphs on Recommendations 37 and 40.

339. **Criterion 25.7** – The Kyrgyz law lacks the rules/regulations required to comply with the requirements of this criterion. Accordingly, the liability for any failure to perform the duties or apply proportionate and dissuasive sanctions is not provided for.

340. **Criterion 25.8** – The Kyrgyz law lacks the rules/regulations required to comply with the requirements of this criterion. Accordingly, no liability for any failure to perform the duties is

provided for.

### *Weighting and conclusions*

341. Kyrgyzstan's law does not allow the establishment of trusts, meaning that criteria 25.1, 25.7 and 25.8 do not apply. Other criteria applicable to Kyrgyzstan are complied, or largely complied, with.

342. **Kyrgyzstan is rated *Compliant with Recommendation 25*.**

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

343. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 23 (pp. 76-85). Only the banking sector was found to have an integrated system of AML/CFT supervision, monitoring and sanctions. In the insurance and securities market sectors, the requirement to apply the Core Principles for AML/CFT was absent; there were shortcomings in the system of supervision and monitoring of exchange offices, while a similar system targeting non-bank money transfers was absent. In addition, non-bank MVTS were not subject to licensing or registration.

344. In the period since the previous mutual evaluation, Kyrgyzstan has passed amendments designed to address technical deficiencies relating to regulation and supervision of financial institutions. The 11th Follow-Up Report of 2014 noted significant progress in bringing national legislation into line with the requirements of Recommendation 23 (pp. 17-21). At the same time, Kyrgyzstan was recommended to take further steps to improve its regulatory framework, in order to ensure compliance of the insurance and securities sectors with the Core Principles on AML/CFT.

345. **Criterion 26.1** – The requirements of the AML/CFT Law apply to all financial institutions falling within the definition given in the FATF Glossary, except for insurance intermediaries (insurance brokers and insurance agents) engaged in the provision of insurance services. Pursuant to paragraphs 3, 4 and 6 of the Regulation on the List of Supervisory Authorities, supervision over the activities of financial institutions, within their competence, is conducted by:

- *the National Bank of the Kyrgyz Republic*, in respect of commercial banks; non-banking financial and credit organizations and institutions (microfinance and microcredit organizations, credit unions, specialized financial and credit institutions, exchange offices); organizations engaged in the provision of services related to the acceptance and making of payments and carrying out settlement transactions in favour of third parties, as well as services involving the use of electronic money;
- *the State Service for Regulation and Supervision of the Financial Market under the Government of the Kyrgyz Republic*, in respect of professional securities market participants; insurance/reinsurance organizations; organizers of trading (commodity and stock exchanges) and auctions; non-state pension funds; leasing (financial leasing) companies; pawnshops and brokerage offices;
- *the State Committee of Information Technologies and Communications of the Kyrgyz Republic*, in respect of postal and telegraph services providers (in connection with postal remittances) (hereinafter "the SIT&CC").

346. **Criterion 26.2** – Pursuant to Article 15 of the Law on Licensing, the activities of institutions covered by the Core Principles (banking, insurance, professional securities market activities) should be licensed. According to this law, non-state pension funds, exchange offices, credit unions, microfinance companies, pawnshops, payment system operators and payment organizations, as well

as postal services (including postal remittances,) are also required to be licensed. In addition, under the Law on Microfinance Organizations, microcredit companies and microcredit agencies should be registered with the National Bank of the Kyrgyz Republic. At the same time, there is no licensing/registration regime for leasing companies that are not banks or microfinance organizations, as well as commodity exchanges and their participants (members). According to Article 3 (2) of the AML/CFT Law, the creation of shell banks is prohibited in the Kyrgyz Republic.

347. **Criterion 26.3** – In Kyrgyzstan, measures designed to prevent criminals from obtaining control and management functions in financial institutions are applied depending on the importance of certain types of financial institutions. In relation to banks, such measures include the requirement for mandatory approval by the National Bank of the bank's officials, as well as natural and legal persons with a significant interest in the bank (10% or more), both at the bank's creation/licensing stage and the time of replacement of the said persons. These requirements are set out in the Law on Banks (Articles 25-1 and 44) and the Regulation on Licensing of Banks (Chapter 12), and include a verification of the business reputation of the applicant (an official, a majority shareholder or his official), including a criminal records check.

348. Appropriate measures with respect to insurance companies and professional securities market participants, provided for by the Law "On the Securities Market" (Article 42) and the Regulation on Qualification Requirements for Insurance (Reinsurance) Company Officials (approved by Government Decree No. 525 dated August 1, 2012), are only applied to officials of the said types of financial institutions, but not to their shareholders (majority shareholders).

349. Measures similar to those taken in respect of banks (approval of control/officials) are applied to microfinance companies. The relevant provisions are contained in Articles 13, 20, 21, 32 of the Law on MFOs, as well as in Chapters 3 and 11 of the Regulation on Licensing the Activities of Microfinance Companies. At the same time, this mechanism is not used in dealing with microcredit companies and microcredit agencies.

350. Measures aimed at preventing criminals from holding a controlling function in exchange offices, payment system operators and payment organizations, credit unions, as well as microcredit companies and microcredit agencies, are taken at the licensing/registration stage in the form of a refusal to issue a license/registration certificate, upon the availability of negative information about the founders/members/shareholders/heads of such institutions (microcredit companies and microcredit agencies) or the heads of such institutions (exchange offices, payment system operators and payment organizations, and credit unions).

351. Measures aimed at preventing criminals from holding a controlling function in pension funds are provided for in Article 7 of the Law "On Savings Pension Funds in the Kyrgyz Republic", in the form of a requirement not to appoint (elect) to an official position in the fund a person who has a criminal record which has not been cleared or expunged in the manner prescribed by law. Similar measures are taken in accordance with the Ministry of Transport and Communications Order No. 50 dated February 27, 2012 in respect of management positions in the state-run postal operator "Kyrgyz Pochtasy".

352. At the same time, measures designed to prevent criminals from holding a controlling or management function in pawnshops, leasing companies (other than banks or microfinance organizations), commodity exchanges and insurance brokers are absent. Furthermore, the Kyrgyz law lacks procedures designed to prevent criminals from being the beneficial owner of financial institutions.

353. **Criterion 26.4** – Kyrgyzstan's existing AML/CFT framework for the banking sector, including some elements of consolidated supervision, is largely consistent with the Core Principles.

Meanwhile, the same regulatory framework for insurance companies and professional securities market participation is not fully consistent with the Core Principles. However, the insurance sector and the securities market sector are inferior to the banking sector in size and importance. The existing licensing and monitoring procedures for exchange offices, payment system operators and payment organizations provide sufficient opportunities for supervising these financial institutions, with account for associated ML/TF risks.

354. **Criterion 26.5** – Paragraph 13 of the Regulation on the List of Supervisory Authorities calls on supervisors to implement a risk-based approach (RBA) to AML/CFT supervision. At the same time, the country's supervisors rely on annual audits to monitor compliance with AML/CFT requirements.

355. The National Bank has prepared a draft Guidance on Risk-Based Supervision over the Banking Sector, which, among others, sets out the procedure for assessing the extent and quality of ML/F risk management as part of the non-compliance risk. The draft Guidance was tested in all 25 commercial banks under the monitoring of outside experts. The risk-based approach is expected to shift the supervisory focus to high-risk areas of the bank's operations, allowing a better allocation of the National Bank's resources. Gosfinnadzor applies a RBA to supervision in accordance with the Law "On the Procedure for Conducting Inspections of Business Entities". The criteria for assessing the risk profile of businesses, approved by Government Decree No.108 dated February 18, 2012, does not contain criteria related to ML/TF risks. The intensity of the SIT&CC's AML/CFT-focused inspections of the Kyrgyz Pochtasy branches depends on the volume of postal remittances.

356. **Criterion 26.6** – Pursuant to paragraph 12 of the Regulation on the List of Supervisory Authorities, the application of a RBA to supervision allows supervisors to relocate resources towards the industries that may be at a higher risk at the time of the inspection. Pursuant to paragraph 15 of this Regulation, the assessment of the ML/TF risk profile should be reviewed periodically, depending on the situation and emergence of new threats (see also descriptions under Criteria 26.5).

### *Weighting and conclusions*

357. Kyrgyzstan has largely complied with the requirements of Criteria 26.1 to 26.4 and partially complied with the requirements of Criteria 26.5 and 26.6. In Kyrgyzstan, licensing/registration procedures are not applied to all types of financial institutions. The requirement for measures designed to prevent criminals from holding a controlling and management function in financial institutions is not fully implemented for certain types of financial institutions. The regulatory framework for insurance companies and professional securities market participants is not fully consistent with the Core Principles. The requirement to apply a RBA to supervision has not been fully complied with. Given the size and importance of the banking sector, these shortcomings are not significant.

358. **Kyrgyzstan is rated *largely compliant* with Recommendation 26.**

### *Recommendation 27 – Powers of supervisors*

359. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 29 (pp. 76-85). This requirement was revealed to have been complied with only in respect of the banking sector. In the period since the last mutual evaluation, Kyrgyzstan has adopted a number of legislative changes aimed, *inter alia*, at eliminating the shortcomings under Recommendation 27.

360. **Criterion 27.1** – The Kyrgyz supervisors' powers to supervise and monitor financial institutions' compliance with AML/CFT requirements are provided for in Article 3 (8) of the

AML/CFT Law and paragraph 7 of the Regulation on the List of Supervisory Authorities. Supervisors' authority over different types of financial institutions is defined in the description for Criterion 26.1. However, the implementation of this criterion is affected by the shortcomings specified in the descriptions for Criteria 27.2 to 27.4.

361. **Criterion 27.2** – Supervisor's authority to inspect financial institutions are provided by the Law on the National Bank (par. 2 of Art. 30), the Law on Banks (par. 1 of Art. 42, the Law on MFOs (par. 1 of Art. 29 and par. 9 of Art. 35), the Law on Credit Unions (Article 30), the Law on the Payment System (par. 1 of Art. 26), the Law on Gosfinnadzor (Articles 5, 6 and 9), the Law on the Securities Market (Article 11), the Law on Insurance (Article 26), the Law on the Pension Savings Funds (Article 36), the Law on Electric and Postal Communications (Article 8), as well as in the Regulation on the List of Supervisory Authorities (paragraph 7) and related regulations. At the same time, the Laws on Commodity Exchanges, Pawnshops and on Financial Leasing (leasing) contain no provisions that empower supervisors to conduct inspections. The procedure for conducting inspections of financial institutions is set out in the Law on Inspections of Business Entities, as well as in the Law on the National Bank (in respect of entities licensed by the National Bank).

362. **Criterion 27.3** – Supervisors' authority to compel production by accountable entities of required information is provided by the Law on the National Bank (Article 30), the Law on Banks (Article 43), the Law on the Payment System (Article 31), the Law on MFOs (Articles 31 and 35), the Law on Credit Unions (Article 30), the Law on Gosfinnadzor (Article 6), the Law on the Securities Market (Article 10) and the Law on Electric and Postal Communications (Article 8). However, the wording of the Law on Insurance (Article 26) and the Law on Pension Savings Funds (Article 36) somewhat curtails these powers (production of financial statements and information on the financial situation). Meanwhile, the Laws on Pawnshops and on Financial Leasing lack similar provisions.

363. **Criterion 27.4** – The National Bank's authority to apply measures and sanctions against accountable financial institutions, including suspension and revocation of licenses/registration certificates is provided by the Law on the National Bank (Article 32), the Law on Banks (Articles 39, 39-2, 45-1, 46 and 48), the Law on MFOs (Articles 28, 30 and 35), the Law on Foreign Currency Transactions (Article 31-1), the Law on the Payment System (Article 31-1) and other relevant regulations. Similar powers of Gosfinnadzor in respect of accountable financial institutions are provided by the Law on Gosfinnadzor (Article 6), the Law on the Securities Market (Article 12), the Law on Insurance (Article 26) and the Law on Pension Savings Funds (Article 37). However, the Laws on Commodity Exchanges, Pawnshops and on Financial Leasing (leasing) do not empower Gosfinnadzor to apply these measures/sanctions. Moreover, Gosfinnadzor lacks the powers to revoke the licenses of accountable financial institutions. All decisions to revoke a license of a financial institution accountable to Gosfinnadzor must be sanctioned by a court. The SIT&CC's authority to apply measures and sanctions against Kyrgyz Pochtasy is provided by the Regulation on the State Committee of Information Technologies and Communications of the Kyrgyz Republic, approved by Government Decree No. 402 dated July 15, 2016 (hereinafter the "Regulation on the SIT&CC"), and the Law on Licensing (regarding the suspension of licenses). Chapter 35-3 (Articles 505-17 – 505-20) of the Code lists the types of ML/TF-related administrative offences. Only the National Bank has the authority to deal with cases falling under these articles. Neither Gosfinnadzor nor the SIT&CC has such powers and, therefore, refer administrative cases related to non-compliance with AML/CFT requirements to SFIS.

### *Weighting and conclusions*

364. NBKR has all the tools necessary to monitor and enforce compliance with the AML/CFT regime. Although Gosfinnadzor and the SIT&CC are vested with supervisory functions, there are gaps in monitoring compliance by commodity exchanges, pawnshops and financial leasing companies. In Kyrgyzstan, not all supervisors have the authority to apply financial sanctions in the form of administrative fines and revocation of licenses. Given the size and importance of the country's banking sector, the identified shortcomings are significant.

365. **Kyrgyzstan is rated largely compliant with Recommendation 27.**

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

366. In the 1st Round of MEs, Kyrgyzstan was rated non-compliant with the requirements of this Recommendation. Among the identified shortcomings were the lack of regulation and supervision over lawyers, notaries, trust and company service providers; the gaps in the monitoring of compliance with AML/CFT requirements by traders in precious stones and precious metals; and the absence of a designated authority or a self-regulatory organization responsible for supervision over real estate agents, an area where the FIU lacks the necessary supervisory powers. The shortcomings revealed in the 1st Round Mutual Evaluation of Kyrgyzstan with respect to the regulation and supervision of the DNFBPs still remain.

367. **Criterion 28.1** – In accordance with Law No. 191 of November 1, 2011 "On the Prohibition of Gambling in the Kyrgyz Republic", all activities related to the organization and offering of, as well as the provision of access to, gambling services in casinos including electronic (virtual) casinos, are prohibited.

368. **Criterion 28.2** – In accordance with the Regulation on the List of Supervisory Authorities and Their Powers, approved by Government Decree No. 135 dated March 5, 2010 (hereinafter "Regulation No. 135"), a list of competent authorities tasked with AML/CFT supervision (including inspections), application of sanctions for non-compliance with AML/CFT requirements, and provision of methodological and other assistance to accountable entities includes the following:

- the Finance Ministry's Precious Metals Department, in respect of persons carrying out transactions with precious metals and precious stones;
- the State Service for Regulation and Supervision of the Financial Market under the Government of the Kyrgyz Republic, in respect of trust and company service providers; organizations holding lotteries and other games in which participants compete for prize money, including in electronic form; individual auditors and accountants.

369. Among other professions lacking their own designated competent authority or an SRB responsible for monitoring compliance with AML/CFT requirements are real estate agents, notaries and independent legal professionals.

370. **Criterion 28.3** – Real estate agents, notaries and independent legal professionals are not monitored (supervised) for compliance with AML/CFT requirements.

371. **Criterion 28.4** – Not all DNFBPs have a designated competent authority (see criteria 28.2 and 28.3).

372. The following has been revealed in respect of DNFBPs.

- (a) – Pursuant to paragraph 7 of Regulation No. 135, the Finance Ministry's Precious Metals Department and the State Service for Regulation and Supervision of the Financial Market under the Government of the Kyrgyz Republic are responsible for monitoring compliance



by accountable DNFBPs with AML/CFT requirements.

- (b) – The mechanisms designed to prevent criminals and their associates from being professionally accredited, or holding (or being the beneficial owner of) a controlling interest, or holding a management function in accountable DNFBPs are not provided for.
- (c) – Pursuant to paragraph 7 of Regulation No. 135, these supervisors have the authority to apply sanctions against DNFBPs for non-compliance with Kyrgyzstan's AML/CFT Law. However, the submitted laws and regulations do not contain norms stipulating any sanctions for non-compliance with the AML/CFT requirements available to these supervisors for use against supervised DNFBPs, except for organizations holding lotteries.

373. Nor do they have access to administrative sanctions that can be used to punish accountable DNFBPs for non-compliance with AML/CFT regulations. Administrative sanctions against reporting entities, as well as the sizes of available penalties for AML/CFT violations, are set out in Chapter 35-3 of the Administrative Liability Code. Pursuant to Article 546-3 of the Administrative Liability Code, the authority to hear cases of administrative violations of AML/CFT requirements is vested in the head or designated official of the country's Financial Intelligence Agency.

374. **Criterion 28.5** – Only for accountable DNFBPs. Pursuant to paragraph 13 of Regulation No. 135, supervisors implementing a risk-based approach should have a clear understanding of ML/TF risks existing in Kyrgyzstan; take into account the specifics of the accountable persons' activities, in particular their organizational structure and the degree of discretion allowed to them under the risk-based approach; and assess the adequacy of AML/CFT internal controls.

#### *Weighting and conclusions:*

375. The requirement to comply with the FATF Recommendations should apply to the following Kyrgyz DNFBPs: real estate agents, persons carrying out transactions with precious metals and precious stones, as well as notaries and independent legal professionals involved in the preparation of real estate transactions. AML/CFT supervision over the activities of real estate agents, notaries and independent legal professionals is absent. The Finance Ministry's Precious Metals Department, which is tasked with monitoring compliance by persons carrying transactions with precious metals and precious stones, is under no obligation to prevent criminals and their accomplices from being professionally accredited, or holding (or being the beneficial owner of) a controlling interest, or holding a management function in the said accountable entities. It also lacks the mechanisms that allow it to apply sanctions against these entities for non-compliance with AML/CFT requirements.

376. **Kyrgyzstan is rated *non-compliant* with Recommendation 28.**

#### ***Recommendation 29 – Financial Intelligence Units (FIU)***

377. In the 1st Round Mutual Evaluation Report of 2007, Kyrgyzstan was rated largely compliant with Recommendation 26 (Financial Intelligence Units). The identified shortcomings related to the difficulties in assessing the effectiveness of the financial analysis caused by the absence of AML/CFT typologies and trends data from the FIU's website and reports, which, in turn, was caused by the fact that the FIU had only recently begun this work. The first shortcoming related to the effectiveness of the FIU's efforts, a parameter not assessed as part of the Methodology 2013. Significant changes affecting this area have been made to the FATF Recommendations since the last mutual evaluation. In particular, the FATF has established new requirements concerning the implementation by FIUs of strategic and operational analysis, submission of additional information by reporting entities and the FIU's authority to request production of information.

378. **Criterion 29.1** – SFIS is a designated AML/CFT authority responsible for collecting, processing and retaining records (reports), documents, information and other materials on transactions with funds or property subject to mandatory controls and on suspicious transactions; carrying out, in accordance with the established procedure, analytical work aimed at identifying transactions with funds and property related to money laundering and terrorist/extremist financing; as well as for preparing and providing spontaneous disseminations to law enforcement and judicial bodies in accordance with applicable law.

379. The Kyrgyz FIU lacks similar powers with respect to predicate offences for ML.

380. **Criterion 29.2** – SFIS is the central authority for receipt of reports and information filed by reporting entities, including:

- a) STRs filed in accordance with Recommendations 20 and 23;
- b) reports on other transactions subject to mandatory controls that are above the designated threshold amount, including cash transactions, certain transactions with movable and immovable property, etc. (Article 6 of the AML/CFT Law).

381. Pursuant to Art. 4 (sub.par. 2) of par. 1) of the AML/CFT Law, reporting entities shall identify suspicious transactions by using a list of suspicious transaction indicators along with other circumstances that give grounds for believing that the transactions are being carried out for ML/TF purposes, and report them to the designated state body (SFIS) not later than the business day following the day of classification of the transaction as suspicious.

382. **Criterion 29.3**

- a) Pursuant to par. 9 of Art. 5 of the AML/CFT Law, SFIS, with respect to any information obtained in the course of performance of its functions, may request and receive from government authorities and reporting entities any additional information related to AML/CFT.

Pursuant to par. 4 of Art. 4 of the AML/CFT Law, reporting entities shall provide to the designated state body upon written request any additional information and documents related to transactions that have become the subject of mandatory controls, including, with respect to suspicious transactions, the information and documents constituting trade, commercial, banking or other secrets, as well as documents and information submitted on the basis of a relevant international treaty of the Kyrgyz Republic, not later than 10 business days from receipt of request therefor.

Pursuant to par. 5 of Art. 5 of the Law on AML/CFT, SFIS may access (use) the databases (registries) established and (or) maintained by the state bodies of the Kyrgyz Republic.

- b) SFIS may, without restrictions, access (use), including automatically, the databases (registers) established and (or) maintained by state bodies, institutions and enterprises in accordance with the procedure established by applicable regulations. This right is set out in par. 5 of Art. 5 of the AML/CFT Law, as well as in sub.par. 1 of par. 9 of Art. 5 of the Regulation on SFIS.

383. **Criterion 29.4**

(a) SFIS conducts analytical work in accordance with the established procedure to identify transactions with funds or property linked to money laundering and terrorist/extremist financing.

(b) SFIS's Analytical Department includes a Strategic Analysis and Egmont Group Engagement Sector tasked with conducting strategic analysis by using available and

obtainable information, including data provided by other competent authorities, to identify money laundering and terrorist financing related trends and patterns.

384. **Criterion 29.5** – Pursuant to sub.pars. Art. 5 (sub.pars. 3 and 6 of par. 5) of the AML/CFT Law and the Regulation on SFIS, the FIU may provide disseminations spontaneously and upon request to courts and law enforcement authorities. Pursuant to par. 3 of the Regulation on the Provision and Consideration of Spontaneous Disseminations, the term "spontaneous disseminations" encompasses any documents and transaction data prepared by SFIS based on the information received from reporting entities and other additional materials provided in accordance with the AML/CFT Law. At the same time, this regulation states that SFIS may supplement spontaneous disseminations and information provided to law enforcement authorities with additional documents or information, including copies of transaction documents.

385. Pursuant to paragraph 4 of the Regulation on the Provision and Consideration of Spontaneous Disseminations, the generalized (additional) material and all supplements thereto constitute a confidential document marked "classified". The transfer, registration (accounting), review and storage of proactive (additional) material shall be carried out in accordance with the Instruction on Classified Record Keeping.

386. Pursuant to sub.par. 3 of par. 8 of the Regulation on SFIS, the FIU shall cooperate with other relevant state bodies, local authorities, the National Bank of the Kyrgyz Republic, public associations and other organizations. SFIS information is classified as "confidential".

387. **Criterion 29.6**

- a) Pursuant to sub.par. 4 of par. 8 of the Regulation, the FIU shall have rules in place governing the security and confidentiality of information, including procedures for handling, storage and protection of data and information obtained in the course of its activities and constituting trade, banking, commercial, communication or other secrets protected by law. The rules governing the security and confidentiality of information, including procedures for storage and protection of, and access to, information, are set out in the Information Security Directive (labelled "for official use only"). All matters related to the protection of information in the course of its transfer to SFIS are addressed in detail in the Regulation on the Procedure for the Provision of Information and Documents to SFIS by Kyrgyz State Bodies and Reporting Entities. The transfer by reporting entities of SEDs to SFIS is made through the ARM utility, using cryptography tools included in the ARM suite and ARM-supported technical communication channels.
- b) The newly hired SFIS employees (both civil servants and technical personnel) are required to obtain a police clearance before gaining access to documents constituting a state secret. Following the issuance of a police clearance, and prior to being granted access to documents constituting a state secret, all new employees must sit an exam to test their knowledge of regulations governing the handling of classified documents. SFIS employees are covered by the Law "On Protection of State Secrets", the Regulation on Handling Documents Containing Restricted Information (labelled "for official use only") and other applicable regulations. In addition, due to their civil servant status, all SFIS employees are prohibited by the Law on Civil Service (par. 11 of Art. 7) from disclosing any official, trade or other secrets protected by law, including after ceasing to be public sector employees for the period stipulated by law.
- c) The requirement to restrict access to its facilities and information, including information security systems, is set out in the Information Security Directive (labelled "for official use only").

388. **Criterion 29.7**

- a) SFIS enjoys a wide autonomy in the performance of its functions (Article 5 of the AML/CFT Law; Regulation on SFIS): conducting analysis, filing requests and/or sending or disclosing specific information. SFIS Chairman is appointed by presidential decree. SFIS Chairman, based on unity of instruction, exercises overall management of the agency's activities and bears personal responsibility for the performance of tasks and functions assigned to it.

Pursuant to par. 1 of Art. 5 of the AML/CFT Law, interference by public authorities in decision-making in matters falling under SFIS's purview is not allowed, save as otherwise provided by applicable law. This provision calls into question the freedom and independence of SFIS in the performance of its functions.

- b) SFIS exchanges information with other domestic competent authorities and foreign counterparts. To this end, SFIS is entitled to enter into agreements with national and foreign counterparts (Article 7 of the AML/CFT Law; par. 9 of the Regulation on SFIS). Pursuant to sub.par. 2 of par. 12 of the Regulation on SFIS, SFIS Chairman shall represent the Agency in its dealings with state bodies, enterprises, institutions and organizations of the Kyrgyz Republic and foreign countries, as well as negotiate, within the scope of its authority, and enter into, in accordance with the established procedure, international agreements on cooperation in matters under its purview.
- c) The Kyrgyz FIU is an independent body that is subordinated only to the Government of the Kyrgyz Republic.
- d) SFIS has its own resources, including financial and human, which are deployed to carry out its functions. Pursuant to par. 16 of the Regulation on SFIS, the FIU's activities are funded from the state budget and other sources in accordance with the procedure established by law, including through grants and donor assistance of international organizations and foreign states.

389. **Criterion 29.8** – The Kyrgyz FIU has been a member of the Egmont Group since 2009.

#### *Weighting and conclusions*

390. Kyrgyzstan has established a legal framework for the operations of the FIU (SFIS), including for collecting the necessary information, conducting operational and strategic analysis, and transferring and protecting the relevant data, as well as endowing it with operational independence. However, SFIS lacks the powers to collect, process and transfer information on predicate offences for ML.

391. **Kyrgyzstan is rated largely compliant with Recommendation 29.**

#### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

392. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country's technical compliance with this recommendation was rated partially compliant, with the partial compliance with the Vienna and Palermo Conventions and non-criminalization of certain types of offences that are predicate for ML being cited among the identified shortcomings. Among the key shortcomings were: the lack of ML investigations due to law enforcement authorities' exclusive focus on predicate offences; and the low effectiveness of the activities carried out by the designated TF law enforcement authority, caused by Kyrgyzstan's failure to criminalize TF.

393. **Criterion 30.1** – Investigative jurisdiction is established by Article 163 of the Criminal Procedure Code, according to which the responsibility for ML offences is assigned to anti-corruption

and anti-drugs agencies, national security and law enforcement authorities.

394. The investigation of TF offences is carried out by the National Bank. In addition, the Criminal Procedure Code designates the law enforcement agencies responsible for investigating predicate offences.

395. **Criterion 30.2** – Law enforcement investigators, in line with investigative jurisdictions established by Article 163 of the Criminal Procedure Code, are tasked with investigating predicate offences. Investigators may identify and track criminal proceeds by taking investigative action and requesting the findings of operational and investigative activities from inquiry bodies. The investigators' powers are defined in Article 36 of the Criminal Procedure Code, while the place of investigative proceedings is determined pursuant to Article 164 of the same code. Investigative proceedings shall be carried out in the region where the crime was committed. In order to facilitate a fair, complete and expeditious conduct of the investigative proceedings, they may be carried out at the crime scene or at the location of the suspect, accused or the majority of witnesses.

396. Pursuant to par. 2 of Article 164 of the Criminal Procedure Code, the investigator, having established that the case is outside his jurisdiction, shall complete all urgent investigative proceedings prior to referring the case to the prosecutor for subsequent dissemination to the appropriate agency.

397. **Criterion 30.3** – According to Regulation No. 135 dated March 5, 2010, as amended by Regulation No. 716 dated October 12, 2012 "On the Procedure for Suspending Transactions, Freezing and Defreezing Funds", SFIS, within the scope of its AML/CFT activities, shall identify, trace and freeze property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime.

398. The investigator, within the framework of criminal proceedings, may undertake investigative action (search, seizure, etc.), initiate the seizure (with the authorization of a court) of the property of the suspect, accused or other persons financially liable for their actions, as well as to request inquiry bodies to carry out operational and investigative activities aimed at tracing such property. The investigator's powers are defined in Article 36 of the Criminal Procedure Code, while the seizure of property is carried out pursuant to Article 119 of the Criminal Procedure Code.

399. **Criterion 30.4** – The Kyrgyz Republic financial investigations are carried out only by law enforcement authorities and SFIS. Law enforcement authorities are endowed with relevant functions, specified in current recommendation.

400. **Criterion 30.5** – Pursuant to Articles 36, 119 of the Criminal Procedure Code, investigative authorities have the authority to identify property subject to confiscation and freezing. Pursuant to Article 163 of the Criminal Procedure Code, the country's prosecution and national security agencies have the authority to pursue corruption investigations. Pursuant to Article 36 of the Criminal Procedure Code, decisions of the investigator concerning the criminal case are subject to mandatory enforcement.

### *Weighting and conclusions*

401. Kyrgyzstan has designated law enforcement bodies tasked with carrying ML/TF investigations. Overall, they have sufficient powers to perform their functions in this area.

402. **Kyrgyzstan is rated *compliant* with Recommendation 30.**

### ***Recommendation 31 – Powers of law enforcement and investigative authorities***

403. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country's technical compliance with this recommendation was rated compliant.

404. **Criterion 31.1** – Pursuant to Article 36 of the Criminal Procedure Code, the investigator may obtain access to all necessary documents and information for use in investigations and subsequent judicial proceedings. Pursuant to Articles 36, 184, 185, 190-192 of the Criminal Procedure Code, investigative authorities have powers to compel production of documents, seize documents, search persons and premises and take witness statements.

405. **Criterion 31.2** – Pursuant to Article 7 of the Law on Operational and Investigative Activities, investigative authorities shall use various investigative techniques to carry out operational and investigative activities. In particular, pars. 12-13 of Article 7 of the Law on OIA provide for the creation of secret businesses and entities and conduct of strategic infiltration. In addition to these activities, other activities envisaged by this article may be classified as secret operations.

406. Interception of communications and accessing computer systems is provided for in Articles 187, 188, and 188-1 of the Criminal Procedure Code, as well as in pars. 9-11, 17-21 of Article 7 of the Law on OIA. In addition, investigative authorities, with the authorization of a court, may remove a computer hard drive. The grounds and procedure for such removal are set out in Article 184 of the Criminal Procedure Code. Controlled delivery is provided for in paragraph 6 of Article 7 of the Law on OIA.

407. **Criterion 31.3** – The information on the mechanisms and procedure for timely identification of accounts held or controlled by natural or legal persons is absent. Also absent is the information on whether competent authorities have a process to identify assets without prior notification to the owner.

408. **Criterion 31.4** – Competent authorities conducting criminal investigations may ask for all relevant information held by SFIS, but this information is not included in the criminal case file. Sub.par. 7 of par. 9 of the Regulation on SFIS provides for the right of courts and law enforcement and prosecution authorities to request, in accordance with the established procedure, information or spontaneous disseminations on initiated and pending criminal cases related to TF and ML.

#### *Weighting and conclusions*

409. Kyrgyzstan's law enforcement authorities have access to documents and information needed for its investigations. The mechanisms for detecting accounts and identifying assets need to be clarified.

410. **Kyrgyzstan is rated largely-compliant with Recommendation 31.**

#### *Recommendation 32 – Cash couriers*

411. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country's technical compliance under this recommendation was rated partially compliant, with the limited powers of customs authorities over transportations with cash and the lack of the regulatory framework governing the transportation of bearer negotiable instruments being cited among the key shortcomings.

412. **Criterion 32.1** – Kyrgyzstan acceded to the Treaty on the Eurasian Economic Union of May 29, 2014 on August 12, 2015. Kyrgyzstan's customs procedures are established in accordance with the treaties and regulations comprising the regulatory framework of the Eurasian Economic Union.

413. Pursuant to paragraph 2 of the Agreement on Combating Money Laundering and Terrorist Financing during the Transportation of Cash and (or) Monetary Instruments across the Customs

Border of the Customs Union, customs authorities, acting in accordance with the customs legislation of the Customs Union and customs regulations of Kyrgyzstan, shall use the information contained in the customs declaration to monitor the transportation of cash and/monetary instruments. Therefore, customs authorities exercise customs control over the transportation of cash and monetary instruments, including with a view to combating money laundering and terrorist financing.

414. **Criterion 32.2** – As a member of the Customs Union, Kyrgyzstan is covered by Articles 3 and 4 of the Agreement on the Transportation by Natural Persons of Cash and (or) Monetary Instruments across the Customs Border of the Customs Union and the passenger customs declaration form, according to which all persons making a physical cross-border transportation of cash or traveller's checks, which are of a value exceeding a maximum threshold of USD10,000, shall complete an additional passenger customs declaration form (Declaration of Cash and Monetary Instruments), enclosing additional information about the natural person, the source of cash and monetary instruments, their owners and intended use.

415. Therefore, the provisions of the Agreement and the declaration form are consistent with this criterion and the objectives of Recommendation 32, which are aimed at ensuring that countries use the lowest possible threshold value for declaration or disclosure.

416. **Criterion 32.3** – Travellers are required to provide the legally mandated information on movable assets to customs authorities upon request, but not upfront.

417. The main emphasis is on an unconditional obligation to provide answers to the questions asked by customs officials. Depending on the answers, travellers may become liable for false declaration or an attempt to transport funds in excess of the established threshold.

418. As noted in the description for Criterion 32.2 above, customs authorities of the Customs Union use "a written declaration system for all travellers transporting amounts in excess of the designated threshold". At the same time, the application of this system is supplemented by the use of the elements of the information/disclosure system provided for in Articles 112 "Verbal inquiries" and 113 "Seeking clarifications" of the Customs Code of the Customs Union.

419. **Criterion 32.4** – Competent authorities' response to a false declaration/information should not be limited the imposition of a perfunctory fine. Essential in this case is the indication that competent authorities should have the authority to not only request, but also obtain information with regard to the origin of the currency and their intended use. The information obtained in this way may give rise to suspicions of ML/TF and the subsequent freezing of transported criminal proceeds. To address the problem of unintended false declaration/non-declaration, great importance is being attached to achieving unconditional awareness of the persons crossing the border of the obligation and the necessary procedure for filling in a declaration.

420. The afore-mentioned powers of the customs authorities of the Custom Union member states are provided through the types of customs controls set out in the Customs Code of the Customs Union (Articles 110-117, 122), namely: 1) documents and information checks; 2) verbal inquiries; 3) seeking clarifications; 4) customs inspections; 5) customs clearance; 6) personal searches; 7) customs audits.

421. **Criterion 32.5** – The level of compliance with the requirements is heavily affected by the severity of imposed sanctions, which should be proportionate to the committed offence and, at the same time, be high enough to "scare off" potential offenders.

422. The CU Customs Code contains no requirement for the imposition of CU-wide penalties or measures of criminal liability for a false declaration and non-declaration. In Kyrgyzstan, such penalties are provided for in Art. 504-22 "Non-declaring or false declaration of goods and vehicles"

of the Administrative Liability Code and Art. 204 "Smuggling" of the Criminal Code. Administrative sanctions include confiscation of undeclared property and a fine (in the amount of KGS5,000-10,000 for individuals, and KGS100,000 for companies); whereas persons convicted of smuggling are punished with imprisonment for a term of up to 12 years with confiscation of property. The severity of these sanctions may have a dissuasive effect.

423. At the same time, additional explanations are needed regarding whether the definition of "goods" in this case includes cash and monetary instruments. In Art. 4 of the Customs Code of the Customs Union, for example, the term "goods" is defined as "any movable property being transported across the customs border, including data storage media, currencies of CU member states, securities and (or) currency values, traveller's checks, electric and other types of energy, as well as any other movable items falling under the category of immovable property".

424. Notably, the term "contraband" is defined in the Criminal Code as "transportation across the customs border of the Customs Union of large quantities of goods or other valuables, except those listed in paragraph 1 of this Article, carried out by eluding customs controls or with deceptive use of documents or means of customs identification, or connected with non-declaration of false declaration". That is, different types of contraband operations are described in detail and largely tied to the existence of intent.

425. **Criterion 32.6** – Pursuant to paragraph 174 of the Roadmap for the Accession of the Kyrgyz Republic to the Customs Union, Kyrgyzstan has taken steps to automate and create a database on the transportation across the border of the Kyrgyz Republic of currency and (or) monetary instruments by natural persons, using the information contained in the additional passenger customs declaration form "Declaration of Cash and (or) Monetary Instruments". The testing of this software product began in early 2017 and is still on-going, along with the training of customs officials. Communication with the FIU is currently being conducted in the request-response pattern.

426. **Criterion 32.7** – Kyrgyzstan's Customs Service and the Financial Intelligence Unit entered into a cooperation and information sharing agreement on May 4, 2007. This Agreement allows the two agencies to share information for AML/CFT. At the same time, no evidence of coordinated action undertaken by the customs, migration and other interested bodies has been provided.

427. **Criterion 32.8** – The provisions of the Customs Union Treaty on AML/CFT partially serve the purpose of fulfilling this criterion. Thus, pursuant to Article 3, "the customs authorities of the Party, in pursuance of the objectives set forth in Article 2 hereof, shall suspend the transportation of cash and (or) monetary instruments based on the information provided to it by a law enforcement and (or) designated authority of such Party, and shall promptly notify the authority that provided the relevant information of such suspension. The provisions of paragraph (b) of this criterion "there is a false declaration or false disclosure" are addressed in par. 32.5.

428. However, the customs authorities do not have the capacity to restrain currency or BNIs for a reasonable time in order to ascertain whether evidence of ML/TF may be found in cases where there is a suspicion of ML/TF or predicate offence or where there is a false declaration or false disclosure.

429. The instruments available to the customs authorities for restraining currency based on the information from designated state bodies and for their prompt notification are sufficient, given that the granting to the customs authorities of the powers to restrain and freeze funds will entail additional expenditure on the creation of additional units in this area, their training and the harmonization of legislation.

430. **Criterion 32.9** – The requirements of this criterion are largely fulfilled by the relevant articles of the Customs Union Treaty on AML/CFT. Article 6 of the said treaty, for example, states that "the Parties shall collect information contained in the additional passenger customs declaration form



"Declaration of Cash and (or) Monetary Instruments", as well as on criminal proceedings into ML/TF-related transportation across the customs border of the Customs Union of cash and (or) monetary instruments, and the creation of databases therefrom". At the same time, the Kyrgyz customs authorities are unable to obtain and store information where there is a suspicion of ML/TF.

431. **Criterion 32.10** – Pursuant to Article 8 of the CU Customs Code "Handling of Information Obtained by Customs Authorities", "any information obtained by customs authorities in accordance with the customs legislation of the Customs Union and (or) the legislation of the member states of the Customs Union shall be used by such bodies solely for customs purposes, including to prevent and suppress administrative violations and crimes".

432. **Criterion 32.11** – Persons who are carrying out a physical cross-border transportation of currency or BNIs that are related to ML/TF may face criminal liability under Arts. 183 and 226-1 of the Criminal Code.

433. Pursuant to Government Decree No. 639 dated November 30, 2016, the State Customs Service has transferred its investigative powers to the State Service for Combating Economic Crimes. The State Customs Services lacks the authority to undertake urgent investigative action in criminal proceedings into offences covered by Article 183 of the Criminal Code.

434. Among administrative penalties provided by Art. 504-22 "Non-Declaration or False Declaration of Goods and Vehicles" of the Administrative Liability Code is the confiscation of the subject of an administrative offence. According to the Kyrgyz FIU, cash and monetary instruments are treated by customs authorities as goods in administrative proceedings into offences covered by Article 504-22 of the Administrative Liability Code.

#### *Weighting and conclusions*

435. The Kyrgyz authorities have sufficient powers to combat cash couriers. However, there are limited opportunities for blocking the movement of foreign currency and negotiable bearer instruments in the event of suspicion of ML/TF. Customs authorities are unable to obtain and store information where there is a suspicion of ML/TF.

436. **Kyrgyzstan is rated largely compliant with Recommendation 32.**

#### *Recommendation 33 – Statistics*

437. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country was rated non-compliant with this recommendation due to its failure to conduct regular reviews of its AML/CFT system and maintain statistics on cross-border transportation of currency and BNIs. In addition, assessors highlighted the lack of statistics on the following: frozen, seized and confiscated property related to ML/TF and predicate offences; property frozen pursuant to UN Resolutions; and MLA and ML/TF-related extraditions.

438. **Criterion 33.1** – Kyrgyzstan maintains statistics on matters relevant to the effectiveness and efficiency of its AML/CFT system. It keeps records on received and disseminated STRs; ML investigations, prosecutions and convictions; and mutual legal assistance received and provided. However, the lack of information about other types of statistics makes it impossible to fully assess the volume of frozen, seized and confiscated property, as well as to conduct an in-depth assessment of the effectiveness of the work carried out by government agencies that are members of the AML/CFT system.

#### *Weighting and conclusions*

439. Despite having ample statistics, Kyrgyzstan lacks the required freezing, seizure and confiscation data

440. **Kyrgyzstan is rated largely compliant with Recommendation 33.**

### **Recommendation 34 – Guidance and feedback**

441. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country was rated largely compliant due to the lack of guidance for DNFBPs and the existing discrepancies between various regulations and guidelines governing the activities of financial regulators, while the available directories and lists of suspicious transactions were mostly relevant to the banking sector.

442. **Criterion 34.1** – From 2010 to 2012, the Kyrgyz Government approved the regulations on the provision of information and documents to SFIS by state bodies and reporting entities; on AML/CFT internal controls; on identification for AML/CFT purposes; and on AML/CFT training and retraining, which apply to all reporting entities, including estate agents, persons carrying out transactions with precious metals and precious stones, and trust service providers. These regulations have subsequently been amended. To assist real estate agents and persons carrying out transactions with precious metals and precious stones in identifying and reporting suspicious transactions, Kyrgyzstan has compiled<sup>81</sup> a list of indicators of suspicious transactions with real estate property, precious metals, precious stones, jewellery made therefrom and scrap thereof. The relevant lists of suspicious transaction indicators are also provided for other types of financial institutions, except banks (insurance companies, professional securities market participants, pawnshops, postal service operators, etc.).

443. According to the information provided by Kyrgyzstan, awareness raising and advisory sessions on the identification of suspicious transactions for compliance officers take place in the form of SFIS-hosted monthly working meetings. At the same time, this information is not sufficient to draw conclusions on the level and quality of feedback from competent authorities, supervisors and SRBs to financial institutions and DNFBPs. There are no guidelines for the private sector on the application of AML/CFT measures and detection of suspicious transactions.

### **Weighting and conclusions**

444. Kyrgyzstan has partially complied with the requirements of Criterion 34.1.

445. **Kyrgyzstan is rated partially compliant with Recommendation 34.**

### **Recommendation 35 – Sanctions**

446. In the MER of 2007, Kyrgyzstan was rated partially compliant with Recommendation 17 (pp. 76-85). The possibility of application of a wide range of sanctions against all types of financial institutions (other than the banking sector) is not clearly defined. In the period since the last mutual evaluation, Kyrgyzstan has adopted a number of legislative changes aimed, *inter alia*, at eliminating the shortcomings under Recommendation 35.

447. **Criterion 35.1** – There is a range of sanctions in place in Kyrgyzstan to deal with persons that fail to comply with all relevant requirements set forth in Recommendations 6 and 8-23.

448. Financial institutions that fail to comply with the AML/CFT Law are subject to administrative

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<sup>81</sup> The List of Suspicious Transaction Indicators and the Directory of Suspicious Transaction Codes, approved by SFIS Decree No. 1/npa dated January 23, 2017 (Annex 3).

penalties provided by the Administrative Liability Code, as well as measures and sanctions provided by regulations governing the activities of such institutions. Among the most common administrative penalties are fines, warnings and enforced liquidation of legal persons. The size of administrative fines ranges from 50 (equivalent to \$US73) to 100 (equivalent to \$US147) standard units<sup>82</sup> for officials, and from 200 (equivalent to \$US295) to 700 (equivalent to \$US1,033) for legal persons. At the same time, violations of the asset freezing/transaction suspension procedures are punishable with a fine of 1,000 (equivalent to \$US1,475) standard units for natural persons, 2,000 (the equivalent of \$US2,950) statutory units for officials and 10,000 (\$US14,750) standard units for legal persons. The same amount of fine is envisaged for legal entities for participation in ML/TF.

449. Besides administrative sanctions, the National Bank may impose monetary penalties on banks and microfinance companies in accordance with industry-specific regulations. The size of monetary penalties may not exceed one percent of the paid authorized capital of the bank/microfinance company for each specific violation of the law.

450. The deterrent effect of sanctions: the range of sanctions provided for financial institutions supervised by the National Bank is likely to have a deterrent effect. The National Bank, besides administrative penalties and fines, may apply the following enforcement measures and sanctions against banks and certain types of financial institutions for failure to comply with AML/CFT requirements: a written warning; a remedial action notice; direct banking supervision; a request to replace an official; restriction or suspension of certain types activities or transactions; appointment of interim management in a bank; establishment of conservatorship and appointment of a conservator; and a temporary suspension and revocation of the license. In addition to enforcement measures, the National Bank may also apply voluntary measures, such as elimination of defects in the framework of preliminary supervisory action; signing of a letter of commitment by a bank; and entering into a written agreement with a bank.

451. Among the penalties applied by the supervisor against exchange offices for failure to comply with the established requirements are warnings, remedial action notices and suspension/revocation the license. With regard to microfinance companies, in addition to administrative penalties and fines, the supervisor may issue a warning or a remedial action notice; suspend, restrict or prohibit certain types of transactions; request replacement of an official; and revoke a license. With regard to microcredit companies and microcredit agencies, in addition to administrative penalties, the supervisor may issue a warning or a remedial action notice; suspend, restrict or prohibit certain types of transactions; revoke the license for factoring operation or the certificate of registration. With regard to credit unions, in addition to administrative penalties, the supervisor may issue a remedial action notice; order direct supervision; request replacement of an official; temporarily suspend or restrict certain transactions; suspend or revoke the license. With regard to payment organizations/payment system operators in addition to administrative penalties, the supervisor may issue a warning or a remedial action notice; temporarily suspend or restrict certain types of payment and other transactions; and revoke the license.

452. Among the sanctions available to Gosfinnadzor in dealing with accountable financial institutions are a remedial action notice and a warning. In addition, with regard to professional securities market participants and insurance companies, Gosfinnadzor may suspend the license (the order to revoke the license can be used by a court). With regard to pension savings funds, Gosfinnadzor, in addition to issuing a remedial action notice, may request the submission of a letter of commitment; request replacement of an official; or suspend the license. As indicated in the description for Criterion 27.4, the laws governing the activities of pawnshops and on financial leasing

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<sup>82</sup> 1 standard unit is equivalent to KGS100 (\$US1.45)

do not grant Gosfinnadzor powers to apply any measures/sanctions.

453. The SIT&CC's authority to apply measures/sanctions against postal service operators is provided for in Chapter 5 of the Regulation on the SIT&CC, in the form of remedial action notices, warnings and resolutions. The requirement to comply with AML/CFT requirements is included in the list of licensing requirements for postal service providers. In this case, a range of penalties for non-compliance includes suspension of the license and filing a claim with a court for revocation of the license.

454. Proportionality of sanctions: When considering the imposition of sanctions against reporting entities, the NB, among others, takes into account the nature, frequency and scope of the activity or transactions found to be in breach of AML/CFT requirements. Due to the absence of similar powers in the arsenal of Gosfinnadzor or the SIT&CC, it is not possible to evaluate the proportionality of measures/sanctions. In light of the information available, the range of measures/sanctions available to Gosfinnadzor and the SIT&CC is more limited than those available to NBKR.

455. Not all types of DNFBPs referred to in Recommendation 22 are covered by the AML/CFT Law. DNFBPs, which fall under the category of reporting entities, may be subject to administrative penalties provided by Chapter 35-3 of the Administrative Liability Code. There is a wide range of administrative penalties. The only AML/CFT supervisor over one DNFBP sector - the Precious Metals Department - is not authorized to apply administrative penalties to the supervised entities performing cash transactions with precious metals and precious stones. The authority to apply administrative penalties to them is vested in SFIS.

456. Criminal liability for ML/TF offences is provided by the Criminal Code for any person (group of persons) who has committed such an offence.

457. **Criterion 35.2** – Administrative penalties provided by the Administrative Liability Code are used against both legal persons and officials. With respect to microfinance companies, the National Bank may, *inter alia*, apply sanctions in the form of a request to replace an official. Gosfinnadzor may request a pension savings fund to replace an official. There is no information confirming that the SIT&CC has similar powers to apply measures/sanctions against the officials of postal service providers.

### *Weighting and conclusions*

458. A range of sanctions for non-compliance with AML/CFT requirements varies for different types of financial institutions and their officials. It can be noted that the NB possesses a wide range of proportionate and dissuasive sanctions, Gosfinnadzor and SIT&CC have a set of sanctions mechanisms but the mechanism of flexible determination of their size depending on the entity to which it is applied. The range of sanctions available for DNFBPs is limited.

459. **Kyrgyzstan is rated largely compliant with Recommendation 35.**

### ***Recommendation 36 – International instruments***

460. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country was rated partially compliant under Recommendation 35 and non-compliant under Special Recommendation I. Among the key shortcomings were failure to fully comply with the Vienna and Palermo Conventions regarding ML criminalization; and partial implementation of the UN International Convention for the Suppression of the Financing of Terrorism (1999) and the UN Security Council Resolutions. The provisions of the revised Recommendation 36 now also include the requirement for the ratification and implementation of the 2003 UN Convention against Corruption (the Merida Convention).

461. **Criterion 36.1** – Kyrgyzstan has acceded to the Vienna Convention (Zhogorku Kenesh Resolution No. 1500-XI of April 16, 1994), to the Palermo Convention (KR Law No. 74 of April 15, 2003), to the Merida Convention (KR Law No. 128 of 6 August 2005), and to the UN Convention for the Suppression of the Financing of Terrorism (KR Law No. 79 of April 15, 2003).

462. **Criterion 36.2)** – Kyrgyzstan has not acceded to the 2010 Protocol supplementing the Convention for the Suppression of Unlawful Seizure of Aircraft and to the 2010 Convention for the Suppression of Unlawful Acts against International Civil Aviation.

### *Weighting and conclusions*

463. **Kyrgyzstan** complies with the majority of international conventions. At the same time, there are certain international instruments to which Kyrgyzstan is not yet a party.

464. **Kyrgyzstan is rated largely compliant with Recommendation 36.**

### *Recommendation 37 – Mutual legal assistance*

465. In the 1st Round Mutual Evaluation of Kyrgyzstan, the country was rated largely compliant with Recommendation 36 and partially compliant with Special Recommendation V.

466. **Criterion 37.1** – The mechanisms for executing MLA requests, including with respect to extraditions, are established by Articles 428 and 433 of the Criminal Procedure Code. Kyrgyzstan is capable of providing different types of mutual legal assistance in accordance with the CCP (section XIV of the CCP) and the AML/CFT Law (Article 7). MLA is provided on the basis of international treaties and agreements, or on the basis of the principle of reciprocity. The role of the country's central body is played by the Prosecutor General's Office of the Kyrgyz Republic.

467. **Criterion 37.2** – Chapters 47 and 48 of the Criminal Procedure Code establish the procedure for the submission and execution of MLA requests. The role of central authority is assigned to the GPO. Pursuant to paragraph 3 of Article 9 of the Law "On the Prosecutor's Office of the Kyrgyz Republic", GPO, acting within the scope of its authority and on the basis of concluded international treaties (agreements), shall take decisions on issues related to the provision of legal assistance.

468. Despite maintaining a register of requests, the Prosecutor General's Office does not monitor progress on outgoing and incoming MLA requests, which may affect the quality and timing of their execution. The criteria for determining the urgency of requests are also absent.

469. **Criterion 37.3** – No disproportionate, unreasonable or overly restrictive conditions for the provision of MLA have been identified. The CCP forms the procedural framework for the execution of MLA requests. The only condition for the provision of MLA is that it should serve the interests of Kyrgyzstan's national security.

470. **Criterion 37.4** – Pursuant to Article 6 of the Law "On Banking Secrecy", disclosure or provision by banks of information constituting bank secrecy to the designated AML/CFT authority does not constitute a breach of bank secrecy. Banks provide this information for AML/CFT purposes only under a special law governing such legal relationships (Article 10 of the Law "On Banking Secrecy"). At the same time, pursuant to Article 10 of the Law "On Banking Secrecy", provision by banks of information constituting bank secrecy to investigative authorities, the court and other state bodies is carried out on the basis of a court order issued in accordance with procedural legislation of the Kyrgyz Republic. This restriction may prevent the proper execution of MLA requests.

471. **Criterion 37.5** – No provisions preventing maintaining the confidentiality of mutual legal

assistance requests received and information contained in them have been found in the Kyrgyz law.

472. **Criterion 37.6** – Kyrgyzstan does not make dual criminality a condition for rendering mutual legal assistance, including where no coercive actions are involved.

473. **Criterion 37.7** – There are no restrictions or requirements for dual criminality in rendering mutual legal assistance in Kyrgyzstan.

474. **Criterion 37.8** – As pointed out in paragraph 37.1, Kyrgyzstan is capable of providing different types of mutual legal assistance based on the provisions of the CCP (section XIV of the CCP) and the AML/CFT Law (Article 7). MLA is provided on the basis of international treaties and agreements, or on the basis of the principle of reciprocity. The role of the country's central body is played by the Prosecutor General's Office of the Kyrgyz Republic. Overall, the Kyrgyz law does not impose any restrictions on the use of powers or investigative techniques available to domestic competent authorities in responding to requests for mutual legal assistance.

#### *Weighting and conclusions*

475. Kyrgyzstan's legal framework is sufficient to implement MLA requests, but it lacks the necessary monitoring and verification mechanisms for incoming and outgoing MLA requests.

476. **Kyrgyzstan is rated largely compliant with Recommendation 37.**

#### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

477. In the MER of Kyrgyzstan, the country was rated partially compliant with Recommendation 38. Among the shortcomings that determined the rating was the absence of the provision allowing the execution MLA requests for the identification, freezing, seizure or confiscation of property of corresponding value and the confiscated property fund. The mechanism governing the distribution of confiscated assets among countries in the case where confiscation is a direct or indirect result of coordinated law enforcement measures is absent.

478. **Criterion 38.1** – Government Decree No. 135 dated March 5, 2010 approved the Regulation "On the Procedure for the Suspension of Transactions, Freezing and Unfreezing of Funds". Paragraph 3 of the said Regulation sets out the grounds for freezing, which include an international freezing request submitted by a foreign competent authority in accordance with international agreements of the Kyrgyz Republic and on the basis of the principle of reciprocity.

479. Pursuant to subparagraph 2 of paragraph 10 of the Regulation, the State Financial Intelligence Service under the Government of the Kyrgyz Republic issues orders for the freezing of funds for the period specified in the international freezing request. Therefore, such actions can be taken upon submission of a request by a foreign competent authority in accordance with international treaties of the Kyrgyz Republic or on the basis of the principle of reciprocity, where there is a suspicion or accusation of ML/TF/PWMD.

480. Subparagraph 5 of paragraph 4 of the Regulation provides for the freezing of the legalized (laundered) criminal proceeds or property of equivalent value, or funds derived from the legalization (laundering) of criminal proceeds or predicate offences.

481. **Criterion 38.2** – Confiscation in Kyrgyzstan is only allowed as part of criminal proceedings, i.e. through a court and following a conviction. In this regard, there is no authority or mechanism for providing assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings.

482. **Criterion 38.3** – Kyrgyzstan has not submitted formal agreements entered with other countries

on the coordination of seizure and confiscation actions.

483. **Criterion 38.4** – No evidence of the country's sharing of confiscated property with other countries, in particular when confiscation is directly or indirectly a result of coordinated law enforcement actions, has been provided.

#### *Weighting and conclusions*

484. Kyrgyzstan has no body or mechanism in place to provide assistance to requests for cooperation based on the basis of non-conviction based confiscation proceedings. No information on the procedure for the sharing of confiscated property and coordinating seizure or confiscation actions.

485. **Kyrgyzstan is rated *partially compliant* with Recommendation 38.**

#### ***Recommendation 39 – Extradition***

486. In the MER of Kyrgyzstan, the country was rated partially compliant with this Recommendation. Among the identified shortcomings were the absence of clear procedures for the prompt review of extradition requests and difficulties in the execution of extradition requests caused by deficiencies in the criminalization of certain offences.

487. **Criterion 39.1** – All offences covered by the Criminal Code are extraditable, including those related to ML and TF.

488. The fundamental principles governing the execution of extradition requests are set out in international treaties, conventions (Minsk, Chisinau, etc.) and Chapter 48 of the Kyrgyz Criminal Procedure Code. The responsibility for the execution of extradition requests lies with the Prosecutor General's Office. At the same time, it was not possible to assess the processes for the execution of requests including prioritization due to the lack of the relevant information.

489. Article 434 of the Criminal Procedure Code defines the grounds for refusals to extradite, which are reasonable for the country's legal framework. In particular, extradition is not allowed:

- if the person whose extradition is requested by a foreign state is a Kyrgyz national;
- if the person is granted refugee status by Kyrgyzstan due to the possibility of its persecution in such country on the basis of race, religion, citizenship, nationality, membership of a particular social group or political convictions;
- if the conduct that served as the basis for the extradition request is not recognized as a crime in Kyrgyzstan, or on other grounds that are not restrictive.

490. If the extradition request is refused, GPO shall notify the competent authorities of the relevant foreign state thereof, specifying the reasons for such refusal.

491. **Criterion 39.2** – Paragraph 4 of Article 50 of the Constitution prohibits the extradition of its own nationals.

492. Article 430 of the Criminal Procedure Code assigns the responsibility for examining the requests of foreign competent authorities for the prosecution of a Kyrgyz national who committed an offense in the territory of a foreign state and returned to the Kyrgyz Republic to the Prosecutor General's Office. In this case, the investigation and judicial proceeding are conducted in accordance with the procedure established by the Criminal Procedure Code.

493. The evidence gathered during the investigation conducted in the territory of a foreign state by

the authorized official within the scope of his authority and in accordance with the established procedure, where such investigation is continued in Kyrgyzstan, shall be valid on par with all other evidence gathered in the case.

494. If the offence is committed in the territory of a foreign state by a Kyrgyz national who has returned to Kyrgyzstan before the initiation of criminal proceedings against him in the place of the commission of the crime, the Kyrgyz competent authorities, acting in compliance with the Criminal Code Procedure, may use the materials of that case submitted to the GPO by the relevant foreign competent authority to initiate and pursue criminal proceedings against such Kyrgyz national.

495. Therefore, where an extradition request is refused on the grounds of nationality, the Prosecutor General's Office may decide to continue the criminal prosecution based on the evidence obtained from foreign competent authorities in the course of the investigation.

496. **Criterion 39.3** – Pursuant to paragraph 3 of Part 1 of the Criminal Procedure Code, extradition should not be carried out if the conduct serving as the ground for an extradition request is not recognized as an offence in Kyrgyzstan. At the same time, extradition is carried out regardless of whether both countries place the offence within the same category of offence, or denominate the offence by the same terminology, provided both countries criminalize the conduct underlying the offence.

497. **Criterion 39.4** – There are no simplified extradition mechanisms.

498. Pursuant to Article 433 of the Criminal Procedure Code, Kyrgyzstan, acting on the basis of an international agreement or the principle of reciprocity, may extradite to a foreign state a person located on the territory of the Kyrgyz Republic for criminal prosecution or to serve a sentence for conducts punishable under the criminal laws of the Kyrgyz Republic and the country seeking extradition. Therefore, all offences covered by the Criminal Code, including tax offences, are extraditable.

### *Weighting and conclusions*

499. Kyrgyzstan has complied with Recommendation 39 and enacted the necessary extradition regulations. However, the country lacks simplified extradition procedures.

500. **Kyrgyzstan is rated *largely compliant* with Recommendation 39.**

### ***Recommendation 40 – Other forms of international co-operation***

501. In the MER of Kyrgyzstan, the country was rated largely compliant with this Recommendation. Among the identified shortcomings was insufficient level of international AML/CFT cooperation.

502. **Criterion 40.1** – Pursuant to Article 7 of the AML/CFT Law, the designated state body and other authorities of the Republic of Kyrgyzstan responsible for combating money laundering and terrorist/extremist financing shall, upon request or on their own initiative, make the relevant information available to foreign competent authorities in the manner and on the grounds consistent with the international treaties of the Kyrgyz Republic, or on the basis of the principle of reciprocity. SFIS is authorized to exchange information on predicate offences under the signed agreements. Within the framework of the signed agreements, SFIS has the right to exchange information on predicate crimes.

503. The Prosecutor General's Office, the NB and the Interior Ministry, acting within the scope of their authority, may send requests to and receive information from the relevant foreign competent authorities. In particular, the Kyrgyz law enforcement authorities have entered into agreements on



cooperation in conducting preliminary inquiries with their foreign counterparts. Notably, in the absence of an international cooperation agreement, information sharing between law enforcement authorities is carried out on the basis of the principle of reciprocity. SFIS is authorized to exchange information on predicate offences under the signed agreements.

504. Pursuant to Art. 7 of the AML/CFT Law and pars. 8 and 9 of the Regulation on SFIS, the FIU shall engage in AML/CFTE-related cooperation and information sharing (submission of requests and information) with foreign competent authorities and international organizations in accordance with international treaties of the Kyrgyz Republic and on the basis of the principle of reciprocity. SFIS may, upon request or its own initiative, provide AML/CFTE-related information to foreign competent authorities.

**505. Criterion 40.2**

- a) International cooperation between law enforcement agencies of Kyrgyzstan and the competent authorities of foreign countries is conducted on the basis of memoranda and agreements on combating crime, including ML/FT. In addition, pursuant to Art. 17 of the Law "On Investigative Activities", investigative authorities, acting on the grounds and in accordance with the procedure provided by international treaties of the Kyrgyz Republic, shall execute requests submitted by the relevant international law enforcement organizations, law enforcement agencies and other designated agencies of foreign states.

The lawful basis for cooperation between SFIS and foreign competent authorities is provided by the AML/CFT Law (Art. 7), the Regulation on SFIS, bilateral agreements with foreign counterparts, and the Statute and Principles of the Egmont Group.

The NB's authority to engage in international cooperation is provided by Art. 30 (3) of the Law on the National Bank and Art. 31 (11) of the Law on the Payment System.

Gosfinnadzor engages in international cooperation on the basis of the Law on Gosfinnadzor.

The lawful basis for international AML/CFT cooperation between the Finance Ministry's Precious Metals Department and foreign supervisory authorities is provided by the Regulation on the Department, as amended by Government Decree No. 19 of January 16, 2017 "On Restructuring of the Precious Metals and Precious Stones Market Regulation System".

The SIT&CC's authority to engage in international cooperation is provided for in Chapter 4 of the Regulation on the SIT&CC, in the form of inspections of compliance by postal operators engaged in the provision of postal remittance services with AML/CFT regulations, on the basis of international requests of foreign supervisory authorities and provision of assistance thereto in obtaining and sharing information.

- b) There are no legal restrictions on SFIS and law enforcement agencies' authority to use the most effective means for international cooperation.
- c) Law enforcement agencies use different types of clear and secure gateways and channels for sharing information with their foreign counterparts. SFIS, a member of the Egmont Group, uses the Egmont Group's secure communication channel to exchange information with foreign competent authorities.
- d) There is no legislative framework governing the prioritization of requests.
- e) Pursuant to sub.par. 6 of par. 9 of the Regulation on SFIS, SFIS may determine in accordance with applicable laws the level of confidentiality and accessibility of AML/CFTE information. Matters related to the confidentiality of information in the framework of cooperation with the

members of the Egmont Group are governed by the Principles for the exchange of information between the FIUs. The issues related to the confidentiality of information are also governed by MOUs concluded by SFIS with its foreign counterparts.

506. **Criterion 40.3** – Pursuant to sub.par. 10 of par. 9 of the Regulation on SFIS, the FIU, acting in accordance with applicable law, may enter into international inter-agency agreements with foreign competent authorities on AML/CFTE cooperation.

507. Currently, SFIS has the memoranda of understanding signed with the FIUs of 27 countries.<sup>83</sup>

508. The Kyrgyz law enforcement authorities have entered into bilateral international agreements, memoranda and protocols with their foreign counterparts on the exchange of information in the context of preliminary inquiries and other activities. The bulk of international cooperation is conducted with the CIS, EAEU and SCO countries.

509. **Criterion 40.4** – Pursuant to the Principles of Information Exchange between the FIUs of the Egmont Group, SFIS, upon request from a foreign counterparty and where possible, shall provide feedback to the latter on the use and usefulness of the information obtained.

510. Kyrgyzstan has not submitted information on the existence of the requirement for the requesting competent authority to provide feedback in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained.

511. **Criterion 40.5** – Despite the absence of the legally mandated grounds for SFIS's refusal to execute information requests, SFIS, as a member of the Egmont Group, is under the obligation to comply with the Egmont Group's Principles of Information Exchange, according to which the grounds set out in this criterion cannot be used as the reason for refusing a request for cooperation.

(a) There are no legislative provisions allowing the Kyrgyz competent authorities to refuse requests for assistance in fiscal matters.

(b) The requirements for financial institutions and DNFBBPs to maintain secrecy and confidentiality (see description of technical compliance with Recommendation 9) do not constitute the grounds for refusing to comply with an international request.

Pursuant to Art. 30 (3) of the Law on the National Bank, the NB may, on the basis of reciprocity with respect to supervision and licensing of banks, engages in cooperation with foreign banking supervisors that carry out, or wish to carry out, their activities under their respective jurisdictions. The NB may exchange information on any bank that carries out, or wishes to carry out, its activities in both relevant jurisdictions with foreign banking supervisors, provided the latter maintain the confidentiality of the information received.

Pursuant to par. 2 of Art. 22 of the Law on Gosfinnadzor, Gosfinnadzor, in cases and according to the procedure established by applicable laws, may disclose confidential information to a foreign financial market regulator with which it has entered into an appropriate agreement on the provision of confidential information.

No copy of the agreement between Gosfinnadzor and foreign financial market supervisors on the sharing of information on accountable DNFBBPs<sup>84</sup> has been provided. At the same time, according to the Law on Gosfinnadzor, it can be concluded that the authority to engage in cooperation and exchange of information, including confidential, granted to Gosfinnadzor

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<sup>83</sup> Armenia, Afghanistan, Bangladesh, Belarus, Belgium, UK, Israel, Iran, Kazakhstan, Cyprus, China, Korea, Moldova, Monaco, Nigeria, Panama, Russia, San Marino, Tajikistan, Turkmenistan, Turkey, Uzbekistan, Ukraine, Sri Lanka, Estonia and Japan.

<sup>84</sup> Among the DNFBBPs accountable to Gosfinnadzor that are covered by the AML/CFT Law are trust and company service providers as well as organizations holding lotteries and other games in which participants compete for prize money, including in electronic form.

under this law does not cover AML/CFT cooperation as it pertains to DNFBPs<sup>85</sup>.

(c) No information with respect to this criterion has been provided.

(d) Law enforcement authorities are not subject to any legally enforced restrictions on the type and status of the requesting authority in executing requests for assistance, and there is no procedure governing the execution by the law enforcement agency of requests from competent authorities that are not part of the law enforcement system. Cooperation between the Kyrgyz law enforcement authorities and their foreign counterparts in conducting preliminary inquiries and other activities is conducted on the basis of international agreements, memoranda and protocols. In the absence of such agreements, cooperation is conducted on the principle of reciprocity.

512. **Criterion 40.6** – As regards SFIS, there is no legally established mechanism for ensuring control and protection of information received from foreign competent authorities. However, as a member of the Egmont Group, SFIS is required to enforce the Egmont Group's Principles of Information Exchange, according to which information provided should only be used by SFIS for the purpose for which it was provided, unless prior authorization has been given by the requested party. In addition, as stated by the Kyrgyz representatives, this requirement is incorporated into bilateral agreements.

513. The Kyrgyz law enforcement authorities, acting within the scope of their authority, shall monitor the use of information obtained from foreign competent authorities, while its provision to other competent bodies is subject to the terms of international agreements, memoranda and protocols entered into by the Kyrgyz law enforcement authorities, as well as to the consent of the requested party.

514. **Criterion 40.7** – As regards SFIS, there is no legally established mechanism for ensuring confidentiality and protection of information received from foreign competent authorities. However, as a member of the Egmont Group, SFIS is required to enforce the Egmont Group's Principles of Information Exchange, according to which information provided should be treated as protected by the same confidentiality provisions as apply to similar information from domestic sources.

515. The Kyrgyz law enforcement authorities, acting within the scope of their authority, shall protect the information obtained as a result of international cooperation in conducting preliminary inquiries and other activities.

516. **Criterion 40.8** – Competent law enforcement authorities, acting within the scope of their authority, may conduct preliminary inquiries and other activities, as well as engage in information sharing with their foreign counterparts, in accordance with the terms of international agreements, memoranda and protocols entered into with them.

517. **Criterion 40.9** – SFIS is not legally restricted in cooperating with foreign competent authorities of various types, including law enforcement, judicial, etc. (see description for Criterion 40.2. (A)). As stated in Criterion 29.1, SFIS's authority to provide cooperation on predicate offences for ML is limited. Nevertheless, SFIS exchanges information on predicate offences under the signed agreements.

518. **Criterion 40.10** – There are no legislative provisions preventing SFIS from providing feedback to its foreign counterparts, upon request and whenever possible, on the use of the

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<sup>85</sup> Pursuant to Article 6 of the Law on Gosfinnadzor, Gosfinnadzor may engage in cooperation with foreign non-banking, accounting and auditing sector regulators in sharing public and confidential information in the framework of joint activities, including in the course of inspections of accountable entities for compliance with the requirements of this and other laws regulating the non-banking, accounting and auditing sectors.

information provided, as well as on the outcome of the analysis conducted, based on the information provided. In addition, as a member of the Egmont Group, SFIS shall provide such feedback pursuant to paragraph 19 of the Egmont Group's Principles of Information Exchange.

519. **Criterion 40.11** – Pursuant to par. 2 of Art. 7 of the AML/CFT Law, SFIS, upon request or its own initiative, shall make the relevant information available to foreign competent authorities in the manner and on the grounds consistent with the international treaties of the Kyrgyz Republic, or on the basis of the principle of reciprocity.

520. **Criterion 40.12** – The NB's authority to engage in international cooperation is provided by Art. 30 (3) of the Law on the National Bank and Art. 31 (11) of the Law on the Payment System. Gosfinnadzor engages in international cooperation on the basis of the Law on Gosfinnadzor. The SIT&CC's authority to engage in international cooperation is provided by Chapter 4 of the Regulation on the SIT&CC, in the form of inspections of compliance by postal operators engaged in the provision of postal remittance services with AML/CFT regulations, on the basis of international requests of foreign supervisory authorities and provision of assistance thereto in obtaining and sharing information.

521. **Criterion 40.13** – There are no legislative provisions restricting the powers of the National Bank, Gosfinnadzor or the SIT&CC to exchange with foreign counterparts information domestically available to them, including information held by financial institutions, in a manner proportionate to their respective needs. The National Bank and Gosfinnadzor have entered into agreements with foreign supervisors. The SIT&CC has entered into agreements with foreign supervisors.

522. **Criterion 40.14** – The agreements entered into by the National Bank with foreign supervisors allow it to exchange with foreign counterparts information domestically available to them, including information held by financial institutions, except for information on specific customers and their transactions. Such information includes, *inter alia*, information on financial (credit) institutions comprising a single group (parent and subsidiary organizations), legal requirements applicable to credit institutions (establishment, licensing and AML/CFT), prudential information, as well as information on customer identification practices and ML/TF trends. Similar terms and conditions are set out in the agreements signed by Gosfinnadzor with foreign supervisory authorities.

523. **Criterion 40.15** – The agreements entered into by the National Bank and Gosfinnadzor with foreign supervisors provide only for inspection of credit institutions upon request, not for the conduct of inquiries.

524. **Criterion 40.16** – The agreements entered into by the National Bank and Gosfinnadzor with foreign supervisors require the parties to maintain confidentiality of information exchanged, including obtaining the prior authorization of the requested party for further dissemination of such information.

525. With respect to the DNFBP sector supervisors, it is not met (see description for criterion 40.5 (b)).

526. **Criterion 40.17** – Kyrgyzstan's Criminal Procedure Code and international agreements (ratified by conventions) do not contain any restrictions designed to curtail the ability of the country's law enforcement authorities, acting within their scope of authority, to exchange information with foreign counterparts for intelligence or investigative purposes relating to money laundering, associated predicate offences or terrorist financing, including the identification and tracing of the proceeds of crime

527. **Criterion 40.18** – The Kyrgyz law and its international agreements allow law enforcement

authorities to conduct preliminary inquiries and criminal investigations in response to their foreign counterparts' requests for mutual legal assistance. In addition, as a member of Interpol since 1996, Kyrgyzstan utilizes the cooperation mechanisms permitted under the relevant agreement.

528. **Criterion 40.19** – The possibility for forming joint investigative teams is provided by the Agreement on the Creation and Activities of Joint Investigative Teams in the Territories of the CIS Member States, dated October 16, 2015, ratified by Kyrgyzstan in July 2016.

529. **Criterion 40.20** – With respect to financial institutions, indirect requests for information can be made under the agreement between NBKR and Gosfinaadzor. The Kyrgyz law enforcement authorities, acting within the scope of their authority and when necessary, may exchange information indirectly with non-counterparts, using the Foreign Ministry's diplomatic channels.

#### *Weighting and conclusions*

530. There are not enough international AML/CFT cooperation mechanisms in Kyrgyzstan

531. **Kyrgyzstan is rated *largely compliant* with Recommendation 40.**

**Summary of Technical Compliance – Key Deficiencies**

<b>Compliance with the FATF Recommendations</b>		
<b>Recommendation</b>	<b>Rating</b>	<b>Factor(s) underlying the rating</b>
1. Assessing risks and applying a risk-based approach	PC	<ol style="list-style-type: none"> <li>1. The mechanisms for notifying the private sector about the outcomes of the risk assessment are absent;</li> <li>2. The exemptions related to the licensing/registration of certain types of financial institutions are not based on the ML/TF risk assessment;</li> <li>3. No specific measures for managing or mitigating risks identified in the NRA have been developed or implemented in Kyrgyzstan;</li> <li>4. The decision whether to apply simplified identification measures for individuals transferring money without opening an account, carrying out currency exchange transactions or cashing checks is taken based on the assumption that the risk is low, rather than on the ML/TF risk assessment;</li> <li>5. No mechanisms for the provision by reporting entities of risk assessment data to competent authorities and SRBs have been developed;</li> <li>6. Financial institutions and DNFBPs are not required to have policies, controls and procedures approved by senior management to enable them to manage and mitigate the risks that have been identified;</li> <li>7. Financial institutions and DNFBPs are not required to take into account information on existing risks when undertaking self-assessment of risks.</li> </ol>
2. National cooperation and coordination	PC	<ol style="list-style-type: none"> <li>1. The national AML/CFT policies which are informed by the risks identified are absent.</li> </ol>
3. Money laundering offence	C	
4. Confiscation and provisional measures	LC	<ol style="list-style-type: none"> <li>1. Confiscation cannot be used under par. 1 of Art. 183 of the Criminal Code "Money Laundering", pars. 1 and 2 of Art. 166 "Fraud" and in respect of some other acquisitive offences;</li> <li>2. No evidence or copies of regulations confirming the existence of mechanisms designed to prevent or cancel the adoption of actions that impede a country's ability to freeze, seize or return the property subject to confiscation have been provided.</li> <li>3. The country lacks the mechanics for the management and disposal of frozen or seized assets.</li> </ol>

5. Terrorist financing offence	LC	1. It may be difficult to classify the actions related to terrorist financing where funds or financial services are provided legally.
6. Targeted financial sanctions related to terrorism and TF	LC	<ol style="list-style-type: none"> <li>1. Financial sanctions enforcement measures do not apply to affiliated persons;</li> <li>2. The mechanism for publishing changes to the list of designated persons does not allow prompt notification about listing or de-listing decisions;</li> <li>3. Protection of the rights of all types of bona fide third parties is not ensured.</li> </ol>
7. Targeted financial sanctions related to proliferation	PC	<ol style="list-style-type: none"> <li>1. Financial sanctions enforcement measures do not apply to affiliated persons;</li> <li>2. The mechanism for publishing changes to the list of designated persons does not allow prompt notification about listing or de-listing decisions;</li> <li>3. Protection of the rights of all types of bona fide third parties is not ensured;</li> <li>4. Adequate mechanisms for accruals of funds to frozen accounts are absent.</li> </ol>
8. Non-profit organizations	NC	<ol style="list-style-type: none"> <li>1. Kyrgyzstan has not used all relevant sources of information to determine the characteristics and types of NPOs that, due to their activities or characteristics, are likely to be at risk of abuse for terrorist financing;</li> <li>2. Kyrgyzstan has not defined the types of threats posed to vulnerable NPOs by terrorist organizations, or ways in which terrorists abuse these NPOs;</li> <li>3. Kyrgyzstan has not assessed the sufficiency of measures, including laws and regulations, affecting the NPOs vulnerable to abuse for terrorist financing;</li> <li>4. Kyrgyzstan has not conducted a repeat analysis of the NPO sector;</li> <li>5. Kyrgyzstan has not drafted regulations for the NPO sector to prevent their abuse for terrorist financing;</li> <li>6. Kyrgyzstan does not conduct awareness training for NPOs and the donor community about NPOs' potential vulnerability to terrorist financing abuse;</li> <li>7. Kyrgyzstan has not engaged NPOs in developing and improving best practices for addressing terrorist financing risks and vulnerabilities;</li> <li>8. Kyrgyzstan has not engaged NPOs in developing incentivization mechanisms to encourage NPOs to carry out transactions through regulated financial channels, where possible;</li> <li>9. Kyrgyzstan does not exercise risk-based supervision or control over the activities of NPOs;</li> <li>10. The lack of supervision means that an appropriate</li> </ol>

		<p>system of sanctions for violations by NPOs or persons acting on their behalf is missing;</p> <p>11. The Kyrgyz law enforcement authorities are limited in gaining full access to financial information (access is only available within the framework of an open criminal case);</p> <p>12. Kyrgyzstan has not established appropriate mechanisms to ensure, when there is suspicion or reasonable grounds, a prompt sharing of information with competent authorities, in order to take preventive and investigative action.</p>
9. Financial institution secrecy laws	LC	1. Before the entry into force of the new Kyrgyz Law "On the National Bank of the Kyrgyz Republic, Banks and Banking", the National Bank's access to bank secrecy is restricted by the Law "On Bank Secrecy". Legal obstacles to the sharing of AML/CFT information also remain.
10. Customer due diligence	LC	<p>1. The requirement prohibiting the application of simplified identification measures in situations involving high ML/FT risks is absent;</p> <p>2. The requirement to refrain from pursuing the CDD process (and file an STR instead) in cases where financial institutions form a suspicion of ML/TF and they reasonably believe that performing the CDD process will tip-off the customer is absent;</p> <p>3. The requirement to perform due diligence on high-risk customers applies only to banks;</p> <p>4. The requirements for the identification of beneficiaries using investment related insurance policies not later than the time of the payout, as well as for the implementation of enhanced CDD measures on the beneficiary of a life insurance policy where such beneficiary presents a higher risk, are absent.</p>
11. Record keeping	LC	<p>1. In the AML/CFT Law, the wording of the requirement for keeping transaction records is at odds with Recommendation 11;</p> <p>2. The requirement for financial institutions to ensure that all CDD information and transaction records are available to domestic competent authorities upon appropriate authority is absent.</p>
12. Politically exposed persons	NC	1. Kyrgyzstan has partially complied with Recommendation 12 as regards foreign PEPs, and not complied as regards domestic PEPs and persons entrusted with important functions by international organizations and members of their families and close associates.
13. Correspondent banking	LC	1. The requirement to collect and retain information



		<p>about any regulatory action or ML/TF investigations undertaken against a correspondent institution is absent;</p> <p>2. The requirements apply solely to the banking sector, and not to other financial institutions in the event of establishment by them of correspondent-like relationships.</p>
14. Money or value transfer services	LC	1. The requirement for MVTs providers to monitor their agents' compliance with AML/CFT programmes is absent.
15. New technologies	LC	1. The requirement to assess ML/FT risks posed by new and existing products that use new technology prior to their launch/use, as well as to take steps to control and mitigate risk, applies only to banks.
16. Wire transfers	PC	<p>1. • The requirement for cross-border wire transfers to be accompanied by required originator and beneficiary information does not apply to cross-border money transfers made with the use of a bank account;</p> <p>2. • The requirement for the ordering financial institution not to execute the wire transfer in the absence of the required information is formulated as a right, not an obligation;</p> <p>3. • The requirement for the beneficiary financial institution to have risk-based policies and procedures for executing, rejecting or suspending wire transfers lacking all required information is absent;</p> <p>4. • The requirement for the intermediary financial institution to retain all originator and beneficiary information that accompanies a wire transfer is absent.</p>
17. Reliance on third parties	NC	1. The practice of third party reliance to perform CDD measures and the lack of regulatory support for it exists in Kyrgyzstan.
18. Internal controls and foreign branches and subsidiaries	LC	<p>1. The requirement to have regard to ML/TF risks and the size of a business in implementing AML/CFT programmes is absent;</p> <p>2. The requirement for non-bank financial institutions to apply AML/CFT policies and procedures at the group level, including to foreign branches and subsidiaries, is absent.</p>
19. High-risk countries	LC	1. Measures designed to ensure that financial institutions are advised of concerns about in the AML/CFT systems of other countries fail to ensure that relevant information is brought to the attention of all financial institutions.
20. Reporting of suspicious transactions	LC	1. The requirement to file an STR in cases of attempted suspicious transactions is absent.

21. Tipping-off and confidentiality	LC	1. The wording of the tipping-off and confidentiality provisions of the AML/CFT Law is not fully consistent with Recommendation 21.
22. DNFBP: customer due diligence	PC	1. Notaries and independent legal professionals involved in the preparation of real estate transactions are not required to conduct CDD on customers participating in these transactions and retain information about them. The requirement for real estate agents to perform CDD is only partially implemented, given that there are no provisions requiring real estate agents to conduct CDD both on sellers and buyers of real estate property. The requirement for DNFBPs to refrain from establishing business relationships, terminate business relationships or refrain from carrying out transactions if they cannot perform CDD measures is absent.
23. DNFBP: other measures	PC	<ol style="list-style-type: none"> <li>1. The requirement of Recommendation 23 for notaries and independent legal professionals involved in the preparation of real estate transactions to report suspicious transactions is only partially implemented;</li> <li>2. These persons are under no obligation to implement internal controls and conduct enhanced CDD on transactions with persons from high-risk countries.</li> </ol>
24. Transparency and beneficial ownership of legal arrangements	PC	<ol style="list-style-type: none"> <li>1. Discrepancies between the Law "On State Registration of Legal Entities, Branches (Representative Offices)" and Government Decree No. 85 dated February 10, 2012 No. 85 regarding the basis (paid or free) for obtaining an extract from the State Register of Legal Entities;</li> <li>2. The State Registration of Legal Entities does not contain information on beneficial owners;</li> <li>3. Kyrgyzstan does not assess the ML/TF risks associated with different types of legal persons;</li> <li>4. Kyrgyzstan lacks clear provisions ensuring the accuracy of information and its timely updating;</li> <li>5. The requirement for legal persons, the MoJ and independent registrars to obtain and retain information required to identify beneficial owners is absent;</li> <li>6. The requirement for legal persons to take reasonable measures to obtain and retain up-to-date information on beneficial owners of the company is absent;</li> <li>7. There are no mechanisms in place designed to ensure that companies cooperate with competent authorities to the fullest extent possible in</li> </ol>

		<p>identifying the beneficial owner;</p> <p>8. Supervisors' powers to obtain information (from insurance companies, pension savings funds, pawnshops and leasing companies) are limited;</p> <p>9. A designated authority responsible for monitoring compliance by real estate agents, lawyers, notaries and other independent legal professionals with AML/CFT requirements is absent;</p> <p>10. Discrepancies between the Civil Code, the Law "On the Securities Market" and the Law "On Joint Stock Companies" regarding the issuance of bearer shares;</p> <p>11. Kyrgyzstan lacks the mechanisms designed to prevent the illegal use of bearer shares for ML or TF;</p> <p>12. Proportionate and dissuasive sanctions for any legal or natural person that fails to properly comply with the Recommendation are absent;</p> <p>13. Not all financial sector supervisors are authorized to deal with administrative offences;</p> <p>14. The mechanisms for controlling the quality of assistance provided by other countries in response to requests for basic and beneficial ownership information, or requests for assistance in locating beneficial owners residing abroad, are absent.</p>
25. Transparency and beneficial ownership of legal arrangements	LC	1. Law enforcement authorities lack the powers to access data held by FIs and DNFBPs.
26. Regulation and supervision of financial institutions	LC	<p>1. Licensing/registration procedures do not apply to leasing companies and commodity exchanges;</p> <p>2. Measures designed to prevent criminals from holding a controlling or management function in pawnshops, leasing companies, commodity exchanges and insurance brokers are absent;</p> <p>3. The requirement to apply a RBA to supervision has not been fully complied with.</p>
27. Powers of supervisors	LC	<p>1. Some supervisors (Gosfinnadzor and the SIT&amp;CC) lack the powers to revoke licenses and impose financial penalties;</p> <p>2. Certain types of financial institutions (pawnshops, leasing companies and commodity exchanges) are not subject to AML/CFT supervision.</p>
28. Regulation and supervision of DNFBPs	NC	1. AML/CFT supervision over the activities of real estate agents, notaries and independent legal professionals is absent. The Finance Ministry's Precious Metals Department, which is tasked with monitoring compliance by persons carrying transactions with precious metals and precious stones, is under no obligation to prevent criminals and their accomplices from being professionally

		accredited, or holding (or being the beneficial owner of) a controlling interest, or holding a management function in the said accountable entities. There are also no mechanisms allowing it to apply sanctions against these entities for non-compliance with AML/CFT requirements.
29. Financial intelligence units	LC	1. The SFIS lacks the powers to gather, process and share information on ML predicate offences.
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	1. The information on the mechanisms and procedure for timely identification of accounts held or controlled by natural or legal persons is absent; 2. The information on whether competent authorities have a process to identify assets without prior notification to the owner is absent.
32. Cash couriers	LC	1. Additional explanations are needed regarding whether the definition of "goods" in this case includes cash and monetary instruments; 2. The FIU lacks direct access to the information provided in the course of declaration/disclosure; 3. No evidence of coordinated action undertaken by the customs, migration and other relevant bodies has been provided; 4. The customs authorities do not have the capacity to restrain currency or BNIs for a reasonable time in order to ascertain whether evidence of ML/TF may be found in cases where there is a suspicion of ML/TF or predicate offence; 5. The Kyrgyz customs authorities do not have the capacity to obtain and retain information in cases where there is a suspicion of ML/TF.
33. Statistics	LC	1. Gaps in statistics make it impossible, in particular, to fully assess the volume of frozen, seized and confiscated assets.
34. Guidance and feedback	PC	1. There is not enough information to draw conclusions on the level and quality of feedback from competent authorities, supervisors and SRBs to financial institutions and DNFBPs; 2. There are no guidelines for the private sector on the application of AML/CFT measures and detection of suspicious transactions.
35. Sanctions	LC	1. A range of sanctions applied against financial institutions accountable to Gosfinnadzor for non-compliance with the AML/CFT requirements lack sufficient measures to target officials; 2. A range of sanctions applied against DNFBPs for non-compliance with AML/CFT requirements is

		<p>insufficient;</p> <p>3. The size of penalties imposed in accordance with the Administrative Code is relatively small for large financial institutions.</p>
36. International instruments	LC	<p>1. Kyrgyzstan has not acceded to the 2010 Protocol supplementing the Convention for the Suppression of Unlawful Seizure of Aircraft and to the 2010 Convention for the Suppression of Unlawful Acts against International Civil Aviation.</p>
37. Mutual legal assistance	LC	<p>1. The Prosecutor General's Office does not monitor progress on outgoing and incoming MLA requests. The criteria for determining the urgency of requests are also absent;</p> <p>2. Pursuant to Article 10 of the Kyrgyz Law "On Banking Secrecy", the provision by banks of information constituting bank secrecy to investigative authorities, the court and other state bodies can only be made on the basis of a court order issued in accordance with procedural legislation of the Kyrgyz Republic. This restriction may prevent the proper execution of MLA requests.</p>
38. Mutual legal assistance: freezing and confiscation	PC	<p>1. There is no authority or mechanism for providing assistance to requests for cooperation made on the basis of non-conviction based confiscation proceedings;</p> <p>2. Kyrgyzstan has not submitted formal agreements entered into with other countries on the coordination of seizure and confiscation actions;</p> <p>3. No evidence of the country's sharing of confiscated property with other countries, where confiscation is directly or indirectly a result of co-ordinated law enforcement actions, has been provided.</p>
39. Extradition	LC	<p>1. It was not possible to assess the processes for the execution by Prosecutor General's Office of requests including prioritisation due to the lack of the relevant information;</p> <p>2. There are no simplified extradition mechanisms.</p>
40. Other forms of international cooperation	LC	<p>1. The agreements concluded with foreign supervisors do not provide for the conduct of inquiries;</p> <p>2. The procedure for prioritisation of requests from foreign FIUs is absent;</p> <p>3. There is no legislative framework governing the prioritisation of requests;</p> <p>4. Kyrgyzstan has not confirmed the existence of the requirement for the requesting competent authority to provide feedback in a timely manner to</p>

		competent authorities from which they have received assistance, on the use and usefulness of the information obtained.
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