



Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

DECEMBER 2008

TAJIKISTAN

Tajikistan is a member of the Eurasian Group on combating money laundering and financing of terrorism (EAG). This evaluation was conducted by the International World Bank and was then discussed and adopted by the EAG Plenary as a 1st mutual evaluation on December 2009.

©2009 EAG. All rights reserved. No reproduction or translation of this publication may be made without prior written permission. Requests for permission to further disseminate, reproduce or translate all or part of this publication should be obtained from EAG (info@eurasiangroup.org).

2009

© EAG

Contents

Page

ABBREVIATIONS	7
A. PREFACE	8
B. EXECUTIVE SUMMARY	9
GENERAL INFORMATION ON TAJIKISTAN	14
GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM	14
OVERVIEW OF THE FINANCIAL SECTOR	16
OVERVIEW OF THE DNFBP SECTOR	19
OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS	20
OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING	20
DETAILED ASSESSMENT REPORT	21
CRIMINALIZATION OF MONEY LAUNDERING (R.1 & 2)	21
Description and Analysis:	21
Compliance with Recommendations 1 & 2	28
CRIMINALIZATION OF TERRORIST FINANCING (SR.II)	28
Description and Analysis	28
Recommendations and Comments	32
Compliance with Special Recommendation II	33
CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)	33
Description and Analysis	33
Recommendations and Comments	38
FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III):	39
Description and Analysis	39
Compliance with Special Recommendation III	46
THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)	47
Description and Analysis	47
Recommendations and Comments	48
LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27, & 28)	48
Description	48
Analysis, Recommendations and Comments	63
Description and Analysis	66
Recommendations and Comments	72
Compliance with Special Recommendation IX	73
CUSTOMER DUE DILIGENCE & RECORD KEEPING	74
RISK OF MONEY LAUNDERING OR TERRORIST FINANCING	74
CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)	74
Description and Analysis	74
Recommendations and Comments	79
ii. Compliance with Recommendations 5 to 8	79
THIRD PARTIES AND INTRODUCED BUSINESS (R.9)	79
Description and Analysis	79
Recommendations and Comments	80
Compliance with Recommendation 9	80
FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)	80
Description and Analysis	80
Recommendations and Comments	81
RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)	81
Description and Analysis	81
Recommendations and Comments	83
Compliance with Recommendation 10 and Special Recommendation VII	83
UNUSUAL AND SUSPICIOUS TRANSACTIONS	84

MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)	84
Description and Analysis	84
Recommendations and Comments	84
Compliance with Recommendations 11 & 21	85
SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)	85
Description and Analysis	85
Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV	86
INTERNAL CONTROLS AND OTHER MEASURES	87
INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)	87
Description and Analysis	87
Recommendations and Comments	88
Compliance with Recommendations 15 & 22	88
SHELL BANKS (R.18)	88
Description and Analysis	88
Recommendations and Comments	89
Compliance with Recommendation 18	89
REGULATION, SUPERVISION, GUIDANCE, MONITORING AND SANCTIONS	89
THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SROs. ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R. 17, 23, 25 & 29)	89
Description and Analysis	89
Recommendations and Comments	92
Compliance with Recommendations 17, 23, 25 & 29	92
MONEY OR VALUE TRANSFER SERVICES (SR.VI)	93
Description and Analysis	93
Recommendations and Comments	93
iii. Compliance with Special Recommendation VI	93
CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)	94
Description and Analysis	94
Recommendations and Comments	96
iv. Compliance with Recommendation 12	96
SUSPICIOUS TRANSACTION REPORTING (R.16)	96
Description and Analysis	96
Recommendations and Comments	97
Compliance with Recommendation 16	97
REGULATION, SUPERVISION AND MONITORING (R.24-25)	97
Description and Analysis	97
Recommendations and Comments	97
Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)	98
OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS & MODERN-SECURE TRANSACTION TECHNIQUES (R.20)	98
Description and Analysis	98
Recommendations and Comments	99
Compliance with Recommendation 20	99
LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)	99
Description and Analysis	99
Recommendations and Comments	100
Compliance with Recommendations 33	100
LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)	100
Description and Analysis	100
Recommendations and Comments	101
Compliance with Recommendations 34	101
NON-PROFIT ORGANISATIONS (SR.VIII)	101
Description and Analysis	101
Recommendations and Comments	104
Compliance with Special Recommendation VIII	104
NATIONAL CO-OPERATION AND COORDINATION (R.31)	105
Description and Analysis	105

THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)	107
Description and Analysis	107
Compliance with Recommendation 35 and Special Recommendation I	109
MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)	109
Description and Analysis	109
Recommendations and Comments	111
Compliance with Recommendations 36 to 38 and Special Recommendation V	111
EXTRADITION (R.37, 39, SR.V)	111
Description and Analysis	111
Recommendations and Comments	114
OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)	114
Description and Analysis	114
Recommendations and Comments	120
Compliance with Recommendation 40 and Special Recommendation V	120
RESOURCES AND STATISTICS	122
Recommendations and Comments	122
Compliance with Recommendations 30 and 32	122
OTHER RELEVANT AML/CFT MEASURES OR ISSUES	123
GENERAL FRAMEWORK FOR AML/CFT SYSTEM	123
TABLE 1. RATINGS OF COMPLIANCE WITH FAFT RECOMMENDATIONS	124
TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM	135
TABLE 3. AUTHORITIES' RESPONSE TO THE ASSESSMENT	148
ANNEX 1: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSION	149
ANNEX 2: LIST OF ALL LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED	150
ANNEX 3: PROCEDURAL BACKGROUND	153

ABBREVIATIONS

AML/CFT	-	Anti-Money Laundering and Combating the Financing of Terrorism
BL	-	Banking Law
BCP	-	Basel Core Principles
CC	-	Criminal Code
CDD	-	Customer Due Diligence
CPC	-	Criminal Procedure Code
CSP	-	Company Service Provider
DNFBP	-	Designated Non-Financial Businesses and Professions
DAR	-	Detailed Assessment report
FAFT	-	Financial Action Task Force
FI	-	Financial institution
FIU	-	Financial Intelligence Unit
FSAP	-	Financial Sector Assessment Program
FSRB	-	FAFT-style Regional Body
FT	-	Financing of terrorism
IAIS	-	International Association of Insurance Supervisors
KYC	-	Know your customer/client
Law on B and BA		Law on Banks and Banking Activity
MLACM	-	Mutual Legal Assistance in Criminal Matters
MEF	-	Ministry of Economy and Finance
MFA	-	Ministry of Foreign Affairs
MoA	-	Memorandum of Agreement
MoIA	-	Ministry/Minister of Internal Affairs
MoJ	-	Ministry/Minister of Justice
MOU	-	Memorandum of Understanding
ML	-	Money laundering
MLA	-	Mutual legal assistance
NBT	-	National Bank of Tajikistan
NPO	-	Nonprofit organization
PEP	-	Politically-exposed person
ROSC	-	Report on Observance of Standards and Codes
SRO	-	Self-regulatory organization
STR	-	Suspicious Transaction Report
UN	-	United Nations Organization
UNSCR	-	United Nations Security Council Resolution

A. PREFACE

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Tajikistan is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 and 2004 of the Financial Action Task Force (FAFT), and was prepared using the AML/CFT assessment Methodology 2004, as updated in February 2007. The assessment team considered all the materials supplied by the authorities, the information obtained on site during their mission from June 11 through June 23, 2007, and other verifiable information subsequently provided by the authorities.

The assessment was conducted by a team of assessors composed of staff of the World Bank. The evaluation team consisted of: Theodore Stuart Greenberg, Senior Financial Sector Specialist (Legal expert, team leader); Mr. Klaudio Stroligo, Consultant (Law Enforcement Expert), Mr. Paul Allan Schott, Consultant (Financial Expert). The assessors reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter and punish money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP). The assessors also examined the capacity, implementation, and effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Tajikistan at the time of the mission or shortly thereafter. It describes and analyzes those measures, sets out Tajikistan levels of compliance with the FAFT 40+9 Recommendations (see Table 1) and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). The report was produced by the World Bank as part of the Financial Sector Assessment Program (FSAP) of Tajikistan. It was also presented to the Eurasian Group on combating money laundering and financing of terrorism (EAG) and endorsed by its Plenary meeting of July, __2008.

The assessors would like to express their gratitude to the National Bank of Tajikistan authorities for its assistance throughout the assessment mission.

B. EXECUTIVE SUMMARY

Key Findings

1. This assessment was fraught with failures by the some agencies of the Government of Tajikistan (GOT) to provide requested information and cooperation that made it impossible to provide a complete and accurate evaluation of the international standards for AML/CFT in Tajikistan. More specifically, government authorities did not:

- provide a response to the Detailed Assessment Questionnaire;
- arrange all requested meetings;
- respond to whether the assessors' list of statutes was current, despite repeated requests, until the on-site mission and even then did not provide all requested laws and regulations; and
- with minor exceptions, respond to after mission requests for statutes, statistics or questions for specific information.

As a result, and as consistent with procedures, a rating of “non-compliant” is given for each criterion for which the assessors did not have sufficient information upon which to make an accurate and meaningful evaluation. A detailed discussion of the procedural background and information requests is provided in Annex 3.

2. Tajikistan does not have any AML/CFT regime in place, nor does it have a strategy to prevent, detect, disrupt dismantle money laundering or the financing of terrorism activities, or to investigate, prosecute and confiscate the proceeds of these crimes.

3. Tajikistan does have some of the basic tools necessary to fight money laundering. Government authorities acknowledged that their law needs to be updated to meet international standards. There is, however, no interest in pursuing money laundering investigations or prosecutions. Indeed, the government has decided that while the Law on Amnesty of Citizens and Legal Entities of the Republic of Tajikistan Related to the Property Amnesty is in force the government will not even investigate old or new money laundering cases, nor will it send updated money laundering legislation to Parliament.

4. Tajik authorities regularly investigate terrorists and terrorist organizations of domestic interest. While Tajik authorities are sensitive to terrorist financing issues and have analyzed how the terrorists are using funds, there have been no terrorist financing criminal investigations. Tajik officials acknowledged that they need training on detection and prosecution of money laundering and terrorist financing.

5. Tajikistan is in need of major new legislation and significant amendments to existing legislation to address each of international standards, as specified in the FATF 40 + 9 and as categorized in the five major areas identified below:

Legal Systems and Related Institutional Measures

6. There are no active money laundering investigations in Tajikistan. Some police officials believe that criminal proceeds are generally used for subsistence purposes. Criminal Code Article 262, Legalization (Laundering) of Illegally Obtained Incomes contains some of the elements of an anti-money laundering statute, but it does not meet the requirements of either (1) United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substance (1988) (Vienna Convention) or (2) United Nations Convention against Transnational Crime (2000) (Palermo Convention).
7. While the Prosecutor General's Office stated that the law covers conversion, transfer and concealment, none of these terms are included in the Criminal Code, nor is the position supported by case law. The only verdict (acquittal) issued by the Supreme Court, under Article 262 of the Criminal Code, has not been provided to the Assessors.
8. Tajik authorities do not seem interested in using Article 262 of the Criminal Code as an anti-money laundering law.
9. Criminal Code Article 57 provides for confiscation of all or part of the "belongings which are the property of the offender." Confiscation is only available for money laundering offenses involving a group involved in a conspiracy, a public official using his official position, an organized group, in a "large amount" (not defined in the law) or repeatedly. Thus, this approach does not meet international standards.
10. Although there is no fundamental principle of domestic law that prevents legal entities from being prosecuted, there is no criminal liability for legal entities under the Criminal Code. They can be punished under the Civil Administrative Procedure or the Civil Code. A legal entities' license can be cancelled or they can be fined under these codes. However, the authorities were unable to provide any example where the civil or administrative authority was used in a money laundering or terrorist financing case.
11. Terrorist financing, while criminalized in the Criminal Code Article 179/1 and the Law on Combating Terrorism (1999), does not apply to individual terrorists. The provisions of the statute do not comply with the UN Convention or the UN Security Council Resolutions.
12. The Tajik Parliament recently enacted the Law on Amnesty of Citizens and Legal Entities of the Republic of Tajikistan Related to the Property Amnesty (the Amnesty Law). This law was to be in force for 6 months. During the on-site mission the procedures to implement this law had yet been issued. No further information on the Amnesty Law has been provided. Therefore, it remains unknown how the law was, or is to be, implemented in practice. The law provides amnesty for Tajik citizens and legal entities for committing certain violations of the law, including the criminal offence of money laundering under article 262 of the Criminal Code in relation to certain categories of property.
13. The adoption of the Amnesty Law and repealing the money laundering offence is contrary to international obligations of the Republic of Tajikistan under the money laundering

related international conventions and the FATF Recommendations 1 and 2. Although the law is limited in time and applies only to Tajik natural and legal persons and only to certain types of property, it will undoubtedly diminish the readiness of the law enforcement bodies and the prosecutors to investigate and prosecute money laundering offences. In addition, the enactment of this law has further delayed the adoption of the AML/CFT law. More precisely, Tajik authorities stated that they would neither investigate nor prosecute old or new money laundering cases while the Amnesty law is in effect. As of the date of the on-site mission, the law had been enacted, but implementing regulations had not been drafted or Gazatted. Therefore, the Assessors were not able to determine how the Amnesty law would work in practice or how long it will be in effect.

14. In Tajikistan, there is no Financial Intelligence Unit (FIU) or any similar unit that serves as a national center for receiving, analyzing and disseminating disclosures of suspicious transactions reports and other relevant information concerning suspected money laundering or financing of terrorism activities. Moreover, there is no suspicious transaction reporting system in place and no guidance regarding the manner of reporting was provided to financial institutions and other reporting entities. This means that there is currently no mechanism in place whereby the financial institutions and other reporting entities report when they suspect that funds are the proceeds of a criminal activity or are related to financing of terrorism. Consequently, law enforcement agencies do not get access to valuable information from financial and designated non-financial business and professions. This undoubtedly hampers the ability of relevant state authorities to prevent and detect money laundering and financing of terrorism.

15. Under the current legislation, several law enforcement authorities have the power to initiate and investigate, as well as to conduct special operative investigation activities (use of special investigative techniques and means), in relation to money laundering and financing of terrorism cases. However, there is very little evidence that these powers are used in practice for money laundering investigations. We can not now assess their use in terrorist financing cases. According to the law enforcement authorities there are currently no such investigations taking place.

16. In Tajikistan, there are provisions concerning the monitoring of physical cross-border transportation of foreign cash currency, yet these provisions do not cover domestic cash currency, or domestic or foreign bearer negotiable instruments, as required by the FATF Special Recommendation IX. Collected information on the amount of currency declared or otherwise detected and the identification data of the bearer are not stored in electronic format nor centralized, which prevents the effective use of such information by competent law enforcement authorities. This limitation would prevent the effective use of such information in a future by the FIU, as well as for international cooperation purposes.

17. It is unclear whether the cross-border transportation of illegally obtained funds falls within the definitions of money laundering and financing of terrorism under the relevant articles of the Criminal Code. The legislation has not been implemented in practice, since there were no money laundering or financing of terrorism investigations initiated by the Customs Service, or were the collected data used by other law enforcement authorities for the above mentioned purpose.

18. Due to several legal and practical impediments, it is questionable whether the Customs Service or other competent authorities can seize/confiscate currency or bearer negotiable

instruments that are related to money laundering or financing of terrorism. The legislation has not been implemented in practice, since there have not been such seizures/confiscations.

19. Due to several legal and practical impediments, the Customs Service can not seize/freeze terrorist funds or other assets of persons designated by the United Nations in accordance with UN Security Council Resolutions 1373 and 1267 and its successor resolutions.

Preventive Measures for Financial Institutions

20. Preventive measures for financial institutions are limited to minimal customer identification procedures that are only applicable to banks under NBT Instructions. There is not a requirement for verification of identity under the existing rules. In this regard, bankers argue that verification is not needed since official government documents are used for identification purposes. In addition, there is no requirement for:

- Due diligence or monitoring of accounts,
- Record keeping with respect to identifying customers,
- Suspicious transaction reporting, or
- Internal controls for compliance and audit.

There are, however, record keeping requirements for accounting purposes that could be utilized to assist in investigations to reconstruct financial transactions for some, but not all financial institutions.

21. Bearer shares for banks are not permitted and the NBT's prior approval is required for changes of 20% or more of a bank's shares. However, there do not appear to be fit and proper requirements for major shareholders. Bearer shares are permitted for non-bank companies, which makes customer identification and beneficial ownership problematic.

22. On the positive side, the National Bank of Tajikistan (NBT) has very broad rulemaking and enforcement authority, but NBT has not used it to impose preventive measures that are consistent with international standards upon financial institutions in Tajikistan.

23. Some of the larger banks have adopted internal compliance programs that address AML/CFT concerns. The primary motivator for adopting these programs, however, is satisfying foreign correspondent banks that something is being done in Tajikistan about money laundering.

Preventive Measures for Designated Non-Financial Businesses and Professions

24. There are no preventative measures applicable to any designated non-financial business or profession.

Legal Persons and Arrangements and Non-Profit Organizations

25. The assessors were not able to obtain any meaningful information regarding legal persons and arrangements.

26. The Law on Charities provides that a charitable organization should: be registered; not support political parties, movements, groups or campaigns; identify or provide sources of its revenue; pay no more than 20% of the financial assets in a fiscal year for administrative and managerial personnel with the rest to be used for the charitable purposes; observe the charter provisions concerning the its purpose; be controlled by the state monitoring bodies; keep proper accounting and shall provide open access to the annual reports.

27. The authorities do not obtain timely information on the activities, size and other relevant features of the country's non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF. The authorities do not conduct periodic reassessment by reviewing new information on NPOs' potential vulnerabilities to terrorist activities. The authorities have not adopted any preventive measure nor undertaken outreach to the NPO sector with a view to protecting it from TF abuse.

28. Tajik authorities did not demonstrate that they have taken steps necessary to promote effective supervision/monitoring of the risky NPOs.

National and International Co-operation

29. On the national level, other than standard confidentiality provisions regarding law enforcement and national security, there is no legal prohibition against any Tajik authority cooperating with another. The Drug Agency noted that it does coordinate with the PGO on "controlled deliveries" and seizure of bank records. With the exception of the Drug Agency, however, the Assessors were not able to identify examples of domestic cooperation between domestic law enforcement agencies and/or supervisors either for sharing information or coordinating on operational activities.

30. Tajik nationals may be extradited only on the basis of a bilateral treaty, of which Tajikistan is a party to seven bilateral treaties. Foreign nationals and stateless persons are subject to extradition. Dual criminality is required in both cases. In addition, Tajikistan is a party to the Minsk Convention and Kishinev Convention

31. No information was provided with regard to mutual legal assistance.

C. GENERAL

General Information on Tajikistan

32. Tajikistan is a landlocked, former Soviet republic with a population of 6.5 million. It is located in Central Asia and is bordered by Afghanistan on the South, Uzbekistan on the West, the Kyrgyz Republic on the North and China on the East.

33. It has a per capita GDP of less than \$400. The poverty rate, while declining, is high; it was estimated by the World Bank to be 57 percent in 2004.

34. The country suffered greatly from the breakup of the Soviet Union and the civil war that followed in 1992. The five-year conflict cost Tajikistan half its real GDP; some \$7 billion in physical damage; and more than 50,000 lives, either dead or missing. Peace was restored in 1997, followed by macroeconomic and political stabilization. Since that time, macroeconomic performance has been robust, albeit with a few lapses.

General Situation of Money Laundering and Financing of Terrorism.

35. Tajikistan does have some of the basic tools necessary to fight money laundering. Government authorities acknowledged that their law needs to be updated to meet international standards. There is, however, no interest in pursuing money laundering investigations or prosecutions. Indeed, the government has decided that while the Law on Amnesty of Citizens and Legal Entities of the Republic of Tajikistan Related to the Property Amnesty is in force the government will not even investigate old or new money laundering cases, nor will it send updated money laundering legislation to Parliament. The Criminal Code was enacted in 1988 and amended in May 2004. Article 262, the relevant article on money laundering, has been used in only one prosecution and the defendant was acquitted. There are no guidelines on using Article 262. In addition, the government declined to provide the only Supreme Court decision on Article 262 on the grounds that the decision is "secret." Other than general comments about the difficulty of investigating financial crime and that there is no laundering, no explanation was provided for the lack of enforcement of Art. 262. While corruption is recognized as a widespread and systemic issue and the government has established the new anti-corruption agency, anti-money laundering enforcement is simply not a priority for the government.

36. The government recently completed a restructuring that has had an impact on the AML/CFT responsibilities. Most, if not all, of the current staff handling AML/CFT matters have been transferred to the newly created Agency for State Financial Control and Combating Corruption. The Assessment Team's believes that there is a risk of money laundering with respect to drug trafficking, trafficking in human beings and corruption, but at present there is not any evidence that those monies are moving through the formal financial system of Tajikistan. The General Prosecutors Office (GPO) said that illegal proceeds are used for living purposes and

none remain to be laundered. Without any statistics or other information to support this assertion the Assessors are without a basis to accept the premise. There is a risk of terrorist financing, which the government is trying to address through intelligence channels. Government agencies recognize the importance of criminal investigation of terrorist financing, but are not using this channel at this time.

37. Although Tajikistan produces few drugs, its location and weak border controls make it a key transit point for Afghan opium, heroin, and hashish via corridors through Central Asian countries to Russia and Europe. Tajikistan is the main gateway for Afghan opiates entering the “Northern Route” (from Afghanistan, across Central Asian States, into Russia and Europe). The drug movement is significant and growing. The government has worked hard to interdict drug trafficking and has made some significant seizures. There is organized crime operating in Tajikistan, most made up of drug networks of Tajiks in northern Afghanistan and clan members in southern Tajikistan. However, except on the Afghan border, there are few firearms being used by criminals, which is a consequence of an aversion to guns because of the civil war and the many thousands of dead or missing.

38. The government was not able to provide any significant information on the extent to which drug trafficking creates criminal proceeds within Tajikistan which are laundered domestically. The government has not detected any drug money being laundered through Tajik banks. The government reports that drug proceeds are handled through the Middle East. Although this is consistent with what others in the region say, government authorities did not provide any anecdotal or concrete examples regarding drug trafficking processes. Although there have been no Tajik-initiated drug money laundering investigations (certainly not during the period of 2005-2007), the government does coordinate with foreign counterparts on cases that have resulted in drug seizures.

39. Tajik authorities regularly investigate terrorists and terrorist organizations of domestic interest. While Tajik authorities are sensitive to terrorist financing issues and have analyzed how the terrorists are using funds, there have been no terrorist financing criminal investigations. Tajik authorities are interested in receiving technical assistance on detecting terrorist financing.

40. Corruption is a problem at all levels of Tajikistan’s government. As Tajik authorities recognize

...the fact that the process of democratization has become especially vulnerable because of the increasing scale of corruption....There is no doubt that the problem of corruption in the ROT is both systemic and individual, since enormous opportunities for the development of corruption first appeared under the Soviet Union....We believe that the period of transition, while strengthening democracy and the market economy failed to reduce the scale of corruption in the country...One must admit that corruption in the ROT has turned

into an unwritten public norm of behavior for both its citizens and its entrepreneurs.¹

41. According to the 2006 Report on corruption in Tajikistan, jointly prepared by the UN and the Strategic Research Center under the President of the Republic of Tajikistan, the statistics of the General Prosecutor's Office show, that there are a number of old court cases accusing government officials of bribery, power abuse, and unlawful use of office for personal benefit. There are extensive networks that have been involved in illegal operations, corruption, and organized crime. There are also some alliances between professional criminals and particular politicians, political parties, high-ranking government officials, and military personnel.

42. In a document provided by an official of the Ministry of Internal Affairs, it is mentioned that, during the period 2000-2005, units of the Ministry of Internal Affairs uncovered 167 organized criminal groups that committed several severe crimes, such as banditism, robberies, murder, hostage taking, assault relating to robbery, illegal storage, carrying of firearms and drugs, recruitment of people for exploitation. Furthermore, during the same period the Ministry of Internal Affairs arrested 373 members of the religious-extremists party "Hiyb-ut-Tahrir", as well as took measures against members of the Islamic movement of Uzbekistan. Nevertheless, no terrorist financing or money laundering investigations were initiated by the Ministry of Internal Affairs with regard to above.

Overview of the Financial Sector

43. The Tajik financial system is small and dominated by banks. There are 10 domestically chartered banks and one branch of a foreign (Iranian) bank, with total assets of approximately \$813 million. Banks represent more than 80 per cent of total financial sector assets.

44. There are 66 micro-finance organizations (MFOs), with aggregate assets of approximately \$37 million representing about three per cent of total financial sector assets. Micro-finance institutions are divided into three types: microcredit funds (38 institutions), microcredit commercial organizations (23) and microcredit deposit-taking institutions (6). Each type is subject to different regulatory requirements and supervision processes.

- Microcredit funds are the lightest regulated MFOs and can be created in the form of social funds, with no required capital. There is also no prudential supervision of these entities. These entities only make loans. Currently, the combined portfolio of these funds is approximately \$20 million; the average loan size is about \$500. They receive most of their funds from donors and service about 28,000 clients.

¹ The Strategic Research Centre-Under the President of the Republic of Tajikistan-GOT Report on Corruption in the Republic of Tajikistan (2006), pgs 8, 9 and 11.

- Microcredit organizations are commercial entities and require a minimum capital of \$10,000. They have prudential regulation, including on-site supervision. These entities only make loans. Their combined portfolio is equivalent to approximately \$5 million and they have over 4,000 clients. The average loan size is about \$1,000. These institutions can borrow from other institutions.
- Microcredit deposit taking institutions are subject to a minimum capital requirement of \$100,000 and are subject to prudential regulation and on-site supervision. These entities accept deposits in addition to making loans. They hold approximately \$6 million in loans and \$1 million in deposits. They have about 5,000 clients and the average loan size is \$500. To avoid regulatory arbitrage, these institutions have a restricted license—their maximum deposit-taking is limited to three times their capital base, compared with five times for commercial banks, and they are allowed to open correspondent accounts for the conduct of foreign business' activities, for which they must use banks.

Because of their small assets holdings, both individually and collectively, micro-finance institutions are not significant players in the overall financial sector, although they are growing.

45. The other non-bank components of the financial sector are also inconsequential in terms of their impact on financial markets. CreditInvest is an asset management company with the special purpose of managing the nation's cotton industry debt that was originally assumed by the government; its only function is to liquidate such assets, which are approximately \$180 million. There are eight credit societies with approximately \$17 million in assets. The insurance industry is in its infancy; there are 14 insurance companies with 90 per cent of premiums dedicated to mandatory coverage, such as property damage. Total insurance assets are approximately \$8 million. There is no secondary securities market.

46. The following table sets out the structure of financial sector, as of 30 April, 2007.

<i>Sample tables, to be adapted as appropriate.</i>	Number of institutions	Total assets (USD million)	Authorized/ Registered and supervised by:
Commercial banks	11	813	National Bank of Tajikistan
Non-bank financial institutions (credit societies)	8	17	National Bank of Tajikistan
Micro-financial organizations 6- credit deposit institutions 22-crediting institutions 38 lending foundations	66	37	National Bank of Tajikistan
Mortgage banks	x		
Investment companies	x		
Collective investment associations	x		
Life insurance companies and occupational pension funds	14	8	
Company pension funds	x		
Insurance brokers	x		
E-money	x		
Savings institutions	x		

Foreign exchange			
Money transmitters	3		
Leasing- and factoring	x		
Credit cards etc.	x		
Postal services	1		

47. The following table sets out the foreign activity by Tajik institutions and domestic activity by foreign institutions, as of April 30, 2007.

	Number of branches abroad	Number of subsidiaries abroad	Branches of foreign banks in the country	
			Number	Supervisor
Commercial banks	none		1	National Bank of Tajikistan
Mortgage banks	x			
Life Insurance Companies	none			
Investment companies	x			
Other.	x			

48. The following table sets out the types of financial institutions that can engage in the financial activities that are within the definition of “financial institutions” in the FAFT 40+9, as of April 30, 2007.

FINANCIAL ACTIVITY BY TYPE OF FINANCIAL INSTITUTION		
Type of financial activity (See the Glossary of the 40 Recommendations)	Type of financial institution that performs this activity	AML/CFT regulator & supervisor
1. Acceptance of deposits and other repayable funds from the public (including private banking)	1. Banks 2. Micro-finance institutions	1. National Bank of Tajikistan 2. National Bank of Tajikistan
2. Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	1. Banks 2. Micro-finance institutions	1. National Bank of Tajikistan 2. National Bank of Tajikistan
3. Financial leasing (other than financial leasing arrangements in relation to consumer products)	1. Banks	1. National Bank of Tajikistan
4. The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance activity), but not including any natural or legal person that provides financial institutions solely with message or other support systems for transmitting funds)	1. Banks 2. Money remitters	1. National Bank of Tajikistan 2. National Bank of Tajikistan
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banks	1. National Bank of Tajikistan
6. Financial guarantees and commitments	1. Banks	1. National Bank of Tajikistan
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.);	1. Banks 2. Foreign exchange dealers	1. National Bank of Tajikistan 2. National Bank of Tajikistan

(b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading		
8. Participation in securities issues and the provision of financial services related to such issues	N/A	
9. Individual and collective portfolio management	N/A	.
10. Safekeeping and administration of cash or	1. Banks	1. National Bank of Tajikistan
11. Otherwise investing, administering or managing funds or money on behalf of other persons	1. Banks	1. National Bank of Tajikistan
12. Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and to insurance intermediaries (agents and brokers))	1. Life insurance companies	1. Finance Ministry
13. Money and currency changing	1. Banks 2. Foreign exchange offices	1. National Bank of Tajikistan 2. National Bank of Tajikistan

Overview of the DNFBP Sector

49. **Lawyers, notaries and other independent legal professionals:** In Tajikistan there are approximately 200 lawyers and 6 law firms (legal persons) that provide “chargeable juridical consultations” (article 14 of Law on licensing of separate type of activity). The obligatory registration of lawyers has been required only since March of 2006, and at present, attorneys only have to register if they act as attorneys. Furthermore, since March 2007 lawyers need to get a license only if they act as private entrepreneurs. In 2006 the Ministry of Justice issued 142 new licenses for providing legal assistance.

50. At present, there are 78 notaries’ offices with 128 notaries that carry out their functions under the auspices of the Ministry of Justice. The authorities stated that in year 2006, notaries executed 3.095 activities in the aggregate.

51. **Accountants:** The assessors were not able to meet with any members of the accounting profession and were not able to obtain any meaningful information on accountants or the accounting industry.

52. **Casinos:** There are currently no casinos operating in Tajikistan. Although the Law on Licensing (article 17) anticipates the establishment and licensing of gambling houses, their licensing and/or establishment were suspended by the Decree 2 of the President of the RT in July 2000. Prior to the adoption of the Decree 2, casinos were operating in Tajikistan, but no specific legislative act regulated their activities.

53. **Dealers in precious metals and stones:** The Law on Precious Stones and Metals (adopted on May 12, 2001) and the Law on Licensing of Separate Type of Activity governs the activities of dealers in precious metals and stones. Under these statutes “any activity regarding

circulation of precious metals and stones (processing of scrap and waste of scrap of precious metal into finished product, refining of precious metal, recuperation of precious stones, wholesale and retail trade, conducting of bank transactions with precious metals and stones)” shall be licensed. The licensing authority and body responsible for the licensing of such activities is the Ministry of Finance. Through May 21, 2007, the MOF had 970 licensed entities, out of which 773 licenses were issued to private entrepreneurs and 144 certificates were issued for repairing jewelry and carrying out dentist activities. In Tajikistan there are 3 companies registered for perform mining activities.

54. **Trust and company service providers:** Trusts and company service providers do not exist as separate categories of entities; such activities tend to be provided by lawyers. Nevertheless, legislation does not prohibit the carrying out such activities by such entities.

55. **Real estate agents:** There are currently seven real estate agents operating in Tajikistan, mostly, if not exclusively, in Dushanbe. They operate both as legal persons or individual entrepreneurs. A real estate agent has to be registered (under the Law on state registration of legal entity) only if its legal status is that of a legal person. Because under article 14 of the Constitutional Act of RT, the earth, water, and other natural resources are the exclusive property of the state, the real estate business is mostly focused on houses, apartment and other buildings. The activities of real estate agents are not regulated by any specific law or regulation and no single supervisory authority is responsible for their supervision or monitoring.

Overview of commercial laws and mechanisms governing legal persons and arrangements

56. The assessors were not able to obtain any meaningful information on commercial laws and mechanisms governing legal persons and arrangements

Overview of strategy to prevent money laundering and terrorist financing

AML/CFT Strategies and Priorities

There is no AML/CFT strategy; nor are there any established AML/CFT priorities.

The institutional framework for combating money laundering and terrorist financing

57. There is no AML/CFT institutional framework for addressing AML/CFT.

Approach concerning risk

58. No information was provided.

Progress since the last IMF/WB assessment or mutual evaluation

59. This is the first AML/CFT assessment for Tajikistan. Thus, there is no progress to report.

DETAILED ASSESSMENT REPORT

Legal System and Related Institutional Measures

Criminalization of Money Laundering (R.1 & 2)

Description and Analysis:

60. Tajikistan acceded to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) in 1996 and ratified the 2000 UN Convention against Transnational Organized Crime (Palermo Convention) on July 8, 2002.

61. Tajikistan has some of the basic legal provisions necessary to fight money laundering and has criminalized money laundering offence in article 262 of the Criminal Code (1988).

62. However, during the on-site mission the assessment team was informed that the Law on amnesty of citizens and legal entities of the Republic of Tajikistan related to the property amnesty was recently adopted (hereinafter referred as the Amnesty Law). This law, although defined as a single action on amnesty, releases from responsibility for committing certain violations of the law, including the money laundering. Namely, paragraph one of article 11 of the Amnesty Law provides that Tajik citizens that have legalized their property in the period of legalization and those citizens whose properties were illegally registered under their names are subject to amnesty and released from responsibility envisaged by articles 259, 260, 261, 262, 263, 269, 292 and 293 of the Criminal Code. In addition, paragraph two of the same article determines that citizens and legal entities of the Republic of Tajikistan that have legalized their property in the period of legalization and those citizens whose properties were illegally registered under their names are subject to amnesty and released from responsibility envisaged by a number of articles contained in the Code on administrative offence.

63. A definition of “property” is contained in article 1 of the Amnesty Law and it covers the following:

- residential and non-residential buildings, objects and unfinished construction sites and other property based on land, and
- other property equaled by the law to immovable property, shares and other securities, vehicles, precious metal and stones.

64. The Amnesty Law only applies to citizens and legal entities of the Republic of Tajikistan (article 2) and to property which prior to the enactment of this law was not subject to a court decision on confiscation of property and the property was not under legal controversy (article 3).

65. According to article 4 of the Amnesty Law a deadline for property legalization is six months and becomes valid after two months of publication in official press with sample of application, certificate, register of legalized property and other normative legal acts on conducting legalization of property. During the on site visit the assessment team was told that the Governmental Co-ordination Commission envisaged in article 6 of the Amnesty Law has been already established, yet it did not yet published the required application forms. The authorities did not provide any further information regarding the implementation of the Amnesty Law.

66. The analysis of the Amnesty Law shows the following:

- This law only applies to citizens and legal persons of the Republic of Tajikistan, which means that foreign natural and legal persons will be treated differently when/if committing money laundering offence. This is contrary to the article 14 of the European Convention on human rights.
- The law only repeals the money laundering offence in relation to certain categories of property, which, for example, does not include money or bank deposits.
- The adoption of this law, although limited in time and to certain categories of persons and property, is contrary to the requirements laid down in the FATF Recommendations, the Vienna Convention and the Palermo Convention. The law repeals the application of the money laundering offence, which can seriously diminish the readiness of the law enforcement bodies and prosecutors to investigate and prosecute money laundering offences.

67. **Legal Framework:** Criminal Code (Article 262, Legalization (Laundering) of Illegally Obtained Incomes), Law on amnesty of citizens and legal entities of the Republic of Tajikistan related to the property amnesty (2007)

68. **Criminalization of Money Laundering - Physical and Material Elements of the Offence) (c. 1.1):** There are several different English translations of Article 262. The Prosecutor General's Office (PGO) confirms that in pertinent part Article 262 states: "...**conducting of property deals or other operations with cash assets or other property**, which are known to be obtained by unlawful means, as well as use of such assets or other property for entrepreneurial or other economic activities or their use by other ways...." Emphasis added.

69. Article 262 does not contain definitions. The PGO said that the term "property deal" could be used very broadly to encompass any direct or indirect situation regarding property, including intangible property rights. [But see the more limited definition for property used in the Amnesty Law] "Operations" is not defined but the PGO said that this term is widely used and

understood to include almost any activity. The PGO was not able to articulate any law, regulation or court opinion to support the statements regarding the meaning of these terms and their use in evidence. The Assessors accept the PGO's statement, but the law should be amended to clarify on its face the full range of illegal conduct that it covers.

70. The elements of Article 262 of the Criminal Code (CC) on "Legalization (Laundering) of Illegally Acquired Monetary Assets or Other Property" are:

- a) conducting property deals or other operations with cash assets or other property, or
- b) using such money or other property for conducting "entrepreneurial" or other economic activity, or
- c) conducting economic activity by other methods and
- d) knowing that the money was obtained illegally.

71. According to the Prosecutor General's Office (PGO) article 262 covers conversion, transfer and use of property. The PGO states that the reference of article 262 to "other operations" covers "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property", knowing that such property is the proceeds of crime (see Articles 3.1.b.ii of the Vienna Convention and 6.1.a.ii of the Palermo Convention) and also covers "acquisition and possession" (see Articles 3.1.c.i of the Vienna Convention and 6.1.b.i of the Palermo Convention). The authorities referred to one Supreme Court decision on Article 262 but said that the information was "Secret" and declined to provide a copy to the Assessors. The PGO explained that the lack of definitions does not hamper its ability to investigate anti-money laundering, but no examples of anti-money laundering investigations/ prosecutions were provided.

72. Since there are no statutory definitions or case precedents to support the PGO's interpretation of article 262 the assessment team could not fully share their views regarding this provision. Namely, the provided interpretation is contrary to the principle of legality, since the wording "other operations" does not meet the "*lex certa*" standard. This means that the above mentioned wording is not precise enough to cover also the "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property" and the "acquisition, possession or use of property" as required by international standards.

73. **The Laundered Property (c. 1.2):** There is no definition of property in the statute. See discussion above.

74. **Proving Property is the Proceeds of Crime (c. 1.2.1):** The elements of the offense can be proven using direct, circumstantial and documentary evidence including bank records.

75. **The Scope of the Predicate Offences (c. 1.3):** Article 262 apparently covers all proceeds generating offenses under the Tajik Criminal Code. The following Criminal Code offenses match the FAFT list of designated offenses:

- participation in an organized criminal group and racketeering – art. 185, 186, 187, 250;
- terrorism, including terrorism financing – art. 179, 179.1;
- trafficking in human beings and migrant smuggling – art. 130, 130.1, 131;
- sexual exploitation, including sexual exploitation of children – art. 132;
- illicit trafficking in narcotic drugs and psychotropic substances – art. 200, 201, 202, 202.1;
- illicit arms trafficking – art. 195, 196, 197, 198, 199;
- illicit trafficking in stolen and other goods – art. 254, 268, 269.
- corruption and bribery – art. 295, 314, 316, 317, 319, 320, 321;
- fraud – art. 247;
- counterfeiting currency – art. 281, 282;
- counterfeiting and piracy of products – art. 294;
- environmental crime – art. 220-236 (Chapter 24);
- murder, grievous bodily injury – art. 104-107, 110;
- kidnapping, illegal restraint and hostage-taking – art. 130, 131.
- robbery or theft – art. 244, 248, 249;
- smuggling – art. 289;
- extortion – art. 250;
- forgery – art. 323, 340;
- piracy – art. 183;
- insider trading and market manipulation – art. 273, 274, 284;

76. The PGO advised that conviction for the predicate offense is not necessary for conviction under Article 262 but there is no statutory provision or case law supporting this statement. Moreover, the PGO said that they would need to prove the predicate crime to the standard necessary for a conviction under that crime. Thus, as a practical matter it appears as though a criminal conviction for the predicate offense is necessary for conviction under Art. 262.

77. **Threshold Approach for Predicate Offences (c. 1.4):** There is no threshold requirement.

78. **Extraterritorially Committed Predicate Offences (c. 1.5):** Article 262 does not limit the scope of the laundering offense to proceeds that are derived from domestic offenses. Article 15 of the Criminal Code regulates the case of offences committed outside of Tajikistan, which can be prosecuted according to Tajik law, subject to dual criminality and in the absence of a foreign conviction in the case of Tajik citizens and residents. Foreign nationals and stateless persons can also be prosecuted in cases of offences committed abroad, in the absence of a conviction and if these offences are considered as crimes by international law or if recognized by

treaties or agreements to which Tajikistan is part. The authorities confirmed that they can prosecute money laundering if the predicate offense generating the proceeds has been committed extraterritorially, yet no such case has ever occurred so far. The assessment team's interpretation of the laws does not differ from the one provided by the authorities.

79. **Laundrying One's Own Illicit Funds (c. 1.6):** This issue is not addressed in the Criminal Code. There is nothing in Article 262 which prohibits prosecution for own funds money laundering. The PGO said that someone laundering their own funds can be prosecuted under Article 262.

80. **Ancillary Offences (c. 1.7):** Criminal Code Article 32 covers preparation and attempts (the case in which the action constituting the crime was not completed for circumstances which did not depend on the will of the perpetrator). Preparation covers, among other circumstances the finding accomplices and the "agreement for committing a crime", therefore the conspiracy. However preparation only applies to "felonies." Thus it does not apply to money laundering crimes with a penalty of four years or less which are classified as "petty misdemeanors". See, Art. 32(1) and (2) and Article 18..

81. Article 262 applies to individuals, a group of individuals acting in a conspiracy (Tajik laws calls it a "confederacy) and an organized group. See Art. 39(2)(A crime is considered to be committed by a group of persons by preliminary collusion if perpetrators being involved in a crime arranged beforehand to commit it jointly."

82. Aiding and abetting is covered under Criminal Code Article 36(1).

83. **Additional Element - If an act occurred overseas, but would not constitute an offence overseas, but would be a predicate offence if occurred domestically, would that act constitute an offence of ML (c. 1.8):** The PGO confirmed that this is the case and this seems to be consistent with article 15 of the Criminal Code.

84. **Liability of Natural Persons (c. 2.1):** Article 262 of the Criminal Code criminalizes ML for offences committed by natural persons.

85. **The Mental Element of the ML Offence (c. 2.2):** ML can be punished only if committed intentionally.

86. Tajik legislation does not contain any explicit provision that would permit the intentional elements of the money laundering offence to be inferred from objective factual circumstances. The PGO advised that circumstantial evidence can be used in court. The authorities did not provide any explanation of the laws regarding this requirement. Art. 3 of the Criminal Procedure Code provides some statutory support for the PGO's position. Consequently, the assessment team concluded that criterion 2.2 of the Methodology is not met.

87. **Liability of Legal Persons (c. 2.3):** Although there is no fundamental principle of domestic law which prevents legal entities from being prosecuted legal persons can only be punished via civil and administrative procedures. The PGO explained that Tajikistan has decided as a matter of policy that the best way to punish legal entities is through Administrative Procedure or Civil Code sanctions, which includes fines and revocation of license.

88. **Liability of Legal Persons should not preclude possible parallel criminal, civil or administrative proceedings & c. 2.4):** Legal persons can only be punished via civil and administrative procedures. Authorities provided no information on which provisions applied and/or how the Codes were used generally.

89. **Sanctions for ML (c. 2.5):** The basic ML offense is punishable by a fine equal to a range from 500–1,000 times the minimum salary² or a term of imprisonment of up to four years and a fine in the amount of up to two hundred minimum salaries. In certain circumstances, the penalties are higher: four to eight years imprisonment in the case of repeated offending or action committed by a group of persons acting by prior conspiracy or by a person abusing his or her official position (with or without confiscation of personal assets); seven to ten years of imprisonment if the crime is committed by a criminal organization or “in large amount” (where the value of the proceeds exceeds three thousand minimum salaries).

However, Art. 262, Note 1 provides that, “A person who took part in legalization of illegal incomes is released from criminal liability if he/she assisted in exposing a crime and voluntarily handed over illegally obtained incomes.” The GPO stated that it would have to approve the use of this provision, but it has never been used. There are no policies or procedures on how it is to be administered.

90. Article 57 of the Criminal Code provides for confiscation of property. Article 48 makes confiscation a “Supplementary Sentence”. Confiscation applies to “...all or part of the belongings which are the property of the offender” except those listed in the Criminal Executive Code Appendix. . These range from a “sole cow”, fuel necessary to prepare meal and to heat a living quarters during heating season for a family to a dwelling house with household buildings or its separate parts if a convicted person and his family permanently live there (not more than one house for a family). In a similar fashion these same items may not be seized or arrested. See Criminal Procedure Code, Article 175.

91. Article 262 provides for confiscation following conviction in money laundering cases, but only if the crime is committed repeatedly, by a group of individuals in a conspiracy or by a person using his official position and when there is money laundering by an organized group and in a large amount. Beyond what is set out in Article 57 the law does not otherwise define what can be confiscated (ex. fruits, instrumentalities).

92. **Assessment of Effectiveness:** Since the enactment of article 262 of the Criminal Code there has only been one prosecution (resulting in an acquittal) and no further money laundering investigations/prosecutions took place. The PGO has not issued guidelines on using Article 262. While predicate offenses are investigated line prosecutors and judges consider Article 262 “complicated.” Further, the GPO noted that the illegal proceeds are spent for daily living and not laundered. The Assessors were informed that there was one Supreme Court decision addressing Article 262, but the PGO could not provide a copy because the decision was “Secret.”

² Currently, minimum salary in Tajikistan is 20 Somoni, or approximately US\$6.22. The amount of the fine, therefore, may range from US\$3,100 to US\$6,200.

93. While Government authorities acknowledge that their legislation has to be updated to meet international standards there is no interest in pursuing money laundering investigations or prosecutions. Indeed, the Government has decided that while the Amnesty Law is in force they will not investigate old or new money laundering cases.

94. The Assessors conclude that anti-money laundering is not a law enforcement priority. While officials understand the relationship between money laundering and the systemic corruption in Tajikistan and while they seem content to receive anti-money laundering technical assistance, they do not see any urgency in identifying or prosecuting money laundering cases.

95. It is clear from the above that article 262 of the Criminal Code is not effectively implemented.

2.1.2 Recommendations and Comments

96. With respect to the FATF Recommendation 1, the authorities should consider:

- Repealing the Amnesty Law and/or amending it to permit investigation and prosecution of money laundering violations.
- Amending Article 262 to bring it into line with the provisions of the Vienna and Palermo Conventions, including:
 - Extending the offense of ML to cover any type of property that indirectly represents the proceeds of crime;
 - Adding definitions of “property”, “transactions” and “other operations” in the Criminal Code to make sure that article 262 would also cover “the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property” and the “acquisition, possession or use of property”. Alternatively, the authorities may wish to consider bringing the text of article 262 closer to the money laundering definitions, as contained in article 6 of the Palermo Convention and article 3 of the Vienna Convention, by explicitly incorporating all the missing elements in the text of article 262.
 - Clarify that the reach of Art. 262 is an “all crimes approach”.
 - Clarify that “own money laundering” is a crime.
 - Clarify that conviction for money laundering does not require a prior conviction for the predicate offense.
 - Make attempt, preparation and conspiracy apply to all categories of money laundering, not just “felonies” (more than five years in prison).
- The GPO should put in place procedures for using Article. 262 and use its statutory powers to ensure that the competent law enforcement start investigating the ML offences.

97. With respect to FATF Recommendation 2 the authorities should:

- Ensure that the laws permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances.
- Clarify the criminal, civil and administrative liability for legal persons engaging in money laundering offenses and ensure that the penalties for such are effective, proportionate and dissuasive.

Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating³
R.1	NC	<ul style="list-style-type: none"> • ML criminal offence does not fully correspond to the Vienna and Palermo Conventions, since it doesn't cover also "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property" and the "acquisition, possession or use of property". • The Amnesty Law currently in force prohibits the prosecution of Tajik natural and legal persons for property related money laundering offenses. • ML offence was not effectively implemented in practice since in 9 years there was only one investigation and prosecution under article 262 of the Criminal Code.
R.2	PC	<ul style="list-style-type: none"> • The law does not permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. • While civil and administrative liabilities apply for ML committed by legal persons, no information or examples were provided as to whether these provisions have ever been used.

Criminalization of Terrorist Financing (SR.II)

Description and Analysis

98. **Legal Framework: Criminal Code (articles 179, 179.1, and 35-37.), Law on combating terrorism (article 10, 26 and 27).**

99. Tajikistan signed the 1999 International Convention for the Suppression of the Financing of Terrorism in 2001 and ratified it in 2004.

100. The Law on Combating Terrorism (1999), Article 10 defines "terrorist activity" as including "the funding of a known terrorist organization or terrorist group or other assistance to them". This law, however, is more of a preventive nature and with regard to the liability of natural persons for participating in terrorist activity explicitly refers to the Criminal Code. The only exception applies for the liability of organizations (legal persons) for terrorist activities and is described in article 27, which explicitly provides for (additional) sanctions.

³ These factors are only required to be set out when the rating is less than Compliant.

101. Whilst article 179 (Terrorism) of the Criminal Code (amended in 2004) criminalizes terrorism, article 179.1 (Involvement in commission of crimes of terrorist nature or any assistance rendered to its commission) deals with the involvement in commission of crimes of terrorist nature.

102. Moreover, during the on-site visit the authorities explained that persons who are guilty, directly or indirectly, of providing or collecting funds for the commission of terrorist acts are criminally liable for offences committed by terrorists as accomplices to those offences, as provided in articles 35 to 37 of the Criminal Code.

103. **Criminalization of Financing of Terrorism (c. II.1):** As stated above, article 179 of the Criminal Code sets forth the offence of terrorism, which is defined as “the accomplishment of explosion, arson, shooting of firearms or other actions, which create the danger of loss of people, reason for significant property damage to or offense other publicly dangerous consequences, if these actions are perfected with the purpose of disturbance of public safety, frightening of population or rendering of action on decision making by the organs of authority, and also threat of accomplishment of actions for the same purposes indicated.”

104. Article 179.1 of the Criminal Code provides for ancillary offenses to the crime of terrorism and reads as follows:

“1) Involvement of the person in commission of the crime stipulated by Articles 179, 181, 184, 185, 310 and 402 of the present Code, or declination of the person to participate in activity of the terrorist organization, armament or training of people with a view of commission of the specified crimes, as well as financing of terrorist act or terrorist organization, shall be punished by imprisonment for five to ten years.

2) The same actions, undertaken by people repeatedly or by misusing official power, shall be punished by imprisonment for ten to fifteen years with deprivation of the right to take certain posts or to be engaged in certain activity for five years.”

105. Article 179.1 also provides that a person is “released from criminal liability, if he/she assists in preventing the act of terrorism by informing in time the organs of state power or by other manner, and if there is no other elements of crime in his/her actions”.

106. According to the authorities, persons who are guilty, directly or indirectly, of providing or collecting funds for the commission of terrorist acts are criminally liable for offences committed by terrorists as accomplices to those offences, as provided in articles 35 to 37 of the Criminal Code. In accordance with article 36, paragraph 1, of the Criminal Code, a person who organizes, instigates or abets an offence is deemed an accomplice to that offence, alongside the perpetrator. Pursuant to article 37, paragraph 1, of the Criminal Code the liability of the accomplices to an offence is determined by the nature and degree of the actual participation of each of them in its commission, and they are liable for committing specific offences under the same article of the Criminal Code as perpetrators of terrorist acts. According to the authorities the very fact of collecting funds for the commission of such offences is thus sufficient grounds for the criminal prosecution of the guilty party.

107. The analysis of the provisions mentioned above shows that terrorist financing – while criminalized in the Criminal Code Article 179/1 and the Law on Combating Terrorism – does not

apply to the founding of individual terrorists. This is contrary to the requirements contained in FATF Special Recommendation II.

108. The laws do not define “financing”. The reference to “financing” is not sufficient to determine whether it entails both the willful “provision” and the “collection” of funds by any means, with the unlawful intention that they should be used, or in the knowledge that they are to be used, for carrying out terrorist acts or by terrorist organizations.

109. Furthermore, the above-mentioned provisions do not contain the definition of “funds”, as defined in article 1 of the International Convention for the Suppression of the Financing of Terrorism. It is therefore clear that in the absence of any case law the Tajik legislation is not in compliance with the FATF Special Recommendation II.

110. The PGO stated that the crime of terrorist financing could be prosecuted if the funds were not actually used to carry out or to attempt a terrorist act(s) or if they were not linked to a specific terrorist act(s), but they provided no statutory provisions or case law to support their position. As mentioned earlier in this report the principles of “lex certa” and legality shall apply to all definitions of criminal offences. In the absence of the explicit provision in the law and court practice the assessment team disagrees with the interpretation provided by PGO.

111. **Predicate Offence for Money Laundering (c. II.2):** Terrorist financing cannot be a predicate for money laundering if the funds came from legal sources as Criminal Code Article 262 criminalized only “property obtained illegally...” If criminal proceeds were used then terrorist financing would be a money laundering predicate.

112. **Jurisdiction for Terrorist Financing Offence (c. II.3):** Article 179.1 of the Criminal Code does not limit the scope of the terrorist financing offence on the basis of the location of a person who has committed the offence.

113. As mentioned above, article 15 of the Criminal Code establishes the conditions under which a person who commits a criminal offence outside the Republic of Tajikistan can be held liable in accordance with the Tajik Criminal Code. According to this provision the terrorist financing offence described in article 179.1 applies regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist organization is located or the terrorist act occurred.

114. Regarding this issue also article 11 of the Law on combating terrorism should be mentioned since it contains a separate definition of “international terrorist activity”. According to this article the international terrorist activity includes activities which are carried out:

- “by a terrorist or terrorist organization on the territory of more than one state;
- by citizens of one state against citizens of another state or on the territory of another state;
- in cases where both the terrorist and the victim of terrorism are citizens of the same state or different states but the crime is committed outside the territories of these states;
- with the aim of destabilizing the international legal order.”

115. As mentioned, the terrorist activity under article 10 of the Law on combating terrorism includes also the funding of a known terrorist organization or terrorist group, which

means that this definition applies also to the international terrorist activities described above. Notwithstanding the limited nature of this law, article 11 provides more clarity regarding the application of the provisions related to the financing of terrorism to cases envisaged under the essential criteria II.3 of the Methodology.

116. **The Mental Element of the FT Offence (applying c. 2.2 (in R.2) (c. II.4):** According to PGO their laws cover any person who willfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act, by a terrorist organization or by an individual terrorist. While this may be the intended scope of the laws the Assessors do not believe that the words of the statute support this statement. Article 179.1 of the Criminal Code only prohibits financing of terrorist act or terrorist organization.

117. Tajik legislation does not contain any explicit provision that would permit the intentional elements of the financing of terrorism offence to be inferred from objective factual circumstances. The authorities did not provide any explanation or interpretation of the laws regarding this requirement. Consequently, the assessment team concluded that the essential criteria II.4 of the Methodology are not met.

118. **Liability of Legal Persons (applying c. 2.3 & c. 2.4 (in R.2) (c. II.4):** As explained above, legal entities are not criminally liable in Tajikistan. Nevertheless, legal persons can be punished via civil and administrative procedures.

119. In addition, article 27 of the Law on combating terrorism provides that in cases when the court recognizes an organization as a terrorist organization it shall disband it and confiscate its property.

120. **Sanctions for FT (applying c. 2.5 (in R.2) (c. II.4):** A sanction for committing a terrorist offence under article 179 of the Criminal Code is imprisonment from five to ten years. In some circumstances the punishment is aggravated: when the offense is committed by a group of people with a preliminary agreement or repeated (imprisonment from eight to fifteen years with the confiscation of property); or when the offense is committed by a criminal organization or if the act is connected with the threat of the application of a weapon of mass-destruction, radioactive materials and accomplishment of other actions, capable of entailing the mass loss of people (imprisonment from fifteen to twenty years with confiscation of property or capital punishment or life incarceration).

121. Under Article 179.1 of the Criminal Code involving a person in “financing a terrorist act or a terrorist organization” is punishable by imprisonment from five to ten years. If done by a government official the term of imprisonment is 10-15 years with forfeiture of right to hold certain posts or engage in certain activities for up to 5 years.

122. However, if, having committed an offense, a person voluntarily, and in a timely manner, provides information to the authorities and helps to prevent the commission of a terrorist offense – the person is exempt from criminal liability – provided that the acts of the person entail no other *corpus delicti*. The PGO said that people are too scared to offer cooperation on these cases.

123. **Assessment of Effectiveness:** No statistics or other relevant data were provided to the assessment team. Based upon the interviews of government officials it can be concluded that the current laws are not often used in practice.

124. However, according to some publicly available sources⁴ some actions were taken against a number of terrorist organizations. Namely, by decision of the Supreme Court of Tajikistan of 30 March 2006, the following organizations were deemed to be terrorist and extremist and forbidden to engage in activities within the Republic of Tajikistan:

- Al-Qaida
- The Taliban
- The Muslim Brotherhood
- The East Turkestan Islamic Movement
- The Islamic Party of Turkestan (formerly the Islamic Movement of Uzbekistan)
- Lashkar-e-Tiba
- The Islamic Group (Jamiat-i-Islam-Pakistan)
- Jamiat-e-Tablic
- The religious missionary organization Sozmoni Tablig (Call to Islam)
- Free Tajikistan (Tochikistoni Ozod, founded by the leaders of the anti-constitutional forces).

Recommendations and Comments

125. The authorities should:

- Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that criminal offence of financing of terrorism applies also to founding of individual terrorists.
- Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that financing of terrorism applies to both the willful “provision” and “collection” of funds.
- Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that financing of terrorism offence includes “funds”, as defined in article 1 of the International Convention for the Suppression of the Financing of Terrorism.
- Amend article 262 of the Criminal Code and/or other relevant provisions to ensure that terrorist financing can be a predicate offence for money laundering also when the funds derive from legal sources.
- Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that the financing of terrorism offence can be prosecuted also if the funds were not actually used to carry out or to attempt a terrorist act(s) or if they were not linked to a specific terrorist act(s).

⁴ See answers from the Government of the Republic of Tajikistan to the note dated 4 April 2006 from the Chairman of the Counter-Terrorism Committee of the United Nations Security Council, S/2006/400 (16 June 2006).

Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> • Terrorist financing offences do not apply to funding of individual terrorists. • Terrorist financing offences are not extended to person who willfully provides or collects funds with the unlawful intention that they should be used to carry out a terrorist act, by a terrorist organizations, or by an individual terrorist. • Terrorist financing offences do not extend to cover “any funds” as defined in the International Convention for the Suppression of the Financing of Terrorism. • Terrorist financing offences are not predicate offences for money laundering when the funds derive from legal sources. • Terrorist financing offences require that the funds were actually used to carry out or attempt a terrorist act(s); or be linked to a specific terrorist act(s). • No statistics or other data were provided regarding the investigations/prosecutions of terrorist financing offences.

Confiscation, freezing and seizing of proceeds of crime (R.3)

Description and Analysis

126. **Legal Framework:** Criminal Code (articles 47, 48, 57, 179, 179.1 and 262), Criminal Procedure Code (articles: 63, 77-80, 167, 168, 171, 175, 176 and 177), Civil Code (article 267), Law on banks and banking (article 33), Law on National Bank of Tajikistan (article 44).

127. Articles 47 and 48 of the Criminal Code determine “confiscation of property” as a sanction, which may only be imposed by the court as an additional punishment (supplementary sanction) in cases explicitly prescribed by the special part of the Criminal Code, which defines criminal offences.

128. Article 57 of the Criminal Code defines the word “confiscation” and reads as follows:

- “Confiscation of property means final, uncompensated taking by the State **of all or part of the belongings which are the property of the offender**
- Confiscation of property is **prescribed for felonies or especially grievous crimes committed with mercenary motives** and it may be imposed by a Court only in cases provided for by corresponding articles of the Special Part of the Code.
- **Belongings being necessary for the convict and his dependents are not subject o confiscation** according to the list specified by the criminal executive Code of the Republic of Tajikistan.” Note: The Appendix to the Criminal Executive Code describes

these items which range from a “sole cow” to a dwelling house with household furnishings. Emphasis added.

129. In addition, article 27 of the Law on combating terrorism establishes another ground for confiscation. Namely, it provides that in cases when in accordance with a court’s decision an organization is recognized as terrorist it shall be disbanded and its property shall be confiscated and transferred to state ownership.

130. Moreover, similar provisions related to the confiscation could also be found in article 267 of the Civil Code, which read as follows:

- In cases stipulated by the law the property may be taken without compensation from an owner upon the decision of a court as a sanction for the commission of a crime or other violation of the law.
- In cases stipulated by the law the confiscation can be conducted by administrative procedure. The decision on confiscation taken by administrative procedure may be appealed in the court.

The authorities were not able to provide any information on how this appeal would work after conviction in a criminal case.

131. The Criminal Procedure Code in articles 77 - 80 provides a definition of “material evidences” and describes a procedure of keeping and storing material evidences and measures that have to be taken with regard to them. Article 63 of the same law determines a procedure for the collection of evidence. However, neither these provisions nor Articles 167-176, Criminal Procedure Code can expand Criminal Code Article 57 which provides “Confiscation of property means final, uncompensated taking by the State **of all or part of the belongings which are the property of the offender.**” Emphasis added.

132. Material evidences are defined in article 77 as “items, which were the crime instruments, or have traces of the crime, or were the objects of crime, including money and other valuable items, acquired due to the criminal activity, and any other items that could be used as a means to clarify traces of crime, define actual case circumstances, identify guilty people or rebut accusation or reduce the degree of charges.”

133. Article 80 of the Criminal Procedure Code further provides that any issues related to the material evidences should be resolved in verdict, sentence or resolution on case termination. Inter alia, it also stipulates the following:

- crime instruments belonging to the accused have to be confiscated and forwarded to the relevant institutions or destroyed;
- money and other valuable items, acquired due to the criminal activity, have to be given to the state;
- other items should be provided to their legal owners.

The GPO advises that cash had to be taken to the bank; and that Court Marshals carries out court ordered confiscation. The authorities did not provide written procedures on how it operates or examples of how it works in practice.

134. Regarding the provisional measures the Criminal Procedure Code recognizes two grounds for taking such measures. According to articles 167 and 168 the investigator should seize the instruments of crime, the objects and the valuables gained through crime, and also objects and documents, which can be important for criminal case. In addition, article 175 of the Criminal Procedure Code requires that in order to secure the civil claim or possible confiscation of property the investigator shall “arrest the property” of the accused or suspected person or the person bearing under the law material liability for their action or other persons who have property gained through crime.

135. **Confiscation of Property related to ML, FT or other predicate offences including property of corresponding value (c. 3.1):** It is clear from the above that articles 77 and 80 of the Criminal Procedure Code provide for confiscation of property that has been laundered or which constitutes proceeds from and instrumentalities used in the commission of any criminal offence including ML, FT and other predicate offences. Regarding money laundering confiscation can take place so long as the items belong to the defendant. The law does not address what should be confiscated from others. However, the legislation does not provide for the confiscation of property which constitutes the instrumentalities intended for use in the commission of criminal offences.

136. The above mentioned Tajik legislation does not contain provisions related to the confiscation of property of corresponding value. Thus, any other property can only be confiscated based on article 48 of the Criminal Code and article 27 of the Law on combating terrorism and under the conditions described above.

137. With respect to the money laundering offence a confiscation as a supplementary sanction can be ordered by the court only for aggravating money laundering cases as defined in paragraphs two and three of article 262 of the Criminal Code (if money laundering is committed on a repeated basis, by a person using his official position, by a group of conspirators, an organized group or in a large amount). This means that confiscation of property as a supplementary sanction is not possible with regard to the basic money laundering offence as defined in paragraph one of article 262 of the Criminal Code.

138. Confiscations as a supplementary sanction is not envisaged under article 179.1 of the Criminal Code, which deals with the financing of terrorism. This means that with the exception of the property belonging to terrorist organizations, which can be confiscated under article 27 of the Law on combating terrorism, no other confiscation of property is permitted in relation to the financing of terrorism. Of course, the proceeds from the financing of terrorism offences and the instrumentalities used for committing such offences can be confiscated under articles 77 and 80 of the Criminal Procedure Code.

139. **Confiscation of Property Derived from Proceeds of Crime (c. 3.1.1 applying c. 3.1):** Although property is not directly defined in the legislation, article 57 of the Criminal Code

clearly determines that everything belonging to the defendant, except the items necessary to live, can be seized.

140. Article 77 of the Criminal Procedure Code does not explicitly cover a confiscation of property that is derived directly or indirectly from proceeds of crime and the relevant Tajik authorities did not provide any explanations regarding the interpretation of this article. Thus, the assessment team came to the conclusion that such property can only be confiscated under the general confiscation provisions contained in article 48 of the Criminal Code and article 27 of the Law on combating terrorism and under the conditions described there. This means that confiscation is possible for money laundering offence only under paragraphs two and three of article 262 of the Criminal Code, and it is not possible for financing of terrorism under article 179.1 of the Criminal Code.

141. Articles 63 and 77 of the Criminal Procedure Code does not prevent the confiscation of “material evidences” if they are held or owned by a third party. A more specific provision is contained in article 175 of the Criminal Procedure Code, which clearly requires that in order to secure the civil claim or possible confiscation of property the investigator shall “arrest the property” of the accused or suspected person or the person bearing under the law material liability for their action or other persons who have property gained through crime. This means that confiscation of the proceeds from crime and instrumentalities used in the commission of any criminal offence is obligatory even if they are held or owned by a third party.

142. Neither the GPO nor the law enforcement agencies were able to provide any example of when they seized or confiscated funds or other property relating to money laundering or financing of terrorism. As there was only one money laundering case in nine years (which resulted in acquittal), the GPO was not able to provide any information on the use of the confiscation authority in practice. Nor were they able to provide any examples of confiscation in non-money laundering and non-financing of terrorism cases.

143. **Provisional Measures to Prevent Dealing in Property subject to Confiscation (c. 3.2):** As mentioned above, the provisional measures are mandatory under articles 167, 168 and 175 of the Criminal Procedure Code.

144. In addition, paragraph six of article 44 of the Law on National Bank of Tajikistan empowers the NBS to suspend any banking operations for up to seven days upon receiving a written request from the authorities responsible for ML investigations. As mentioned in section related to the FATF SR III, this power can only be used if the banking operations are suspicious from the ML point of view.

145. The law enforcement agencies, PGO and NBS did not provide any statistics or examples of cases where provisional measures were taken in respect of any criminal offence.

146. **Ex Parte Application for Provisional Measures (c. 3.3):** Article 175 of the Criminal procedure Code allowing for provisional measures refers to a “justified resolution” that has to be issued by the investigator on arresting the property. The law remains silent as to when this resolution has to be issued and who shall have the right to receive it. The laws do not explicitly

prohibit applying the freezing or seizing of property to be made ex-parte or without prior notice. The authorities provided no information on confiscation activities or how the statutes might be applied in practice.

147. **Identification and Tracing of Property subject to Confiscation (c. 3.4):** Several law enforcement authorities have adequate powers to identify and trace property that is, or may become subject to confiscation or is suspected of being the proceeds of crime (see more under the Chapter of this report dealing with the FATF Recommendations 27 and 28).

148. **Protection of Bona Fide Third Parties (c. 3.5):** As already stated above, paragraph five of article 5 of the Law on National Bank of Tajikistan provides that “all statutory acts and regulations of the National Bank may be appealed in accordance with the procedures established by law”.

149. Decisions to “arrest the property” under articles 167 and 175 of the Criminal Procedure Code are subject to an automatic review of the PGO under article 212 of this law. In addition, article 219 provides that a complaint against the actions of the inquiry body or investigator could be filed with the GPO. Filing a complaint could only suspend the execution of the appealed action if the person conducting the investigation, investigator or prosecutor found it to be necessary. Article 220 of this law requires prosecutor to examine the complaint within three days of its receipt and inform the applicant of the results of the examination. Complaints against actions and decisions of a prosecutor can be submitted to a prosecutor of a higher rank.

150. Article 80 of the Criminal Procedure Code provides that items that were seized as material evidences (and were not acquired due to the criminal activity) should be provided to their legal owners. In case of arguing about owning of these items the dispute shall be resolved in the civil proceedings.

151. During the on-site meetings the authorities explained that the above mentioned provisions apply also to the bona fide third parties. However, the authorities provided no examples of citizens contesting the confiscation powers of the government generally, and none related to money laundering. The assessors do not have any basis to conclude that it is possible, in practice, for third parties to contest seizure/confiscation or that they could do so successfully.

152. **Power to Void Actions (c. 3.6):** There is no authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

153. **Additional Elements – Provision for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (c. 3.7):** There is no statutory provision for any of these additional elements.

Recommendations and Comments

154. The authorities should amend the Criminal Code and/or the Criminal Procedure Code to:

- Provide for confiscation of property that constitutes instrumentalities intended for use in the commission of ML, FT or other predicate offences.
- Provide for confiscation of property of corresponding value, as required under the Palermo and Vienna conventions and FATF Recommendation 3, if the original proceeds are no longer available or have been transformed or converted.
- Provide for confiscation of property that is derived directly or indirectly from proceeds, including the income, profits or other benefits from the proceeds of crime, outside the confiscation regime envisaged under article 48 of the Criminal Code and article 27 of the Law on combating terrorism.
- Establish a competent authority with powers to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of the actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

155. PGO and competent law enforcement authorities should use their powers to use provisional measures in ML and FT cases as well as in cases related to predicate offences.

156. The authorities should consider adopting confiscation measures as envisaged under the additional criteria 3.7 of the Methodology, as described above.

Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	<ul style="list-style-type: none"> • The legislation does not provide for confiscation of property that constitutes instrumentalities intended for use in the commission of ML, FT or other predicate offences. • The legislation does not provide for confiscation of property of corresponding value, as required under the Palermo and Vienna conventions and FATF Recommendation 3. While confiscations of property, other than the proceeds of crime and instrumentalities, is determined as a supplementary sanction, it does not apply for the basic ML offence under paragraph one of article 262 and for the FT offence under article 179.1 of the Criminal Code. • Confiscation of property that is derived directly or indirectly from proceeds of crime is possible only as a supplementary sanction under article 48 of the Criminal Code and article 27 of the Law on combating terrorism, yet it is not allowed for all ML offences and for the FT offences. Moreover, it can't be applied also in respect of predicate offences.

		<ul style="list-style-type: none"> • There is no authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of the actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • There are no statistical data or examples of using effectively the confiscation and/or provisional measures.
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Freezing of funds used for terrorist financing (SR.III):

Description and Analysis

157. **Legal Framework:** Criminal Code (articles 47, 48 and 57), Criminal Procedure Code (articles 167, 168, 171, 175, 212, 219 and 220), Law on combating extremism (articles 3, 8 and 20), Law on combating terrorism (articles 10, 11, 14, 26 and 27), Law on banks and banking activity (article 33) and Law on National Bank of Tajikistan (articles 5, 44, 47 and 48).

158. **Freezing Assets under S/Res/1267 (c. III.1):** Tajikistan did not adopt any specific laws or procedures in order to implement its freezing obligations under the UN Security Council Resolution 1267 and its successor resolutions. Instead it implemented these resolutions directly by relying on the existing powers of the competent authorities which are based on criminal standards set out under the Criminal Procedure Code, the Law on combating extremism and the Law on combating terrorism. Some additional provisions relevant for the implementation of the UN Security Council resolutions (hereinafter referred as to UNSC resolutions) could also be found in the Law on banks and banking activity and the Law on National Bank of Tajikistan.

159. As discussed above, the Law on Criminal Procedure recognizes two grounds for taking provisional measures, such as seizure of property. According to articles 167 and 168 the investigator should seize the instruments of crime, the objects and the valuables gained through crime, and also objects and documents, which can be important for criminal case. In addition, article 175 requires that in order to secure the civil claim or possible confiscation of property the investigator shall “arrest the property” of the accused or suspected person or the person bearing under the law material liability for their action or other persons who have property gained through crime.

160. Articles 47 and 48 of the Criminal Code determine confiscation as a sanction, which may only be imposed by the court as a supplementary sanction in cases directly prescribed by the special part of the Criminal Code. As mentioned above, this means that in cases related to terrorism confiscation may only be ordered under paragraphs two and three of article 179 (Terrorism).

161. In addition, article 27 of the Law on combating terrorism establishes another ground for confiscation. Namely, it provides that in cases when in accordance with a court's decision an organization is recognized as terrorist it shall be disbanded and its property shall be confiscated and transferred to state ownership. This law in article 14 also requires state officials and citizens to promptly inform the state security bodies and the law enforcement bodies about any incident that features evidences of preparation or implemented terrorist action. Since the "terrorist activity", as described in article 1 of this law, includes also the funding of a known terrorist organization or terrorist group, it means that the law *inter alia* requires also reporting of FT cases. Nevertheless, as stated above, the law doesn't cover the reporting of funding of individual terrorists.

162. A similar provision requiring officials and private individuals to notify the state security bodies and the law enforcement bodies of all incidents containing signs that extremist activity is being planned or committed, is included also in paragraph two of article 8 of the Law on combating extremism. The term "extremism", as defined in article 3 of this law, includes also "the performance of terrorist activity".

163. Two additional provisions should be mentioned in the context of provisional measures as required under the UN Security Council resolutions. Article 33 of the Law on banks and banking activity allows for a seizure of monetary assets and other valuables kept in a bank based on "a court order or a resolution of preliminary investigation agencies if a prosecutor's sanction is available." Paragraph two of this article requires banks to immediately stop transactions upon a receipt of a seizure order. Moreover, paragraph five of this article allows for confiscation of funds in a bank only on the basis of a verdict of the court which has come into force.

164. According to paragraph six of article 44 of the Law on National Bank of Tajikistan the NBS has the right to suspend any banking operations for up to seven days upon receiving a written request from the authorities responsible for ML investigations. However, this power can only be used if the banking operations are suspicious from the ML point of view. State Security wants broader access to bank records.

165. Regarding the lists of persons designated by the UN Al-Qaida and Taliban Sanctions Committee the National Bank explained that their Department 1 handles the UN lists which are provided by the Ministry of foreign affairs. However, the Ministry of foreign affairs stated that they send the UNSC lists of designated persons to SNSC, which then sends both the list and the request for freezing the accounts to the National Bank. According to the Ministry of foreign affairs statement the National Bank shall then send the list of designated persons to the banks.

166. During the meetings with representatives of the commercial banks the assessment team was told that while one bank receives the lists of designated persons only from the foreign embassies, the other bank stated that they receive such lists from the National Bank.

167. The assessment team met with the representatives of the Department for registration of legal entities in the Ministry of justice, the Tax committee under the Government of Tajikistan,

CSuG, and the Department for precious metals and stones in the Ministry of Finance. The above mentioned officials could not provide the team with a copy of the list of designated persons, nor could they remember to receive, see or use such a list during the inspection or licensing of legal and other entities that fall under their competence.

168. During the on-site mission several Tajik authorities confirmed that no assets have been frozen as yet under the UNSC Resolution 1267.

169. It is clear from the above that the current freezing regime is based exclusively on criminal standards, which don't permit freezing of assets outside the criminal or pre-criminal procedure. Therefore, the existing laws do not allow for seizure of legally obtained property of a designated person unless he/she is suspected to commit a crime or he/she has property gained through crime. The laws and related procedures regarding the freezing of terrorist funds or other assets of designated persons are thus not effective, nor can such freezing take place without delay. Furthermore, duration of the freezing orders issued under the criminal legislation is limited and it does not depend on whether or not a suspect is still on the list of persons designated by the competent UN Committee, as required by the UNSC resolution 1267.

170. **Freezing Assets under S/Res/1373 (c. III.2):** In general, the legislative framework described in relation to UNSC Resolution 1267 applies also in cases covered under the UNSC Resolution 1373.

171. However, in the note verbale dated 23 May 2003, which the Permanent Mission of Tajikistan to the UN sent to the Chairmen of the committee established pursuant to resolution 1267, the Tajik authorities stated that in order to implement the UNSC Resolution 1373 the National Bank issued an order No. 21/62-2559 on 15 November 2001. The order requires commercial banks to freeze funds and other financial assets or economic resources of persons and organizations that directly or indirectly commit or attempt to commit terrorist acts and participate in the commission of terrorist acts or assist in their commission. This order has not been provided to the assessment team, nor have the authorities referred to it during the discussions on the implementation of the UNSC resolutions. Nevertheless, the assessment team could establish that under article 5 of the Law on the National Bank the National Bank is authorized to issue statutory acts and regulations that are binding upon all banks and credit institutions, as well as legal entities and individuals.

172. Notwithstanding of the fact that the assessment team could not check the provisions of the above mentioned order, the note verbale provide enough information to be able to conclude that the order of the National Bank only applies to commercial banks. This means that other financial organizations, as well as other legal and natural persons are not bound by this order.

173. In the note verbale the Tajik authorities also stated that in 2003 their security agencies arrested 16 leaders of the underground radical extremist party Khizb-ut-Tahrir and seized and confiscated 60 diskettes, 2 copying machines, 5 binding machines and more than 20,000 copies of subversive and terrorist-extremist literature. Six criminal cases were instituted under articles

187 (Organizing a Criminal Organization) and 307 (Public Calls to Forceful Changing the Constitutional System of the Republic of Tajikistan) of the Criminal Code. It remained unknown as to whether members of the mentioned extremist party had any accounts or deposits in Tajik financial institutions and if any actions have been taken to identify and freeze such accounts or deposits.

174. With the exception of the reporting obligations under article 8 of the Law on combating extremism, article 14 of the Law on combating terrorism and the above mentioned order of the National Bank there are no other laws or special procedures in place requiring the non-banking institutions or/and other legal persons to regularly control transactions of their clients in order to freeze terrorist funds or other assets of persons designated in the context of the UNSC resolution 1373. Furthermore, representatives of several governmental authorities stated that they did not receive, see or use any lists of designated persons during the inspection or licensing of legal and other entities that fall under their competence.

175. **Freezing Actions Taken by Other Countries (c. III.3):** Apart from the mutual legal assistance provisions Tajik laws do not establish any special procedure to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdiction.

176. However, according to the above mentioned note, the National Bank, after receiving a note from the Embassy of the United States of America on 1 April 2002, issued another order (No. 21/20-1077 of 3 May 2002) requiring commercial banks to close all accounts belonging to the Al-Alqsa Martyrs Brigade and to take urgent measures to freeze their assets. Once again, the authorities did not provide a copy of this order and did not refer to it during the evaluation process. Therefore, it remained unknown whether any accounts have been closed or assets have been frozen on the basis of this order and how, if at all, have the authorities determined the existence of reasonable grounds to initiate this freezing action. For the same reason it is also unknown whether this order was issued without prior notice to the organization concerned.

177. Based upon the representations of authorities, the assessment team concluded that the government was able to give effect to the freezing actions initiated by foreign authorities. There had been an issue of timeliness in one instance in the past, but authorities stated that, if appropriate information is available with the request, freezing of assets is done in a timely manner consistent with international standards.

178. **Extension of c. III.1-III.3 to funds or assets controlled by designated persons (c. III.4):** The above mentioned legislative acts do not contain any explicit provision that would extend the freezing actions also to funds or other assets wholly or jointly owned or controlled by designated persons, terrorists, those who finance terrorism or terrorist organizations, and funds or other assets derived or generated from funds or other assets owned or controlled by these persons or terrorist organizations. Regarding this issue the competent authorities did not provide their interpretation of laws and in the absence of the court practice the assessment team could not fully assess the compliance with the FATF Special Recommendation III as far as the essential criteria III.4 of the methodology is concerned.

179. **Communication to the Financial Sector (c. III.5):** As mentioned earlier, the assessment team received contradicting information regarding the distribution of lists of designated persons to commercial banks. While one bank confirmed during the meeting that they received lists of designated persons, another bank only received such lists from the foreign embassies. In this regard the assessment team came to the following conclusions:

- the lists of designated persons under the UNSC resolution 1267 was not distributed to the non-banking financial institutions nor to all commercial banks;
- the freezing actions under the UNSC resolution 1373 were introduced in the form of Central Bank orders, yet this was only communicated to the commercial banks and not to the non-banking financial institutions;
- Tajik authorities did not take any actions to integrate, organize, publish and update without delay the designated persons list, as foreseen in the FATF Best Practices paper related to the implementation of the FATF SR III;

180. **Guidance to Financial Institutions (c. III.6):** Apart from the general obligation in the laws discussed above, there is no other clear guidance provided to all financial institutions with respect to their obligations in freezing terrorist-related funds.

181. **De-Listing Requests and Unfreezing Funds of De-Listed Persons (c. III.7):** Tajikistan has designated domestically and on the basis of the freezing mechanism initiated by a foreign jurisdiction some entities for the purpose of freezing terrorism-related funds. However, there are no publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities. During the on-site mission the assessment team was advised that the de-listing process would include a request to the Ministry of security or using the right of all citizens to apply to the courts for redress against state actions. The authorities did not provide any legislative act or identify the provisions that they were referring to in their statement.

182. **Unfreezing Procedures of Funds of Persons Inadvertently Affected by Freezing Mechanism (c. III.8):** There are no effective and publicly known procedures for unfreezing of funds that have been mistakenly frozen. The only provision that partially addresses this issue could be found in paragraph eight of article 175 of the Criminal Procedure Code, which applies to seizure of property aimed to secure civil claim and possible confiscation of property. According to this provision the “arrest of property should be repealed by the resolution of the investigator if there is no further need to apply this measure”. No other safeguards or guarantees of the prompt release of such funds have been established and this loop-hole in the legislation could be detrimental to the rights of individuals and operations of legitimate business.

183. **Access to frozen funds for expenses and other purposes (c. III.9):** The Law on combating terrorism contains specific provisions regarding the rights of the victims of terrorist actions, yet there is no reference in this law or in any other legislative act to procedures for authorizing access to funds that were frozen pursuant to the UNSC Resolution 1267. The laws do not provide for the release of funds under the freezing regime, such as funds that are necessary

for basic expenses (e.g. payments for foodstuffs, rent or mortgage, taxes etc.) or for extraordinary expenses, as required under the UNSC Resolution 1452 (2002).

184. **Review of Freezing Decisions (c. III.10):** Paragraph five of article 5 of the Law on National Bank of Tajikistan provides that “all statutory acts and regulations of the National Bank may be appealed in accordance with the procedures established by law”. The authorities did not provide any explanation regarding these procedures.

185. Decisions to freeze under articles 167 and 175 of the Criminal Procedure Code are subject to an automatic review of the PGO under article 212 of this law. In addition, article 219 provides that a complaint against the actions of the inquiry body or investigator could be filed with the GPO. Filing a complaint could only suspend the execution of the appealed action if the person conducting the investigation, investigator or prosecutor found it to be necessary. Article 220 of the law requires prosecutor to examine the complaint within three days of its receipt and inform the applicant of the results of the examination. Complaints against actions and decisions of a prosecutor can be submitted to a prosecutor of a higher rank.

186. **Freezing, Seizing and Confiscation in Other Circumstances (applying c. 3.1-3.4 and 3.6 in R.3, c. III.11):** The above-mentioned provisions related to freezing, seizing and confiscation of funds apply in all circumstances and no other provisions exist regulating this issue. As discussed above, the confiscation and related provisional measures can only be applied in FT cases under paragraphs two and three of article 179, and in ML cases under paragraphs two and three of article 262 of the Criminal Code. There is no authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. The authorities did not provide any additional information in this regard.

187. **Protection of Rights of Third Parties (c. III.12):** Tajik legislation does not provide for protection for the rights of bona fide third parties and the authorities did not take any other measures to this effect.

188. **Enforcing the Obligations under SR III (c. III.13):** Article 47 of the Law on National Bank of Tajikistan empowers the NBT to conduct inspections of banks and credit institutions and to apply legal sanctions. Violations of the NBT orders, including those related to freezing of funds of designated persons/entities can be sanctioned under article 48 of the mentioned law. The NBT has a variety of sanctions and measures on its disposal, such as for example the right to require the bank to correct the revealed violations, the right to impose fines and to revoke a banking license.

189. Apart from the NBT powers described above there is no elaborate regime for the implementation of the freezing, seizing and confiscation obligations under the FATF SR III. Powers are given to various law-enforcement agencies, GPO and the courts to sanction for failure to comply with the instructions/resolutions that are available to these agencies.

190. In separate meetings with the NBT and banks the assessment team was not satisfied that banks' due diligence in implementation of the obligations to identify accounts related to listed persons was adequately conducted. There were no sanctions imposed on banks for failure to carry out appropriate checks against the list of persons and entities related to terrorism. Thus the assessment team drew a conclusion that some banks have not received the lists of designated persons and that the monitoring of their obligations is weak. Other non-bank entities have not received the lists as well, and this raises serious concerns regarding the actual implementation of the obligations under the UNSC resolutions 1267 and 1373.

191. **Additional Element (SR III) - Implementation of Measures in Best Practices Paper for SR III (c. III.14):** Apart from the legal provisions and measures already described above, the authorities have not implemented any other measure set out in the FATF Best Practice Paper for SR III.

192. **Additional Element (SR III) - Implementation of Procedures to Access Frozen Funds (c. III.15):** Tajik authorities have not implemented procedures to authorize access to funds that were frozen pursuant to the UNSC Resolution 1373.

Recommendations and Comments

193. Tajik legal framework is obviously inadequate and has to be updated in order to facilitate the work of the competent authorities in controlling the flows of funds relating to terrorism. To that end, the authorities should consider the following:

- Provisions related to confiscation and provisional measures should be amended as suggested under chapters 2.2 and 2.3 of this report.
- The procedures to freeze terrorist funds or other assets of persons designated under the UNSC Resolutions 1267 and 1373 should be adopted. The authorities may determine these procedures in the Law on Combating Terrorism or in another law, as appropriate, and should ensure that the procedures are binding to all legal and natural persons, and in particular to all financial and non-financial institutions.
- Clearly define procedures and grounds for taking freezing actions under the freezing mechanisms of other jurisdiction. These procedures should ensure that decisions as to whether the authorities should initiate such freezing actions are taken without delay.
- The legislative or/and other procedures should be adopted to ensure that freezing actions also include funds or other assets wholly or jointly owned or controlled by designated persons, terrorists, those who finance terrorism or terrorist organizations, as well as funds or other assets derived or generated from funds or other assets owned or controlled by these persons or terrorist organizations. In order to achieve this goal the authorities may wish to consider amending the confiscation provisions in the Criminal Code and the Criminal Procedure Code.
- Supervisory and/or other competent authorities should develop systems for communicating actions taken under the freezing mechanisms to non-banking financial

institutions. The existing systems applying to banks and credit institutions should ensure that all banks receive the lists of designated persons.

- Supervisory and/or other competent authorities should issue rules or guidance to clarify the obligations of persons and entities that have to implement freezing and seizing measures.
- Detailed publicly known procedures for delisting and reviewing the decisions to freeze have to be introduced to protect the rights of persons involved.
- Appropriate procedures should be established in the law or otherwise to provide access to frozen funds in circumstances described in the UNSC Resolution 1452.
- The Criminal Procedure Code or/and the Law on combating terrorism or any other relevant law should include explicit provisions regarding the protection of the rights of bona fide third parties.
- Supervisory and/or other competent authorities should monitor compliance with the decisions to freeze or seize the funds related to terrorism. Sanctions for failure to implement the freezing or seizing measures should be introduced in respect to all legal and natural persons, and in particular regarding the non-banking financial institutions.
- The authorities should consider implementing other measures set out in the Best Practices Paper for the FATF SR III, such as:
 - ensuring thorough follow-up investigation, co-ordination with law enforcement, intelligence and security authorities, and appropriate feedback to the private sector;
 - facilitating communication and co-operation with foreign governments and international institutions; and
 - facilitating communication with the private sector.

Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> • Confiscation and provisional measures do not apply to all FT cases; this limits the scope of confiscation measures in this regard. • There are no effective laws and procedures to freeze terrorist funds or other assets of persons designated under the UNSC Resolution 1267. • There are no effective laws and procedures to freeze terrorist funds or other assets of persons designated under UNSC Resolution 1373 that would apply to non-banking and non-financial sectors. • The authorities did not provide enough information to be able to assess the effectiveness of the laws and procedures regarding the implementation of the UNSC Resolution 1373 that apply to banks and credit institutions. • Whilst authorities can give effect to the actions initiated under the freezing mechanisms of other jurisdictions, it remained unknown on what grounds such actions may be initiated. The adopted procedures are not effective, since they can not ensure taking freezing actions without delay.

	<ul style="list-style-type: none"> • Freezing actions can not be extended to funds or other assets wholly or jointly owned or controlled by designated persons, terrorists, those who finance terrorism or terrorist organizations, nor to funds or other assets derived or generated from funds or other assets owned or controlled by these persons or terrorist organizations. • There are no systems for communicating actions taken under the freezing mechanisms to non-banking financial institutions; the existing systems applying to banks and credit institutions are not effective. • There is no clear guidance provided to all financial institutions with respect to their obligations in freezing terrorist-related funds. • There are no clear and publicly known procedures for delisting or reviewing the decisions to defreeze mistakenly frozen funds. • No clear procedures have been set up to ensure access to the frozen funds pursuant to the UNSC Resolution 1267 and in accordance with the UNSC Resolution 1452. • There are no clear legal or other safeguards for bona fide third parties. • There are no monitoring measures and sanctions for non-compliance with legislation governing the obligations under the FATF SR III for non-banking financial sector.
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Authorities

The Financial Intelligence Unit and its functions (R.26)

Description and Analysis

194. In Tajikistan, there is no FIU or any other similar unit that serves as a national centre for receiving, analyzing and disseminating disclosures of STR and other relevant information concerning suspected ML or FT activities. Moreover, there is no formal suspicious transaction reporting system in place and no guidance regarding the manner of reporting was provided to financial institutions and other reporting entities. This means that there is currently no mechanism in place whereby the financial institutions and other reporting entities should report in case they suspect that funds are the proceeds of a criminal activity, or are related to FT. Consequently, law enforcement agencies do not get access to valuable information from financial and designated non-financial business and professions, which means that a ML or FT case can only be initiated on a basis of the law enforcement agencies' own sources of information. This undoubtedly hampers the ability of relevant state authorities to prevent and detect ML and FT.

195. There is currently no preventive AML/CFT law in force in Tajikistan. In 2005 a draft law on action against ML and FT was prepared by a special working group, headed by the legal department of the Presidential Administration. According to the Presidential Administration's statement this draft law is currently still under discussion among various state authorities and it

should be finalized and submitted to the Parliament (Majlisi) before November 2007. However, some state authorities (e.g. DCA, Migration Service and NBT) indicated that were only able to comment the draft law in its 2005 version and afterwards they were not invited to provide comments to any further drafts. What the team believes is the 2005 draft was made available to the assessment team before the mission includes provisions on the FIU (authorized body) which shall be an executive body responsible to take AML/CFT measures as defined in this draft law. The President of the Republic of Tajikistan shall further define the authorized body that will serve as an FIU. With regard to this issue the authorities explained that the decision as to where shall be the FIU located has not yet been taken.

Recommendations and Comments

196. As a matter of priority the AML/CFT law providing *inter alia* the powers and obligations of the FIU should be adopted and an operational FIU should be established. The act on the establishment of FIU or other legislative acts should ensure that the FIU is free from undue influence or interference.

197. Upon the establishment of the FIU this body should be adequately structured, funded and staffed, and provided with sufficient technical and other resources. The FIU staff should also be provided with adequate and relevant training.

Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	NC	<ul style="list-style-type: none"> • There is no established/operational FIU. • There are no reporting requirements and consequently no guidance is issued regarding the reporting procedures.

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

Description

198. **Legal Framework:** the Constitutional Act (November 6, 1994; amended in 1999 and again in 2003), the Law on combating corruption (Law No. 502 from 31 December 2004), the Regulation on agency for state financial control and combating corruption (No.143 from 10 January 2007), Presidential decree on agency for state financial control and combating corruption (No. 143 from 10 January 2007), the Law on prosecution service, the President decree on the structure of Prosecutor General's Office of the Republic of Tajikistan (No. 1708, 28 February 2006), the Law on narcotic drugs, psychotropic substances and precursors (Law No.

873 from 1999; as amended on 29 April 2006), the Law on combating terrorism (No. 846 from 16 November 1999; as amended No 77 from 1 March, 2005; and No. 246 from 12 May 2007), the Law on combating extremism (No. 69 from 8 December 2003; as amended No. 96 from 5 November 2003, No. 455 from 21 November 2003; and No. 226 from 5 March 2007), the Law on the national security service (No. 610 from 22 May 1998), the Law on the police (No. 41 from 17 May 2004), the Law on operational investigation activity (No. 651 from 23 May 1998; as amended No. 848 from 16 November 1999; and No. 30 from 1 August 2003), the Constitutional Law on Prosecutor Office's Bodies (No. 107 from 25 July 2005), the Law on combating of trafficking of people (adopted on 14 July 2004), the Customs Code (adopted in December 2004), the Criminal Code (No. 684 from 13 November 1998; as amended, last amendments adopted with the law No. 125 from 26 December 2005), and the Criminal Procedure Code.

199. **Designation of Authorities for ML/FT Investigations:** In Tajikistan several law enforcement authorities are responsible for the investigation of ML and FT cases, namely the Agency for State Financial Control and Combating Corruption, the Ministry of internal affairs (the Police and the Migration Service), the State National Security Committee, the Customs Service and the Prosecutor General's Office. Other law enforcement bodies, such as the Drug Control Agency, also claim to be responsible for the investigation of ML related to predicate offences under their competence.

200. With regard to the FT offences the Law on combating terrorism in articles 7, 8 and 9 empowers the State National Security Committee, the Ministry of Internal Affairs, the Customs Service under the Government of the Republic of Tajikistan and the Agency for State Financial Control and Combating Corruption to deal with different aspect of terrorism, including the FT as defined in article 10 of this law, within the authority set up in this an other legislative acts. In addition, the Criminal Procedure Code in article 122 determines the State National Security Committee as a body responsible for preliminary investigations related to the FT offences as defined under articles 179 and 179(1) of the Criminal Code.

201. Additional provisions regarding the competences of different state bodies to deal with the terrorism and FT could be found in article 8 of the Law on combating of trafficking of people. While according to this article the Ministry of Internal Affairs is responsible for detecting links between the human trafficking and terrorist organizations and organized criminal groups, the SNSC is empowered to detect links with the international terrorist organizations and organized criminal groups.

202. The Criminal Procedure Code in paragraph seven of article 122 determines the Ministry of Internal Affairs as a body responsible to conducting preliminary investigations of ML offences. However, paragraph eleven of the same article gives the Prosecutor General's Office the right to take over any criminal case from the body involved in investigation and to transfer the criminal case to another investigatory body. In addition, the 2007 Regulation on agency for state financial control and combating corruption in article 3 provides that the Agency for State Financial Control and Combating Corruption is responsible, *inter alia*, to "*counteract*

legalisation of material values and laundering of money received illegally". Whilst during the on-site mission some Tajik authorities claimed that after the adoption of the above mentioned Regulation the State Financial Control and Combating Corruption became the sole body responsible for ML, the representatives of other Tajik authorities did not share the same view.

203. The authorities did not provide any written or oral information regarding the tasks and powers of the Committee for the Protection of the State Borders and the Presidential Guard; thus it remained unknown to the assessment team whether these state bodies are or could also be responsible to deal with ML or FT issues.

The Agency for State Financial Control and Combating Corruption (ASFCCC)

204. ASFCCC was established by the Decree of the President of the Republic of Tajikistan in January 10, 2007 as both an independent law enforcement body and agency of financial control that reports directly to the President. It took over the functions of the former Committee of State Financial Control, the Main Administration of the Tax Police and the anti-corruption related crimes departments formerly ascribed to the Prosecutor General's Office and other law enforcement authorities. SCFCCC is authorised to investigate 49 different types of criminal offences, including bribery, fraud, tax offences, ML and FT.

The Ministry of the Internal Affairs - The Police

205. The Tajikistan Police is a national law enforcement agency and an enquiry and preliminary investigatory body subordinated to the Ministry of Internal Affairs. It has several departments that operate on a central – republican level and also departments of internal affairs in the City of Dushanbe and in all three oblasts – regional level, as well as the divisions of internal affairs in cities and raions – district level.

206. Within the Police the main organizational unit responsible for investigation of ML and FT is the Department on struggle against the organized crime. In addition also the newly established Migration Service (see below) claims to be responsible to deal with ML and FT cases related to illegal migration and trafficking of people under the Law on combating of trafficking of people and the Law on the Police.

207. ***The Department on struggle against the organized crime (DSAOC)*** is collecting information and investigating different types of criminal offences committed by criminal groups, including offences related to drug trafficking, shadow economy, terrorism and ML.

The Ministry of the Internal Affairs - The Migration Service (MS)

208. MS became operational on March 20, 2007 and is responsible for the implementation of national strategy and international agreements concerning migrations. MS was also tasked to monitor the transactions regarding the migrations and illegal human trafficking and related crimes (e.g. prostitution, drug trafficking and ML). Therefore, MS can detect ML and FT

offences, yet it is not clear whether it can also conduct inquiries and preliminary investigation in ML and FT cases.

The State National Security Committee (SNSC)

209. According to the Article 8 of the Law on combating terrorism and other above mentioned legislative acts, the SNSC is the main entity that is directly involved in the fight against terrorism, including the FT. It is responsible for preventing, uncovering, and stopping terrorist crimes. Moreover, the law states that SNSC, *inter alia*, collects, analyzes and proceeds information regarding the state of and movements in terrorism, including information that is channelled to the centralized inter-institutional data bank on the problems of terrorism by the entities which are engaged in combating terrorism; it coordinates the activities of entities engaged in combating terrorism; it also elaborates proposals on improving the Tajik legislation in the sphere of the fight against terrorism.

The Customs Service under the Government of the Republic of Tajikistan (CSuG)

210. The Customs Code in article 222 provides that CSuG is a preliminary investigative body for cases of smuggling, evasion of payment of customs charges, illegal currency transactions and other offences involving foreign-currency assets within the purview of customs operations, as well as cases involving other crimes for which the preliminary investigation has been assigned to them. The Customs Code doesn't explicitly mention that the CSuG can investigate ML and/or ML criminal offences but it does not exclude it either. Thus it remains unclear whether the wording used in the law allows CSuG to deal with ML/FT involving foreign currency assets or ML deriving from smuggling and evasion of payment of customs charges offences or whether the PGO can assign the ML or FT investigations to them.

The Prosecutor General's Office (PGO)

The Constitutional Act defines PGO as a single centralized system responsible for oversight the exact and uniform compliance with the law on the whole territory of Tajikistan. Its powers and structures are regulated by the Law on prosecution service, the President decree on the structure of PGO of the Republic of Tajikistan (No. 1708, 28 February 2006), the Criminal Code, the Criminal Procedure Code and by other laws and regulations. The PGO directs and supervises inquiries and preliminary criminal investigations carried out by the various LEA and it is the authority responsible for prosecution of all criminal offences, including ML and FT.

The Drug Control Agency under the President of the Republic of Tajikistan (DCA)

211. DCA was established in 1999 as an independent law enforcement body which reports directly to the head of the government. Its main tasks are to coordinate and supervise activity of state bodies in the illegal circulation of the narcotic drugs, psychotropic substances and precursors, struggle against illicit turnovers from drug related offences, prevention of drug addiction and also social rehabilitation of the drug addicts.

212. **Ability to Postpone / Waive Arrest of Suspects or Seizure of Property (c. 27.2):** Law enforcement authorities (investigators⁵) and PGO have the authority to postpone or waive the arrest of suspected persons for the purposes of identification of other persons or evidence gathering. This authority is based on article 82 of the Criminal Procedure Code and is implicit in the absence of any restriction on the authorities' discretion regarding to the time of arrest. Nevertheless, the above mentioned authorities have never used this authority in conducting investigations in ML or FT cases.

213. Article 175 of the Criminal Procedure Code, which deals with seizure of property, is more restrictive and requires that the competent authorities "*shall be obliged to arrest property of the accused or suspected persons*". Nevertheless, the legislation regulating the use of special investigative techniques (see below) provides for exceptions and, therefore it is clear that the authorities investigating ML or FT can postpone or waive the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering.

214. **Additional Element - Ability to Use Special Investigative Techniques (c. 27.3):** The use of special investigative techniques is permitted under the Law on operational investigation activities, the Customs code, the Law on the national security service, the Law on the Police and the Law on narcotic drugs, psychotropic substances and precursors.

215. The Law on operational investigation activities in articles 6 and 13 authorises the Police, the SNSC, the DCA and some other state bodies to use a wide range of special investigative techniques, such as for example observation, interception of mails and other kind of communications, formation of the legal entity, (overt and covert) examination of items, documents, premises, buildings and means of transportation, infiltration, and controlled delivery. Some special investigative techniques, such as those allowing for the interception of telecommunications, are only permitted under certain conditions and are subject to a prior decision of GPO. However, in urgent cases which may lead to the perpetration of a grave or particularly grave crime, such measures can also be taken by the heads of competent law enforcement bodies. The definition of "grave" and "particularly grave crimes" is contained in article 18 of the Criminal Code and it covers intentionally committed ML and FT subject to a sentence of more than five years of imprisonment. According to article 21 of the Law on operational investigation activities PGO is responsible for the supervision over the implementation of this law.

216. Moreover, article 11 of the Law on operational investigation activities determines that the results of the use of special investigative techniques may serve for the following purposes:

- as grounds for instituting a criminal case,
- may be presented to the inquest body, investigator or to the court, which has instituted proceedings on the criminal case, and
- may be used to prove the criminal cases in accordance with the provisions of the Criminal Procedure Code.

⁵ Term "Investigator" is defined in article 23 of CPC and covers investigators of the GPO, LEA and national security bodies.

217. Chapter 37 of the Customs code authorizes the CSuG to use controlled deliveries of narcotics and psychotropic substances (article 227) as well as other items that are tools or means for committing a crime or items obtained by criminal means or items with which unlawful acts constitute smuggling (article 228).

218. Furthermore, article 19 of the Law on the national security service and article 1 of the Law on the Police provide that the SNSC and the Police can use the above mentioned special investigative techniques when conducting their activities, including combating and preventing crime.

219. Under article 14 of the Law on narcotic drugs, psychotropic substances and precursors DCA is also authorized to use the controlled delivery, yet this is only limited to delivery of drugs, psychotropic substances and precursors.

220. **Additional Element - Use of Special Investigative Techniques for ML/FT Techniques (c. 27.4):** Although the above mentioned special investigative techniques have been used on several occasions in the investigation of a wide range of criminal offences (e.g. terrorism and illegal drug trafficking), the assessment team was advised such techniques have not been used in ML or FT investigations to date.

221. **Additional Element - Specialized Investigation Groups & Conducting Multi-National Cooperative Investigations (c. 27.5):** Out of several law enforcement authorities only the ASFCCC mentioned that they have specialists for financial operations in all three major divisions who can follow the money trail and identify suspicious transactions. However, neither ASFCCC nor any other law enforcement body has established a group or body specialized in investigation, seizure and confiscation of the proceeds of crime.

222. ASFCCC, DCA, SNSC and CSuG reported that on the basis of international conventions and treaties (e.g. the UN Palermo Convention, the Minsk Convention and the Kishinev Convention) they can conduct co-operative investigations with competent authorities in other countries, including the use of special investigative techniques. Relevant provisions allowing for co-operation with the foreign law enforcement bodies are contained in article 3 of the Regulation on agency for state financial control and combating corruption, article 19 of the Law on the national security service, article 14 of the Law on narcotic drugs, psychotropic substances and precursors and articles 224 and 227 of the Customs code.

223. The authorities did not provide information as to whether such co-operative investigations have been conducted in criminal cases other than those related to illegal drug trafficking.

224. **Additional Elements - Review of ML & FT Trends by Law Enforcement Authorities (c. 27.6):** Whilst not having specialised officers dealing with ML or FT some interviewed law enforcement officials were well informed about ML techniques and trends. In DCA this is due to the work done in the Analytical Centre within DCA which regularly reviews the ML methods,

techniques and trends used by drug related organised crime groups, yet it remained unclear whether the resulting information was shared with other competent authorities.

225. Representatives of SNSC and MS (they carefully monitor financial transactions related to migration) were also able to provide their oral assessment of FT and/or ML risk related to some predicate offences; however these authorities did not provide information as to whether the ML/FT methods, techniques and trends are reviewed on a regular, interagency basis.

226. ASFCCC is a newly created state body and does not yet review the ML and FT methods, techniques and trends. Likewise, PGO also doesn't review the ML and FT typologies and trends due to the lack of such cases.

227. DSAOC conducted a lot of analytical work on terrorism and drug related crimes, however due to insufficient information related to ML and FT it was not able to study and analyse the ML/FT methods, techniques and trends.

228. **Ability to Compel Production of and Searches for Documents and Information (c. 28.1):** General provisions relating to searches of premises and/persons as well as to seizure of documents can be found in Chapter 15 (articles 167 – 177) of the Criminal Procedure Code (CPC). These provisions apply to all criminal offences, including ML, FT and underlying predicate offences.

229. Article 167 of the CPC deals with seizure of objects and documents important for a criminal case and requires the investigator to perform such seizure if he/she knows where they are and who is keeping them. The seizure can only be carried out on a basis of a justified resolution of the investigator. While a special procedure apply for seizure of documents which contain data considered to constitute a state secret (paragraph 2 of article 167), the CPC does not contain any similar *lex specialis* provisions dealing with the seizure of documents that constitute banking or other type of business secrecy.

230. Article 168 of the CPC determines that “the investigator, having sufficient data to believe that in any premise or other place or at any person there are instruments of crime, the objects and valuables, gained through crime, and also objects and documents, which can be important for criminal case, shall make a search for finding and seizing them.” Search of premises can be performed on the ground of justified investigator's resolution and with or without a prior approval of the prosecutor. The latter is only allowed in urgent cases and the investigator shall report to the prosecutor within one day on the performed search.

231. Article 172 of the CPC contains provisions on search of persons and refers to the same criteria and conditions as described in previous paragraph.

232. Under article 11, point 19 of the Law on the Police, the Police has additional powers when a crime has been committed in the sphere of finances (banking operations and budget treasuries), business, entrepreneurship and trade. When dealing with the mentioned crimes the Police can enter the premises of enterprises, institutions and organization, irrespective of their

affiliation and form of ownership, and conduct, with the participation of the owner of the property or its/his/her representative, an inspection of production, trading and other business premises, vehicles, places where property is stored and used, and take the required documents.

233. With regard to the Customs authorities article 182 of the Customs code requires that any person who convey goods and means of transportation across the Tajikistan border or conduct activities that are subject to customs control shall submit documents and information required for customs control to CSuG. In addition, paragraph three of this article gives CSuG the right to obtain from banks and other lending institutions information and reports on the transactions and status of the accounts of persons who convey goods and means of transportation across the Tajik border, customs brokers or other persons conducting activities that are subject to customs control. CSuG may also demand from the above mentioned persons any document (including banking document) and information that pertain to the conduct of foreign economic and other business activities (article 186).

234. CSuG has the right to access the premises of any person where goods and means of transportation subject to customs control or documents required for customs control may be located, or where activities are conducted that are subject to customs control (article 184 of the Customs code). Moreover, article 189 of the Customs code provides that CSuG can also search persons crossing the border if sufficient grounds exist to believe that he/she is concealing on his person and is not surrendering goods that are subject of violation of relevant legislation.

235. As mentioned above the Law on operational investigation activities allows the police, SNSC and some other law enforcement bodies to use the special investigative techniques, including the (covert) examination of items, documents, premises and means of transportation. In addition, the Law on the national security service in article 19 allows SNSC to enter unhindered and inspect the premises of legal or natural persons. However, this can only be done for the purpose of preventing, investigating or prosecuting crimes, and in emergency situations threatening state security, if the danger can not be eliminated in any other way. Subsequent notification of GPO is required within 24 hours. The above mentioned law does not provide for any special provisions regarding the access of SNSC to the transaction records and other financial/business correspondence.

236. The Regulation on agency for state financial control and combating corruption in article 3 empowers ASFCCC to request and obtain of the originals and the copies of the regulations, orders, instructions, official documents and materials, statistics and other required documents connected with the corruption of state bodies, political parties, banks and other entities. Under the same article ASFCCC has also the right to:

- inspect premises, check and seize objects, material values and documents; and
- suspend the transactions of the legal entities on bank accounts and in other financial organisations and seize funds, material values, money on the accounts and other assets of the suspected person.

237. Regarding the production and seizure of documents containing data which constitutes banking secrecy the Law on banks and banking activity applies in addition to the above mentioned legislative acts. Article 32 of this law provides that such documents can only be given to:

- inquiry and preliminary investigation agencies pursuing criminal cases on the basis of the resolution approved by the competent prosecutor;
- courts, for criminal, civil and administrative infringements cases; and
- tax services, on issues of tax payments by individuals and legal entities being inspected on the basis of the letter of the head of the tax agency and upon presentation of a copy of an instruction of a tax agency for checking.

238. The authorities did not provide any statistical or other data/information regarding the use of the above mentioned powers (compelling production of, searching persons and premises for, seizing and obtaining transaction record and other documents) in ML/FT investigations.

239. **Power to Take Witnesses' Statement (c. 28.2):** Article 63 of the Criminal Procedure Code provides that an individual, involved in interrogation, investigator, prosecutor and court have the right to invite any person for interrogation or expert testimony. In addition, article 66 requires that based on invitation of the above mentioned persons the witness is obliged to appear and give a true testimony. If the witness fails to appear due to unreasonable excuse all the above mentioned persons have the right to force the witness to come, yet only the court can also impose monetary sanctions in such cases.

240. Article 11 of the Law on the Police, article 7 of the Law on narcotic drugs, psychotropic substances and precursors and article 19 of the Law on the national security service provide that the police, DCA and SNSC have the right to summon (verbally or in writing) to the their premises citizens with respect to cases and materials in the course of proceedings and to receive explanations.

241. CSuG is entitled to carry out customs control by questioning individuals and officials (article 180 of the Customs code). Furthermore, article 188 of the Customs code determines that for purposes of an audit of financial and economic operations CSuG has also the right to obtain written and oral explanations from officials and employees of legal and other persons who conduct activities that are subject to customs control.

242. The authorities did not provide any data regarding the frequency of taking of witness statements for the use in investigations and prosecutions of ML/FT and other predicate offences or concrete examples related thereto.

243. **Adequacy of Resources to Law Enforcement and Other AML/CFT Investigative or Prosecutorial Agencies (c. 30.1):** ASFCCC is administrated from its headquarters in Dushanbe and has two additional departments in the City of Dushanbe and in another city. Within the headquarters and in both departments there are 3 major divisions responsible to deal also with ML and FT, namely: 1) the main division on state financial control, 2) the main division on

combating corruption and other corruption related offences and 3) the main investigative division. In addition, within the headquarters they also set up a special operative division responsible to deal with the special investigative techniques and means. The investigative division is the only division authorised to initiate a preliminary investigation on a basis of information provided by other above mentioned divisions. According to the Criminal Procedure Code the investigators from this division have the right to appeal against a decision of the prosecutor if he/she is not willing to send the case to the court.

244. ASFCCC has a staff of around 400 with 100 positions that are still not filled. Among the 98 employees that are working in the above mentioned 4 divisions on a central - republican level they have also specialists in monitoring financial operations. The ASFCCC stated that the 2007 budget does not ensure sufficient financial resources to buy the necessary technical equipment for all organisational units. Furthermore, the special operative division is not yet operational because it doesn't dispose of any technical equipment necessary to perform its tasks, although there is the money available for this purpose in the 2007 budget.

245. DSAOC is administrated from its headquarters in Dushanbe and operates also through its branches in three oblasts. From the ML and FT point of view the following organizational units that operate within DSAOC shall be mentioned: 1) Department on combating illegal drug trafficking; 2) Division for detection of financing of criminal groups which also has the Economic crime unit; and 3) Division on analysis and development of material.

246. DSAOC has 400 staff, out of which 20 people are working in the Division for detection of financing of criminal groups, and 4 people are working in the Economic crime unit. On the oblast level they don't have any economic crime specialists. At present none of these staff are dedicated to deal with ML or FT exclusively. During the on-site mission the assessment team was told that DSAOC is currently reviewing its structure, yet it doesn't lack staff because it can relocate people from different organizational units whenever this is necessary. However, DSAOC is not yet started to consider how many staff, if any, it shall assign to specialise in ML and FT due to the expected new requirements under the draft AML/CFT law.

247. MS has several departments and divisions among which the following are relevant from ⁶the ML and FT perspective: 1) Department on external control of migration; 2) Department on labour migration; and 3) Department on financial control. MS has a branch office in the Russian Federation and it's currently setting up another branch office in Kazakhstan. In the near future it also plans to open a branch office in Kirghizstan.

248. MS has a current strength of around 500 people but would need more people to be able to effectively tackle the crimes related to migration. Except the head of MS, no other staff is dealing with the detection or investigation of ML or FT cases. On the other hand MS already

⁶ The head of MS is the author of a criminal offence of ML and wrote several books concerning this topic.

employed some specialists in banking operations but would need more specialists to be able to conduct financial investigations.

249. CSuG has the central office in Dushanbe and five regional units, namely in the City of Dushanbe, in 3 oblasts and in one region. A specialised Department on combating customs offences was established on the central and regional levels. Within this department there is also a Division on inquiry, responsible for investigations of customs violations and crimes falling under the CSuG competence.

250. CSuG has a current strength of around 1060 staff, out of which 150 employees work in the central office. The Department on combating customs offences has 70 staff in the central office. At present none of the staff is dedicated or specialised to deal with ML, FT or conduct financial investigations. CSuG has sufficient financial, human and technical resources to perform its functions, yet it lacks of appropriate IT hardware and software and it is thus unable to store the records of the volume of imported and exported cash foreign exchange and securities that are subject of obligatory declarations. The collected data are kept only in a paper form and CSuG is unable to conduct any further analysis of collected data.

251. PGO has various departments dealing with crimes and the supervision of observance of laws in LEA, for example: 1) Department on general supervision; 2) Department on investigation of criminal cases of particular importance; 3) Department on supervision of lawfulness of court decisions on criminal cases; and 4) Department on supervision of preliminary investigation and inquiry in the bodies of the MiAF and the ADC. In addition it has also several divisions, among which the following are worth to mention: 1) Division on observance of laws in the bodies of the Ministry of Security and special clerical work; 2) Division on statistics and analysis; 3) Division on criminalistics; and 4) Division on international relations, law enforcement and information center. PGO operates through its organizational units on a republican level as well as on the oblast – regional level and the district level.

252. Currently PGO has around 1.000 staff, out of which there are 75 prosecutors and the rest are assistant prosecutors and investigators. The administrative staff is not included in this number. Despite of various organizational units in PGO there is no department or division dedicated to deal exclusively with ML and FT cases nor there are any prosecutors or investigators specialized in the ML and/or FT issues. During the meeting with PGO the assessment team was told that the main responsibility to deal with ML and FT cases is vested to the Department on general supervision. Moreover, they also mentioned ASFCCC as a main body responsible for investigating ML/FT cases.

253. PGO did not provide data regarding its funding and technical resources needed to perform its AML/CFT related functions, yet during the on-site meetings the assessment team became aware of a lack of appropriate IT support available to prosecutors.

254. DCA has its headquarters in Dushanbe and operates also through its departments in 3 provinces (oblasts) and its divisions in 2 regions near the borders with Afghanistan and

Uzbekistan as well as via its liaison officers in 3 provinces in Afghanistan. Within its structure the following 3 units are relevant for the investigation of ML/FT cases: 1) Investigation Unit - responsible for investigation of drug trafficking and related crimes, including ML and FT; 2) Operational Unit – responsible for conducting operational investigation activities (special investigative techniques); and 3) Analytical Centre – responsible for collecting and analysing intelligence and data related to drug trafficking.

255. DCA has a staff of 408 with 15 positions that are currently vacant. At present none of the staff is dedicated or specialised to deal with ML or FT, however they are in a process of hiring people with the knowledge related to financial and banking operations to work in a newly created Division on high important cases. In future this division shall also be responsible to conduct financial investigations related to drug trafficking. The salaries of the staff are low and the authorities emphasised that more sophistic technical equipment is needed to enable the wiretapping of conversation between people that are using mobile phones.

256. SNSC doesn't have specialized officials or organizational units designated to detect and investigate ML and FT cases. However, it has an arm - the Department on economic counterintelligence which is responsible to check the resources of funds invested in Tajikistan and analyze the activities of foreign investors with the intention to disrupt illegal economic operations. No data were provided to the assessment team regarding SNSC structure, funding, staff and technical resources needed to perform its AML/CFT related functions.

257. **Integrity of Competent Authorities (c. 30.2):** General provisions applying to all “persons authorized to perform public functions” are contained in articles 1 and 8-10 of the Law on combating corruption. The definition of these persons (article 1) covers “persons who hold public positions or civil service positions and officials of government economic entities and other economic entities in which the state controls more than half of the equity”. Article 8 provides that persons who are applying for public position as well as persons who are authorized to perform public functions shall file annual statements of income to the tax authorities. A government body that is authorized to appoint or remove such persons has the right to request data regarding their property from these persons. Furthermore, article 10 provides for restrictions related to persons holding a public position, which includes inter alia the following prohibitions:

- engaging in other paid work, with the exception of scientific, creative , or teaching activities;
- accepting payments for services provided in the performance of their official duties, giving gifts, and providing non-official services to higher-level officials; and
- carrying out instructions and orders from political parties, public associations, religious organisations, and economic entities that relate to their service in a government body, or using their official position in their interest.

Administrative and criminal sanctions are provided if a person performing public functions fails to comply with the above mentioned restrictions.

258. In ASFCCC a competitive procedure is conducted to employ the staff of the agency, during which the candidates are assessed on a basis of their professional background, work experience, competence and honesty. The procedure encompasses examination of criminal records of applicants as well as requires a declaration of their assets.

259. The director of ASFCCC is appointed and dismissed by the President of Tajikistan and reports to him. With regard to the material support and medical care the director is on the same level as a Deputy Prime Minister. The director appoints and dismisses employees of ASFCCC, proposes the budget and is entitled to participate in the meetings of the Government and Security Council of Tajikistan. Under article 5 of the Regulation on agency for state financial control and combating corruption the director is empowered to issue orders with normative effect and on operational issues.

260. Article 9 of the Law on the Police provides that the minister of internal affairs is appointed and dismissed from his position by the president of Tajikistan. The minister of internal affairs appoints and dismisses all the heads of the departments for internal affairs in agreement with the President of Tajikistan. The Police is supervised by the Prosecutor's General Office for the legitimacy of its actions.

261. According to the Law on the Police (article 4) the police officers are not allowed to be members of a political party and are bound *inter alia* by the principles of legality and protection of secrecy. In addition, article 10 of the same law explicitly provides that no-one, with the exception of agencies and officials specifically authorized by the laws, shall have the right to interfere in police activities.

262. Within the Police all DSAOC operational staff needs to have 3 to 5 years of work experience in operational matters and undergoes criminal records checks, yet they don't have to report on their assets. The Law on the Police, the Law on state secrecy, governmental resolutions and other legislative acts providing the obligation to keep secret the data received during the course of employment apply to all DSAOC staff. A variety of sanctions are available for breaches of these legal acts, including criminal sanctions and dismissal.

263. Conditions to become a MS staff vary from department to department, but as a general rule all the staff dealing with criminal offences shall undergo criminal records checks. Regarding the operational autonomy, confidentiality and sanctions the same legislative acts and provisions applying to police officers also apply to MS staff.

264. The Customs Code in articles 418 and 419 provides for conditions and requirements regarding the integrity of CSuG officials. The law requires that only citizens, who are able, based on their practical and moral qualities, their educational level and state of health, to carry out the tasks entrusted to CSuG, may become the CSuG officials. A probationary period of up to one year is required for initial appointments and customs officials appointed for the first time shall take an oath. The law also determines that the CSuG officials, when performing their duties, shall only be guided by the law and other legislation and shall obey their immediate superiors. Any illegal pressure or interference in any form in order to influence a decision that is being

adopted by the CSuG official is prohibited and a penalty is prescribed for the violation of this provision. If the CSuG official receives an order or an instruction that clearly contravene the law, he/she is required to follow the provisions of the law. Moreover, the law prohibits any formation and activities of political parties in CSuG, as well forbids the CSuG officials to take part in the management of a business entity, engage in business activities and perform any paid work as a second job, except for scientific, teaching and creative activities.

265. The Prosecutor General and deputies are appointed and dismissed by the President of the Republic of Tajikistan with the consent of the Parliament. The Prosecutor General is appointed for a term of five years and reports to the Parliament (Majlisi Oli) and to the President of the Republic of Tajikistan. The Prosecutor General has the right to appoint and dismiss prosecutors subordinate to him/her. The term of office of prosecutors is five years. According to the Constitutional Act (article 96) the Prosecutor General and other prosecutors exercise their powers independently of other governmental organs and officials and are subordinate only to the law. A prosecutor may not occupy another position, be a deputy in a representative organ, be a member of a political parties or associations, or engage in entrepreneurial activity besides scientific, creative, and teaching activities.

266. Citizens of the Republic of Tajikistan with higher legal education who have the required business and moral qualities may be appointed prosecutors and investigators. Persons with a criminal record, except those who have been exculpated, cannot be appointed prosecutors and investigators. When appointed the prosecutors shall take the Oath of a Public Prosecution Worker.

267. The staff of DCA is employed on a competitive basis and 75, 4 % of all staff has finished a high school (lawyers represent 38 % and economists 5,6 % of all the staff). Under the current laws and internal regulations DCA has to examine the professional and moral background (including eventual criminal records) of all the candidates and the employees are obliged to report on their assets when taking the office and when there is a significant change in their assets. Between 1999 and 2007 all together 6 employees of DCA were arrested; 2 persons on drug trafficking charges and 4 persons due to exceeding of their powers.

268. SNSC did not provide any information regarding the maintenance of professional standards, integrity and skills of its staff.

269. The 2006 and 2007 Corruption Perception Index (CPI)⁷ of the international watchdog organization Transparency International ranked Tajikistan among the most corrupted countries in the world (in 2006 Tajikistan was on 142nd place out of 163 countries and territories surveyed and in 2007 on 150th place out of 180 countries and territories surveyed).

⁷ See more on: http://www.transparency.org/policy_research/surveys_indices/cpi/2006 and http://www.transparency.org/policy_research/surveys_indices/cpi/2007.

270. Moreover, in November 2006 the Strategic Research Centre under the President of the Republic of Tajikistan and the UN Development Program in the Republic of Tajikistan published the Report on corruption in the Republic of Tajikistan. The report, which is based on a public opinion survey, shows corruption is spread at different levels of power structures and practically in all government sectors. Courts, local administration and law enforcement bodies (in particular the Traffic Police and the Tax Service) are mentioned as most corrupted institutions in Tajikistan.

271. **Training for Competent Authorities (c. 30.3):** The members of ASFCCC attended few seminars related to ML and FT, including the recent one which was organized by the World Bank in Dushanbe in May 2007.

272. Up to the present MS and CSuG staff has not received any ML/FT related training. With regard to DSAOC and SNSC the assessment team was unable to get any information as to whether any ML/FT related training was provided to their staff.

273. Regarding the training of prosecutors the assessment team was told that in the past prosecutors (assistant prosecutors and investigators) participated in various seminars related to ML and FT which were organized abroad and in Tajikistan. The PGO also mentioned that ML/FT topics are included in their regular programs for training, where prosecutors from all the regions (rajons) are invited to participate. Nevertheless, no documented training program for the PGO staff to ensure a consistent level in the skills of the prosecutions was seen.

274. Although in the past DCA has received a lot of technical assistance from the UNDCP, IMF, EBDR and other donors, they have not undergone any ML or FT specialist training. The ML and FT training received so far was too general and organised only on ad hoc basis.

275. **Additional Element (Rec 30) - Special Training for Judges (c. 30.4):** The Tajik authorities did not provide any information regarding the training or educational programs for judges and courts concerning ML and FT offences, and the seizure, freezing and confiscation of property.

276. **Statistics (applying R.32):** In year 2007 ASFCCC detected 37 criminal offences, out of which there were 23 thefts, 9 bribes and 5 other criminal offences. Till now they did not detect or investigate any ML or FT. The preliminary investigations initiated in the same year involve amounts of 2.000.000 Somoni or approximately USD 591.540, yet the authorities did not provide information as to whether these monies were seized.

277. In 2007 CSuG detected 4332 violations of law, out of which 58 were criminal offences, namely 39 cases of illicit drug trafficking, 11 cases of contraband of cultural values, 5 cases of contraband of consumer goods, 1 case of contraband of foreign currency, 1 case of contraband of precious stones, and 1 case of smuggling arms and ammunition. Aggregate damage of all detected crimes was Somoni 424.054 and during the investigation the CSuG seized 76,5 kg of drugs, currency in amount of USD 200.000 and goods in amount of Somoni 26.292.

278. At the time of the assessment, there have been no convictions for ML under article 262 of Criminal Code. GPO indicated that so far they only indicted one defendant in 2004 for committing predicate offence under article 263 (illegal banking bringing revenue and inflicting damage on a particularly large scale) and ML under article 262 of Criminal Code, but the Supreme Court finally convicted this person only for the predicate offence and acquitted him for ML. The GPO and other Tajik authorities were unable to provide the Supreme Court verdict.

279. During the on-site meetings the representatives of the judicial authorities stated that in 2006 there were 15 convictions connected with terrorist offences committed during the Tajik civil war, yet not a single one was related to the FT offences.

280. Up till now DCA have not initiated any ML or FT related criminal investigation. However, the statistics provided by DCA for the period from 2004 to 31 May 2007 shows the following amounts of assets or other property seized in relation to drug trafficking offences:

Year	Number of criminal cases	Amount of seized assets
2004	8	Somoni 998.379 and USD 24.900
2005	9	Somoni 16.637 and USD 69.500
2006	5	Somoni 419.600 and USD 3.300
2007	2	USD 4.000
All together	24	Somoni 1.434.616 and USD 101.700

281. No ML or FT cases were detected or investigated by MS as yet.

282. The authorities did not provide any statistical data concerning the investigations of ML/FT conducted by DSAOC and SNCC and on property frozen, seized and confiscated related to ML/FT or any underlying offence.

Analysis, Recommendations and Comments

283. Tajikistan has designated law enforcement authorities to investigate ML and FT criminal offences, yet it seems that due to the newly established ASFCCC and the adopted Regulation on agency for state financial control and combating corruption the authorities are not completely clear which law enforcement authority shall be primarily responsible to deal with ML cases. Although the ML and FT are criminalised for many years, the competent authorities focus their investigative efforts exclusively on investigating the predicate offences. It is recommended that legislation is amended or an official interpretation of the legislation is provided to ensure clear lines of responsibility for each designated law enforcement body in the combating of ML and FT. Competent law enforcement authority/authorities should develop a more proactive approach

to pursuing ML and FT investigations and set up mechanisms for co-ordination of efforts at both policy and operational level.

284. Whereas the legislation allows competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of money or other property for the purpose of identification of other persons or evidence gathering, it seems that the authorities have never used these powers in practice when investigating ML/FT cases.

285. In Tajikistan the legislation empowers competent law enforcement authorities to use a wide range of special investigative techniques when conducting investigations of ML and FT, yet up till now these techniques were not used in ML or FT investigations. The competent law enforcement bodies and PGO should consider using appropriate special investigative techniques in future ML/FT investigations, especially in cases where it is difficult or impossible to get evidences or identify the property subject to confiscation by using other investigative means.

286. Although some law enforcement bodies have staff specialized in investigating financial operations, no permanent or temporary groups of financial investigators have been established to date. It is recommended that the competent law enforcement authorities establish such groups responsible for investigation, seizure, freezing and confiscation of the proceeds of crime.

287. Tajik law enforcement bodies have already conducted co-operative investigations with foreign competent authorities in cases related to illegal drug trafficking, yet it remained unknown if such investigations were also performed in relation to other criminal offences. Therefore, it is recommended that Tajik law enforcement bodies consider using this mechanism when investigating all criminal offences connected with foreign countries, and in particular when investigating serious criminal offences covered by the Palermo Convention and other ratified international agreements.

288. Whilst some law enforcement bodies (DCA and partially also MS and SNCC) review the ML methods, techniques and trends related to some predicate offences, this is not the case with the FT offences. Moreover, the designated law enforcement bodies are not reviewing these methods, techniques and trends on a regular, interagency basis, nor they are disseminating the resulting information to staff of other competent authorities. The competent law enforcement authorities should regularly review ML and FT methods, techniques and trends related to all predicate offences as well as share their information with staff of other competent authorities.

289. Competent law enforcement authorities have the necessary powers to compel production of, search persons and premises for, and seize and obtain transactions records and other financial/business documents or information and can use these powers in investigations and prosecutions of all criminal offences, including ML and FT. They can also take witnesses' statements and use them in investigations and prosecutions of all criminal offences. However, no figures were available concerning the use of these powers in any criminal investigation and due to the lack of ML/FT investigations it is clear that these powers were not used in these investigations. It is recommended that the competent law enforcement authorities make use of

the range of powers provided to them when conducting the investigations of ML, FT and other underlying predicate offences.

290. The current organizational structure and the number of staff of the competent law enforcement authorities seems to be adequate and enables them detecting and investigating ML and TF offences. However, the law enforcement authorities and PGO don't have any staff specialized in ML/FT investigations/prosecutions.

291. The salaries of the law enforcement staff are low and the technical and financial resources provided to some law enforcement authorities are not sufficient to fully and effectively perform their functions. Whilst ASFCCC and DCA are lacking of appropriate technical equipment to conduct special investigative techniques, PGO and CSuG don't have the necessary IT support to be able to store and/or analyze electronically the statistical data on criminal offences and requests for mutual legal assistance (PGO), as well as reports on currency transactions across the border (CSuG).

292. The legislation provides for sufficient operational independence and autonomy of law enforcement and prosecutorial authorities and no information was available to prove the contrary.

293. Whilst the legislation requires the staff of competent law enforcement, prosecutorial and judicial authorities to be of high integrity, appropriately skilled and maintain high professional standards, the published reports based on public opinion surveys show that Tajikistan is facing significant challenges concerning the corruption in public sector.

294. With the exception of PGO the staff of other competent authorities only received limited (ASFCCC) training for combating ML/FT; and in case of MS and CSuG no such training was provided up to now.

295. Due to the lack of provided data the assessment team was unable to fully assess the compliance with the FATF Recommendation 30 as far as the essential criteria 30.1, 30.2 and 30.3 with respect to DSAOC and SNSC and criteria 30.4 with respect to judiciary are concerned.

296. Tajik authorities do not review the effectiveness of their systems for combating ML and FT on a regular basis.

297. DSAOC, SNCC and PGO don't maintain or/and did not provide to the assessment team statistics on criminal proceeds and on amounts of property frozen, seized, and confiscated relating to predicate offences for ML.

298. Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> • Law enforcement authorities focus exclusively on investigating the predicate offences and are not ensuring a proper investigation of ML

		and FT offences.
R.28	LC	<ul style="list-style-type: none"> • Law enforcement authorities are not using powers to take witnesses' statements, compel production of, search persons and premises for, and seize and obtain transaction records and other financial documents in ML and FT investigations. • Due to the lack of provided data the assessment team was unable to assess if the above mentioned powers are effectively used in investigations and prosecutions of predicate offences.

Cross Border Declaration or Disclosure (SR.IX)

Description and Analysis

299. **Legal Framework:** The Law on foreign exchange regulations and foreign exchange control (No. 112 from 4 November 1995; as amended No. 498 from 12 December 1997, No. 662 from 22 May 1998, and No. 826 from 3 September 1999); The Instruction No. 142 (issued by NBT and the Ministry of Revenue and Collections on 29 September 2005 and registered by Ministry of Justice on 11 October 2005); and the Customs Code (adopted in December 2004).

300. **General:** Tajikistan imposes a system of foreign exchange control for monetary purposes under the Law on foreign exchange regulations and foreign exchange control. The law determines the definitions of domestic and foreign currency, the foreign exchange assets and the residents and non-residents (article 1), as well as provides general directions regarding the import and export of domestic and foreign currency.

301. A definition of “foreign currency” includes token money denominated in the form of banknotes, treasury notes and coins in circulation and being the legal payment instruments in a foreign state, as well as token money withdrawn or being extracted from circulation and subject to exchange. “Domestic currency” is defined as currency in circulation in the form of bank banknotes and coins of the NBT; and the “foreign exchange assets” are defined as:

- foreign currency,
- securities in foreign currency – payment documents, equity, and other debt obligations denominated in foreign currency,
- precious metals – gold, silver, platinum, and platinum metals in any form and condition, except for jewelry, other household products and scrap of such products,
- natural precious stones, except for jewelry, other household products from these stones and scrap.

302. The above mentioned law does not impose any restrictions regarding the import and export of domestic currency and foreign exchange assets, yet it distinguishes between the rights and obligations of residents and non-residents and refers to the customs legislation. Furthermore, articles 6 and 8 of the law authorize NBT, relevant ministries and Customs Committee under the

Government of the Republic of Tajikistan to jointly regulate the procedures for the import and export of domestic currency and foreign exchange assets. The assessment team was informed that while the Instruction No. 142 was issued based on article 8 of the law regulating the import and export of foreign exchange assets, no procedures were adopted under article 6 regarding the import and export of domestic currency.

303. Declaration of Physical Cross-border Transportation of Currency: Under the Instruction No. 142 (articles 8 and 18) the import and export of securities in foreign currency by natural persons (residents and non-residents) may be carried out without any restrictions or reporting obligations. Regarding the import and export of cash foreign currency the Instruction No. 142 provides for the following regimes:

Natural persons- residents

	Less than USD 3.000	USD 3.000 - USD 10.000	More than USD 10.000
Import	no requirements	No requirements	declaration
Export	no requirements	declaration	declaration and permission

Natural persons – non-residents

	Less than USD 3.000	More than USD 3.000
Import	no requirements	declaration
Export	no requirements	declaration and permission

304. With respect to legal persons the Instruction No. 142 only regulates the import and export of cash foreign currency and securities if carried out by authorized banks of the Republic of Tajikistan. With the exception of the obligation of authorized banks to monthly report to the NBT on volume of export and import of cash foreign currency and securities by type of currencies and securities for each shipment, no other restrictions or obligations are provided in the legislation. This means that a representative of a legal person who crosses the border with cash foreign currency owned by this legal person is treated in the same manner as any other natural person and the legislation as well as the present customs declaration form do not require to establish the beneficial owner of the transported currency.

305. Section III. of the Law on foreign exchange regulations and foreign exchange control and articles 5, 9 and 15 of the instruction 142 determine the supervisory bodies (control bodies and agents) responsible to monitor compliance with these legislation, as well as their powers and

rights. Under the above mentioned legal acts and based also on articles 198 – 201 of the Customs Code (Section VI – Currency control) a control over the cross-border transportation of currency and securities is carried out by the Customs Service under the Government of the Republic of Tajikistan (CSuG). For this purpose CSuG developed a special declaration form which needs to be filled in accordance with the requirements mentioned above.

306. Request Information on Origin and Use of Currency: Article 13 of the Law on foreign exchange regulations and foreign exchange control requires residents and non-residents carrying out transactions with domestic and foreign currency and securities to submit all required documents and information on foreign exchange transactions and provide explanations to CSuG and other supervisory bodies during the inspection. Failure to do so is sanctioned under paragraph two of article 14 of the same law.

307. Restraint of Currency: According to article 15 of the Law on foreign exchange regulations and foreign exchange control CSuG has the power to suspend operations or withdraw licenses and permits for foreign exchange transactions issued to residents and non-residents. However, this law doesn't provide for duration of such measure and the conditions under which it could be ordered. The assessment team was told that this depends on the amount of undeclared or falsely declared currency. If the amount is above 100.000 Somoni (app. USD 30.000) than CSuG shall initiate a criminal investigation for committing a criminal offence of smuggling under the article 289 of Criminal Code. In such case under the Criminal Procedure Code (insert article...) they can keep the seized assets for 10 days and then they may refer the case to PGO. In case that the amount of undeclared or falsely declared currency is less than 100.000 Somoni than CSuG should start an administrative procedure for the violation (misdemeanor) of article 199 of the Administrative Code and keep the seized assets till the final court decision is reached. In a recent case in June 2007 CSuG seized cash in amount of USD 235.500 and other valuables in total amount of USD 300.000, which was not declared by an Afghanistan citizens when he crossed the border. The case was transmitted to the court which shall make a final decision regarding the violation of law.

308. Retention of Information of Currency and Identification Data by authorities: Under the Instruction 142 (article 9) CSuG is obliged to keep records of the volume of imported and exported cash foreign exchange and securities that are subject of obligatory declarations. However, in practice CSuG stores all the customs declarations in paper form in their regional departments and keep them stored for three years. After this period the documents are destroyed. The collected personal and other data are kept only in paper form and due to the lack of IT hardware and software the CSuG is unable to conduct any further analysis of collected data. Since there is no FIU the CSuG is only obliged to report the consolidated data on the monthly basis to the NBT and other stakeholders.

309. Domestic Cooperation: In discussions with NBT and CSuG two different explanations regarding the existing foreign exchange currency regime were provided. Since both explanations differ from the content of the articles 3 and 4 of the Instruction No. 142 it appears to be a misunderstanding of the laws available and indicates the absence of appropriate coordination in

relation to such monitoring. On the other hand special rules were adopted (lastly amended in 2005) between the CSuG, the Police, the Border Control and the Dushanbe Airport Security Service that regulate procedures, responsibilities and cooperation between the mentioned bodies which operate in the airport of Dushanbe. However, the assessment team was informed that despite the adopted procedures in everyday practice there is a lot of rivalry among the aforementioned bodies which is hindering the collaboration.

310. **International Cooperation:** Tajikistan is a party to the 1993 Minsk Convention on legal assistance and legal relations in civil, family and criminal matters and the 2002 Kishinev Convention on legal assistance and legal relations in civil, family and criminal matters. Furthermore, CSuG has entered into bilateral arrangements with customs authorities from the following states: Uzbekistan, Kazakhstan, Kyrgyz Republic, Afghanistan, Iran, Turkey, People's Republic of China, Russian Federation and Belorussia. These agreements allow for the sharing of customs information, including the information pertaining to the transportation of foreign currency and other goods. The fact that all but one neighboring countries (Uzbekistan) have in place similar foreign exchange controls, certainly enables fruitful cooperation between mentioned states; however it remains unclear how CSuG can effectively provide information contained in customs declaration forms to its counterparts since it lacks a centralized and computerized data base.

311. **Statistics:** Statistics are kept on the movement of cash foreign currency for monetary purposes. According to data provided by the NBT the following transactions (import and export of cash through CSuG) were recorded at the border:

Year	Import of foreign cash (in USD)	Export of foreign cash (in USD)
2004	7.522.952,30	60.481.149,10
2005	15.056.603,20	41.127.577,70
1. quarter of 2006	1.481.841,10	25.412.238,70

312. In addition, the CSuG provided the following data on the movement of cash foreign currency for the year 2007:

Year 2007	Import of foreign cash	Export of foreign cash
Legal entities	USD 73.828.775	USD 44.000.000
Natural persons	USD 38.743.565 Russian rubles 9.295.121	USD 154.598.476 Russian rubles 17.191.661

		Kazakh tenge 25.200
		Uzbek som 4.597

313. The assessment team requested further statistics regarding the number of violations and amounts of seized currency for the period 2004 – 2007, yet the only statistics provided by CSuG after the on-site mission was for the year 2007. Namely, in 2007 CSuG detected one case of smuggling of foreign currency. It remained unknown what was the amount of foreign currency and whether CSuG or other authorities seized the foreign currency involved, as well as what sanctions, if any, were imposed in this case. Due to the lack of statistical data the assessment team was unable to fully assess the effectiveness of the existing foreign currency regime under the FAFT SR IX.

314. **Sanctions:** Article 14 of the Law on foreign exchange regulations and foreign exchange control determines that residents and non-residents shall bear criminal, administrative and civil responsibility for the violation of foreign exchange legislation. This law (article 14) provides the following administrative sanctions for non-declaring or falsely declaring cash foreign currency:

- the proceeds from any transaction carried out in violation of this law shall be recovered in favor of the state;
- a fine equal to five-fold of the undeclared amount.

Furthermore, breaches of articles 2 – 8 of the mentioned law are also punishable under article 289 of the Criminal Code by imprisonment for a period of 5 to 8 years. If the actions are committed 1) repeatedly; 2) by an official using his position; 3) using violence towards a person, who implements customs examination; 4) by break of the customs border; they are punishable by imprisonment for a period of 10 to 15 years simultaneously with or without confiscation of property and with deprivation of the right to hold certain positions or be engaged in certain activities for up to 5 years or without it. If such actions are committed by an organized group they are punishable by imprisonment for a period of 15 to 20 years simultaneously with confiscation of property and with deprivation of the right to hold certain positions or be engaged in certain activities for up to 5 years or without it.

315. It remains unclear whether the cross-border transportation of illegally obtained funds falls within the definitions of ML and FT under the relevant articles of the Criminal Code described above, due to the deficient definitions of both offences.

316. **Confiscation of Currency Related to ML/FT:** In general, the provisional measures under the Criminal Procedure Code (article 175; Arresting the property) apply for ML offences, yet due to the deficiencies described above, it is unclear whether they could be taken in connection to the ML offence committed by transporting the illegally gained funds across the border. Likewise, the provisional measures as well as confiscation of such funds (or other property) under article 262 of the Criminal Code are only mandatory for actions described in paragraph three, and confiscation is optional for actions under paragraph two of article 262.

317. With regard to FT offence under article 179/1 of the Criminal Code the provisional measures and confiscation of property, as envisaged in articles 175 of the Criminal Procedure Code and article 57 of the Criminal Code, do not apply because no mandatory or optional confiscation is foreseen under article 179/1. However, it seems that the authorities could take provisional and confiscation measures regarding the FT related currency and bearer negotiable instruments on a basis of articles 167, 171 and 172 of the Criminal Procedure Code, if the currency represents the instrumentalities of crime. Moreover, article 9 of the Law on combating terrorism explicitly requires CSuG “to stop illegal trafficking of items which could be used for pursuing terrorist aims.”

318. To date, there is no record of any seizures/confiscations of currency being transported across-borders, pursuant to articles 262 and 179/1 as well as other FT related articles of the Criminal Code.

319. **Confiscation of Currency Pursuant to UNSCRs:** As noted previously in the section 2.4 on FAFT SR III, in Tajikistan there are no laws and procedures requiring freezing funds or other assets of persons designated by the UN in accordance with UNSC Resolution 1267 and its successor resolutions. Besides, legislation related to the implementation of UNSC Resolution 1373 is not satisfactory, since there is no legal basis for giving effect to the actions initiated under the freezing mechanisms of other countries. Consequently, Tajikistan can not freeze currency or bearer negotiable instruments of persons designated by the UN or other countries under the UNSC resolutions 1267 and 1373.

320. In discussions with CSuG, it was stated that till now they didn’t receive any lists of designated persons, thus they were unable to check persons who were transporting cash foreign currency across the border upon these lists.

321. **Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones:** As mentioned above, Tajikistan is a party to several multilateral and bilateral agreements that, according to the authorities, allow notifying the competent authorities of other states on unusual cross-border movements of gold, precious metals and stones.

322. **Safeguards for Proper Use of Information:** Under paragraphs two and three of Article 15 of the Law on foreign exchange regulations and foreign exchange control all foreign exchange control bodies, including CSuG, and their officials are obliged to keep commercial secrets of residents and non-residents that became known during performance of foreign exchange functions. Illegal divulging or using of a commercial secret is punishable under article 278 of the Criminal Code by a fine or imprisonment for up to 3 years with deprivation of the right to hold certain positions or be engaged in certain activities for up to 5 years.

323. **Implementation of SR.IX Best Practices:** Tajikistan has implemented some (see above), yet not all the measures set out in the FAFT Best practice paper for FAFT SR IX. For example, it has not developed specific technical expertise to increase their capacity to detect cash

at the borders and measures to detect the physical cross-border transportation of currency and bearer negotiable instruments for ML or FT purposes.

324. **Analysis:** It is clear from the above that Tajikistan has established a system that aims at controlling cross-border transportation of cash foreign currency and securities, rather than the monitoring of them. In adopting the legislation and during its implementation the ML and FT related issues were not taken into account. As a consequence the current legal system only partially addresses the requirements of FAFT SR IX. However, the existing system can and should provide a ground for creation of a more efficient monitoring system aimed also to prevent and detect ML and FT cases.

325. Additionally to the comments provided above the following deficiencies of countries' legislation and practices were identified:

- Whilst the legislation imposes obligations to declare import or export of cash foreign currency when crossing the border it does not require declaring the cross-border transportation of domestic cash currency and domestic and foreign bearer negotiable instruments above a designated threshold (EUR/USD 15.000). This is not compliant with the FAFT SR IX which requires that in addition to foreign and domestic cash currency also bearer negotiable instruments of value exceeding USD/EUR 15.000 need to be declared or disclosed when crossing the border. The legal basis for regulating the missing requirements exists in paragraph two of article 2 and in paragraph five of article 8 of the Law on foreign exchange regulations and foreign exchange control, however the NBT, the CSuG and the Government of the Republic Tajikistan did not use it when adopting the Instruction No. 142 nor they issued any other regulatory act based on articles 2 and 8 of the law.
- Customs declaration forms related to the cash foreign currency transactions are only kept and stored in paper form in the CSuG regional departments. Collected personal and financial data are thus not recorded in any electronic format nor are they centralized. As a consequence CSuG can not properly use and analyze data with a purpose of detecting suspicious transactions related to repeated cross-border transportations of cash by people who use different customs and border control points to enter or leave the country. In practice there is also a very limited possibility to share the collected data with other LEA within Tajikistan or internationally.
- Customs declaration forms concerning the cash foreign currency are only kept for 3 years, which unable CSuG and/or other LEA to check the collected information during all period of time allowed to investigate and prosecute ML and FT due to the statute of limitations.
- Due to legal and practical deficiencies identified above CSuG does not play any significant role in detecting or investigating ML and FT nor is capable to detect effectively cross-border transportations of cash carried out by persons designated by the UN or other countries under the UNSC resolutions 1267 and 1373.

Recommendations and Comments

326. In order to be compliant with international standards and create effective AML/CFT measures, the authorities should consider:

- Amending the Instruction No. 142 or adopt a new instruction based on articles 2 and 8 of the Law on foreign exchange regulations and foreign exchange control to include under current controlling regime also the domestic cash currency as well as foreign and domestic bearer negotiable securities above a designated threshold(s) (not less than USD/EUR 15.000). Alternatively, in addition to the existing regime, a new monitoring system could be established taking into account all the requirements contained in the FAFT SR IX. The latter should be independent of any changes in the monetary or currency related policy and could supplement the existing regime with the necessary AML/CFT component.
- Providing CSuG with the list of persons designated by the UN and other countries under the UNSC resolutions 1267 and 1373, subject to the necessary legislative changes mentioned above under section 2.4 of this Report.
- Extending the period of maintaining the data on transactions and identification data included in customs declaration forms from three to at least five years.
- Ensuring adequate co-ordination among CSuG, immigration authorities, police and other relevant authorities that operate in all the cross-border points on issues related to ML/FT and physical cross-border transportation of currency and bearer negotiable instruments.
- Implementing all the measures set out in the FAFT Best Practices Paper for SR.IX and identified above.

Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	NC	<ul style="list-style-type: none"> • There are provisions concerning the monitoring of physical cross-border transportation of foreign cash currency, yet they don't cover domestic cash currency and domestic and foreign bearer negotiable instruments. • Collected information on the amount of currency declared or otherwise detected and the identification data of the bearer are not stored in electronic format nor centralized, which in practice unable the effective use of such information by competent LEA, and in future also by the FIU, as well as for the purpose of international cooperation. • The cross-border transportation of illegally obtained funds does not fall within the definitions of ML and FT under the relevant articles of the Criminal Code. The legislation is not implemented in practice since there were no ML or FT investigations initiated by CSuG, nor were the collected data used by other LEA for the above mentioned purpose. • Due to several legal and practical impediments the CSuG or other competent authorities can not seize/confiscate currency or bearer negotiable instruments that are related to ML or FT. The legislation is

		<p>not implemented in practice since there were no such seizures/confiscations.</p> <ul style="list-style-type: none"> • Due to several legal and practical impediments the CSuG can not seize/freeze terrorist funds or other assets of persons designated by the UN in accordance with UNSC Resolution 1267 and its successor resolutions.
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

Risk of money laundering or terrorist financing

327. There is no statutory provision imposing any preventive measures upon financial institutions or otherwise establishing an overall AML/CFT regime. While there is criminal provision dealing with money laundering (ML), there is no other statutory provision dealing with AML. Thus, Tajikistan has not made any determinations regarding which, if any, preventative measures should not be applied, nor has it determined which, if any, preventative measures are eligible for reduced or simplified treatment.

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

Description and Analysis

328. Banks and other institutions subject to regulation by the National Bank of Tajikistan (NBT) are required to identify their customers when opening accounts. The requirement is limited to account openings and does not apply to occasional transactions, even though some banks require customer identification for such transactions, especially for large occasional transactions. The requirement is limited to identification; there are no other customer due diligence (CDD) requirements or enhanced measures applicable to NBT-regulated institutions.

329. Institutions subject to supervision and regulation by the NBT constitute the universe of institutions falling within the FATF definition of “Financial Institution,” with the exception of money remitters, insurance companies and securities firms. Based upon representations of the NBT, all money remitters (with the exception of the Postal Service) operate pursuant to agreements with commercial banks at commercial bank main offices or branch locations. Money transmitters maintain no separate offices. As a consequence, money transmitters (other than the Postal Service) operate under NBT’s limited identification requirements, regardless of the amount.

330. There are no customer identification requirements or CDD measures applicable to insurance companies or securities firms, other than internal rules of the firms themselves. In addition, although there is a securities law, there is no secondary market for securities; thus, there

are no securities brokers or dealers. In general, documentation requirements increase for individuals (physical persons) acting as entrepreneurs, and legal entities (juridical persons) with demand accounts. Nonetheless, under the NBT Instructions, at a minimum, a physical person is required to present a document, such as a “passport, certificate of birth, etc.,” attesting to the identity of the individual. A juridical person is required to present its certificate of registration, address, authorized signatures for account access, bylaws and tax ID number. A tax ID number is required for an individual only when acting in the capacity of an entrepreneur.

331. Legal Framework: There are no statutory requirements for any financial institution to conduct customer identification, verification or other customer due diligence with regard to the accounts of its customers. The NBT, under its general rulemaking authority of Article 5 of the Law on the National Bank of Tajikistan (Law on NBT), has issued two “Instructions,” Nos. 90, and 146, which are legally enforceable and subject to sanctions that could include revocation of license, pursuant to the Law on NBT. These Instructions require, to a limited degree, identification of both physical and juridical persons in opening an account with a financial institution. By the terms of the Law on NBT and Law on Banks and Banking Activities (Law on B and BA), these customer identification requirements apply only to institutions subject to regulation by the NBT. The MoF, which regulates insurance companies, pursuant to the Law on Insurance, and securities issuers and dealers (even though there are currently no dealers), pursuant to Law on Securities and Stock Exchange (Law on Securities) has not issued any regulatory requirements for customer identification. Other statutory and regulatory issues are discussed below in terms of specific paragraph topics.

332. Prohibition of Anonymous Accounts (c. 5.1): Banks and the NBT state that there are no anonymous accounts in institutions, based upon the identification requirements of NBT Instructions 90 and 146, the practices of the institutions, or both. At least some banks offer coded or numbered accounts, but assert that they do so only after identifying the customer. Applicable statutes and regulations bring this assertion into question, at least theoretically. First, there are no statutory or regulatory prohibitions against anonymous accounts. Second, Paragraph of Article 863 of the Civil Code provides: “The contract of bank deposit may provide for the issuance of a bank book in a name or a bearer bank book. A bearer bank book is a commercial paper.” Third, Article 3 of the Law of the Republic of Tajikistan on Securities and Stock Exchange, which is administered by the MoF, provides that, “securities for the bearer can be issued only in documentary (paper) form. Thus, it appears that both bearer bank books and bearer securities are authorized by statute.

333. When CDD is required (c. 5.2): NBT Instructions require identification for the opening of accounts. By its terms, this requirement does not apply to occasional transactions or other circumstances. Some banks interviewed stated that their practice was to require identification for large occasional transactions, such as those involving the equivalent of \$15,000. Otherwise there was no indication of customer due diligence procedures being pursued.

334. Identification measures and verification sources (c. 5.3): NBT Instructions require an individual to produce a “passport, certificate of birth, etc.” Under the Instructions, Financial institutions are not required to verify the identities of the customers. Banks stated that, because official government documents were utilized for identification, they did not verify identities, unless the face of the document raised suspicion.

335. **Identification of Legal Persons or Other Arrangements (c. 5.4):** NBT Instruction Nos. 90 and 146 do not require financial institutions to verify that a person purporting to act on behalf of a legal person is authorized to do so. Signature and stamp cards are required, but this does not include verification of authority to act on behalf of the legal entity. The Instructions do require a legal person to produce government or other official documents regarding its establishment and registration, directors, and power to bind the entity consistent with international standards.

336. **Identification of Beneficial Owners (c. 5.5; 5.5.1 & 5.5.2):** Instruction Nos. 90 and 146 do not require that beneficial owners be identified; thus, there is no verification requirement. The Instructions do include reasonable requirements to identify shareholders of legal entities, their management or control structures. There are no requirements for identifying natural person that ultimately own or control a customer.

337. **Information on Purpose and Nature of Business Relationship (c. 5.6):** Instructions Nos. 90 and 146, which are the only CDD requirements applicable to financial institutions, do not contain any requirements for specifying the purpose of intended nature of the business relationship between the institution and its customer.

338. **Ongoing Due Diligence on Business Relationship (c. 5.7; 5.7.1 & 5.7.2):** There is no requirement that a financial institutions conduct ongoing due diligence on its business relationships.

339. **Risk – Enhanced Due Diligence for Higher Risk Customers (c. 5.8):** There is no requirement for enhanced due diligence for higher risk customers.

340. **Risk – Application of Simplified/Reduced CDD Measures when appropriate (c. 5.9):** Tajikistan may very well have customer, transactions or products where the risk of money laundering is low. There has been no determination of what those lower risk elements are, since there has been no overall AML/CFT regime put in place.

341. **Risk – Simplification / Reduction of CDD Measures relating to overseas residents (c. 5.10):** No requirement.

342. **Risk – Simplified/Reduced CDD Measures Not to Apply when Suspicions of ML/TF or other high risk scenarios exist (c. 5.11):** There is no provision authorizing simplified or reduced CDD requirements.

343. **Risk Based Application of CDD to be Consistent with Guidelines (c. 5.12):** Financial institutions have not been permitted to apply CDD measures on a risk sensitive approach, since no overall AML/CFT regime has been adopted.

344. **Timing of Verification of Identity – general rule (c. 5.13):** The NBT and banks assert that accounts will not be opened unless the necessary identification documents are produced, pursuant to the requirements of Instruction Nos.90 and 146. As noted previously, however verification of identity is not part of the requirement. Furthermore, transactions for occasional customers are not covered by this requirement.

345. **Timing of Verification of Identity – treatment of exceptional circumstances (c.5.14 & 5.14.1):** Instruction Nos. 90 and 146 do not provide any direction in the event the identification document(s) is/are not produced prior to establishment of the account opening. Banks assert that accounts are not opened unless the necessary identification documents are produced. There are no provisions in the Instructions for when an account may be opened or business transacted. In addition, the Instructions do not require verification of any beneficial owner of an account. Even if accounts are never opened without the required documentation, the identity of a beneficial owner or occasional transaction customer over a threshold is not addressed.
346. **Failure to Complete CDD before commencing the Business Relationship (c. 5.15):** See paragraphs 139 and 140 above. In addition, a suspicious transaction report (STR) can not be filed under the existing structure, since there is no procedure for filing one and there is no governmental entity authorized to receive one.
347. **Failure to Complete CDD after commencing the Business Relationship (c. 5.16):** See paragraphs 139 and 140 above. In addition, a STR can not be filed under the existing structure, since there is no procedure for filing one and there is no governmental entity authorized to receive one.
348. **Existing Customers – CDD Requirements (c. 5.17):** There is no requirement to apply any CDD measures to existing customers under any circumstances
349. **Existing Anonymous-account Customers – CDD Requirements (c. 5.18):** See also the discussion at paragraph 128 above. Banks assert that that they do not maintain anonymous accounts. In any event, there is no requirement to apply CDD measures to existing customers whether or not they are anonymous account customers.
350. **Foreign PEPs – Requirement to Identify (c. 6.1):** There are no statutory, regulatory or other provisions requiring financial institutions to: perform any CDD measures, put in place any risk management systems, obtain senior management approval, determine beneficial ownership, to determine source of wealth and source of funds, monitor, or otherwise adopt any other requirement with respect to accounts of foreign politically exposed persons (PEPS).
351. **Foreign PEPs – Risk Management (c. 6.2; 6.2.1):** There is no applicable requirement.
352. **Foreign PEPs – Requirement to Determine Source of Wealth and Funds (c. 6.3):** There is no applicable requirement.
353. **Foreign PEPs – Ongoing Monitoring (c. 6.4):** There is no applicable requirement.
354. **Domestic PEPs – Requirements (Additional Element c. 6.5):** There are no provisions applicable to domestic PEPs.
355. **Domestic PEPs - Ratification of the Merida Convention (Additional Element c. 6.6):** Tajikistan has signed and ratified the Merida Convention. The extent to which it has implemented that Convention is discussed under Recommendation 35.

356. Cross Border Correspondent Accounts and Similar Relationships – introduction:

The issue of Tajik banks providing correspondent banking services is somewhat confusing from the regulatory standpoint. According to NBT Instruction 90, foreign banks do not appear to have correspondent accounts with banks in Tajikistan. Rather, nonresident banks may have correspondent accounts with the NBT under procedures provided for in Instruction 90. Article 2 (1) (c) of the Law on B and BA, however, provides that banks may offer “correspondent accounts for banks and non-bank financial institutions.” The NBT has, in fact, confirmed that Tajik banks do offer correspondent banking services to foreign banks, primarily for international remittances. In this regard, the account opening procedures are the same as those provided in NBT Instruction 90, which do not have comprehensive CDD procedures. As noted previously, the only identification requirements are for copies of the institution’s charter and tax registration documents. Otherwise, there are no requirements applicable to establishing or maintaining correspondent banking relationships.

357. Requirement to Obtain Information on Respondent Institution (c. 7.1): There is no requirement to obtain information about the nature of the respondent’s business or to determine the quality of its supervision.

358. Assessment of AML/CFT Controls in Respondent Institution (c. 7.2): There is no requirement to assess the respondent’s AML/CFT controls or ascertain whether they are adequate and effective.

359. Approval of Establishing Correspondent Relationships (c. 7.3): There is no requirement to obtain senior management approval prior to establishing a new correspondent banking account.

360. Documentation of AML/CFT Responsibilities for Each Institution (c. 7.4): There is no requirement for a correspondent bank to document the AML/CFT responsibilities of each respondent institution.

361. Payable-Through Accounts (c. 7.5): The NBT states that Tajik banks do not employ payable through accounts in the context of providing correspondent banking services.

362. Misuse of New Technology for ML/FT (c. 8.1): There is no statutory, regulatory or other requirement for financial institutions to have any policies or procedures in place or to take necessary measures with regard to preventing the misuse of technological developments in money laundering or terrorist financing schemes.

363. Risk of Non-Face to Face Business Relationships (c. 8.2 & 8.2.1): There is no statutory, regulatory or other requirement for financial institutions to have any policies or procedures in place with respect to addressing any specific risks associated with non-face-to-face business relationships or transactions.

364. Analysis of Effectiveness: While there are some customer identification requirements, the CDD regimen is not effective given all of the other deficiencies with respect to international

standards. Since there are no provisions dealing with PEPS, Cross border correspondent relationships, non face-to-face relationships or new technologies, there can be no assessment of effectiveness.

Recommendations and Comments

365. In order to satisfy international AML/CFT standards, the authorities should seriously consider:

- Amending their laws to prohibit anonymous accounts at financial institutions and bearer shares for all companies.
- Adopting a new law or regulation that addresses each of the CDD requirements of FATF Recommendation 5, the provisions applicable to PEPS in Recommendation 6, the correspondent banking requirements for cross border relationships in Recommendation 7, and the provisions applicable to non face-to-face transactions and new technologies in Recommendation 8.

ii. Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	NC	There are only minimal identification requirements, which are insufficient to address CDD requirements
R.6	NC	There is no applicable requirement
R.7	NC	There is no applicable requirement
R.8	NC	There is no applicable requirement

Third parties and introduced business (R.9)

Description and Analysis

366. Banks and other credit institutions regulated and supervised by the NBT do not utilize intermediaries or third parties to conduct any aspect of the customer identification process. They follow the identification requirements of NBT Instruction Nos. 90 and 146. Insurance companies in Tajikistan utilize only “captive” agents, i.e., the agent sells only the insurance products of the single company for which the agents is employed. Further, it appears that introduced business and the use of intermediaries to perform CDD is simply not a way of doing business in Tajikistan.

367. **Legal Framework:** There is no statutory or regulatory authorization for intermediaries or third party CDD procedures or introduced business. The limited customer identification requirements of NBT Instruction Nos. 90 and 146 do not authorize persons or entities, other than the financial institution itself, to perform the required identification of customer.

368. **Requirement to Immediately Obtain Certain CDD elements from Third Parties (c. 9.1):** No requirement.
369. **Availability of Identification Data from Third Parties (c. 9.2):** No requirement.
370. **Regulation and Supervision of Third Party (applying R. 23, 24 & 29, c. 9.3):** No requirement.
371. **Adequacy of Application of FATF Recommendations (c. 9.4):** No requirement.
372. **Ultimate Responsibility for CDD (c. 9.5):** No requirement.
373. **Analysis of Effectiveness:** Since banks, credit institutions and insurance companies do not rely on intermediaries and since there is no provision addressing the use of intermediaries for CDD purposes, there can not be assessment of effectiveness.

Recommendations and Comments

374. The authorities should consider whether intermediaries should be able to conduct any aspect of the CDD process and, if so, adopt a CDD requirement that satisfies international standards.

Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	N/A	Banks, credit institutions and insurance companies do not rely on intermediaries to perform any CDD

Financial institution secrecy or confidentiality (R.4)

Description and Analysis

375. Banks and other credit institutions chartered pursuant to the Law on B and BA are subject to comprehensive bank secrecy provisions. They are required to develop policies and procedures to protect bank secrecy through their own mechanisms. Under the existing law, financial institutions could be inhibited from making disclosures of information through suspicious transaction reports and sharing information, unless the entities that receive such information are law enforcement agencies. This is based upon the exceptions to the general prohibition on disclosure for investigations at certain stages of development, disclosure pursuant to writ of a court, or the tax authorities. The assessment team was informed that, as a practical matter, police investigators are able to gain access to bank records according to a writ, regardless of the stage of development of the investigation. Thus, disclosure is permitted under these circumstances.

376. The prohibition appears to pose a significant problem with respect to the ability of to share information between competent authorities (except for the exception for law enforcement subject to a writ), both domestically and internationally, as well as sharing of information between financial institutions.

377. **Legal Framework:** The legal basis for bank secrecy is Article 32 of the Law on B and BA.

378. **Inhibition of Implementation of FATF Recommendations (c. 4.1):** The existing bank secrecy provisions do not cause a problem for law enforcement authorities because of the exceptions to the prohibition on disclosure. The existing bank secrecy provisions would be in conflict with international standards if suspicious transaction reporting requirements were put in place and the financial intelligence unit were not a law enforcement agency.

379. **Analysis of Effectiveness:** The existing statute would inhibit implementation of FATF Recommendations, especially with regard to sharing information with entities other than law enforcement authorities.

Recommendations and Comments

380. The authorities should consider amending the existing law to permit suspicious transaction reporting and the sharing of information for AML/CFT purposes, subject to protections.

381. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	PC	The existing law would inhibit suspicious transaction reporting and the sharing of information with entities other than with law enforcement authorities

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

Description and Analysis

382. Banks and other credit institutions keep records for their own business purposes, but which records are maintained and for how long vary depending upon the institution, with the exception of accounting requirements, as described in the paragraph immediately below. All outgoing wire transfers have to comply with comprehensive procedures of the NBT. In addition to requiring originator information, all domestic wire transfers must be accompanied by a statement of purpose of the transfer. International wire transfers are governed by the requirements of the SWIFT network for wire transfers and, like domestic transfers, must include a statement of the purpose of the transfer.

383. **Legal Framework:** There are no statutory, regulatory or other requirements for financial institutions to maintain any records of any customer identification documentation. There is, however, a general requirement in Article 18 of the Law on Accounting, which requires institutions subject to this provision to keep financial records for a period of five years. This provision could be utilized to assist in investigations to reconstruct financial transactions. NBT

Instruction No. 147 governs all outgoing wire transfers. It requires that the purpose of the payment be included as part of the transfer information.

384. **Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1):** There are minimal record keeping requirements for accounting purposes applicable to certain financial institutions and other entities subject to the Accounting Law, but not all financial institutions covered by the international standards.

385. **Record-Keeping for Identification Data (c. 10.2):** No requirement.

386. **Availability of Records to Competent Authorities (c. 10.3):** No requirement.

387. **Obtain Originator Information for Wire Transfers (applying c. 5.2 & 5.3 in R.5, c.VII.1):** Under NBT Instruction No. 147, financial institutions are required to obtain for all wire transfers, regardless of the amount: the originator's name, address and account number,. Verification of the identity of both the sender, for outgoing wire transfers, and the receiver, for incoming wire transfers is also required, whether or not the amount involves EUR/USD of 1,000 or more. In addition. The NBT also requires all outgoing wire transfers to contain information regarding the purpose of the transfer.

388. **Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2):** It is not a requirement of Instruction No. 147 that full originator information be included in the message or payment form accompanying cross border wire transfers.

389. **Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3):** It is not a requirement of Instruction No. 147 that full originator information be included in the message or payment form accompanying domestic wire transfers.

390. **Maintenance of Originator Information (c.VII.4):** There is no requirement for each intermediary and beneficiary institution in the payment chain to ensure all originator information accompanies a wire transfer is transmitted with the transfer in Tajikistan.

391. **Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5):** There is no requirement that beneficiary financial institutions adopt effective risk-based procedures for wire transfers that are not accompanied by complete originator information. Most banks stated, however, that they simply do not credit the transfer and return it.

392. **Monitoring of Implementation of SR VII Restrictions on De Minimis Threshold (c. VII.6):** Tajikistan has no measures in place to effectively monitor the compliance of financial institutions with wire transfer rules. The NBT does not, as a matter of practice, monitor wire transfers even though it has the authority to do so.

393. **Sanctions (applying c. 17.1-17.4 in R.17) (c. VII.7):** There is no specific provision for sanctions for compliance failures with wire transfer rules, other than the general and broad

enforcement powers of the NBT. In this regard, there is no indication that such powers have ever been used in this area.

394. **All Incoming Wire Transfers (c. VII.8):** There is no requirement that complete originator information accompany all incoming wire transfers, regardless of amount.

395. **All Outgoing Wire Transfers (c. VII.9):** The existing NBT Instruction No. 147 covers all outgoing wire transfers, regardless of amount and regardless of whether it is cross border.

396. **Analysis of Effectiveness:** Since only minimal record keeping requirements exist for certain institutions, there can be no accurate assessment of their effectiveness. The banks state that they comply with NBT Instruction No. 147, which requires complete originator information to be included in any outgoing wire transfer, but there has not been any meaningful monitoring or examination by NBT to determine the extent of compliance. In addition, there has not been any enforcement action taken for a compliance failure. Other than requiring originator information for all outgoing wire transfers, there are no other requirements that address the criteria and, therefore, these can not be assessed for effectiveness.

Recommendations and Comments

397. In order to comply with international AML/CFT standards, the authorities should consider enacting a law or adopting regulations to:

- Require financial institutions to maintain records in compliance with FATF Recommendation 10.
- With respect to FATF SR VII, requiring: financial institutions to include full originator information in the message or payment form accompanying the wire transfer; each intermediary and beneficiary in the payment chain to ensure that all originator information accompany each wire transfer; and adopt effective risk-based procedures for dealing with wire transfers that are not accompanied with full originator information.
- Monitor the compliance of financial institutions with regard to SR VII.
- Impose sanctions for compliance failures.

Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	There minimal record keeping requirements.
SR.VII	NC	There is a requirement that complete originator information must be obtained for all outgoing wire transfers, and there is identification verification requirement, but none of the other essential criteria are satisfied

Unusual and Suspicious Transactions

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

Description and Analysis

398. There is no statutory, regulatory or any other requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Similarly, there is no statutory, regulatory or any other requirement for financial institutions to pay special attention to business relationships and transactions with persons or legal persons from or in countries that do not, or insufficiently apply, the FATF Recommendations. Similarly, there is no penalty for non-or lax compliance; nor is there a suspicious transaction reporting requirement that could utilize such information. Some banks have instituted voluntary programs whereby they look at unusual large transactions. While such an approach is admirable, this is being done solely to permit correspondent banking relationships to be maintained.

399. **Legal Framework:** There is no statutory, regulatory or other requirement applicable to monitoring transactions and relationships.

400. **Special Attention to Complex, Unusual Large Transactions (c. 11.1):** No requirement.

401. **Examination of Complex & Unusual Transactions (c. 11.2):** No requirement.

402. **Record-Keeping of Findings of Examination (c. 11.3):** No requirement.

403. **Special Attention to Countries Not Sufficiently Applying FATF Recommendations (c. 21.1 & 21.1.1):** No requirement..

404. **Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 21.2):** No requirement.

405. **Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 21.3):** There is no such requirement. As a result, there are no countermeasure to be applied and no enforcement of such countermeasures.

406. **Analysis of Effectiveness:** Since there are no applicable requirements, there can be no assessment of effectiveness.

Recommendations and Comments

407. In order to satisfy international AML/CFT standards, the authorities should consider passing legislation or adopting regulations:

- Requiring financial institutions to pay special attention to all complex, unusual large, and all unusual patterns of transaction with no apparent economic or visible lawful purpose, consistent with FATF Recommendation 11.
- Requiring financial institutions to pay special attention to business relationships and transactions with persons and entities from countries that do not or insufficiently apply the FATF Recommendations, consistent with Recommendation 21.

Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	NC	There is no applicable requirement
R.21	NC	There is no applicable requirement

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

Description and Analysis

408. There is no AML or terrorist financing suspicious transaction reporting by any financial institution in Tajikistan. Moreover, there is no financial intelligence unit to make such reports to, even if there was a reporting requirement.

409. **Legal Framework:** There are no statutory, regulatory or any other requirements for any financial institution (or designated non-financial businesses or professions (DNFPBs)) to file a suspicious transaction reports with respect to money laundering or terrorist financing.

410. **Requirement to Make STRs on ML and TF to FIU (c. 13.1 & IV.1):** No requirement.

411. **STRs Related to Terrorism and its Financing (c. 13.2):** No requirement.

412. **No Reporting Threshold for STRs (c. 13.3):** No requirement..

413. **Making of ML and TF STRs Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2):** No requirement.

414. **Additional Element - Reporting of All Criminal Acts (c. 13.5):** No requirement.

415. **Protection for Making STRs (c. 14.1):** There is no protection currently for financial institution officers, directors or employees from making good faith suspicious reports.

416. **Prohibition Against Tipping-Off (c. 14.2):** There is no prohibition against financial institution officers directors or employees “tipping off” or informing a person or entity that a suspicious transaction report has been filed.

417. **Additional Element – Confidentiality of Reporting Staff (c. 14.3):** There are no provisions protecting the names of financial institution staff or otherwise providing confidentiality when suspicious transaction reports are filed. .

418. **Consideration of Reporting of Currency Transactions above a Threshold (c. 19.1):** there is no current cash transaction reporting requirement. In addition, there is no indication of whether Tajikistan has considered establishing a threshold for, cash transaction reporting, since the AML/CFT law has not been considered by parliament, the Majalisi Oli.

419. **Additional Element - Computerized Database for Currency Transactions Above a Threshold and Access by Competent Authorities (c. 19.2):** There is no computer database, since there is no cash transaction reporting requirement.

420. **Additional Element - Proper Use of Reports of Currency Transactions Above a Threshold (c. 19.3):** There is no cash reporting requirement.

421. **Guidelines for Financial Institutions with respect to STR and other reporting (c. 25.1):** There are no guidelines for financial institutions with respect to suspicious transaction reporting, since there is no such reporting requirement.

422. **Feedback to Financial Institutions with respect to STR and other reporting (c. 25.2):** There is no requirement for providing feedback to financial institutions with respect to suspicious transaction reporting, since there is no such reporting requirement.

423. **Analysis of Effectiveness:** Since there are no applicable requirements, there can be no assessment of effectiveness

424. **Recommendations and Comments**

In order to satisfy international AML/CFT standards, the authorities should consider adopting legislation and/or regulations to implement fully FATF Recommendations 13, 14, 19, 25 and SR IV, according to the criteria of the Methodology.

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

	Rating	Summary of factors underlying rating
R.13	NC	There is no applicable requirement
R.14	NC	There is no applicable requirement
R.19	NC	There is no applicable requirement
R.25	NC	There is no applicable requirement
SR.IV	NC	There is no applicable requirement

Internal controls and other measures

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

Description and Analysis

425. Financial institutions do not generally establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing. Normally such policies and procedures would cover, among other things, CDD, record keeping, monitoring for unusual and suspicious transactions and reporting, appointment of a compliance officer (even an independent compliance officer), an independent audit function, ongoing employee training, and screening procedures for new employees. While some institutions have adopted some of these measures, which is admirable, they have done so solely for purposes of maintaining correspondent banking relationships. In addition, these efforts vary significantly from institution to institution and are not required; nor are they enforceable.

426. **Legal Framework:** There are no statutory, regulatory or any other requirements for financial institutions to establish and maintain internal controls to prevent money laundering or terrorist financing.

427. **Establish and Maintain Internal Controls to Prevent ML and TF (c. 15.1, 15.1.1 & 15.1.2):** No requirement.

428. **Independent Audit of Internal Controls to Prevent ML and TF (c. 15.2):** No requirement.

429. **Ongoing Employee Training on AML/CFT Matters (c. 15.3):** No requirement.

430. **Employee Screening Procedures (c. 15.4):** No requirement.

431. **Additional Element – Independence of Compliance Officer (c. 15.5):** No requirement.

432. **Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):** Tajik financial institutions do not operate any branches or subsidiaries in a foreign country, although there appears to be authority to do so under Article 24 of the Law on BB (at least foreign branches are not prohibited under this Article). The minimal identification requirements that do exist would apply to branches and subsidiaries under the law on NBT.

433. **Application of AML/CFT Measures to Foreign Branches & Subsidiaries (c. 22.1, 22.1.1 & 22.1.2):** There is no requirement to inform the NBT if foreign subsidiaries can not perform CDD procedures in a foreign country because there are no AML CDD requirements and there are no foreign operations by Tajik financial institutions.

434. **Unable Implement AML/CFT Measures (c. 22.2):** There is no requirement for financial institutions to inform the home supervisor of their inability to perform AML/CFT

measures in foreign branches or subsidiaries. As noted above in paragraph 225, Tajik financial institutions do not operate outside of Tajikistan.

435. **Additional Element – Consistency of CDD Measures at Group Level (c. 22.3):** There are no group elements to address under the existing regulatory scheme.

436. **Analysis of Effectiveness:** Since there are no requirements, there can be no assessment of effectiveness.

Recommendations and Comments

437. The authorities should consider adopting legislation and/or regulations to implement fully FATF Recommendation 15, requiring financial institutions to have internal control systems, internal audit requirements, screening of employees and ongoing training procedures. In addition, at or prior to the time a bank in Tajikistan establishes a branch outside of the country, the authorities should consider adopting regulations to implement FATF Recommendation 22, making AML/CFT requirements applicable to such foreign branches.

Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	NC	There is no applicable requirement
R.22	N/A	Banks in Tajikistan do not currently operate foreign branches

Shell banks (R.18)

Description and Analysis

438. Shell banks do not exist in Tajikistan. The NBT informed the assessment team that, as a matter of policy, it will not charter shell banks based, in large part, upon the requirement that any applicant for a license must provide proof of a physical address and that such address must be a “real” address. In addition, the application must contain a business plan that shows actual banking operations.

439. **Legal Framework:** There is no statutory or regulatory prohibition applicable to shell banks. Article 17 of the Law on BB requires a license in order to operate a bank, and the license can only be issued by the NBT.

440. **Prohibition of Establishment Shell Banks (c. 18.1):** As stated above, Tajikistan does not authorize the establishment of shell banks. The NBT confirmed that none currently operate within Tajikistan.

441. **Prohibition of Correspondent Banking with Shell Banks (c. 18.2):** There is no prohibition against Tajik banks entering into, or continuing correspondent banking relationships with shell banks, although the NBT states that its banks do not maintain correspondent relationships with shell banks.

442. **Requirement to Satisfy Respondent Financial Institutions Prohibit of Use of Accounts by Shell Banks (c. 18.3):** There is no requirement that financial institutions satisfy themselves that foreign respondent banks do not permit their accounts to be used by shell banks.

443. **Analysis of Effectiveness:** The current licensing procedures do not authorize shell banks in Tajikistan and none currently exist. Otherwise, there are no statutory or regulatory requirements that can be assessed with respect to the other two criteria.

Recommendations and Comments

444. The authorities should consider:

- Adopting legislation prohibiting the establishment and operation of shell banks in Tajikistan.
- Adopting regulations that:
 - prohibit Tajik banks from entering into, or continuing correspondent banking relationships with shell banks; and
 - require financial institutions to satisfy themselves that foreign respondent banks do not permit their accounts to be used by shell banks.

Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	There are no shell banks currently operating in Tajikistan, but no provisions that address any of the other criteria.

Regulation, supervision, guidance, monitoring and sanctions

The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R. 17, 23, 25 & 29)

Description and Analysis

445. Much work has been accomplished in recent years to improve banking supervision and regulation. The existing statutory framework provides the NBT with adequate authority to effectuate its mission. Significant efforts have been made to strengthen NBT's supervisory capacity, particularly in the area of on-site bank examination. In addition, there have been significant enhancements to make the off-site reporting regime more robust as well as to analyze the data that NBT receives. Finally, a unit for supervision of non-bank financial institutions has been established.

446. The NBT employs a total of approximately 600 staff, 400 at the head office in Dushanbe and 200 at the six branch offices. It is unclear how many staff are dedicated to financial

institution supervision and regulation matters. Since there is no AML/CFT regime, none of the staff are currently dedicated to ML or TF supervision, regulation or monitoring.

447. Each bank or credit institution must obtain a license before it may engage in business in Tajikistan. In the past, there appear to have been some inconsistencies in the application of the licensing process. NBT officials represent that a thorough analysis of business plans and the underlying documentation supporting the application is now required before a license is issued.

448. There is also concern regarding the ability of NBT supervisors to realistically address specified problems once they are identified at a bank. There is concern that specific remedial actions are not being taken on a regular basis to the extent that they should be. For example, while there is a requirement for originator information to accompany all outgoing wire transfers, there is no indication that NBT monitors to determine compliance with the Instruction requiring such a procedure.

449. **Legal Framework:** The relevant laws are the Law of the Republic of Tajikistan on the National Bank of Tajikistan (NBT Law) and the Law on B and BA.

450. **Regulation and Supervision of Financial Institutions (c. 23.1):** There is no AML/CFT regime in Tajikistan; thus, there is no regulation or supervision of the implementation of FATF recommendations.

451. **Designation of Competent Authority (c. 23.2):** Because there is no regime, no competent authority has been designated to have responsibility for assuring compliance.

452. **Fit and Proper criteria and Prevention of Criminals from Controlling Institutions (c. 23.3 & 23.3.1):** All financial institutions conducting any permissible banking service or offering banking products (as defined in Article 2 of the Law on Band BA) are required to be licensed under Article 5 of the Law on B and BA. Under the Law on B and BA, Article 19 establishes criteria for “executives” of a financial institution, (which includes a bank, credit institution, foreign exchange dealer and money transmitter). The term executive is defined as the Chairman and his deputies, head of the accounting department and his deputies and the head and chief accountant of any branch office. The applicable criteria include education requirements, experience and knowledge about banking and economic legislation and a determination that any previous criminal conviction has been cancelled or expunged. Ultimately, the decision to permit a person to serve as a management official is left to a qualification commission with the NBT. Article 43 of the NBT Law requires the NBT to conduct a biannual evaluation to determine if management officials are qualified for their positions.

453. There are no fit and proper criteria for insurance companies under the statutory framework and no information was provided to indicate that there are any informal mechanisms.

454. Under Article 44 of the NBT Law, acquisitions of more than 5% of a financial institution’s shares are to be notified to the NBT. Under this same provision, acquisitions of more than 20% of an institution’s shares require the prior approval of the NBT. The statute does

specifically provide for denying an application on the basis of prior criminal involvement as the statute does for management officials. The basis for denying an application to acquire shares is not stated in the statute, other than the questionable financial status of the proposed purchasers. Thus, this approval authority appears to be discretionary.

455. **Application of Prudential Regulations to AML/CFT (c. 23.4):** There are prudential requirements applicable to financial institutions in the context of AML/CFT, other than the minimal customer identification provisions.

456. **Licensing or Registration of Value Transfer/Exchange Services (c. 23.5):** money transfer and foreign currency dealers are required to obtain licenses from the NBT under the conditions described above.

457. **Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6):** Since there is no AML/CFT regime, there is not monitoring or supervision of these entities.

458. **Licensing and AML/CFT Supervision of other Financial Institutions (c. 23.7):** There is a licensing requirement for insurance companies, but there is no supervision for AML/CFT purposes because there is no AML/CFT regime in Tajikistan.

459. **Guidelines for Financial Institutions (c. 25.1):** There are no guidelines because there is no AMLCFT regime.

460. **Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1):** Under Article 47 of the NBT Law, the NBT has broad powers to monitor compliance and conduct inspections for any statutory or regulatory requirement applicable to institutions under its jurisdiction. The problem, of course, is that there are no AML/CFT requirements for which the NBT is responsible for inspecting. While the NBT would be a logical choice as the AML/CFT supervisor, no such supervisor has been designated because there is no AML/CFT regime.

461. **Authority to conduct AML/CFT Inspections by Supervisors (c. 29.2):** Article 47 provides the NBT with carry out inspections, including access to, and copies of, all records of the institution. See also the paragraph immediately above.

462. **Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1):** See the paragraph immediately above.

463. **Powers of Enforcement & Sanction (c. 29.4):** Under Article 48 of the NBT Law, the NBT has very broad enforcement authorities, which include the authority to collect fines, issue directives for corrective action, replace management, appoint a receiver to conduct the affairs of the institution on a temporary basis, and revoke the institution's license. While the NBT would be a logical choice as the AML/CFT supervisor, no such supervisor has been designated because there is no AML/CFT regime.

464. **Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1):** As stated above, The NBT has very broad enforcement powers (see paragraph immediately above). As described in the introductory paragraphs to this section, there is, however, a question about the NBT's willingness to use such powers. Moreover, the problem is no authority has been designated as the AML/ CFT supervisor because there is no AML/CFT regime.
465. **Designation of Authority to Impose Sanctions (c. 17.2):** See paragraph immediately above.
466. **Ability to Sanction Directors & Senior Management of Financial Institutions (c. 17.3):** See paragraph immediately above.
467. **Range of Sanctions – Scope and Proportionality (c. 17.4):** See paragraph immediately above.
468. **Adequacy of Resources for Competent Authorities (c. 30.1):** See paragraph immediately above.
469. **Integrity of Competent Authorities (c. 30.2):** See paragraph immediately above.
470. **Training for Competent Authorities (c. 30.3):** See paragraph immediately above. There has been none.
471. **Additional Element – Special Training for Judges and Courts (c. 30.4)** See paragraph immediately above.
472. **Statistics (applying R.32):** There are no statistics.
473. **Assessment of Effectiveness:** While there appears to be an adequate mechanism for preventing criminals from becoming management officials of financial institutions, none of the other criteria are addressed because Tajikistan has not adopted an overall AML/CFT regime.

Recommendations and Comments

474. Authorities should consider adopting a comprehensive AML/CFT legal framework that adequately addresses FATF Recommendations 17, 23, 25 and 29.

Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	NC	There is no sanctioning mechanism applicable to AML/CFT
R.23	NC	Criminals are prevented from serving as management officials, but not necessarily from controlling financial institutions through direct share ownership or beneficial ownership.
R.25	NC	There are no applicable requirements

R.29	NC	There are no applicable requirements
-------------	-----------	--------------------------------------

Money or value transfer services (SR.VI)

Description and Analysis

475. There are three money remitters in Tajikistan; each is affiliated with a commercial bank and each maintains no offices other than those at an office of its affiliated bank. Money remitters are licensed and operate under the supervision of the NBT.

476. **Legal Framework:** The Law on B and A.

477. **Designation of Registration or Licensing Authority (c. VI.1):** Under Article 2 (e) of the Law on B and BA, money remittance operations and issuance of money transfer orders are banking operations that must be licensed pursuant to Article 5 of that statute. According to this statute, the NBT is the authority designated to license such entities.

478. **Application of FATF Recommendations (applying R.4-11, 13-15 & 21-23, & SRI-IX)(c. VI.2):** There is no AML/CFT regime in place in Tajikistan. Thus, there are no requirements applicable to such entities. Money remitters operate according to their own internal requirements, but not any imposed by Tajikistan. As a result, there is no supervisor, monitoring or sanctioning.

479. **Monitoring of Value Transfer Service Operators (c. VI.3):** See paragraph immediately above.

480. **List of Agents (c. VI.4):** See paragraph immediately above.

481. **Sanctions (applying c. 17.1-17.4 in R.17)(c. VI.5):** See paragraph immediately above.

482. **Additional Element – Applying [Best Practices Paper](#) for SR VI (c. VI.6):** See paragraph immediately above.

483. **Assessment of Effectiveness:** Since there are no requirements, there can be no assessment of effectiveness.

Recommendations and Comments

484. Authorities should consider adopting measures to make the requirements of FATF SR VI applicable to money remitters.

iii. Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	NC	There is no applicable requirement

PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

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

Description and Analysis

485. **General:** Several Designated non-financial businesses and professions (DNFBPs) that present potential ML and FT risk are present in Tajikistan. This includes real estate brokers, lawyers, notaries, accountants and dealers in precious metals and stones. During the on-site mission the assessment team couldn't meet with representatives of real estate agents, accountants, notaries and members of the Bar association, and only received some legislation that is relevant for DNFBPs; thus, it could not fully assess their risks and vulnerabilities for ML or FT and their compliance with the FAFT recommendations.

486. **Casinos:** Though the Law on licensing of separate type of activity (article 17) anticipates the establishment and licensing of gambling houses, there are currently no casinos in Tajikistan. They were suspended by the Decree 2 of the President of the RT on streamlining casino activities, adopted in July 2000. Prior to the adoption of the Decree 2 casinos were operating in Tajikistan but no specific legislative act regulated their activities.

487. **Real estate agents:** There are currently 7 real estate agents that are carrying out their activities in Tajikistan, mostly, if not exclusively, in Dushanbe. They operate as legal persons or individual entrepreneurs and only have to be registered under the Law on state registration of legal entity if they have a status of a legal person. It is important to note that under article 14 of the Constitutional Act of RT the earth, water, and other natural resources are the exclusive property of the state and, therefore, the real estate business is mostly focused on other immobility, e.g. houses and apartments and other buildings. The real estate agents' activities are not regulated by any specific law or regulation and no single supervisory authority is responsible for their supervision or monitoring.

488. Tajik authorities failed to provide any further information and data regarding the real estate agents.

489. **Notaries:** Law on state notary was adopted in 1997, yet it doesn't contain any provisions relevant for the assessment of compliance with the international AML/CFT standards. At present there are 78 notaries' offices with 128 notaries that carry out their functions under the auspices of the Ministry of Justice. The authorities stated that in year 2006 they executed 3.095 activities all together.

490. Tajik authorities failed to provide any further information and data regarding the notaries.

491. **Lawyers:** In Tajikistan there are approximately 200 lawyers and 6 law firms (legal persons) that provide "chargeable juridical consultations" (article 14 of Law on licensing of

separate type of activity). The obligatory registration of lawyers is only required from March 2006, and at present they only have to register if they act as attorneys. Furthermore, from March 2007 lawyers need to get a license only if they act as private entrepreneurs. In 2006 the Ministry of Justice issued 142 new licenses for providing legal assistance.

492. Tajik authorities failed to provide any further information and data regarding the lawyers.

493. **Accountants:** The Law on Financial Accounting was adopted in 1999, yet it doesn't contain any provisions relevant for the assessment of compliance with the international AML/CFT standards. Tajik authorities failed to provide any further information and data concerning the accountants.

494. **Dealers with precious metals and stones:** The activities of dealers with precious metals and stones are regulated under the Law on Precious Stones and Metals (adopted on May 12, 2001) and the Law on Licensing of Separate Type of Activity, which requires that "any activity regarding circulation of precious metals and stones (processing of scrap and waste of scrap of precious metal into finished product, refining of precious metal, recuperation of precious stones, wholesale and retail trade, conducting of bank transactions with precious metals and stones)" shall be licensed. The licensing authority and body responsible for the supervision of this sector is the Ministry of Finance (the Department of Ministry of Finance for precious metals and stones and another special organizational unit within the ministry).

495. Until 21 May 2007, the above mentioned department issued 970 licensed entities, out of which 773 licenses were issued to private entrepreneurs and 144 certificates were issued for repairing jewelry and carrying out dentist activities. In Tajikistan there are also 3 companies registered for performing mining activities.

496. In the whole of Tajikistan, an average monthly production of precious metals for jewelry items is 1.5 kg in gold (worth app. USD 30.000) and an average price of piece of jewelry is USD 600 (to be verified by the authorities). On average, a jewelry shop in Tajikistan has a turnover in gold of USD 3,000 in every 3 months.

497. The above mentioned laws regulating the activities of dealers with precious metals and stones do not contain any provisions that would require taking customer due diligence and other measures set out in the FATF Recommendations 5, 6 and 8 -11.

498. **Trust and company service providers:** During the meeting with representatives of the Ministry of Justice the assessment team was told that trusts and company service providers don't exist as a separate category of entities, and that such activities tend to be provided by lawyers. Nevertheless, the legislation does not prohibit carrying out such activities.

499. Tajik authorities failed to provide any further information and data regarding the businesses of trust and company service providers conducted by lawyers.

500. **Legal Framework:** As it has been mentioned above (see Chapter 3) Tajikistan does not have an AML/CFT preventive law or any other law/regulation requiring that CDD and/or other preventive measures should be taken by DNFBPs. Furthermore, in the new draft AML/CFT law (article 5) lawyers, notaries, accountants and real estate agents, as well as trusts and company service providers, are not included in the list of obliged entities under this law.

501. **CDD Measures for DNFBPs in set circumstances:** There is no AML/CFT preventive law or other law/regulation requiring that CDD and other measures foreseen under FAFT Recommendations 5, 6 and 8-11 shall be implemented by DNFBPs.

Recommendations and Comments

502. As a matter of priority the AML/CFT law should be adopted providing that CDD and other preventive measures foreseen under FAFT Recommendations 5, 6 and 8-11 apply also to DNFBPs.

iv. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	There is no AML/CFT law or other law and/or regulation requiring that CDD and other preventive measures under FAFT R 5, 6 and 8-11 apply to DNFBPs.

Suspicious transaction reporting (R.16)

Description and Analysis

503. **Legal Framework:** Decree of the President of the RT on streamlining casino activities (adopted in July 2000), Law on licensing of separate type of activity, Law on precious stones and metals (adopted on May 12, 2001), Law on state notary (adopted in 1997), and Law on financial accounting (adopted in 1999).

504. In Tajikistan, there is no FIU and there is no AML/CFT law or any other law/regulation requiring:

- DNFBPs to make any kind of suspicious transactions reports related to ML or FT or other criminal offences (predicate offences) to the FIU;
- to protect DNFBPs from criminal and civil liability for breach of any restriction on disclosure if they report their suspicions in good faith to the FIU;
- DNFBPs and their employees not to disclose the fact that the STR or related information is being reported to the FIU;
- to keep confidential the names and personal details of staff of DNFBPs who report to the FIU;
- DNFBPs to establish and maintain internal controls to prevent ML and FT as well as to audit these procedures;
- DNFBPs to establish an ongoing employee training on AML/CFT matters;

- DNFBPs to put in place screening procedures to ensure high standards when hiring employees;
- the AML/CFT compliance officer within the DNFBPs to be able to act independently;
- DNFBPs to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply FAFT Recommendations;
- DNFBPs to examine transactions with no apparent economic or visible lawful purpose; and
- Republic of Tajikistan to consider taking appropriate counter measures with regard to countries that are not sufficiently applying FAFT Recommendations.

Recommendations and Comments

505. As a matter of priority a comprehensive AML/CFT law should be adopted and should address the requirements of FAFT Recommendations 13 - 15 and 21 with respect to DNFBPs.

Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> • There is no FIU and no AML/CFT law or any other law/regulation requiring DNFBPs to make STRs to the FIU. • Consequently, the requirements under FAFT Recommendations 13, 14, 15 and 21 are not met.

Regulation, supervision and monitoring (R.24-25)

Description and Analysis

506. **Legal Framework:** Decree of the President of the RT on streamlining casino activities (adopted in July 2000), Law on licensing of separate type of activity, Law on precious stones and metals (adopted on May 12, 2001), Law on state notary (adopted in 1997), and Law on financial accounting (adopted in 1999).

507. As mentioned above under the 2000 Decree of the President of the RT the activities of casinos are prohibited and they do not exist in Tajikistan.

508. There is no AML/CFT legislation and no AML/CFT related obligations apply to DNFBPs, thus there are no effective systems in place for monitoring and ensuring compliance with these requirements. No guidelines were issued that would assist DNFBPs to implement and comply with AML/CFT requirements.

Recommendations and Comments

509. The AML/CFT law should be adopted providing that requirements under FAFT Recommendations 24 (ensuring effective system of monitoring) and 25 (establishing guidance) apply also to DNFBPs that exist in Tajikistan.

510. In designating DNFBPs, the authorities should also determine authority/authorities with sufficient powers and capacity to supervise or monitor the designated DNFBPs.

Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> There are no AML/CFT requirements for DNFBPs and they are not subject to any effective systems for monitoring and ensuring compliance with such requirements.
R.25	NC	<ul style="list-style-type: none"> There are no AML/CFT requirements for DNFBPs and, consequently, no guidelines were issued that would assist DNFBPs to implement and comply with such requirements.

Other non-financial businesses and professions & Modern-secure transaction techniques (R.20)

Description and Analysis

511. **Legal Framework:** As indicated above, there is no AML/CFT law and Tajikistan has not yet applied CDD and other preventive measures, as well as the reporting of STRs to the FIU, to other potentially vulnerable sectors. However, under article 5 of the draft AML/CFT law the following additional entities are included in the list of obliged entities: “pawn-shops, mail companies, companies holding totalizators and handbook entities and also organizing lotteries, where an organizer raffles off prizes among participants, including in the electronic form.”

512. Due to the lack of information provided by the authorities, the assessment team was unable to assess whether any other non-financial businesses and professions exist that are vulnerable to ML or FT.

513. **Modernization of Conduct of Financial Transactions:** Tajikistan is primarily a cash-based economy and the authorities have taken several steps to reduce reliance on cash. In 2006 the Parliament adopted a document related to the monetary policy of Tajikistan, where it took a formal decision on increasing the share of non-cash payments in the economy of the country and expanding opportunities for citizens to use plastic cards. According to this document, the following measures should be taken:

- accepting of household cash assets to be spent for the payment for communal services with the use of plastic cards;
- increasing the number of banks-members of international payment systems, such as Visa International and Euro-pay International;
- in order to improve arrangement of interstate settlements, the NBT will provide banks that are users of the Point of collective access to SWIFT network, with favorable conditions, which shall enable banks to render their clients the set of new services.

514. Additionally, the NBT is promoting the use of ATM machines and is inviting companies to pay the salaries of their employees by transferring the monies on their bank accounts instead of paying their salaries in cash.

515. While it remains to be seen whether all planned measures are going to be implemented, some positive results are already visible. Namely, the assessment team was told that in 2005 there were between 6.000 and 7.000 users of credit cards, and in 2006 their number increased to almost 14.000 users.

516. In Tajikistan, banknotes are denominated in a value of not more than 100 Somonis (app. USD 30). The currency is not convertible, nor is widely used outside the country. The assessment team believes that the above mentioned facts make Tajikistan's currency less vulnerable to ML.

Recommendations and Comments

517. It is recommended that the authorities take measures to assess the vulnerability of other businesses and professions, such as for example dealers in high value and luxury goods, to ML and FT and extend the AML/CFT requirements where necessary.

Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	PC	<ul style="list-style-type: none"> Tajikistan has not assessed the vulnerability of businesses and professions, other than DNFBPs, to money laundering and terrorist financing and has not yet considered applying the FATF Recommendations 5, 6, 8-11, 13-15, 17 and 21 to such businesses and professions.

LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

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

Description and Analysis

518. Very little information was provided to the assessors in the area of legal persons and non-profit organizations. Based upon representations by government authorities, the Justice Ministry is charged with operating a registration system for all legal entities, which is computerized but it can only be searched by name of company or founders. Information in the system does include senior management and the names of board of directors. In 2006 there were 1739 entities who registered plus 118 who registered as a branch office for a total of 1, 857. Between January and June 2007 the following legal entities were registered: 83 joint stock companies, 33 associations, 29 production co-operatives, 512 limited companies, 38 joint ventures and 3 credit organizations. Altogether, the Ministry database has about 6000-7000 entities registered.

519. **Legal Framework:** The assessors were informed that there is an applicable statute, the Law on State Registration of Legal Entities, but were not provided with any copy of such law.

520. **Measures to Prevent Unlawful Use of Legal Persons (c. 33.1):** No information provided.

521. **Access to Information on Beneficial Owners of Legal Persons (c. 33.2):** No information provided.

522. **Prevention of Misuse of Bearer Shares (c. 33.3):** Article 167 of the Civil Code allows the issuance of bearer shares by legal entities. No other information was provided.

523. **Additional Element - Access to Information on Beneficial Owners of Legal Persons by Financial Institutions)(c. 33.4):** No information provided.

524. **Assessment of Effectiveness:** Due to the lack of information provided, no assessment of effectiveness could be made.

Recommendations and Comments

525. The authorities should consider amending the law to fully implement the requirements of FATF Recommendation 33, including the prohibition of bearer shares.

Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	NC	Insufficient information was provided to make a proper evaluation.

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

Description and Analysis

526. Other than the discussion above regarding legal persons, no further information was provided during the mission. Tajik authorities were unable to provide any information as to the potential/actual misuse of legal arrangements in relation to money laundering or terrorist financing. Tajik authorities had not taken any steps to examine license applications in order to determine whether the information provided was truthful, nor had they conducted any audit on the database referred to above. No information was provided on trusts.

527. **Legal Framework:** No statutory or regulatory materials were provided.

528. **Measures to Prevent Unlawful Use of Legal Arrangements (c. 34.1):** No information provided.

529. **Access to Information on Beneficial Owners of Legal Arrangements (c. 34.2):** No information provided.

530. **Additional Element - Access to Information on Beneficial Owners of Legal Arrangements by Financial Institutions)(c. 34.3):** No information provided.

Assessment of Effectiveness: No information provided on effectiveness.

Recommendations and Comments

531. The authorities should consider amending the law to address adequately the requirements of FATF Recommendation 34.

Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	NA	The Assessors had unanimously rated this as NC based upon the fact that insufficient information was provided by Tajik authorities to make a proper evaluation. The EAG Plenary determined, without substantive analysis, to change the rating to NA, based upon the assumption that the Tajik situation was similar to other EAG member countries.

Non-profit organisations (SR.VIII)

Description and Analysis

532. The Law on Charities was adopted in 2003 and provides, inter alia, the definitions of charitable organization, charitable fund and economic society (see article 2). According to this law a “charitable organization” is *“a non-governmental, non-commercial organization founded in accordance with the procedure established in the Tajik legislation, created for realization of charitable purposes, performing basic charity work in the interest of the society or separate categories of persons.”* A “charitable fund” is *“a charitable organization without having a membership founded by a natural or legal person on the basis of voluntary material payments and pursuing purposes with respect to charity.”* Finally, the “economic society” is *“an organization created by the charitable organization, which is sending the profit for the purposes of charities and the founders who can only be charitable organizations.”*

533. According to articles 7 - 9 of the Law on Charities the charitable organizations can be created by natural or/and legal persons - through establishment or reorganization of the existing legal entity - as:

- public organizations (associations);
- funds;
- establishments (only if its founder is another charitable organization); and
- other forms stipulated by the Tajik legislation for charities.

Public authorities and local governments as well as state-owned enterprises and agencies can not be founders of a charitable organization.

534. The Law on Charities also regulates the following:

- Charitable organizations should be registered (article 11) and should not have the right to spend means and to use the property to support political parties, movements, groups and campaigns;
- The charter of a charitable organization should , inter alia, provide sources of formation of money resources and other property of the charitable organization (articles 10 and 17);
- A charitable organization can only spend up to 20% of the financial assets in a fiscal year to pay the administrative and managerial personnel; the rest should be used for the charitable purposes (article 18);
- Whilst the state body which has registered a charitable organization shall observe the charter provisions concerning the purpose of charities, they should be controlled by the state monitoring bodies. They should keep accounting and shall provide open access to the annual reports (article 27);
- Charitable organizations have the right to receive donations from foreign citizens, persons without citizenship, and from foreign and international organizations (article 23);
- Natural and legal persons violating the requirements of this law shall be sanctioned pursuant to the Tajik legislation.

535. During the on-site visit the authorities mentioned that the Law on Public Organizations (Associations) was recently adopted, however it did not come into force yet. The authorities did not provide a copy of this law.

536. In the Ministry of Justice there are currently 3.200 registered public organizations and according to the authorities it is expected that their number will diminish after the enactment of the Law on public organizations.

537. **Legal Framework:** Law on Charities (No. 18, dated April 22, 2003); Law on Public Organizations (Associations) (adopted in 2007; this law was not provided to the assessment team).

538. **Review of Adequacy of Laws & Regulations of NPOs (c. VIII.1):** The authorities did not review the adequacy of legislation related to the non-profit organizations and can not obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF. The authorities did not conduct periodic reassessment by reviewing new information on the NPOs potential vulnerabilities to terrorist activities.

539. **Preventative Measures Against Illegitimate NPOs (c. VIII.2):** The authorities did not adopt any preventive measure nor undertake outreach to the NPO sector with a view to protecting it from TF abuse.

540. **Diversion of Funds for Terrorists Purposes (c. VIII.3):** Tajik authorities could not demonstrate that they have taken steps necessary to promote effective supervision/monitoring of the risky NPOs.

541. While according to the Law on Charities sanctions can be applied regarding the violations of this law, the authorities did not provide any information regarding the type and application of these sanctions.

542. The Law on Charities in articles 10 and 17 requires charitable organizations to have a charter providing information on the purpose and objectives of their state activities. However, the law does not explicitly require maintaining information on the person who own, control or directing their activities. The authorities did not provide any further information in this regard. The Law on Charities in article 22 requires that information regarding the activities of charitable organizations should be publicized and the annual reports have to be made available also to the media.

543. The legislation provide for the mandatory registration of charitable organizations. As discussed above, several law enforcement authorities have access to data contained in the registry.

544. The Law on Charities does not require that charitable organizations shall maintain their financial records. The authorities did not provide further information as to whether any other legislation requires maintaining the record for a period of at least five years, as required by international standards.

545. **Implementation of SR VIII (c. VIII.4):** Authorities did not provide any information regarding the existence of domestic co-operation, co-ordination and information sharing among appropriate authorities that hold relevant information on NPOs of potential TF concern.

546. As discussed above in the chapter dealing with the powers of law enforcement authorities, during the course of investigation several law enforcement authorities can have access to information on the administration and management of a particular NPO. In addition, paragraph 4 of article 22 of the Law on Charities explicitly provides that “the information on the size and structure of revenues of the charitable organization, the size of its property, charges, number of workers, payment for their labor and attraction of volunteers shall not be a commercial secret.”

547. In Tajikistan the authorities did not develop mechanisms for the prompt sharing of information among all relevant competent authorities in order to take appropriate action when there is a suspicion that a particular NPO is being used for TF purposes. Nevertheless, it seems that the authorities do have the necessary investigative expertise and capability to examine such

NPOs and legal mechanisms in place to allow for prompt investigative or preventative action against such NPOs.

548. **Responding to international requests for information (c. VIII.5);** The authorities did not provide information as to whether any specific points of contacts and procedures have been established to respond to international requests for information regarding particular NPOs that are suspected of TF.

Recommendations and Comments

549. The authorities should:

- establish an inter-ministerial working group to review the adequacy of legislation related to the non-profit organizations;
- amend the Law on Charities and/or other relevant legislation to ensure that the competent authorities can obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF;
- adopt an effective outreach program with the NPO sector or other preventive measures which, inter alia, may include the development of best practices to address terrorist financing risks and regular outreach events with this sector to discuss scope and methods of abuse of NPOs;
- ensure that competent registration and supervisory authorities monitor/supervise the NPOs that are more risky, as required under the essential criteria VIII.3 of the Methodology;
- ensure that the appropriate measures are in place to sanction violations of rules by NPOs or persons acting on behalf of NPOs and that such measures are effectively implemented;
- amend the Law on Charities or other relevant legislation to ensure that NPOs maintain information on the person who own, control or directing activities of the charitable organizations;
- amend the Law on Charities or other relevant legislation to ensure that NPOs to maintain financial records for a period of at least five years;
- develop mechanisms, such as MOUs or establishing point of contacts, to ensure domestic co-operation, co-ordination and information sharing among appropriate authorities that hold relevant information on NPOs of potential TF concern;
- identify appropriate points of contacts and procedures to respond to international requests for information regarding particular NPOs that are suspected of TF.

Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"> • The authorities did not review the adequacy of legislation related to the non-profit organizations and can not obtain timely information on

		<p>the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF.</p> <ul style="list-style-type: none"> • No periodic reassessment of the new information on the NPOs potential vulnerabilities to terrorist activities has been conducted. • The authorities did not adopt any preventive measure nor undertake outreach to the NPO sector with a view to protecting it from TF abuse. • No steps necessary to promote effective supervision/monitoring of the risky NPOs have been taken yet. • The authorities did not provide any information regarding the type and application of sanctions under the Law on Charities. • The legislation does not require maintaining information on the person who own, control or directing activities of the charitable organizations. • The legislation does not require NPOs to maintain financial records for a period of at least five years. • Lack of domestic co-operation, co-ordination and information sharing among appropriate authorities that hold relevant information on NPOs of potential TF concern. • No mechanisms have been developed for the prompt sharing of information among all relevant competent authorities in order to take appropriate action when there is a suspicion that a particular NPO is being used for TF purposes. • The authorities did not provide information as to whether specific points of contacts and procedures have been identified to respond to international requests for information regarding particular NPOs that are suspected of TF.
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

NATIONAL AND INTERNATIONAL CO-OPERATION

National co-operation and coordination (R.31)

Description and Analysis

550. Other than standard confidentiality provisions regarding law enforcement and national security there are no legal prohibitions that prevent Tajik authorities from cooperating with one another. The Drug Agency noted that it does coordinate with the PGO on “controlled deliveries” and seizure of Bank records. With the exception of the Drug Agency the Assessors were not able to identify examples of domestic cooperation by and between law enforcement agencies and/or supervisors either for sharing information or coordinating on operational activities.

551. The President of Tajikistan established the Agency on State Financial Control and Corruption in January 2007 to facilitate the fight against corruption and to be the anti-money laundering agency. See Decree No 143, January 10, 2007. The Agency, described in detail elsewhere in the DAR, was created in part to facilitate cooperation and action amongst existing agencies; and in this regard has its own investigators, and is intended to be designated as the Financial Intelligence Unit. The agency was in the process of becoming operational (400 staff had already been hired) during the mission visit so there was no information or examples of its actual capabilities and/or the extent to which its creation would mitigate the lack of interagency cooperation observed by the Assessors.

552. The Law “On the National Security Service (No. 610, 22 May 1988) has as one of its key responsibilities combating crime (Art. 12). In this regard it has the authority to make inquiries and perform preliminary investigations into cases of crimes included in its terms of reference. (Articles 17 and 18) and authorized to cooperate with law enforcement bodies (Art. 19(23)) and by implication domestic agencies. Smuggling, corruption and organized crime are in listed as areas for the security service to address (Art. 18 (3)). The intention is to have a unit that handles money laundering but they need more access to banking information.

553. **Legal Framework:** There is no statutory framework that either prohibits domestic cooperation or that requires or directs that there should be such cooperation.

554. **Mechanisms for Domestic Cooperation and Coordination in AML/CFT (c. 31.1):** The Presidential Administration has responsibility for supervising all agencies but there is no mechanism set up to effect coordination among the agencies

555. The authorities did not provide any information concerning the existence of mechanisms that are in place for consultation between competent authorities, the financial sector or other sections (including DNFBP regarding money laundering or terrorist financing. The Assessors did not learn of any such mechanisms.

556. **Additional Element - Mechanisms for Consultation between Competent Authorities and Regulated Institutions (c. 31.2):** There are no mechanisms for consultation between competent authorities and regulated institutions.

557. **Statistics (applying R.32):** The assessors were not able to obtain any statistics.

558. **Recommendations and Comments:** The authorities should consider:

- Amending Article 278 to specifically permit disclosure to law enforcement agencies acting in the course of their statutory duties; and
- Establishing an interagency coordinating mechanism to share information and coordinate on operational matters.

Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	NC	<ul style="list-style-type: none"> • There are no statutory prohibitions to sharing information by and between agencies yet there is no indication that the agencies engage in any sharing of information or coordination on operational issues. • Government officials did not provide any information concerning the existence of mechanisms that are in place for consultation between competent authorities, the financial sector or other sections (including DNFBP regarding money laundering or terrorist financing).

The Conventions and UN Special Resolutions (R.35 & SR.I)

Description and Analysis

559. **Legal Framework:** the Constitutional Act (November 6, 1994; amended in 1999 and again in 2003), the Law on Narcotic Drugs, Psychotropic Substances and Precursors (Law No. 873 from 1999; as amended on 29 April 2006), the Law on Combating Terrorism (No. 846 from 16 November 1999; as amended No 77 from 1 March, 2005; and No. 246 from 12 May 2007), the Law on Combating Extremism (No. 69 from 8 December 2003; as amended No. 96 from 5 November 2003, No. 455 from 21 November 2003; and No. 226 from 5 March 2007), the Law on the National Security Service (No. 610 from 22 May 1998), the Law on the Police (No. 41 from 17 May 2004), the Law on Operative Investigation Activity (No. 651 from 23 May 1998; as amended No. 848 from 16 November 1999; and No. 30 from 1 August 2003), the Constitutional Law on Prosecutor Office's Bodies (No. 107 from 25 July 2005), the Law on Combating of Trafficking of People, the Customs Code, the Criminal Code and the Criminal Procedure Code and relevant acts of the Parliament on the ratification of the UN conventions.

560. **Ratification of conventions:** Tajikistan ratified, or became a party to with accession, of the following UN conventions:

- The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention; acceded on May 6, 1996);
- The UN Convention against Transnational Organized Crime (the Palermo Convention; ratified on July 8, 2002);
- The UN International Convention for the Suppression of the Financing of Terrorism (the SFT Convention; ratified on 15 August 2004) and other 12 UN anti-terrorism conventions and protocols.

561. Tajikistan is also a party to the UN Convention against Corruption (acceded on September 26, 2006), yet till now has not signed, ratified or fully implemented the 1990 Council

of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) or its successor convention - the 2005 Council of Europe Warsaw Convention. Furthermore, Tajikistan is a charter member of the new Eurasian Group on Combating Money Laundering and Financing of Terrorism - EAG, a FAFT Style Regional Body established in October 2004.

562. **Implementation of conventions:** While Tajikistan has to be commended for becoming a party to all but two ML/FT - related international conventions, its achievement in implementing the provisions of these conventions give rise to particular concerns. Tajikistan has enacted legislation implementing the Vienna Convention, the Palermo Convention and the SFT Convention, yet as it can be seen from the analysis in this Report: Sections 2.1 (Criminalization of money laundering), 2.2 (Criminalization of terrorist financing), 2.3 (Confiscation, freezing and seizing of proceeds of crime), 2.4 (Freezing of funds used for terrorist financing), 2.6. (Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing), 3 (Preventive measures – Financial institutions) and 6.3 - 6.5 (Mutual Legal Assistance and Other Forms of International Co-operation), some provisions of the domestic legislation are insufficient or inconsistent with these conventions. Tajikistan is not fully in compliance with the obligations provided in the following articles: 1) the Vienna Convention (articles 3, 5 and 9); 2) the Palermo Convention (articles 6, 7, 10, 12, 13, 29, 31 and 34); and 3) the SFT Convention (articles 2, 5, 8 and 18).

563. The criminal offence of ML exists in the Criminal Code for almost nine years but it has been applied in investigations and prosecutions only once. Furthermore, the recent adoption of the Law on amnesty of citizens and legal entities of the Republic of Tajikistan related to the property amnesty (the Amnesty Law), as discussed above in this Report, is contrary to international obligations of the Republic of Tajikistan under the ML related conventions. Although it is a single action on amnesty it will undoubtedly further diminish the readiness of the Law enforcement authorities and the prosecutors to investigate and prosecute the ML offence.

564. The information provided by the authorities shows that in the period 2002 – 2007 there were no FT related prosecution and convictions.

565. **Implementation of UN Security Council resolutions:** As analyzed in Section 2.4 of this Report (Freezing of funds used for terrorist financing), Tajikistan does not yet fully implement UN Security Council Resolutions 1373 and 1267 as well as its successor resolutions.

566. **Recommendations and Comments:** The authorities should consider:

- Adopting measures to update its legal system consistent with its various obligations under the Vienna Convention, the Palermo Convention and the SFT Convention.

- Avoiding legal initiatives, such as adopting and implementing the Amnesty Law, which temporarily repeals the application of the ML offence, that contradict its obligations under the Vienna Convention and the Palermo Convention.
- Adopting appropriate laws and/or regulations and taking other measures to ensure that the requirements contained in the UNSC resolutions 1373 and 1267 as well as with its successor resolutions are satisfied.

Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	NC	<ul style="list-style-type: none"> • Tajikistan has ratified /acceded to the Vienna Convention, the Palermo Convention and the SFT Convention, yet it has not taken measures to fully implement them through domestic laws. • Whilst the ML criminal offence exists in the Criminal Code for almost nine years, it has been applied in investigations and prosecutions only once. This suggests that ML activities have not been yet effectively pursued. • The adoption and the implementation of the Amnesty Law will temporarily unable Tajikistan authorities to carry out some of their obligations under the Vienna Convention and the Palermo Convention.
SR.I	NC	<ul style="list-style-type: none"> • Tajikistan has ratified the SFT Convention, yet it has not taken measures to fully implement it through domestic laws. • Tajikistan has taken some measures to implement Security Council Resolution 1373, but the obligations regarding the criminalization of FT and freezing/seizing of assets of persons linked with terrorism are not fully met. • Whilst Tajikistan has taken some practical measures to implement Security Council Resolution 1267 and its successor resolutions, it has fallen short of addressing the majority of the legal requirements under these resolutions.

Mutual Legal Assistance (R.36-38, SR.V)

Description and Analysis

567. No information was provided.

568. **Legal Framework:** No information was provided.

569. **Widest Possible Range of Mutual Assistance (c. 36.1):** No information was provided.

570. **Provision of Assistance in Timely, Constructive and Effective Manner (c. 36.1.1):** No information was provided.

571. **No Unreasonable or Unduly Restrictive Conditions on Mutual Assistance (c. 36.2):** No information was provided.
572. **Efficiency of Processes (c. 36.3):** No information was provided.
573. **Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 36.4):** No information was provided.
574. **Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 36.5):** No information was provided.
575. **Availability of Powers of Competent Authorities (applying R.28, c. 36.6):** No information was provided.
576. **Avoiding Conflicts of Jurisdiction (c. 36.7):** No information was provided.
577. **Additional Element – Availability of Powers of Competent Authorities Required under R28 (c. 36.8):** No information was provided.
578. **International Cooperation under SR V (applying c. 36.1-36.6 in R. 36, c. V.1):** No information was provided.
579. **Additional Element under SR V (applying c. 36.7 & 36.8 in R.36, c. V.6):** No information was provided.
580. **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):** No information was provided.
581. **International Cooperation under SR V (applying c. 37.1-37.2 in R. 37, c. V.2):** No information was provided.
582. **Timeliness to Requests for Provisional Measures including Confiscation (c. 38.1):** No information was provided.
583. **Property of Corresponding Value (c. 38.2):** No information was provided.
584. **Coordination of Seizure and Confiscation Actions (c. 38.3):** No information was provided.
585. **International Cooperation under SR V (applying c. 38.1-38.3 in R. 38, c. V.3):** No information was provided.
586. **Asset Forfeiture Fund (c. 38.4):** No information was provided.
587. **Sharing of Confiscated Assets (c. 38.5):** No information was provided.

588. **Additional Element (R 38) – Recognition of Foreign Orders for a) Confiscation of assets from organizations principally criminal in nature; b) Civil forfeiture; and, c) Confiscation of Property which Reverses Burden of Proof (applying c. 3.7 in R.3, c. 38.6):** No information was provided.

589. **Additional Element under SR V (applying c. 38.4-38.6 in R. 38, c V.7):** No information was provided.

590. **Statistics (applying R.32):** No information was provided.

Recommendations and Comments

591. Authorities should consider adopting measures to comply fully with FATF Recommendations 36, 37, 38 and SR V.

Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	NC	No information was provided.
R.37	NC	No information was provided.
R.38	NC	No information was provided.
SR.V	NC	No information was provided.

Extradition (R.37, 39, SR.V)

Description and Analysis

592. According to the Tajikistan report to the UN Security Council Counter Terrorism Committee (10 February 2006) a national of the Republic of Tajikistan who has committed an offence in the territory of another State shall not be liable to extradition to that State unless otherwise provided in a bilateral treaty (Act of the Republic of Tajikistan No. 35 of 17 May 2004).

593. Foreign nationals and stateless persons who have committed an offence outside the Republic of Tajikistan but are present in its territory may be extradited to a foreign State for criminal prosecution or to serve a sentence in accordance with an international treaty (Act of the Republic of Tajikistan No. 35 of 17 May 2004).

594. In accordance with article 16 of the Constitution of the Republic of Tajikistan, criminal extradition is permitted on the basis of bilateral agreements. Tajikistan has a range of bilateral agreements and treaties on rendering legal assistance and on extradition.

595. Bilateral treaties:

- Treaty with the People's Republic of China on Legal Assistance in Civil and Criminal Matters (1996);

- Agreement with the Republic of Turkey on Legal Cooperation in Civil, Commercial and Criminal Matters, of 6 May 1996;
- Treaty with the Kyrgyz Republic on Legal Cooperation in Civil, Commercial and Criminal Matters, of 6 May 1998;
- Treaty with the Republic of India on Legal Assistance in Criminal Matters, of 10 May 2001;
- Treaty with the Republic of Uzbekistan on Extradition, of 15 June 2000;
- Treaty with the Republic of India on Extradition, of 14 November 2003; and
- Treaty with Ukraine on Extradition and on the Transfer of Convicted Persons to Serve Their Sentences, of 2 April 2004.

596. Multilateral treaties: Tajikistan has signed the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, of 22 January 1993, which entered into force for Tajikistan on 20 December 1994. Based on article 56, the Contracting Parties are obligated, under the conditions stipulated in this Convention, to extradite on request, persons present in their territories for criminal prosecution or to serve a sentence.

597. The Kishinev Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, of 7 October 2002, was ratified by Tajikistan on 1 October 2004. Based on article 66, the Contracting Parties are obligated, under the conditions stipulated in this Convention, to extradite on request, persons present in their territories for criminal prosecution or to serve a sentence.

598. Also under article 5 of the Treaty, each Contracting Party may, in the absence of conditions permitting extradition and at the request of the other Contracting Party, prosecute its own nationals or other persons habitually resident in its territory under the legislation of the requested Contracting Party if these persons are suspected of committing an offence.

599. The Republic of Tajikistan considers, among other things, commission of the following acts to be grounds for extradition:

- Offences referred to in the Convention for the Suppression of Unlawful Seizure of Aircraft (1970), the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971) and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988), supplementary to the above-mentioned Convention of 1971;
- Serious offences referred to in the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);
- Offences referred to in the International Convention against the Taking of Hostages (1979);
- Offences referred to in the Convention on the Physical Protection of Nuclear Material (1980);

- Offences referred to in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988);
- Offences referred to in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, of 2 December 1949;
- Offences referred to in the United Nations Convention against Transnational Organized Crime, of 15 December 2000;
- Offences referred to in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, of 15 December 2000;
- Offences referred to in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, of 15 December 2000;
- Offences referred to in the Optional Protocols to the United Nations Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, of 26 June 2000.

600. **Legal Framework:** Constitution Article 16 and Criminal Code Article 16.

601. **Dual Criminality and Mutual Assistance (c. 37.1 & 37.2):** The government did not provide any examples of the extent to which mutual legal assistance was rendered or the extent to which it could be rendered. Authorities stated that dual criminality is required and that the government will look to the conduct of the crime rather than the exact wording of the statutes. No further information was provided and there are no agreements to extradite Tajik citizens from Tajikistan.

602. **Money Laundering as Extraditable Offence (c. 39.1):** Money laundering is an extraditable when it is provided for by bilateral treaty. See paragraph immediately below. According to representations by Tajik authorities, money laundering has never been the basis for an extradition request.

603. **Extradition of Nationals (c. 39.2):** According to the Constitutional Act extradition of nationals is not allowed unless it is agreed under an international or bilateral treaty (see Constitutional Act, Article 16). As yet, no bilateral treaties allowing for extradition of Tajik citizens have been signed by the Republic of Tajikistan.

604. **Cooperation for Prosecution of Nationals (applying c. 39.2(b), c. 39.3):** See paragraph immediately above.

605. **Efficiency of Extradition Process (c. 39.4):** No information provided.

606. **Additional Element (R.39) – Existence of Simplified Procedures relating to Extradition (c. 39.5):** No information provided.

607. **Additional Element under SR V (applying c. 39.5 in R. 39, c V.8):** No information was provided.

608. **Statistics (applying R.32):** Extradition is carried out amongst CIS countries pursuant to the regional treaty. From 2006-first quarter 2007 there were 15 requests for extradition and 8 were granted. Tajikistan made 104 requests and 40 were satisfied. None included money laundering or terrorist financing.

Recommendations and Comments

609. The authorities should consider:

- Listing money laundering as an extraditable offense, consistent with the Constitution;
- Where extradition is not permitted or is denied for appropriate reasons, the case should be submitted without undue delay to competent authorities for investigation and/or prosecution, in accordance with the request from the foreign jurisdiction; and
- Where extradition is not granted, the authorities should take measures to cooperate on procedural and evidentiary issues.

610. Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	NC	Insufficient information provided to make assessment.
R.37	NC	Insufficient information provided to make assessment.
SR.V	NC	Insufficient information provided to make assessment.

Other Forms of International Co-operation (R.40 & SR.V)

Description and Analysis

611. **Legal Framework:** Regulation on agency for state financial control and combating corruption, Law on the national security service, Law on combating extremism (adopted in December 2003), Law on narcotic drugs, psychotropic substances and precursors, Customs Code, Law on operational investigation activities, and several international - bilateral and multilateral - agreements between Tajikistan and foreign countries/group of countries (see below).

612. **Widest Range of International Cooperation (c. 40.1):** According to article 3 of the Regulation on agency for state financial control and combating corruption, ASFCCC is empowered to:

- co-operate in the determined order with corresponding bodies of foreign states, international organizations in the area of corruption and state financial control;

- fulfill the obligations under international agreements and international normative acts on combating corruption adopted by the Republic of Tajikistan; and
- bilaterally exchange information on economic relations of Tajik physical persons and legal entities with the physical persons and legal entities of other countries based on Intergovernmental agreements.

613. During the on-site meeting ASFCCC stated that while they cooperate directly with international organizations, their co-operation with the competent authorities of other countries is channeled through the Ministry of foreign affairs using the mutual legal assistance framework. Up till now ASFCCC did not receive any requests from the foreign competent authorities nor have they exchange any operational information with them.

614. Article 19, paragraph one, point 23 of the Law on the national security service authorizes SNSC to:

- co-operate with the special services, law enforcement bodies and organizations of foreign states;
- exchange with them, on mutual basis, operational information, special technical and other means within the scope of the powers of SNSC and in the manner established by the regulatory acts of the Ministry of security;
- conclude corresponding agreements in the manner established by the law and within the scope of its powers; and
- send their official representatives to foreign states on agreement with the special services or law enforcement bodies of these states for the purpose of raising the effectiveness of the fight against international crimes.

615. Another provision of a general nature dealing with the international co-operation could be found in the Law on combating extremism. Article 20 of this law provides that “Tajikistan shall co-operate in combating extremism with foreign states, their law enforcement authorities, and special services, as well as international organizations engaged in combating extremism, in accordance with recognized international treaties”. Definition of extremism is contained in article 3 and covers also “the performance of terrorist activity”.

616. SNSC did not provide any information and/or statistics regarding their cooperation with the foreign counterparts or foreign law enforcement bodies.

617. Regarding the international co-operation in the sphere of control over the narcotic drugs, psychotropic substances and precursors article 6 of the Law on narcotic drugs, psychotropic substances and precursors empowers DCA to:

- represent the Republic of Tajikistan in international relations; and
- provide for the implementation of the international obligations in the above-mentioned sphere.

618. In the period 2000 – 2006 DCA has entered into several inter-sectoral agreements with the following foreign authorities:

- the Federal Security Service, the Ministry of Interior, and the State Committee on control over drug trafficking and psychotropic substances of the Russian Federation;
- the Supreme State Commission of Afghanistan on combating against drug trafficking;
- the Security Service of Ukraine;
- the Southern Department of Agency on Drug Control of the Kyrgyz Republic; and
- the Ministry of Public Security of Chinese People's Republic.

619. DCA stated that they are using the above-mentioned bilateral agreements and other international agreements signed by the Tajik Government (see below) in practice and that the agreements contain also provisions regarding the co-operation in the sphere of combating ML. In support of their statement DCA provided some statistics regarding their international co-operation related to ML (see below), yet it did not provide further information as to whether the requests were granted or refused and whether they involved also fiscal matters.

620. The Ministry of internal affairs signed several agreements with its foreign counterparts aiming to strengthening co-operation in combating transnational organized crime, terrorism and religious extremism. The following treaties were pointed out by the authorities:

- agreement with the Ministry of internal affairs of the Republic of Uzbekistan (in 1998);
- agreement with the Ministry of internal affairs of the Russian Federation (in 1999);
- agreement between the ministries of internal affairs of the CIS countries (in 2000); and
- agreement with the Ministry of Public Security of the People's Republic of China (in 2002).

621. Regarding the international co-operation of the Ministry of internal affairs and its organizational units only the fact that MS has a branch office in the Russian Federation and it's setting up another branch office in Kazakhstan was pointed out. The assessment team has not received any information concerning the contents of the afore-mentioned agreements and/or statistics on the number of the requests for international co-operation received/sent.

622. CSuG stated that they have also signed bilateral agreements on customs co-operation with the customs authorities from the following countries: Iran, Turkey, Uzbekistan, Kazakhstan, People's Republic of China, Russian Federation and Belarus. However, CSuG has failed to provide details as to whether these agreements contain provisions on ML, FT and exchange of information regarding the cross-border cash transactions. No statistics on international co-operation between CSuG and its foreign counterparts or other foreign competent bodies has been provided either.

623. In the period 1996 - 2006 the Government of the Republic Tajikistan has signed several international - bilateral and multilateral - agreements regulating issues of combating illegal drug trafficking, terrorism and organized crime, as follows:

- bilateral agreements with the following countries: Russian Federation, Kazakhstan, Kyrgyzstan, Uzbekistan, People's Republic of China, India, Turkey, Iran, France, U.S.A., Ukraine, Italy, Poland, Pakistan, Afghanistan and Thailand;

- multilateral agreements with the CIS countries and member-states of Shanghai Organization.

624. No further data regarding the contents of these agreements and/or related statistics was provided to the assessment team.

625. There is nothing in the above-mentioned legislative acts preventing the Tajik competent authorities to provide the widest range of international co-operation to their foreign counterparts. However, the majority of the quoted legislative acts refer to the international agreements, the examples of which have not been provided to the assessment team. In addition, the assessment team has only received some statistics regarding the international exchange of information from DCA and was thus unable to fully assess the compliance with the FATF R 40 as regards the essential criteria 40.1 of the methodology.

626. The NBT stated that it cooperates with certain of its counter parts on an informal basis. There was no specificity as to how many counterparts it has developed relationships with in the international cooperation area and no statistics were provided. No information was provided by the Ministry of Finance with respect to insurance supervisor counterpart cooperation.

627. **Provision of Assistance in Timely, Constructive and Effective Manner (c. 40.1.1):** For the reasons described above the assessment team was unable to assess the compliance with the FATF R 40 regarding the essential criteria 40.1.1 of the methodology.

628. **Clear and Effective Gateways for Exchange of Information (c. 40.2):** Tajikistan became a member of Interpol in 2004 and has entered into several bilateral and multilateral agreements with other countries on co-operation in the area of drug trafficking, organized crime and terrorism (see above). In addition, article 19 of the Law on the national security service mentioned above allows for sending SNSC representatives to foreign states based on agreements with the special services or law enforcement bodies of these states. Whilst it remained unknown whether this provision was already used in practice, MS has already established its branch office in the Russian Federation and plans to do s also in some other neighboring countries.

629. There is nothing in the legislation that would prevent Tajik competent authorities to exchange information directly with their counterparts, yet due to the lack of available data the assessment team was unable to assess whether any obstacles exist to a prompt and constructive exchange of information and whether the Tajik authorities are responding to their foreign counterparts' requests in a timely way.

630. **Spontaneous Exchange of Information (c. 40.3):** Here again it should be stated that the Tajik legislation does not prohibit the spontaneous exchange of information, yet it remained unknown to the assessment team whether the majority of the afore-mentioned international treaties allow for such exchange and whether this is possible also in relation to ML and the underlying predicate offences as well as FT, terrorist acts and terrorist organizations.

631. **Making Inquiries on Behalf of Foreign Counterparts (c. 40.4):** The laws do not prohibit Tajik competent authorities to conduct inquiries on behalf of foreign counterparts and one would assume that this means that they are authorized to search their databases and other databases to which they have access on behalf of foreign counterparts. Nevertheless, due to the lack of provided data concerning the provisions of the signed international treaties and statistics the assessment team could not fully assess the compliance with the FATF R 40 as regards the essential criteria 40.4 of the methodology.

632. **FIU Authorized to Make Inquiries on Behalf of Foreign Counterparts (c. 40.4.1):** The FIU has not been established yet.

633. **Conducting of Investigations on Behalf of Foreign Counterparts (c. 40.5):** Article 14 of the Law on operational investigation activities requires all domestic law enforcement bodies and security services to “implement, on the grounds and in conformity with the procedure stipulated by the international treaties of Tajikistan, the inquiries of the corresponding international law-protection organizations, the law-enforcement bodies and the specialized services of foreign states”. During the on-site visit the authorities didn’t provide any further explanation regarding the interpretation of this provision and whether it actually authorizes the competent Tajik authorities to conduct special investigative techniques on behalf of the foreign counterparts.

634. Similarly, also articles 227 and 228 of the Customs code and article 14 of the Law on narcotic drugs, psychotropic substances and precursors, dealing with the controlled delivery technique, are not explicit enough to be able to reach a firm conclusion regarding the use of this technique on behalf of the foreign competent bodies. Namely, both laws authorize SCuG and DCA to use the controlled delivery method in accordance with domestic legislation and on the basis of the agreements with the competent authorities of foreign states or on the basis of the international treaties recognized by Tajikistan.

635. As already mentioned, the assessment team has not received any examples of the international treaties signed between Tajikistan and other countries and in the absence of the oral explanations it could not properly assess the compliance with the FATF R 40 as regards the essential criteria 40.5 of the methodology.

636. **No Unreasonable or Unduly Restrictive Conditions on Exchange of Information (c. 40.6):** Tajik legislation does not contain any provision specifically providing for the imposition of disproportionate or unduly restrictive conditions related to the international exchange of information. Although it is not likely that such provisions would be included in the treaties signed by Tajikistan, in the absence of any statistics and for the reasons explained above, the assessment team could not properly assess the compliance with the FATF R 40 regarding the essential criteria 40.6 of the methodology.

637. **Provision of Assistance Regardless of Possible Involvement of Fiscal Matters (c. 40.7):** There is nothing in the above mentioned Tajik legislative acts that would allow their

competent authorities to refuse a foreign request for co-operation on the sole ground that it involves fiscal matter. For the reasons explained above the assessment team could not properly assess the compliance with the FATF R 40 regarding the essential criteria 40.7 of the methodology.

638. Provision of Assistance Regardless of Existence of Secrecy and Confidentiality Laws (c. 40.8): As mentioned above (see the paragraph dealing with the ability to compel production of and searches for documents and information) the Law on banks and banking activity as well as other laws contain provisions regarding the access to data and documents which constitute banking or other kind of secrecy. These laws do not prohibit sharing of such information and documents with foreign authorities nor provide any specific conditions regarding the international exchange of such information/documents. Nevertheless, for the reasons explained above, the assessment team could not properly assess the compliance with the FATF R 40 regarding the essential criteria 40.8 of the methodology.

639. Safeguards in Use of Exchanged Information (c. 40.9): There are no provisions in Tajik legislation regulating the use of information received by foreign competent authorities and it is not known whether provisions of that kind are contained in the international treaties signed by Tajikistan. Taking into account that no oral information and statistics was provided by authorities, the assessment team was unable to properly assess the compliance with the FATF R 40 regarding the essential criteria 40.9 of the methodology.

640. Additional Element -Exchange of Information with Non-Counterparts (c. 40.10 & c. 40.10.1): Whilst the Regulation on agency for state financial control and combating corruption empowers ASFCCC co-operate with corresponding bodies of foreign states, the Law on the national security service authorizes SNSC to co-operate with foreign special services, law enforcement bodies and organizations of foreign states.

641. In addition, the statistical data presented above show that DCA has received and sent requests to the different foreign law enforcement bodies.

642. In the absence of any other oral or written information the assessment team could not fully assess the compliance with the FATF R 40 in relation to the additional element 40.10 of the methodology.

643. Additional Element –Provision of Information to FIU by Other Competent Authorities pursuant to request from Foreign FIU (c. 40.11) The FIU has not been established yet.

644. International Cooperation under SR V (applying c. 40.1-40.9 in R. 40, c. V.5): The same legislative acts and provisions applying to international co-operation concerning the ML offences are also relevant for the FT offences. Moreover, the authorities have not provided any additional information regarding the provisions of international treaties and the statistics on international co-operation in the field of FT, terrorist acts and terrorist organizations. Therefore,

the assessment team was unable to assess the compliance with the FATF SR V in respect of the essential criteria V.5 of the methodology.

645. **Additional Element under SR V (applying c. 40.10-40.11 in R. 40, c. V.9):** The same findings and conclusions as mentioned above under criteria 40.10 – 40.11 apply also in relation to the additional element under V.9 of the methodology.

646. **Statistics (applying R.32):** As mentioned above, only DCA provided some statistical data regarding their international co-operation related to ML, as follows:

- Requests received:
 - In year 2006 DCA received 20 requests, all from the Russian Federation (Interpol and FDCS);
 - In the period January – May 2007 DCA received 10 requests, out of which 9 were from the Russian Federation (Interpol and FDCS) and 1 was from Kazakhstan (National Security Committee of Kazakhstan).
- Requests sent:
 - In the period 2006 – May 2007 DCA sent 8 requests, out of which 7 were sent to the Russian Federation (FDCS) and 1 request to Kyrgyzstan (DCA).

Recommendations and Comments

647. Tajik authorities should ensure that their law enforcement authorities and other competent authorities are able to provide the widest range of international co-operation to their foreign counterparts. To that end they should consider:

- amending the laws containing provisions on international co-operation to ensure that such co-operation is provided notwithstanding of the existence of the international treaties.
- In creating the framework for the FIU, giving the authorities the power to:
 - a. share information with foreign counterparts upon request or spontaneously; and
 - b. search the FIU's database and other databases to which it may have access on behalf of foreign counterparts.
- amending the regulation on agency for state financial control and combating corruption to permit ASFCCC to also exchange information with foreign non-counterparts.

Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	NC	<ul style="list-style-type: none"> • The domestic legal provisions and mechanisms for exchange of information with foreign counterparts, that are not parties of the

		<p>international treaties signed by the Tajik authorities, are not clear.</p> <ul style="list-style-type: none"> • It is not known whether the bilateral and multilateral treaties signed by Tajikistan authorities allow for: <ul style="list-style-type: none"> - exchange of information related to ML and all predicate offences between the Tajik competent law enforcement authorities and their foreign counterparts, - spontaneous exchange of information between the Tajik competent law enforcement authorities and their foreign counterparts, - conducting investigations on behalf of foreign counterparts, - refusing the foreign request for co-operation on the sole ground that the request is also considered to involve fiscal matters, and - refusing the request for co-operation on the grounds of laws that impose secrecy requirements on financial institutions or DNFBP. • It is not known whether the bilateral and multilateral treaties signed by Tajikistan authorities provide for the safeguards regarding the use of the exchanged information or if other mechanisms are in place ensuring that the information received by foreign competent authorities is used only in an authorized manner. • Very limited statistical information and other relevant information regarding the exchange of information with foreign competent authorities was been made available and an assessment of effectiveness could not be made.
SR.V	NC	<ul style="list-style-type: none"> • The domestic legal provisions and mechanisms for exchange of information related to the FT with foreign counterparts, that are not parties of the international treaties signed by the Tajik authorities, are not clear. • It is not known whether the bilateral and multilateral treaties signed by Tajikistan authorities allow for: <ul style="list-style-type: none"> - exchange of information related to the FT between the Tajik competent law enforcement authorities and their foreign counterparts, - spontaneous exchange of information related to the FT between the Tajik competent law enforcement authorities and their foreign counterparts, - conducting investigations related to the FT on behalf of foreign counterparts, - refusing the foreign request for co-operation on the sole ground that the request is also considered to involve fiscal matters, and - refusing the request for co-operation on the grounds of laws that impose secrecy requirements on financial institutions or DNFBP. • It is not known whether the bilateral and multilateral treaties signed by Tajikistan authorities provide for the safeguards regarding the use of the exchanged information related to the FT or if other mechanisms are in place ensuring that the information received by foreign competent

		<p>authorities is used only in an authorized manner.</p> <ul style="list-style-type: none"> • No statistical information or other relevant information regarding the exchange of information related to FT with foreign competent authorities has been made available.
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

OTHER ISSUES

Resources and statistics

Recommendations and Comments

648. In section 2.6, several deficiencies were identified regarding the compliance of law enforcement bodies, GPO and judiciary with the FATF Recommendation 30 and the authorities should consider implementing the following recommendations in this regard:

- Competent law enforcement and PGO should have staff specialized to conduct ML/FT investigations and/or prosecutions.
- ASFCCC and DCA should be provided with appropriate technical equipment to conduct special investigative techniques;
- PGO and CSuG should be provided with the appropriate IT hardware and software to be able to store and/or analyze electronically the statistical data on criminal offences and requests for mutual legal assistance (PGO), as well as reports on currency transactions across the border (CSuG);
- The law enforcement authorities and judicial authorities should strengthen their internal controls and co-operate with the ASFCCC in order to prevent corruption within their institutions and address the issue of public corruption in the media;
- Adequate and relevant training for combating ML and FT, including *inter alia* also topics related to financial investigations, should be organized on a regular basis and provided to the competent law enforcement authorities and judiciary;
- The Tajik Government and/or the Office of the President of Tajikistan should ensure that the effectiveness of the Tajik systems for combating ML and FT is reviewed on a regular basis by requiring all the competent law enforcement bodies and PGO to establish and maintain statistics relevant for ML/FT and freezing, seizing and confiscation of the proceeds of crime and to regularly analyse these data on interagency basis.

Compliance with Recommendations 30 and 32

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	NC	<ul style="list-style-type: none"> • The staff of law enforcement authorities and PGO is not specialized in ML/FT investigations/prosecutions. • Technical and financial resources provided to some law enforcement authorities and PGO are not sufficient to fully and effectively perform their functions.

		<ul style="list-style-type: none"> • It is questionable whether the law enforcement and judicial authorities maintain high professional standards and their staff is of a high integrity due to the high level of corruption in these sectors. • The staff of ASFCCC, MS, CSuG has not received adequate and relevant training. • The assessment team was unable to fully assess the compliance with the essential criteria 30.1, 30.2 and 30.3 with respect to DSAOC and SNSC due to the lack of provided data.
R.32	NC	<ul style="list-style-type: none"> • Tajik authorities do not review the effectiveness of their systems for combating ML and FT on a regular basis. • DSAOC, SNCC and PGO don't maintain or failed to provide to the assessment team annual statistics on criminal proceeds. • Whilst CSuG and CB dispose of some statistics on cross border transportation of currency, this statistics is not comprehensive and doesn't contain all data relevant for combating ML and FT.

Other relevant AML/CFT measures or issues

649. None

General framework for AML/CFT system

650. There is great need for Tajikistan to adopt a comprehensive framework for AML/CFT and amend its existing laws to meet international standards.

Table 1. Ratings of Compliance with FAFT Recommendations

Forty Recommendations	Rating	Summary of factors underlying rating⁸
Legal systems		
1. ML offense	NC	<ul style="list-style-type: none"> • ML criminal offence does not fully correspond to the Vienna and Palermo Conventions, since it doesn't cover also "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property" and the "acquisition, possession or use of property". • The Amnesty Law currently in force prohibits the prosecution of Tajik natural and legal persons for property related money laundering offenses. • ML offence was not effectively implemented in practice since in 9 years there was only one investigation and prosecution under article 262 of the Criminal Code.
2. ML offense—mental element and corporate liability	PC	<ul style="list-style-type: none"> • The law does not permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. • While civil and administrative liabilities apply for ML committed by legal persons, no information or examples were provided as to whether these provisions have ever been used.
3. Confiscation and provisional measures	PC	<ul style="list-style-type: none"> • The legislation does not provide for confiscation of property that constitutes instrumentalities intended for use in the commission of ML, FT or other predicate offences. • The legislation does not provide for confiscation of property of corresponding value, as required under the Palermo and Vienna conventions and FATF Recommendation 3. While confiscations of property, other than the proceeds of crime and instrumentalities, is determined as a

⁸ These factors are only required to be set out when the rating is less than Compliant.

		<p>supplementary sanction, it does not apply for the basic ML offence under paragraph one of article 262 and for the FT offence under article 179.1 of the Criminal Code.</p> <ul style="list-style-type: none"> • Confiscation of property that is derived directly or indirectly from proceeds of crime is possible only as a supplementary sanction under article 48 of the Criminal Code and article 27 of the Law on combating terrorism, yet it is not allowed for all ML offences and for the FT offences. Moreover, it can't be applied also in respect of predicate offences. • There is no authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of the actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • There are no statistical data or examples of using effectively the confiscation and/or provisional measures.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	<ul style="list-style-type: none"> • The existing law would not permit suspicious transaction reporting or the sharing of information other than with law enforcement authorities.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • There are only minimal identification requirements, which are insufficient to address CDD requirements.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There is no applicable requirement.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There is no applicable requirement.
8. New technologies & non face-to-face business	NC	<ul style="list-style-type: none"> • There is no applicable requirement.
9. Third parties and introducers	N/A	<ul style="list-style-type: none"> • Banks, credit institutions and insurance companies do not rely on intermediaries to perform any CDD.
10. Record-keeping	PC	<ul style="list-style-type: none"> • There are only minimal record keeping requirements.
11. Unusual transactions	NC	<ul style="list-style-type: none"> • There is no applicable requirement.
12. DNFBP–R.5, 6, 8–11	NC	<ul style="list-style-type: none"> • There is no AML/CFT law or other law and/or regulation requiring that CDD and other preventive measures under FAFT R 5, 6 and 8-11 apply to DNFBPs.

13. Suspicious transaction reporting	NC	• There is no applicable requirement.
14. Protection & no tipping-off	NC	• There is no applicable requirement.
15. Internal controls, compliance & audit	NC	• There is no applicable requirement.
16. DNFBP–R.13–15 & 21	NC	<ul style="list-style-type: none"> • There is no FIU and no AML/CFT law or any other law/regulation requiring DNFBPs to file STRs. • As a result of above, the requirements under FAFT Recommendations 13, 14, 15 and 21 are not met.
17. Sanctions	NC	• There is no sanctioning mechanism applicable to AML/CFT
18. Shell banks	PC	• There are no shell banks currently operating in Tajikistan, but there are no provisions that address any of the other criteria.
19. Other forms of reporting	NC	There is no applicable requirement.
20. Other NFBP & secure transaction techniques	NC	There is no applicable requirement.
21. Special attention for higher risk countries	NC	• There is no applicable requirement.
22. Foreign branches & subsidiaries	N/A	• Banks in Tajikistan do not currently operate foreign branches
23. Regulation, supervision and monitoring	NC	• Criminals are prevented from serving as management officials, but not necessarily from controlling financial institutions through direct share ownership, bearer share ownership or beneficial ownership.
24. DNFBP—regulation, supervision and monitoring	NC	• There is no AML/CFT requirement for DNFBPs and they are not subject to any effective systems for monitoring and ensuring compliance with such requirements.
25. Guidelines & Feedback	NC	There is no applicable requirement.
Institutional and other measures		
26. The FIU	NC	<ul style="list-style-type: none"> • There is no established/operational FIU. • There are no reporting requirements and consequently no guidance is issued regarding the reporting procedures.
27. Law enforcement authorities	LC	• Law enforcement authorities focus exclusively on investigating the predicate offences and are not ensuring a proper investigation of ML and FT offences.
28. Powers of competent authorities	LC	• Law enforcement authorities are not using powers to take witnesses' statements, compel production of, search persons and premises for, and seize and obtain transaction records

		<p>and other financial documents in ML and FT investigations.</p> <ul style="list-style-type: none"> • Due to the lack of provided data the assessment team was unable to assess if the above mentioned powers are effectively used in investigations and prosecutions of predicate offences.
29. Supervisors	NC	<ul style="list-style-type: none"> • There are no applicable requirements.
30. Resources, integrity, and training	NC	<ul style="list-style-type: none"> • The staff of law enforcement authorities and PGO is not specialized in ML/FT investigations/prosecutions. • Technical and financial resources provided to some law enforcement authorities and PGO are not sufficient to fully and effectively perform their function. • It is questionable whether the law enforcement and judicial authorities maintain high professional standards and their staff is of a high integrity due to a high level of corruption in these sectors. • The staff of ASFCCC, MS, CSuG has not received adequate and relevant training. • The assessment team was unable to fully assess the compliance with the essential criteria 30.1, 30.2 and 30.3 with respect to DSAOC and SNSC due to the lack of provided data.
31. National co-operation	NC	<ul style="list-style-type: none"> • There are no statutory prohibitions to sharing information by and between agencies yet there is no indication that the agencies engage in any sharing of information or coordination on operational issues. • Government officials did not provide any information concerning the existence of mechanisms that are in place for consultation between competent authorities, the financial sector or other sections (including DNFBP regarding money laundering or terrorist financing).
32. Statistics	NC	<ul style="list-style-type: none"> • Tajik authorities do not review the effectiveness of their systems for combating ML and FT on a regular basis. • DSAOC, SNCC and PGO don't maintain or failed to provide to the assessment team annual statistics on criminal proceeds. • Whilst CSuG and CB dispose of some statistics

		on cross border transportation of currency, this statistics is not comprehensive and doesn't contain all data relevant for combating ML and FT.
33. Legal persons–beneficial owners	NC	<ul style="list-style-type: none"> Insufficient information was provided to make a proper evaluation.
34. Legal arrangements – beneficial owners	NA	<ul style="list-style-type: none"> The Assessors had unanimously rated this as NC based upon the fact that insufficient information was provided by Tajik authorities to make a proper evaluation. The EAG Plenary determined, without substantive analysis, to change the rating to NA, based upon the assumption that the Tajik situation was similar to other EAG member countries.
International Cooperation		
35. Conventions	NC	<ul style="list-style-type: none"> Tajikistan has ratified /acceded to the Vienna Convention, the Palermo Convention and the SFT Convention, yet it has not taken measures to fully implement them through domestic laws. Whilst the ML criminal offence exists in the Criminal Code for almost nine years, it has been applied in investigations and prosecutions only once. This suggests that ML activities have not been yet effectively pursued. The adoption and the implementation of the Amnesty Law will temporarily unable Tajikistan authorities to carry out some of their obligations under the Vienna Convention and the Palermo Convention.
36. Mutual legal assistance (MLA)	NC	<ul style="list-style-type: none"> Insufficient information was provided to make a proper evaluation.
37. Dual criminality	NC	<ul style="list-style-type: none"> Insufficient information was provided to make a proper evaluation
38. MLA on confiscation and freezing	NC	<ul style="list-style-type: none"> Insufficient information was provided to make a proper evaluation.
39. Extradition	NC	<ul style="list-style-type: none"> Insufficient information was provided to make a proper evaluation.
40. Other forms of co-operation	NC	<ul style="list-style-type: none"> The domestic legal provisions and mechanisms for exchange of information with foreign counterparts, that are not parties of the international treaties signed by the Tajik authorities, are not clear. Based upon the limited information provided, it could not be determined whether the

		<p>bilateral and multilateral treaties signed by Tajikistan authorities allow for:</p> <ul style="list-style-type: none"> - exchange of information related to ML and all predicate offences between the Tajik competent law enforcement authorities and their foreign counterparts, - spontaneous exchange of information between the Tajik competent law enforcement authorities and their foreign counterparts, - conducting investigations on behalf of foreign counterparts, - refusing the foreign request for co-operation on the sole ground that the request is also considered to involve fiscal matters, or - refusing the request for co-operation on the grounds of laws that impose secrecy requirements on financial institutions or DNFBP. <ul style="list-style-type: none"> • Based upon the limited information provided, it could not be determined whether the bilateral and multilateral treaties signed by Tajikistan authorities provide for the safeguards regarding the use of the exchanged information or if other mechanisms are in place ensuring that the information received by foreign competent authorities is used only in an authorized • Very limited statistical information and other relevant information regarding the exchange of information with foreign competent authorities have been made available.
Nine Special Recommendations		
SR.I Implement UN instruments	NC	<ul style="list-style-type: none"> • Tajikistan has ratified the SFT Convention, yet it has not taken measures to fully implement it through domestic laws. • Tajikistan has taken some measures to implement Security Council Resolution 1373, but the obligations regarding the criminalization of FT and freezing/seizing of assets of persons linked with terrorism are not fully met. • Whilst Tajikistan has taken some practical measures to implement Security Council Resolution 1267 and its successor resolutions, it has fallen short of addressing the majority of

		the legal requirements under these resolutions.
SR.II Criminalize terrorist financing	NC	<ul style="list-style-type: none"> • Terrorist financing offences do not apply to founding of individual terrorists. • Terrorist financing offences are not extended to person who willfully provides or collects funds with the unlawful intention that they should be used to carry out a terrorist act, by a terrorist organizations, or by an individual terrorist. • Terrorist financing offences do not extend to cover “any funds” as defined in the International Convention for the Suppression of the Financing of Terrorism. • Terrorist financing offences are not predicate offences for money laundering when the funds derive from legal sources. • Terrorist financing offences require that the funds were actually used to carry out or attempt a terrorist act(s); or be linked to a specific terrorist act(s). • No statistics or other data were provided regarding the investigations/ prosecutions of terrorist financing offences.
SR.III Freeze and confiscate terrorist assets	NC	<ul style="list-style-type: none"> • Confiscation and provisional measures do not apply to all FT cases; this limits the scope of confiscation measures in this regard. • There are no effective laws and procedures to freeze terrorist funds or other assets of persons designated under the UNSC Resolution 1267. • There are no effective laws and procedures to freeze terrorist funds or other assets of persons designated under UNSC Resolution 1373 that would apply to non-banking and non-financial sectors. • The authorities did not provide enough information to be able to assess the effectiveness of the laws and procedures regarding the implementation of the UNSC Resolution 1373 that apply to banks and credit institutions. • Whilst authorities can give effect to the actions initiated under the freezing mechanisms of other jurisdictions, it remained unknown on what grounds such actions may be initiated. The adopted procedures are not

		<p>effective, since they can not ensure taking freezing actions without delay.</p> <ul style="list-style-type: none"> • Freezing actions can not be extended to funds or other assets wholly or jointly owned or controlled by designated persons, terrorists, those who finance terrorism or terrorist organizations, nor to funds or other assets derived or generated from funds or other assets owned or controlled by these persons or terrorist organizations. • There are no systems for communicating actions taken under the freezing mechanisms to non-banking financial institutions; the existing systems applying to banks and credit institutions, are not effective. • There is no clear guidance provided to all financial institutions with respect to their obligations in freezing terrorist-related funds. • There are no clear and publicly known procedures for delisting or reviewing the decisions to defreeze mistakenly frozen funds. • No clear procedures have been set up to ensure access to the frozen funds pursuant to the UNSC Resolution 1267 and in accordance with the UNSC Resolution 1452. • There are no clear legal or other safeguards for bona fide third parties. • There are no monitoring measures and sanctions for non-compliance with legislation governing the obligations under the FATF SR III for non-banking financial sector.
SR.IV	Suspicious transaction reporting	<p>NC</p> <ul style="list-style-type: none"> • There is no applicable requirement.
SR.V	International cooperation	<p>NC</p> <ul style="list-style-type: none"> • The domestic legal provisions and mechanisms for exchange of information related to the FT with foreign counterparts, that are not parties of the international treaties signed by the Tajik authorities, are not clear. • It is not known whether the bilateral and multilateral treaties signed by Tajikistan authorities allow for: <ul style="list-style-type: none"> - exchange of information related to the FT between the Tajik competent law enforcement authorities and their foreign counterparts, - spontaneous exchange of information related to the FT between the Tajik competent law enforcement authorities and their foreign

		<p>counterparts,</p> <ul style="list-style-type: none"> - conducting investigations related to the FT on behalf of foreign counterparts, - refusing the foreign request for co-operation on the sole ground that the request is also considered to involve fiscal matters, and - refusing the request for co-operation on the grounds of laws that impose secrecy requirements on financial institutions or DNFBP. <ul style="list-style-type: none"> • It is not known whether the bilateral and multilateral treaties signed by Tajikistan authorities provide for the safeguards regarding the use of the exchanged information related to the FT or if other mechanisms are in place ensuring that the information received by foreign competent authorities is used only in an authorized manner. • No statistical information or other relevant information regarding the exchange of information related to FT with foreign competent authorities has been made available.
SR.VI AML/CFT requirements for money/value transfer services	NC	<ul style="list-style-type: none"> • There is no applicable requirement.
SR.VII Wire transfer rules	NC	<ul style="list-style-type: none"> • There is a requirement that complete originator information must be obtained for all outgoing wire transfers, but none of the other criteria are satisfied
SR.VIII Nonprofit organizations	NC	<ul style="list-style-type: none"> • The authorities did not review the adequacy of legislation related to the non-profit organizations and can not obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF. • No periodic reassessment of the new information on the NPOs potential vulnerabilities to terrorist activities has been conducted. • The authorities did not adopt any preventive measure nor undertake outreach to the NPO sector with a view to protecting it from TF

		<p>abuse.</p> <ul style="list-style-type: none"> • No steps necessary to promote effective supervision/monitoring of the risky NPOs have been taken yet. • The authorities did not provide any information regarding the type and application of sanctions under the Law on Charities. • The legislation does not require maintaining information on the person who own, control or directing activities of the charitable organizations. • The legislation does not require NPOs to maintain financial records for a period of at least five years. • Lack of domestic co-operation, co-ordination and information sharing among appropriate authorities that hold relevant information on NPOs of potential TF concern. • No mechanisms have been developed for the prompt sharing of information among all relevant competent authorities in order to take appropriate action when there is a suspicion that a particular NPO is being used for TF purposes. • The authorities did not provide information as to whether specific points of contacts and procedures have been identified to respond to international requests for information regarding particular NPOs that are suspected of TF.
SR.IX Cash Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • There are provisions concerning the monitoring of physical cross-border transportation of foreign cash currency, yet they don't cover domestic cash currency and domestic and foreign bearer negotiable instruments. • Collected information on the amount of currency declared or otherwise detected and the identification data of the bearer are not stored in electronic format nor centralized, which in practice unable the effective use of such information by competent LEA, and in future also by the FIU, as well as for the purpose of international cooperation. • The cross-border transportation of illegally

		<p>obtained funds does not fall within the definitions of ML and FT under the relevant articles of the Criminal Code. The legislation is not implemented in practice since there were no ML or FT investigations initiated by CSuG, nor were the collected data used by other LEA for the above mentioned purpose.</p> <ul style="list-style-type: none"> • Due to several legal and practical impediments the CSuG or other competent authorities can not seize/confiscate currency or bearer negotiable instruments that are related to ML or FT. The legislation is not implemented in practice since there were no such seizures/confiscations. • Due to several legal and practical impediments the CSuG can not seize/freeze terrorist funds or other assets of persons designated by the UN in accordance with UNSC Resolution 1267 and its successor resolutions.
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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

FATF 40+9 Recommendations	Recommended Action (in order of priority within each section)
1. General	Tajikistan needs to conduct an internal assessment of its AML/CFT situation and determine what its greatest risks are. The country should then prioritize its action plan to address the greatest risks in an orderly and achievable manner.
2. Legal System and Related Institutional Measures	
Criminalization of Money Laundering (R.1, 2, & 32)	<ul style="list-style-type: none"> • With respect to the FATF Recommendation 1, the authorities should consider: <ul style="list-style-type: none"> • Repealing the Amnesty Law and/or amending it to permit investigation and prosecution of money laundering violations. • Amending Article 262 to bring it into line with the provisions of the Vienna and Palermo Conventions, including: <ul style="list-style-type: none"> ○ Extending the offense of ML to cover any type of property that indirectly represents the proceeds of crime; ○ Adding definitions of “property”, “transactions” and “other operations” in the Criminal Code to make sure that article 262 would also cover “the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property” and the “acquisition, possession or use of property”. Alternatively, the authorities may wish to consider bringing the text of article 262 closer to the money laundering definitions, as contained in article 6 of the Palermo Convention and article 3 of the Vienna Convention, by explicitly incorporating all the missing elements in the text of article 262. ○ Clarify that the reach of Art. 262 is an “all crimes approach”. ○ Clarify that “own money laundering” is a crime. ○ Clarify that conviction for money laundering does not require a prior conviction for the predicate offense. ○ Make attempt, preparation and conspiracy apply

	<p>to all categories of money laundering, not just “felonies” (more than five years in prison).</p> <ul style="list-style-type: none"> • The GPO should put in place procedures for using Article. 262 and use its statutory powers to ensure that the competent law enforcement start investigating the ML offences. • With respect to FATF Recommendation 2 the authorities should: <ul style="list-style-type: none"> • Ensure that the laws permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. • Clarify the criminal, civil and administrative liability for legal persons engaging in money laundering offenses and ensure that the penalties for such are effective, proportionate and dissuasive.
Criminalization of Terrorist Financing (SR.II & R.32)	<ul style="list-style-type: none"> • The authorities should: <ul style="list-style-type: none"> • Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that criminal offence of financing of terrorism applies also to founding of individual terrorists. • Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that financing of terrorism applies to both the willful “provision” and “collection” of funds. • Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that financing of terrorism offence includes “funds”, as defined in article 1 of the International Convention for the Suppression of the Financing of Terrorism. • Amend article 262 of the Criminal Code and/or other relevant provisions to ensure that terrorist financing can be a predicate offence for money laundering also when the funds derive from legal sources. • Amend article 179.1 of the Criminal Code and/or other relevant provisions to ensure that the financing of terrorism offence can be prosecuted also if the funds were not actually used to carry out or to attempt a terrorist act(s) or if they were not linked to a specific terrorist act(s). •

<p>Confiscation, freezing, and seizing of proceeds of crime (R.3 & 32)</p>	<p>The authorities should amend the Criminal Code and/or the Criminal Procedure Code to:</p> <ul style="list-style-type: none"> • Provide for confiscation of property that constitutes instrumentalities intended for use in the commission of ML, FT or other predicate offences. • Provide for confiscation of property of corresponding value, as required under the Palermo and Vienna conventions and FATF Recommendation 3, if the original proceeds are no longer available or have been transformed or converted. • Provide for confiscation of property that is derived directly or indirectly from proceeds, including the income, profits or other benefits from the proceeds of crime, outside the confiscation regime envisaged under article 48 of the Criminal Code and article 27 of the Law on combating terrorism. • Establish a competent authority with powers to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of the actions the authorities would be prejudiced in their ability to recover property subject to confiscation. <p>PGO and competent law enforcement authorities should use their powers to use provisional measures in ML and FT cases as well as in cases related to predicate offences.</p> <p>The authorities should consider adopting confiscation measures as envisaged under the additional criteria 3.7 of the Methodology, as described above.</p> <ul style="list-style-type: none"> •
<p>Freezing of funds used for terrorist financing (SR.III & R.32)</p>	<ul style="list-style-type: none"> • Provisions related to confiscation and provisional measures should be amended as suggested under chapters 2.2 and 2.3 of this report. • The procedures to freeze terrorist funds or other assets of persons designated under the UNSC Resolutions 1267 and 1373 should be adopted. The authorities may determine these procedures in the Law on Combating Terrorism or in another law, as appropriate, and should ensure that the procedures are binding to all legal and natural persons, and in particular to all financial and non-financial institutions.

	<ul style="list-style-type: none"> • Clearly define procedures and grounds for taking freezing actions under the freezing mechanisms of other jurisdiction. These procedures should ensure that decisions as to whether the authorities should initiate such freezing actions are taken without delay. • The legislative or/and other procedures should be adopted to ensure that freezing actions also include funds or other assets wholly or jointly owned or controlled by designated persons, terrorists, those who finance terrorism or terrorist organizations, as well as funds or other assts derived or generated from funds or other assets owned or controlled by these persons or terrorist organizations. In order to achieve this goal the authorities may wish to consider amending the confiscation provisions in the Criminal Code and the Criminal Procedure Code. • Supervisory and/or other competent authorities should develop systems for communicating actions taken under the freezing mechanisms to non-banking financial institutions. The existing systems applying to banks and credit institutions should ensure that all banks receive the lists of designated persons. • Supervisory and/or other competent authorities should issue rules or guidance to clarify the obligations of persons and entities that have to implement freezing and seizing measures. • Detailed publicly known procedures for delisting and reviewing the decisions to freeze have to be introduced to protect the rights of persons involved. • Appropriate procedures should be established in the law or otherwise to provide access to frozen funds in circumstances described in the UNSC Resolution 1452. • The Criminal Procedure Code or/and the Law on combating terrorism or any other relevant law should include explicit provisions regarding the protection of the rights of bona fide third parties. • Supervisory and/or other competent authorities should monitor compliance with the decisions to freeze or seize the funds related to terrorism. Sanctions for failure to implement the freezing or seizing measures should be introduced in respect to all legal and natural persons, and in particular regarding the non-banking financial institutions.
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<ul style="list-style-type: none"> • The authorities should consider implementing other measures set out in the Best Practices Paper for the FATF SR III, such as: <ul style="list-style-type: none"> - ensuring thorough follow-up investigation, co-ordination with law enforcement, intelligence and security authorities, and appropriate feedback to the private sector; - facilitating communication and co-operation with foreign governments and international institutions; and - facilitating communication with the private sector.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	<ul style="list-style-type: none"> • As a matter of priority the AML/CFT law providing <i>inter alia</i> the powers and obligations of the FIU should be adopted and an operational FIU should be established. The act on the establishment of FIU or other legislative acts should ensure that the FIU is free from undue influence or interference. • Upon the establishment of the FIU this body should be adequately structured, funded and staffed, and provided with sufficient technical and other resources. The FIU staff should also be provided with adequate and relevant training.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	<ul style="list-style-type: none"> • The relevant legislation should be amended or an official interpretation of the legislation should be provided to ensure clear lines of responsibility for each designated law enforcement body in the combating of ML and FT. Competent law enforcement authorities should develop a more proactive approach to pursuing ML and FT investigations and set up mechanisms for co-ordination of efforts at both policy and operational level. • The competent law enforcement bodies and PGO should consider using appropriate special investigative techniques in future ML/FT investigations, especially in cases where it is difficult or impossible to get evidences or identify the property subject to confiscation by using other investigative means. • Permanent or temporary groups of financial investigators should be established within the competent law

	<p>enforcement authorities to deal with investigation, seizure, freezing and confiscation of the proceeds of crime.</p> <ul style="list-style-type: none"> • Tajik law enforcement bodies should consider using co-operative investigations with other foreign competent authorities when investigating criminal offences connected with foreign countries, and in particular when investigating serious criminal offences covered by the Palermo Convention and other ratified international agreements. • Competent law enforcement authorities should regularly review ML and FT methods, techniques and trends related to all predicate offences as well as share their information with staff of other competent authorities. • Competent law enforcement authorities should make use of the range of powers provided to them when conducting investigations of ML, FT and other underlying predicate offences. • Competent law enforcement authorities and PGO should have staff specialized to conduct ML/FT investigations and/or prosecutions. • ASFCCC and DCA should be provided with appropriate technical equipment to conduct special investigative techniques. • PGO and CSuG should be provided with the appropriate IT hardware and software to be able to store and/or analyze electronically the statistical data on criminal offences and requests for mutual legal assistance (PGO), as well as reports on currency transactions across the border (CSuG). • The law enforcement authorities and judicial authorities should strengthen their internal controls and co-operate with the ASFCCC in order to prevent corruption within their institutions and address the issue of public corruption in the media. • Adequate and relevant training for combating ML and FT, including <i>inter alia</i> also topics related to financial investigations, should be organized on a regular basis and provided to the competent law enforcement authorities and judiciary. • The Tajik Government and/or the Office of the President should ensure that the effectiveness of the Tajik systems for combating ML and FT is reviewed on a regular basis by requiring all the competent law enforcement bodies and PGO to establish and maintain statistics relevant for ML/FT and freezing, seizing and confiscation of the proceeds of crime and to regularly analyse these data on interagency basis.
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3. Preventive Measures— Financial Institutions	
Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> • Make a risk assessment of the potential for money laundering and terrorist financing in Tajikistan and determine whether, if any, certain types of customers, products or services should be eligible for reduced customer due diligence or whether, if any, should be subjected to increased measures.
Customer due diligence, including enhanced or reduced measures (R.5–8)	<p>In order to satisfy international AML/CFT standards, the authorities should seriously consider:</p> <ul style="list-style-type: none"> • Amending their laws to prohibit anonymous accounts at financial institutions and bearer shares for all companies. • Adopting a new law or regulation that addresses each of the CDD requirements of FATF Recommendation 5, the provisions applicable to PEPS in Recommendation 6, the correspondent banking requirements for cross border relationships in Recommendation 7, and the provisions applicable to non face-to-face transactions and new technologies in Recommendation 8.
Third parties and introduced business (R.9)	<p>The authorities should consider whether intermediaries should be able to conduct any aspect of the CDD process and, if so, adopt a CDD requirement that satisfies international standards.</p>
Financial institution secrecy or confidentiality (R.4)	<p>The authorities should consider amending the existing law to permit suspicious transaction reporting and the sharing of information for AML/CFT purposes, subject to protections.</p>
Record keeping and wire transfer rules (R.10 & SR.VII)	<p>The authorities should consider enacting a law or adopting regulations to:</p> <ul style="list-style-type: none"> • Require financial institutions to maintain records in compliance with FATF Recommendation 10. • With respect to FATF SR VII, requiring: financial institutions to include full originator information in the message or payment form accompanying the wire transfer; each intermediary and beneficiary in the payment chain to ensure that all originator

	<p>information accompany each wire transfer; and adopt effective risk-based procedures for dealing with wire transfers that are not accompanied with full originator information.</p> <ul style="list-style-type: none"> • Monitor the compliance of financial institutions with regard to SR VII. • Impose sanctions for compliance failures.
Monitoring of transactions and relationships (R.11 & 21)	<p>The authorities should pass legislation or adopt regulations:</p> <ul style="list-style-type: none"> • Requiring financial institutions to pay special attention to all complex, unusual large, and all unusual patterns of transaction with no apparent economic or visible lawful purpose, consistent with FATF Recommendation 11. • Requiring financial institutions to pay special attention to business relationships and transactions with persons and entities from countries that do not or insufficiently apply the FATF Recommendations, consistent with Recommendation 21.
Suspicious transaction reports and other reporting (R.13, 14, 19, 25, & SR.IV)	<p>The authorities should adopting legislation and/or regulations to implement fully FATF Recommendations 13, 14, 19, 25 and SR IV, according to the criteria of the Methodology.</p>
Cross Border Declaration or disclosure (SR IX)	<ul style="list-style-type: none"> • The Instruction No. 142 should be amended or a new instruction based on articles 2 and 8 of the Law on foreign exchange regulations and foreign exchange control should be adopted to include under current controlling regime also the domestic cash currency as well as foreign and domestic bearer negotiable securities above a designated threshold(s) (not less than USD/EUR 15.000). Alternatively, in addition to the existing regime, a new monitoring system could be established taking into account all the requirements contained in the FAFT SR IX. The latter should be independent of any changes in the monetary or currency related policy and could supplement the existing regime with the necessary AML/CFT

	<p>component.</p> <ul style="list-style-type: none"> • CSuG should be provided with the list of persons designated by the UN and other countries under the UNSC resolutions 1267 and 1373, subject to the necessary legislative changes mentioned above under section 2.4 of this Report. • The period of maintaining data on transactions and identification data included in customs declaration forms should be extended from three to at least five years. • Adequate co-ordination should be established between CSuG, immigration authorities, police and other relevant authorities that operate in all the cross-border points on issues related to ML/FT and physical cross-border transportation of currency and bearer negotiable instruments. • Authorities should consider implementing other measures set out in the FAFT Best Practices Paper for SR.IX and identified above.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>The authorities should consider adopting legislation and/or regulations to implement fully FATF Recommendation 15, requiring financial institutions to have internal control systems, internal audit requirements, screening of employees and ongoing training procedures. In addition, at or prior to the time a bank in Tajikistan establishes a branch outside of the country, the authorities should consider adopting regulations to implement FATF Recommendation 22 by making AML/CFT requirements applicable to such foreign branches.</p>
Shell banks (R.18)	<p>The authorities should consider:</p> <ul style="list-style-type: none"> • Adopting legislation prohibiting the establishment and operation of shell banks in Tajikistan. • Adopting regulations that: <ul style="list-style-type: none"> ○ prohibit Tajik banks from entering into, or continuing correspondent banking relationships with shell banks; and ○ require financial institutions to satisfy themselves that foreign respondent banks do not permit their accounts to be used by shell banks.

The supervisory and oversight system—competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 25, & 32)	A comprehensive AML/CFT legal framework should be adopted that adequately addresses FATF Recommendations 17, 23, 25, 29, 30 and 32, according to the criteria set out in the Methodology.
Money value transfer services (SR.VI)	Authorities should adopt measures to make the requirements of FATF SR VI applicable to money remitters, consistent with the criteria set out in the Methodology.
4.Preventive Measures– Nonfinancial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> • An AML/CFT law should be adopted providing that CDD and other preventive measures foreseen under FAFT Recommendations 5, 6 and 8-11 apply also to DNFBPs.
Suspicious transaction reporting (R.16)	<ul style="list-style-type: none"> • As a matter of priority the AML/CFT law should be adopted providing that requirements under FAFT Recommendations 13 - 15 and 21 apply also to DNFBPs.
Regulation, supervision, monitoring, and sanctions (R.17, 24, & 25)	<ul style="list-style-type: none"> • The AML/CFT law should be adopted providing that requirements under FAFT Recommendations 24 (ensuring effective system of monitoring) and 25 (establishing guidance) apply also to DNFBPs that exist in Tajikistan. • In designating DNFBPs, the authorities should also determine authority/authorities with sufficient powers and capacity to supervise or monitor the designated DNFBPs.
Other designated non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> • The authorities should take measures to assess the vulnerability of other businesses and professions, such as for example dealers in high value and luxury goods, to ML and FT and extend the AML/CFT requirements where necessary.
5. Legal Persons and Arrangements & Nonprofit Organizations	
Legal Persons—Access to beneficial ownership and control information (R.33)	The authorities should consider amending the law to fully implement the requirements of FATF Recommendation 33, including the prohibition of bearer shares, consistent with the

	<p>criteria in the Methodology.</p> <ul style="list-style-type: none"> •
Legal Arrangements–Access to beneficial ownership and control information (R.34)	<p>The authorities should amend the law to address adequately the requirements of FATF Recommendation 34, consistent to the criteria in the Methodology.</p>
Nonprofit organizations (SR.VIII)	<p>The authorities should:</p> <ul style="list-style-type: none"> • establish an inter-ministerial working group to review the adequacy of legislation related to the non-profit organizations; • amend the Law on Charities and/or other relevant legislation to ensure that the competent authorities can obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF; • adopt an effective outreach program with the NPO sector or other preventive measures which, inter alia, may include the development of best practices to address terrorist financing risks and regular outreach events with this sector to discuss scope and methods of abuse of NPOs; • ensure that competent registration and supervisory authorities monitor/supervise the NPOs that are more risky, as required under the essential criteria VIII.3 of the Methodology; • ensure that the appropriate measures are in place to sanction violations of rules by NPOs or persons acting on behalf of NPOs and that such measures are effectively implemented; • amend the Law on Charities or other relevant legislation to ensure that NPOs maintain information on the person who own, control or directing activities of the charitable organizations; • amend the Law on Charities or other relevant legislation to ensure that NPOs to maintain financial records for a period of at least five years; • develop mechanisms, such as MOUs or establishing

	<p>point of contacts, to ensure domestic co-operation, co-ordination and information sharing among appropriate authorities that hold relevant information on NPOs of potential TF concern;</p> <ul style="list-style-type: none"> • identify appropriate points of contacts and procedures to respond to international requests for information regarding particular NPOs that are suspected of TF.
6. National and International Cooperation	
National cooperation and coordination (R.31 & 32)	<p>With respect to Rec. 31, the authorities should:</p> <ul style="list-style-type: none"> ○ Amending Article 278 to specifically permit disclosure to law enforcement agencies acting in the course of their statutory duties; and ○ Establishing an interagency coordinating mechanism to share information and coordinate on operational matters. <p>With respect to Rec. 32, authorities should systematically maintain statistics in this area</p>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> • Tajikistan should take measures to update its legal system consistently with its various obligations under the Vienna Convention, the Palermo Convention and the SFT Convention. • Tajikistan should avoid taking legal actions, such as adopting and implementing the Amnesty Law, which temporarily repeals the application of the ML offence, that contradict its obligations under the Vienna Convention and the Palermo Convention. • Tajikistan should adopt the appropriate law or regulation and take other measures to ensure that the requirements contained in the UNSC resolutions 1373 and 1267 as well as with its successor resolutions are met.
Mutual Legal Assistance (R.36, 37, 38, SR.V & 32)	<p>Authorities should adopt measures to comply fully with FATF Recommendations 36, 37, 38 and SR V, consistent with the criteria in the Methodology.</p>
Extradition (R. 39, 37, SR.V & R.32)	<p>The authorities should take measures to:</p>

	<ul style="list-style-type: none"> • List money laundering as an extraditable offense, consistent with the Constitution; • Where extradition is not permitted or is denied for appropriate reasons, the case should be submitted without undue delay to competent authorities for investigation and/or prosecution, in accordance with the request from the foreign jurisdiction; and • Where extradition is not granted, the authorities should take measures to cooperate on procedural and evidentiary issues.
Other Forms of Cooperation (R. 40, SR.V & R.32)	<ul style="list-style-type: none"> • Tajik authorities should ensure that their law enforcement authorities and other competent authorities are able to provide the widest range of international co-operation to their foreign counterparts. To that end they should consider amending their laws containing provisions on international co-operation to ensure that such co-operation is provided notwithstanding of the existence of the international treaties. • In creating the framework for the FIU, the authorities should give it the power to share information with foreign counterparts upon request or spontaneously. • In creating the framework for the FIU, the authorities should give it the power to search its own database and other databases to which it may have access on behalf of foreign counterparts. • The Regulation on agency for state financial control and combating corruption should be amended to permit ASFCCC to exchange information also with foreign non-counterparts.
7. Other Issues	
Other relevant AML/CFT measures or issues	<ul style="list-style-type: none"> •

Table 3. Authorities' Response to the Assessment

--

ANNEXES

- Annex 1: Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others.**
- Annex 2: List of all laws, regulations and other material received**
- Annex 3: Procedural Background of this Assessment**

Annex 1: Details of all bodies met on the on-site mission
- Ministries, other government authorities or bodies, private sector institutions and others.

Meetings were held with officials from the:

- b. Prosecutor General's Office,
- c. Ministry of Finance,
- d. Ministry of Foreign Affairs,
- e. National Bank of Tajikistan,
- f. Presidential Administration,
- g. Ministry of Internal Affairs,
- h. State Committee on National Security,
- i. Drug Control Agency,
- j. Agency for State Financial Control and Combating Corruption,
- k. Ministry of Justice,
- l. Customs Service,
- m. Tax Committee,
- n. State Committee on Investments and State property Management,
- o. Four insurance companies, and
- p. Three commercial banks.

Annex 2: List of all laws, regulations and other material received

1. Constitution of the Republic of Tajikistan (amended as a result of the referendums of September 26, 1999 and June 22, 2003). Adopted at the general Referendum on November 6, 1994.
2. Constitutional Law of the Republic of Tajikistan “On Courts of the Republic of Tajikistan”, August 6, 2001, No. 30.
3. Constitutional Law of the Republic of Tajikistan “On referendum of the Republic of Tajikistan”, November 4, 1995, No. 106.
4. Constitutional Law of the Republic of Tajikistan “On Nationality of the Republic of Tajikistan”, November 4, 1995, No.104
5. Law of the Republic of Tajikistan “On election of the President of the Republic of Tajikistan”, July 21, 1994, No. 1042
6. Law of the Republic of Tajikistan “On election of the Majlisi Oli of the Republic of Tajikistan”, December 1, 1994, No. 1088
7. Law of the Republic of Tajikistan “On the National Bank of Tajikistan”, December 14, 1996, No. 383
8. Law of the Republic of Tajikistan “On Banks and banking activity”, May 23, 1998, No. 648
9. Law of the Republic of Tajikistan “On foreign currency regulation and foreign currency control”, November 4, 1995, No.112
10. Law of the Republic of Tajikistan “On guarantee for deposits of individuals”, July 16, 2003
11. Law of the Republic of Tajikistan “On micro-financial organizations”, May 17, 2004, No. 38
12. Law of the Republic of Tajikistan “On bank securities and stock exchanges”, March 10, 1992, No. 552
13. Law of the Republic of Tajikistan “On joint-stock companies”, March 5, 2007, No. 237
14. Law of the Republic of Tajikistan “On Limited Liability Companies (LLC)”, May 10, 2002, No. 53
15. Law of the Republic of Tajikistan “On public associations”, May 23, 1998, No. 644
16. Law of the Republic of Tajikistan “On insurance”, July 20, 1994, No. 981
17. Law of the Republic of Tajikistan “On accounting”, May 14, 1999, No. 750
18. Law of the Republic of Tajikistan “On state registration of legal entity”, April 22, 2003, No. 5
19. Law of the Republic of Tajikistan “On electronic document”, May 10, 2002, No. 51
20. Law of the Republic of Tajikistan “On power supply”, May 10, 2002, No. 29
21. Law of the Republic of Tajikistan “On environment protection”, December 27, 1993, No. 905
22. Law of the Republic of Tajikistan “On quality and safety of food products”, May 10, 2002, No. 54
23. Law of the Republic of Tajikistan “On competitiveness and restriction of monopolistic activity on goods market”, July 28, 2006, No. 198
24. Law of the Republic of Tajikistan “On natural monopolies”, March 5, 2007, No. 235
25. Law of the Republic of Tajikistan “On advertisement”, July 16, 2003

26. Law of the Republic of Tajikistan "On electrical communication", May 10, 2002, No. 56
27. Law of the Republic of Tajikistan "On transport, November 29, 2000, No. 32
28. Law of the Republic of Tajikistan "On copyright and neighboring rights", November 13, 1998, No. 726
29. Law of the Republic of Tajikistan "On television and radio broadcasting", December 14, 1996, No. 382
30. Law of the Republic of Tajikistan "On press and other mass media", December 14, 1990, No. 199
31. Law of the Republic of Tajikistan "On control in trafficking in people", July 15, 2004, No. 47
32. Law of the Republic of Tajikistan "On refugees", May 10, 2002, No. 50
33. Law of the Republic of Tajikistan "On migration", December 11, 1999, No. 881
34. Law of the Republic of Tajikistan "On security", December 28, 1993, No. 918
35. Law of the Republic of Tajikistan "On fighting terrorism", November 16, 1999, No. 845
36. Law of the Republic of Tajikistan "On fighting extremism", December 8, 2003, No. 69
37. Law of the Republic of Tajikistan "On legal status of foreign citizens in the RT:", February 1, 1996, No. 230
38. Law of the Republic of Tajikistan "On concessions", May 15, 1997, No. 429
39. Law of the Republic of Tajikistan "On police", May 17, 2004, No. 41
40. Law of the Republic of Tajikistan "On drugs, psychotropic substances and precursors", December 10, 1999, No. 873
41. Law of the Republic of Tajikistan "On precious metals and stones", May 12, 2001, No. 21
42. Law of the Republic of Tajikistan "On amendments to the Criminal Code of the Republic of Tajikistan", July 16, 2003
43. Law of the Republic of Tajikistan "On amendments to the Criminal Code of the Republic of Tajikistan", July 15, 2004, No. 47
44. Convention on legal support and legal relations on civil, family and criminal cases, Minsk, January 22, 1993, with changes of March 28, 1997.
45. Convention on legal support and legal relations on civil, family and criminal cases, Kishinev, October 7, 2002
46. Administrative Code of the Republic of Tajikistan (Law of August 31, 1991, No. 378)
47. Civil Code of the Republic of Tajikistan (Articles 1-488)
48. Criminal Code of the Republic of Tajikistan (Law of May 17, 2004, No. 35)
49. Code of execution of criminal penalties of the Republic of Tajikistan
50. Labor Code of the Republic of Tajikistan, May 15, 1997
51. Customs Code of the Republic of Tajikistan, December 3, 2004
52. Tax Code of the Republic of Tajikistan, December 3, 2004
53. Family Code of the Republic of Tajikistan, November 13, 1998
54. Economic Procedure Code of the Republic of Tajikistan, November 4, 1995
55. Land Code of the Republic of Tajikistan, December 13, 1996
56. Water Code of the Republic of Tajikistan
57. Resolution of the Government of the Republic of Tajikistan "On anti-corruption", December 31, No. 502
58. Regulation on State Financial Control and Anti-Corruption Agency of the Republic of Tajikistan, January 10, 2007, No. 143

59. Instruction No.90 “On deposit banking accounts opened in the banks of the Republic of Tajikistan”, April 25, 2005, No. 134
60. Instruction No.142 “On procedure of imports and exports of foreign currency and securities in foreign currency”, November 11, 2005, No. 153

Annex 3: PROCEDURAL BACKGROUND

1. Pursuant to an exchange of letters between the World Bank and the National Bank of Tajikistan (NBT), the Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Assessment Team from the World Bank visited Dushanbe from June 11 to 22, 2007, to meet with authorities regarding AML/CFT.
2. As set forth in the letter from the World Bank of March 13, 2007, the assessment was to be conducted in accordance with the AML/CFT Methodology that reflects the Financial Action Task Force's Recommendations.
3. The National Bank of Tajikistan, in its letter of May 5, 2007, acknowledged the assessment dates and appointed itself as the mission coordinator. The mission wishes to express its appreciation to the authorities and, in particular, to the National Bank and its staff, for all their work in support of the mission.
4. The government did not provide the World Bank with a response to the Detailed Assessment Questionnaire or statistical table, which were attached to the March 13th letter.
5. On May 25, 2007, the Assessment Team held a videoconference with representatives from the National Bank, Agency for State Financial Control and Combating Corruption, Drug Control Agency, Customs Service, Tax Committee, and the Ministry of Foreign Affairs to discuss the process for the assessment and what was needed for the on-site mission to be successful.
6. On May 30, 2007, the World Bank Assessment Team sent the list of agencies and officials with which the assessment team wished to meet. The NBT worked hard to arrange for all of the requested meetings, but there was resistance from some agencies and others were not able to meet with the assessors.
7. Prior to coming to Dushanbe, the Assessment Team had its complete listing of laws translated into Russian and forwarded to the Tajik authorities with a request to determine whether the listing was up to date and whether any other laws should be added to that list. The team received no reply to this request even though a response was requested on several occasions.
8. As the meetings progressed, it was learned that many of the laws provided in advance of the mission were not up to date. The mission was affected adversely because of the added time it took to receive these updated laws. When laws were provided during the on-site mission, critical time was lost while the laws were translated. Some laws were provided pursuant to the January 17, 2008 letter from the Tajikistan Country Manager of the Bank, because of their length, remain to be translated. Thus, to date, the government has failed to provide many relevant laws.
9. Importantly, a number of government agencies asked the World Bank for specific comments on the then-pending draft AML/CFT law. Those agencies did not have a copy of the current draft and directed the Assessors to the Presidential Administration. The Presidential

Administration did not respond to a written request from the Country Manager for the draft. An undated draft, which the Assessors obtained before traveling to Tajikistan, does not comply with international anti-money laundering and combating the financing of terrorism standards.

10. Some of the key personnel rescheduled meetings, had limited time to meet – and in one circumstance – declined to provide access to other key officials.

11. The Assessors never did need to meet with representatives from the judiciary (Supreme Court), Police (Interpol and Economic crime unit within the Department on the struggle against organized crime), State Committee on National Security, lawyers, notaries, accountants, real estate sector and others.

12. Despite repeated efforts before and during the mission – including specific requests at each agency – only a few of the requested statistics have been received.

13. The cumulative effect of these problems made it impossible to provide a complete draft of the Detailed Assessment Report (DAR) during this mission to Dushanbe. Accordingly, a preliminary and partial draft of the DAR was provided to the NBT and Finance Ministry during the end of the mission briefing.

14. By letter dated October 16, 2007, the Assessors received some comments on the partial and preliminary draft report.

15. On January 17, 2008, The Country Manager wrote to the Deputy Chairman of the NBT, follows:

Dear Mr. Eshov:

Thank you for your comments on the “Preliminary and Partial Draft of the Detailed Assessment Report on Tajikistan’s Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)”. As per the Aide Memoire discussed at the concluding meeting in Dushanbe, held on June 23, 2007, the mission team was then able to provide only a preliminary and partial draft due to incomplete information provided by many of the government agencies during its on-site visit in June 2007.

However, we understand from the recent discussion with Mr. Jamshed Yusupov (Head of Monetary Policy and Statistic Department, National Bank of Tajikistan) that Tajikistan is interested in completing the assessment by providing additional information. We welcome the opportunity to work with you and looking forward to our continued fruitful cooperation in completing the assessment report that will be submitted to the next Plenary of the Eurasia Group combating money laundering and financing of terrorism (“EAG”), which is June 15-17, 2008. In this context, we will be grateful for your cooperation in providing the requested information by **February 12, 2008**. The requested information is elaborated in the three attachments, which restate the information that was requested during the on-site visit and is still missing. The first includes questions describing the AML/CFT situation in Tajikistan, to be completed by the

authorities. The second is a list of legislative acts including any implementing regulations for such acts that the team needs for the assessment. The last attachment is a list of required statistical information.

Given the very short time frame, we would very much appreciate if you could forward any of the requested information as soon as it is available, so as to facilitate translation and analysis.

Upon completion of the analysis of the additional information that Tajikistan will provide, Mr. Klaudio Stroligo, a member of the assessment team, will visit Dushanbe to conduct any follow up meetings needed and clarify matters. We will then proceed to finalize the draft, taking into account the comments you have already submitted, and provide Tajikistan with a final opportunity to comment on the completed draft report.

In the event that Tajikistan does not provide additional information or provides only part of the requested information by Feb. 12, 2008, the Bank will have to go ahead to finalize the Assessment Report. In such circumstances, the finalized report, will take into account your comments and any information provided by February 12. I would also like to draw your attention to the fact that, in accordance with Financial Sector Assessment Program procedures, any FATF recommendations for which we are unable to make an accurate and meaningful evaluation due to a lack of information will be rated "Non-Compliant". This draft report, as finalized, will also be provided to the EAG as Tajikistan's draft mutual evaluation for discussion at the 8th EAG Plenary meeting, with a note explaining the procedures followed by the Bank.

We look forward to your assistance in completing the assessment report as soon as possible. Thank you very much for your cooperation.

Sincerely Yours,

Chiara Bronchi

16. Attached to this letter were three specific lists requesting information: Questions for the Authorities, Missing Legislative Acts, and Missing Statistical Data. These lists are included as Annexes 1, 2, and 3.

17. Some laws and statistics were provided in response to the above letter, but no narrative addressing the questions asked or other information was provided. Accordingly, there was no follow-up, on-site mission. As noted in the above letter, where no information was provided, a rating of "Non-Compliant" has been given.