



Mutual Evaluation Report.

Anti-Money Laundering and Combating the Financing of Terrorism

JUNE 2011

REPUBLIC OF KAZAKHSTAN

Kazakhstan is a member of the Eurasian Group on combating money laundering and financing of terrorism (EAG). This evaluation was conducted by the EAG and was the discussed and adopted by the EAG Plenary in June 2011.

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2011

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PREFACE – INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF THE REPUBLIC OF KAZAKHSTAN

1. The evaluation of the anti-money laundering (AML)¹ and combating the financing of terrorism (CFT) regime of the Republic of Kazakhstan is based on the Forty Recommendations of 2003 and Nine Special Recommendations on Terrorist Financing of 2001 of the Financial Action Task Force (FATF) and was prepared using the AML/CFT Methodology of 2004² recognized by the EAG. The evaluation was based on the laws, regulations and other materials, and information obtained by the evaluation team during its October 2-10, 2010 on-site visit to the Republic of Kazakhstan and thereafter. During the on-site mission, the evaluating team met with officials and representatives of all relevant government authorities of Kazakhstan and the private sector. The list of the agencies met with is presented in Annex 1 to the mutual evaluation report.
2. The evaluation was conducted by the assessment team consisting of the EAG experts in law, finance and law enforcement areas. The assessment team included the following experts: Mr. M. Abdurakhmonov – Deputy Director of the Internal Control Coordination Department of the Central Bank of the Republic of Uzbekistan (financial expert), Mr. I. Alexeev – Deputy Head of the International Relations Department of the Federal Financial Monitoring Service of the Russian Federation (legal expert), Mr. A. Bulaev – Deputy Head of the Legal Department of the Federal Financial Monitoring Service of the Russian Federation (legal expert), Mr. A. Vodyanoy – Head of the 3rd Division of the Chief Department for Combating Crime of the Ministry of Internal Affairs of the Republic of Belarus (law enforcement expert), Mr. A. Gasanov – Deputy Head of the Division for Legal Support of International Cooperation and Drafting of Regulations of the Legal Department of the Federal Financial Monitoring Service of the Russian Federation (legal expert), Mr. A. Movsisyan – Analyst of the Analysis Department of the Financial Monitoring Center of the Central Bank of the Republic of Armenia (financial expert), Mr. V. Pak – Head of the System Analysis and Planning Division of the Department for Combating Fiscal, Foreign Currency Crime and Legalization of Criminal Proceeds with the General Prosecutor’s Office of the Republic of Uzbekistan (legal expert), and Mr. A. Seleznev and Mr. S. Teterukov from the EAG Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, instructions, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions, designated non-financial businesses and professions (DNFBP) and examined the implementation and effectiveness of these systems.
3. This report provides a summary of the AML/CFT measures in place in Kazakhstan as of the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Kazakhstan’s levels of compliance with the FATF 40+9 Recommendations (see Table 1).

¹ See Annex 1 for a full list of abbreviations and acronyms

² As up dated in February 2009

EXECUTIVE SUMMARY

1. Background

1. This report summarizes the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in Kazakhstan as of October 2010 (i.e. as of the time of the on-site visit and immediately thereafter). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out the levels of compliance of the Kazakhstan with the Financial Action Task Force (FATF) 40+9 Recommendations (see the attached Table of the Ratings of Compliance with the FATF Recommendations).
2. Introduction, in 2000, of Article 193 “Legalization of Illegally Obtained Funds or Other Property” in the Criminal Code of Kazakhstan laid the foundation for further development of the AML/CFT legal system in the country. In 2004, Kazakhstan was one of the countries that established the Eurasian Group on Combating Money Laundering and Financing of Terrorism. The first practical step for establishing the national AML/CFT system in Kazakhstan was creation, in 2008, of the financial intelligence unit – the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (RK MoF FMC). On August 28, 2009, Law No.191-IV “On Counteracting Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism” was adopted and came into force on March 9, 2010. Law No.192-IV “On Amendments to Certain Legislative Acts of the Republic of Kazakhstan on Combating Legalization (Laundering) of Illegal Proceeds and Financing of Terrorism”, adopted along with the AML/CFT Law, introduced the appropriate amendments and modification into 26 legislative acts of the country that regulated the activities of the entities subject to financial monitoring, their industry regulators and government agencies. At the time of the on-site mission, the AML/CFT system in the country was functioning for less than one year, which made it impossible to judge on its effectiveness (in particular, in regard to the powers vested in the supervisory authorities). The existing gaps in the system of preventive measures (customer due diligence, record keeping, internal control, etc.) applied to financial institutions and designated non-financial businesses and professions (DNFBP) raise certain concerns.
3. The main sources of criminal proceeds in Kazakhstan are crimes related to fraud and abuse of public office.
4. Kazakhstan is the sovereign, unitary, secular and democratic republic with a presidential form of government. In 2009, Kazakhstan's GDP was equal to 182.044 billion US dollars. The country's banking system, made up of 39 banks, is the most developed part of the financial sector, which also includes 225 credit societies, 6 mortgage companies, 1,780 micro credit organizations as well as 152 professional securities market participants, 40 insurance (reinsurance) companies and 13 insurance brokers. In addition to banks, the money and value transfer services may also be provided by the stock exchange, the Central Depository, brokers and (or) dealers authorized to maintain customers’ accounts and acting as nominee holders (subject to appropriate license) as well as by credit societies (for their members), the E-Government Payment Gateway system operator and the national postal service operator – KazPost. The DNFBP are represented by notaries, lawyers, audit institutions and gambling and lottery organizers.

2. Legal System and Related Institutional Measures

5. Kazakhstan criminalized ML as "Legalization of Illegally Obtained Funds or Other Property" in Article 193 of the Criminal Code of Kazakhstan. According to this Article, performance of financial transactions and other deals with funds or other property, knowingly obtained in illegal way, as well as the use of such funds or other property for carrying out entrepreneurial (business) or other economic activities constitutes a criminal offence. However, the definition of ML crime does not include, in particular, conversion, transfer of property or concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights with respect to property, knowing that such property is the proceeds of crime as well as ownership or use of property for personal benefit/advantages and not just for carrying out entrepreneurial (business) or other economic activities, as required by the Vienna and Palermo Conventions. Predicate offences for money laundering are all offences set forth in the Criminal Code. However, the Criminal Code of the Republic of Kazakhstan does not cover all designated categories of predicate offences specified in the FATF 40 Recommendations. In particular, such offences as insider trading and market manipulation are not covered by the Criminal Code. The crime of money laundering may be applied to persons who commit the predicate offence (i.e. self-laundering). Under the legislation of Kazakhstan, criminal liability applies only to natural persons, with no explicit provisions ensuring ML liability for legal entities. A wide range of sanctions for money laundering, which include imposition of fines, detention under arrest, imprisonment and confiscation, is adequate. Amount of the fines may be both fixed which is based on monthly calculated indices (MCI) (in 2010 the MCI amount is 1,413 tenge) and graded which depends on income of a guilty person for a certain period of time. The terms of imprisonment range from three to seven years. Guilty verdicts affecting 51 persons were passed in 2006 – 2009. In most instances the ML-related criminal cases are dismissed at the preliminary investigation stage. Low percent of the instituted ML criminal cases submitted to court is also the indirect evidence of certain problems with classification of the ML-related offences.
6. Financing of terrorism is criminalized in Article 233-3 "Financing of Extremism or Terrorist Activity" of the Criminal Code of Kazakhstan. However, the provisions of Article 233-3 of the Criminal Code do not define such terms as "financing of terrorism" and "terrorist activity". Definitions of the "terrorism", "terrorist act", "financing of terrorism" and "terrorist activity" concepts are contained in Law No.416 «On Counteracting Terrorism» dated 13.07.1999. Pursuant to this Law, financing of terrorism (terrorist activity) is the provision or collection of money and (or) other property, or the provision of financial services to terrorists and (or) terrorist organizations for carrying out terrorist activity. Criminal liability applies only to natural persons, with penalties being largely proportionate (up to eight years of imprisonment). In 2006 – 2009, 162 persons involved in extremism and terrorist activity were convicted under 77 criminal cases, while no persons were convicted for financing of terrorism. In this context, it seems that Article 233-3 of the Criminal Code of the Republic of Kazakhstan is applied in respect of terrorist financing not effectively enough. Adopted in 1999 was the Law "On Counteracting Terrorism" which provides for liability of persons, recognized as terrorist organizations, in form of their liquidation.
7. Confiscation of property for ML-related offences in Kazakhstan is covered in Articles 121 and 161 of the Criminal Procedure Code of the Republic of Kazakhstan. In addition to procedural confiscation, the legislation of the Republic of Kazakhstan also provides for criminal confiscation of property. Article 51 of the RK Criminal Code defines confiscation as

forcible uncompensated taking of all or part of property owned by a convict and transfer of such property to the State. In view of the fact that one out of the twenty designated categories of predicate offences is not criminalized, confiscation in respect of this offence is not possible. The law enforcement and other competent authorities have sufficient powers to identify and trace property subject to forfeiture, or in the event of suspicions that such property constitutes the proceeds of crime. However, the legal basis for these powers is poorly regulated.

8. The AML/CFT Law contains provisions allowing for suspension for up to 3 days of transactions conducted by persons suspected of being involved in terrorist activities. At the same time, the existing legal mechanisms do not provide for any effective procedures for freezing terrorist assets or ways for implementing such procedures as required by UN Security Council Resolutions 1267 and 1373. The necessary mechanisms for analyzing and using the data received from foreign states and pertaining to the subjects of freezing, along with procedures for reviewing requests for de-listing of individuals are absent.
9. The financial intelligence unit (FIU) of Kazakhstan – the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (hereinafter the FMC) was established as the department of the central executive authority (the Ministry of Finance) in compliance with Resolution No.378 of the Government of the Republic of Kazakhstan “On Certain Issues Pertaining to the Ministry of Finance of the Republic of Kazakhstan” dated April 24, 2008. The terms of reference of the FMC and the procedure of its coordination and interaction with other government agencies are set forth in Regulation on the FMC. After the basic AML/CFT Law (Law No.191-IV) was adopted, the Regulation on the FMC was amended as appropriate by the Order of the Minister of Finances of the Republic of Kazakhstan. Pursuant to the introduced amendments, the basic objectives and functions of the FIU, including collection, requesting, processing and analysis of information as well as dissemination to the national competent authorities of materials of financial investigations carried out based on the analysis of suspicious transaction reports and information supplied from other sources, were assigned to the headquarters of the FMC. Potential limitations of the operational independence of the Financial Monitoring Committee are explicitly set forth in the Constitutional Law “On the Government of the Republic of Kazakhstan” and, from the legal viewpoint, such limitations may be removed only if the FMC becomes the agency that is not part of the RK Government but is subordinated directly to the President of the Republic of Kazakhstan. Since the FMC has no statutory obligation to provide information and materials requested by the law enforcement agencies, the so-called proactive approach to financial investigations plays important role.
10. Pursuant to Article 192 of the Criminal Procedure Code preliminary investigations into ML-related offences are carried out by the Financial Police investigators, while preliminary investigations into FT-related crimes are conducted by the National Security Committee investigators. It appears that the law enforcement authorities have sufficient resources and are well aware of their responsibilities in respect to AML/CFT-related investigations. Their structure, in general, is adjusted to meet the AML /CFT-related objectives. There is need for the staff to receive training in the use of the ML/FT-related investigation procedures. General powers of the law enforcement agencies related to confiscation of documents, searches, arrests and other similar actions are in line with Recommendation 28.
11. Under Kazakhstan's system for declaring goods and currency and pursuant to the Agreement on movement by individuals of cash and (or) financial instruments across the border of the Customs Union, subject to mandatory declaration are money in amount equal to

or exceeding the equivalent of 10,000 US dollars. The existing system is not fully in line with Special Recommendation IX, because it is not used for the AML/CFT purposes and, besides that, the Customs authorities have no powers to seize or freeze the funds suspected of being used for money laundering or terrorist financing.

3. Preventive Measures – Financial Institutions

12. Pursuant to Article 3 of the AML/CFT Law of the Republic of Kazakhstan financial institutions covered by the AML/CFT regime include: banks, institutions carrying out certain types of banking operations, stock exchanges, insurance (reinsurance) institutions, insurance brokers, pension savings funds, professional securities market participants and post office operators rendering money remittance services.
13. The AML/CFT Law does not cover such financial institutions as: consumer credit unions; pawnshops; micro credit organizations; leasing companies; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals.
14. Regulation of financial institutions, among other things, is based on the standard Internal Control Rules (hereinafter the ICR) developed and established by joint Resolutions of the Department and the respective supervisory, oversight and licensing authorities. Financial institutions are obliged to incorporate the provisions of the said Rules in their own internal control rules. However, it is impossible to assess how all the requirements set forth in the aforementioned ICR are implemented since these Internal Control Rules were adopted shortly before the on-site evaluation mission.
15. Despite the fact that Kazakhstan has taken measures that prevent opening of anonymous accounts or accounts in fictitious names, there is no direct prohibition to open anonymous accounts or accounts in fictitious names in the banking sector.
16. Pursuant to the AML/CFT Law of the Republic of Kazakhstan, customer due diligence is performed when establishing business relationships, carrying out transactions with funds and (or) other property subject to financial monitoring and also when there are grounds to doubt the veracity of previously obtained information on an individual or a legal entity. General requirements for customer due diligence are set forth in the AML/CFT Law. Besides that, the entities subject to financial monitoring perform customer due diligence in compliance with the internal control rules. The entities subject to financial monitoring are obliged to independently develop the internal control rules with due consideration for the requirements established by the legislation. There is a number of shortcomings in the statutory requirements pertaining to verification of information provided by a customer, clarification whether a customer acts on its own behalf or not, and structure of ownership and control of customers being legal entities. Furthermore, the legislation does not set out a timeframe for updating information on the existing customers and does not require to apply a full range of CDD measures to such customers. There is no obligation in the Republic of Kazakhstan to verify information obtained through the CDD process and no requirement to undertake the CDD measures in respect of high-risk customers. The “beneficiary owner” concept introduced for the insurance sector is inconsistent with the FAFT definition.
17. Kazakhstan has implemented measures regarding politically exposed persons (PEPs) as required by the FAFT Recommendations, however, there are certain difficulties with

identifying PEPs that have been already served by a financial institution. The National Bank of the Republic of Kazakhstan establishes just basic requirements with regard to correspondent relationships, granting financial institutions the right to cooperate and establish business relationships under agreements signed between them, and therefore, there is no comprehensive AML/CFT regulation of correspondent relationships. The requirements do not apply to correspondent relationships established by banks and non-banking institutions with non-resident banks. Correspondent relationships of banks and non-banking institutions with non-resident banks are regulated by the respective agreements between them and the business practices applicable in the banking sector.

18. The legislation of the Republic of Uzbekistan does not contain provision that permits all financial institutions to rely on third parties to perform CDD process or to introduce business. At the same time, there is no provision that directly prohibits the use of third parties for the aforementioned purposes. Given that financial institutions in practice do not use third parties for undertaking CDD measures and with consideration for the specificities of the RK legislation, which does not regulate the aforementioned relationships, the assessors consider that Recommendation 9 is not applicable.
19. In general, the legislation of the Republic of Uzbekistan on financial institution secrecy does not inhibit the implementation of the FATF Recommendations. However, inconsistent legislation and different terminology defining the same subject or object under the AML/CFT system framework may be a legal impediment and seriously affect the effectiveness of obtaining information from the entities subject to financial monitoring and cooperation with foreign partners.
20. Pursuant to the legislation of the Republic of Kazakhstan the record keeping requirement extends to a certain segment of identification data, while other identification data and transactions records are not covered by the statutory record keeping requirements. In particular, there is a general requirement for financial institutions to retain customer identification data for five years following termination of business relationships. Financial institutions are not clearly and explicitly required to ensure proper storage of information to allow its prompt retrieval in the event of a request from the competent authorities.
21. The legislation of Kazakhstan does not directly require financial institutions to pay special attention to all complex, unusual large transaction or patterns of transactions that have no apparent and visible economic or lawful purpose. This requirement is indirectly implemented under the STR filing procedures since unusual nature of a transaction is one of the indicators of a suspicious transaction. The legislation of the Republic of Kazakhstan does not define the “non-cooperative (high-risk) countries”, therefore, financial institutions are not obliged to pay special attention and examine the background and purpose of transactions with persons from the “non-cooperative countries”, i.e. countries that do not or insufficiently apply the FATF Recommendations.
22. Since March 2010, Kazakhstan uses the system of mandatory controls, under which transactions above a certain threshold as well as suspicious transaction that meet the criteria of suspiciousness established by the AML/CFT Law have to be reported to the FIU. However, given the fact that, at the time of the on-site mission, the STR filing system was functioning for less than one year, it was difficult to analyze the effectiveness of this system.
23. Kazakhstan has implemented measures to comply with Recommendation 19. However, the legislation of Kazakhstan does not oblige all financial institutions to file with the designated

agency reports on all cash transactions above the established threshold. Feedback to financial institutions is not provided at the appropriate level. No guidelines or recommendations describing ML/FT methods and techniques have been issued to the institutions engaged in transactions with funds or other property.

24. The entities subject to financial monitoring shall independently develop the internal control rules with due consideration for the requirements set forth in the legislation. The AML/CFT Law and the Order of the Ministry of Finance of the Republic of Kazakhstan sets out a general requirement for financial institutions to arrange for and establish the internal control system, but there are no individual ICR requirements for different financial sectors. There are no detailed requirements for internal control as prescribed by Recommendation 15. No requirements have been established for appointment of a designated officer (except for banks), for implementation of screening procedures when hiring employees. Besides that, no requirements for qualification, education and training of personnel and for communicating the internal control rules to employees are established.
25. The legislation of the Republic of Kazakhstan does not directly and explicitly prohibit operation of shell banks and establishment of correspondent relationships with such banks and with respondent institutions that have accounts in shell banks.
26. The system of AML/CFT regulation and supervision of financial institutions in Kazakhstan is based on the AML/CFT Law and partially on the industry laws and regulations that govern the activities of financial institutions. In the Republic of Kazakhstan, the functions of control over compliance by the entities subject to financial monitoring with the AML/CFT legislation are assigned to the respective government agencies within their terms of reference. The only AML/CFT regulator of financial institutions is the Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Institutions (FSA)³. In some sectors supervision of financial institutions is also performed by the National Bank and the Ministry of Communications of the Republic of Kazakhstan within their respective terms of reference, but not in the AML/CFT area. The AML/CFT control and sanctions mechanism in Kazakhstan is currently under development. In Kazakhstan, not all sectors are covered by the regime of sanctions for non-compliance with the AML/CFT legislation. Except for the banking sector, possible imposition of a broad range of sanctions on all other types of financial institutions for AML/CFT violations is not explicitly regulated. The powers of not all supervisory authorities to perform supervision of financial institutions are clearly specified in the legislation. There is no practice of AML/CFT inspections of financial institutions, and sanctions have not been imposed in practice. Financial institutions are not obliged to apply the Basic Principles for the AML/CFT purposes. The staffing and structure of the supervisory authorities are not yet fully adjusted for the AML/CFT supervision purposes, and the supervisory agencies have received no training in the AML/CFT supervision methods and techniques.
27. The government-regulated financial system of Kazakhstan permits money remittance only through banks or post offices. However, banks and post offices are already subject to the

³ Pursuant to Decree No.25 “On further improvement of the system of state regulation of the financial market of the Republic of Kazakhstan” issued by the President of the Republic of Kazakhstan on April 12, 2011, the Agency of the Republic of Kazakhstan for Regulation and Supervision of Financial Market and Financial Institutions was abolished and its functions and powers were vested in the National Bank of the Republic of Kazakhstan.

requirements of the AML/CFT Law, and, therefore, all the AML/CFT-related deficiencies identified in the banking system are applicable to banks in the context of remittances. At the same time, Kazakhstan has failed to demonstrate the effectiveness of its legislative and other measures against individuals engaged in transfers of money or valuables (TMV) outside the framework of the regulated financial system (e.g. *Hawala, fei ch'ien*).

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

28. The requirements of the AML/CFT legislation of Kazakhstan do not apply to dealers in precious metals, dealers in precious stones, trusts (trust management of property), institutions acting as formation and service agents of legal entities, real estate agents.
29. Pursuant to the Law on Gambling Business, casinos and slot shops can be located only in Almaty Region, on the coast of Kapshagai dam lake and in Schuchinsky District of Akmola Region within the territories designated by the local executive authorities.
30. The existing system of measures established by the AML/CFT Law for financial institutions is also applicable to DNFBP. The deficiencies in fulfillment of Recommendations 5, 6, and 8-11 in respect of DNFBP as well as Recommendations 13-15 and 21 are similar to the deficiencies identified in respect of financial institutions, while the low level of awareness among DNFBP of their AML/CFT-related responsibilities contributes to a greater risk of money laundering and terrorist financing in this sector.
31. Licenses for notaries and lawyers are issued by the Ministry of Justice of the Republic of Kazakhstan. The Ministry of Justice also makes decisions on suspension and cancellation of licenses that grant the right to be engaged in notarial activities and legal practice and also initiates notary license withdrawal proceedings. Local justice authorities are responsible for exercising control over compliance by notaries with the AML/CFT legislation of the Republic of Kazakhstan. The powers vested in the Ministry of Justice include only control over compliance by the supervised persons with the requirements of the general law concerning the respective activities and with the license terms and conditions, and do not cover the AML/CFT issues.
32. The Ministry of Tourism and Sports of the Republic of Kazakhstan is the designated agency that issues licenses to operate gambling business in the Republic of Kazakhstan. Gambling businesses are operated under licenses issued to applications for each gambling venue for a period of ten years.
33. According to the information provided by the representatives of Kazakhstan, the legal experts include private lawyers, and, in general, this term covers all persons who are theoretically capable of providing legal services and have University degree in law but do not have a lawyer license. There is no supervisory authority that oversees the activities of this type of entities subject to financial monitoring.

5. Legal Entities and Arrangements and Non-Profit Organizations

34. The Ministry of Justice of the Republic of Kazakhstan performs the state registration of legal entities and the record registration of branches and representative offices and also provides information to the government supervisory and oversight authorities at their request. The legislation of the Republic of Kazakhstan does not oblige legal entities to report on beneficial owners and controllers: being provided is just information on founders. Over

300,000 legal entities are registered in the country, but under the current law there is no information about beneficial owners of these entities, which contributes to further aggravation of such vital problem in the country as pseudo-businesses and shadow companies. The issue of bearer shares is indirectly prohibited in the Republic of Kazakhstan; pursuant to the Civil Code shares may be issued only as registered issuance securities.

35. The legal system of the Republic of Kazakhstan does not provide for establishment of trusts and the legal concept of a trust does not exist in the civil legislation of Kazakhstan. Kazakhstan has not ratified the Hague Convention on the Law Applicable to Trusts and on their Recognition of 1985. Taking into account the fact that there are no laws and practice in this area, the assessors believe that Recommendation 34 is not applicable.
36. Kazakhstan has established the NPO (non-profit organization) sector oversight and monitoring system, but the AML/CFT issues are not covered by this system. At the same time, one can state that this sector may be used for financing of terrorism or money laundering. No assessment of adequacy of the NPO-related legislation, in terms of ensuring appropriate AML/CFT measures, has been conducted in Kazakhstan, and the NPO sector has not been reviewed for identifying its vulnerability to ML/TF. The authorities have taken no measures to enhance supervision of large NPO and have provided no FT risk awareness training for the NPO. The state registration of non-profit organizations is performed by the Ministry of Justice. In Kazakhstan, NPO provide information on their activities to the government tax and statistics authorities, while branches of foreign and international NPO publish annually information about their founders, property and on sources of funds and their spending. The information on managers and members of the management board is stored in the unified state register of legal entities kept by the Ministry of Justice of the Republic of Kazakhstan.

6. National and International Cooperation

37. Pursuant to Article 16 of the AML/CFT Law, the designated government agency (Financial Monitoring Committee) is authorized to coordinate the efforts of the government authorities involved in combating legalization of illegally obtained proceeds and financing of terrorism. At present the FIU, law enforcement, supervisory and other competent authorities do not have effective mechanisms which enable them to cooperate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.
38. Pursuant to the Order of the Minister of Finance of the Republic of Kazakhstan the AML/CFT Inter-Agency Committee has been established and currently operates. The members of the said Committee include the heads of all competent authorities incorporated in the national AML/CFT system and the managers or deputy managers of professional associations and unions representing the entities subject to financial monitoring.
39. Kazakhstan ratified the Vienna Convention (the UN Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances of 1988) on 29.06.1998 and the Palermo Convention (the UN Convention against Transnational Organized Crime of 2000) on 04.06.2008. Those Conventions were ratified by the Republic of Kazakhstan without any reservations. The International Convention for the Suppression of the Financing of Terrorism was ratified by the RK Law of October 2, 2008 without any reservations. The ML and FT criminalization shortcomings have negative impact on effective implementation of the Conventions. There are substantial deficiencies in respect of implementation of the UNSCR

1267 and 1373 and subsequent resolutions, the UNSCR 1452 on granting access to funds for basic needs is not being implemented, there are no de-listing procedures.

40. Kazakhstan is capable of providing various types of mutual legal assistance (MLA) in compliance with the requirements of Recommendation 36. Since no MLA statistics were presented, it was impossible to assess effectiveness of the MLA regime. In the absence of a mutual recognition of certain act as a criminal offence (dual criminality), MLA can be provided to the maximum extent possible, while any technical differences between the laws of the requesting and requested States do not create an obstacle for provision of MLA by Kazakhstan. There are clear procedures to ensure timely execution of MLA requests. Kazakhstan has not considered establishing the asset forfeiture fund.
41. Pursuant to the Criminal Code and the Criminal procedure Code of Kazakhstan, foreign nationals and stateless persons who have committed crimes outside of Kazakhstan but who are located on the territory of Kazakhstan, may be extradited to a foreign state for prosecution or servicing a sentence subject to an appropriate international agreement. The said provisions also cover ML offences and other predicate offenses except those that are not criminalized in Kazakhstan: insider trading and market manipulation. Certain elements of the ML offence, which are not criminalized by Kazakhstan as required by the Vienna and Palermo Conventions are not covered either. There are clear procedures to ensure timely execution of extradition requests.
42. The AML/CFT Law establishes the necessary framework for international cooperation between the competent authorities of Kazakhstan and foreign counterparties. However, the existing mechanisms for international cooperation are not sufficiently used by the FIU.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1. General Information on Kazakhstan

1. The Republic of Kazakhstan is the country located in the north-western part of the Central Asia and in the south-eastern part of the Eastern Europe. Kazakhstan covers a total area of 2724.9 thousand square kilometers (1052.1 thousand square miles). In terms of its territory, Kazakhstan is the ninth-largest country in the world, i.e. is among ten largest countries after Russia, Canada, China, USA, Brazil, Australia, India and Argentina. In the north and west Kazakhstan borders Russia, in the east Kazakhstan shares its border with China, and in the south it has common borders with Kyrgyzstan, Uzbekistan and Turkmenistan. In terms of administrative division, the Republic of Kazakhstan consists of 14 regions and 2 cities of the national importance (Astana and Almaty). The national currency of the Republic of Kazakhstan is tenge. The capital of Kazakhstan is Astana city. Kazakh is the national language. The citizens have the right to choose the language for the international communication upon their own discretion. The most common languages of the business communications are the Russian and English.

Governmental System

2. The Republic of Kazakhstan is a unitary state with the presidential system of government which proclaims itself a democratic, secular, legal and social state whose highest values are an individual, his/her life, rights and freedoms. The Constitution of the Republic of Kazakhstan was adopted at the national referendum on August 30, 1995. Later on, the Constitution was amended by the Law of the Republic of Kazakhstan of October 7, 1998 and the Law of the Republic of Kazakhstan of May 21, 2007. The President of the Republic of Kazakhstan is the head of the state.
3. The two-chamber Parliament of the Republic of Kazakhstan is the supreme public representative body that exercises the legislative powers. The Parliament consists of two chambers – the Parliament (the lower chamber – 107 deputies) and the Senate (the upper chamber – 47 senators).
4. The Cabinet of Ministers – the Government of the Republic of Kazakhstan is the supreme executive body of the Republic of Kazakhstan. The Government of the Republic of Kazakhstan exercises the executive powers. It manages the system of executive authorities and supervises their activities. The Cabinet of Ministers of the Republic of Kazakhstan is the collective body formed by the President of the Republic of Kazakhstan and consists of the Prime Minister, Deputy Prime Ministers, Ministers and other officials of the Republic of Kazakhstan. The head of the Government – the Prime Minister is appointed by the President of the Republic of Kazakhstan with the approval of the Majilis (the lower chamber) of the Parliament. Structurally, the Government consists of the Ministers and other central executive bodies of the Republic of Kazakhstan.
5. The state powers in the Republic of Kazakhstan are executed by their division into the legislative, executive and judicial. Judicial power in the Republic of Uzbekistan is independent from the legislative and executive powers, political parties or any other public

associations. The government bodies are independent to the extent of their authority; they interact, check and balance each other.

6. The Constitutional Court of the Republic of Kazakhstan makes sure that the legislative acts of the country are consistent with the principles of the Constitution.

Economy

7. According to Article 127 of the Civil Code of Republic of Kazakhstan, the national currency is “tenge”, which is the legal means of payment compulsory accepted at par at the entire territory of Kazakhstan. The payments are made in cash or by cashless settlements. As of the date of assessment the exchange rate of tenge was: 1 tenge = \$0.00067 US dollars.

Economy in Figures, 2005-2008.					
Indicator	Unit of Measurement	2005	2006	2007	2008
GDP (current prices)	bln. tenge	7 590.593	10 213.731	12 849.794	16 052.919
GDP average annual growth rate	In %	9.7	10.6	8.7	3.3
GDP per capita in USD	USD	3.760	5.295	6.805	6.981

8. Kazakhstan exports raw materials produced by the excavating, fuel, metallurgical and chemical industries. The structure of Kazakhstan export is as follows: crude oil and oil products – 35%, non-ferrous metals – 17%, ferrous metals – 16%, ore – 12%, grain crops – 9%, other – 11%. The main importers include: Italy (16%), China (14%), Russia (8%), France (8%), Switzerland (6.2%), Netherlands (5.1%) and Canada (3.2%).
9. The main imported products include machinery and equipment, transport vehicles, devices and instruments (39.5%), non-precious metals and items (20.1%), chemical products, plastics and natural rubber (12.1%) and mineral products (10.7%). The main suppliers include — Russia (31%), China (12.6%), Ukraine (7.5%), Germany (7.2%), Italy (6.7%) and USA (4.9%).

Foreign Affairs

10. Kazakhstan is the member of the UN, the OSCE and the CIS, the Collective Security Treaty Organization (CSTO), the Eurasian Economic Cooperation Organization, the Shanghai Cooperation Organization and the Central Asian Cooperation Organization. Since 2004 Kazakhstan is the member of the EAG.
11. Besides that, Kazakhstan is the member of other international organizations. The legal framework of the international legal cooperation consists of more than 100 multilateral Conventions and Protocols thereto.

Legal System and Hierarchy of Laws

12. The legal system of Kazakhstan is based on the continental civil law. The following types of the regulatory legal acts are the principal source of law in Kazakhstan:
 - a) Statutory instruments

- Constitutional Laws, Decrees of the President of the Republic of Kazakhstan having the force of a constitutional law;
- Codes;
- Laws, Decrees of the President of the Republic of Kazakhstan that have the force of a law;
- Resolutions of the Parliament of the Republic of Kazakhstan, Resolutions of the Senate and the Majilis.

b) By-laws

- Regulatory Decrees of the President of the Republic of Kazakhstan;
- Regulatory Resolutions of the Government of the Republic of Kazakhstan;
- Regulatory Orders of the Ministers of the Republic of Kazakhstan and of other heads of the central government agencies, Regulatory Resolutions of the central governmental agencies and Regulatory Resolutions of the Central Election Committee of the Republic of Kazakhstan.

13. Pursuant to Law No.213 of the Republic of Kazakhstan dated 24.03.1998 “On Regulatory Legal Acts”, the laws govern the most important social relations and establish the basic principles and norms provided for by section 3 of Article 61 of the Constitution of the Republic of Kazakhstan. The laws are adopted by the Parliament of the Republic of Kazakhstan, and in situations specified in subsection 3 of Article 53 of the Constitution of the Republic of Kazakhstan – adopted by the President of the Republic of Kazakhstan. The Parliament adopts legislative acts in form of laws of the Republic of Kazakhstan, Resolutions of the Parliament, Resolutions of the Senate and the Majilis that are binding throughout the Republic. The laws of the Republic of Kazakhstan, Resolutions of the Parliament and of its Chambers shall be consistent with the Constitution. Resolutions of the Parliament and of its Chambers shall be consistent with the laws. The President of the Republic of Kazakhstan, on the basis and in pursuance of the Constitution and the laws, issues Decrees and Orders that are binding throughout the Republic. The Government of the Republic of Kazakhstan, within the respective terms of its reference, issues Resolutions that are binding throughout the Republic. Resolutions of the Government shall be consistent with the Constitution, laws and Decrees and Orders of the President of the Republic of Kazakhstan.
14. The Ministries, Government Committees and Agencies adopt, within their respective terms of reference, regulatory legal acts in the form of orders and resolutions. The regulatory legal acts adopted in the form of regulations, rules and guidelines shall be approved by the orders or resolutions of the Ministries, Government Committees and Agencies. The regulatory legal acts of the Ministries, Government Committees and Authorities may be jointly adopted by several Ministries, Government Committees and Authorities or by one of them in coordination with the others.
15. The ratio of various regulatory legal acts in terms of their legal effect shall be determined according to the Constitution of the Republic of Kazakhstan, the terms of reference and the status of the body that has adopted the regulatory legal act, and the types of such acts. The regulatory legal act must be consistent with the regulatory legal acts of higher legal effect. In case of any discrepancies between the regulatory legal acts, a regulatory legal act of higher legal effect shall apply. In case of any discrepancies between the regulatory legal acts of different levels, the provisions of the higher level act shall apply. The provisions of the laws, if they are inconsistent with the provisions of the codes of the Republic of Kazakhstan, may

be applied only after the codes are appropriately amended. In case of any discrepancies between the regulatory legal acts of the equal legal effect, the provisions of the later adopted act shall apply.

16. Another consideration is that, according to the Constitution, Kazakhstan recognizes the priority of the generally recognized norms of the international law.

Transparency, Bona Fide Governance, Anti-Corruption Measures

17. According to the Law No.31-IV of the Republic of Kazakhstan of May 2008, Kazakhstan has acceded to the UN Anti-Corruption Convention (New York, October 31, 2003).
18. In this regard, special anti-corruption units have been established in the prosecution, internal affairs, national security and financial police agencies.

1.2. General Situation with Money Laundering and Financing of Terrorism

Money Laundering

19. The anti-money laundering measures have been taken in the Republic of Kazakhstan since the moment when actions involving legalization of funds or other property obtained in illegal manner were criminalized in the Criminal Code of the Republic of Kazakhstan. The goals and objectives of the AML/CFT efforts are set forth in the Law on Counteracting Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism.
20. The situation with the crimes that are the main source of illegal proceeds is as follows:

Type of Crime as per Articles of the RK Criminal Code	Year/Number of Cases			
	2007	2008	2009	9 мес. 2010
Appropriation or embezzlement of trusted property	1532	2189	2004	1643
Fraud	9871	10679	9941	7532
Pseudo business	315	368	565	612
Production or distribution of counterfeit money or securities	802	1445	1767	950
Commercial smuggling	510	530	604	414
Establishing and running an organized criminal group or criminal association (criminal organization), participation in a criminal association	51	51	73	54
Receipt of a bribe	256	290	344	300

21. Kazakhstan has criminalized money laundering in Article 193 of the Criminal Code of the Republic of Kazakhstan. The following chart sets out statistics of crimes covered by Article 193 from 2007 – 2010 (data on the Republic of Kazakhstan)

Year	Number of Criminal Cases Instituted under Article 193 of the Criminal Code	Considered by Courts	Number of Convicts as per Valid Court Verdicts	Sanctions Imposed on Convicts	
				Fine	Imprisonment
2007	66	14	11	-	-
2008	50	10	26	0	15
2009	113	12	11	1	4
9 months of 2010	104	6	5	1	2

22. The most wide spread are the actions related to legalization of property obtained through fraud – this is legalization of funds, residential apartments, motor vehicles, land plots, private houses and stolen crude oil. This property, after being re-registered through the use of fictitious documents, is further sold to third parties.
23. Quite wide spread is legalization of funds obtained as a result of fictitious payments effected among pseudo businesses and shadow companies. Such companies are established for laundering “dirty” money and their follow-on appropriation. In this criminal scheme offences punishable under Article 193 of the RK Criminal Code are closely linked to illegal activities covered by Article 192 of the Criminal Code (Pseudo Business).
24. The commission of crime covered by Article 193 of the Criminal Code of the Republic of Kazakhstan with the use of pseudo businesses is, as a rule, accompanied by a number of ancillary offences such as tax evasion, fraud, theft, appropriation or embezzlement of trusted property, smuggling, sales/distribution of forged documents, etc.
25. The increase of number of cases where illegal proceeds are obtained through the use pseudo business gives grounds to believe in growing scope of their legalization (laundering). According to the information available to the Tax Committee of the RK Ministry of Finance, at present 586 business entities are formally recognized as pseudo businesses used for carrying out fictitious transactions and converting criminal funds into cash.
26. Pseudo businesses are often registered in the name of straw parties using their documents and persons without permanent residence. After transactions are carried out with pseudo businesses and large amounts of funds are accumulated on bank accounts of such pseudo businesses and limited liability companies, illegal funds are converted into cash through

banks. Besides that, bank employees are often engaged at this stage and facilitate receipt of multi-million cash amounts.

27. Funds illegally obtained against fictitious credit instruments are often legalized (laundered) by employees of banks and credit institutions that issue loans as well as by other persons by providing false information on a borrower, collateralized property, intended use of a loan, etc.
28. Stolen budget funds and state owned property are legalized (laundered) by both business entities and officials employed by the government institutions by falsifying official documents, selling state owned property to thirds parties, entering into fictitious overpriced export deals for reimbursement of VAT. In most instances the objects of criminal offences include the budget funds and the state-owned property such as buildings, land plots, motor vehicles.

Financing of Terrorism

29. Kazakhstan ratified the International Convention for the Suppression of the Financing of Terrorism by adopting the respective Law of the Republic of Kazakhstan of October 2, 2002. The Convention was ratified without any reservations.
30. In general, the legislation of the Republic of Kazakhstan criminalizes actions specified in nine conventions and protocols listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism, except for certain elements.
31. According to information provided by the Committee on Legal Statistics and Special Records of the General Prosecutor’s Office of the Republic of Kazakhstan, in 2006-2010 courts instituted no criminal proceedings for actions punishable under Article 233-3 “Financing of Extremism or Terrorist Activity” of the Criminal Code of the Republic of Kazakhstan. See section 2.2 of the Report for detailed information.

1.3. Overview of Financial Sector and DNFBP

1.3.1. Overview of Financial Sector

32. The Table below compares the types of financial institutions that operate in the Republic of Kazakhstan with the types of financial activities to which the FATF Recommendation should apply.

Financial Activities and Types of Financial Institutions			
Type of Activity of a Financial Institution (See Glossary to 40 FATF Recommendations)	Types of Financial Institutions Engaged in Such Activities	Whether They are Covered by AML/CFT Requirements	AML/CFT Supervisory/Regulatory Authority
1. Acceptance of deposits and other repayable funds from the public.	Banks Institutions engaged in certain types of banking operations (properly licensed)	Yes	FSA

	KazPost		
2. Lending	Banks Institutions engaged in certain types of banking operations (properly licensed)	Yes	National Bank
	KazPost Micro credit organizations Consumers' cooperatives that extend credits to their members; Pawnshops	No	No
3. Financial leasing.	Banks	Yes	FSA
	Persons engaged in financial leasing transactions; KazPost Micro credit organizations	No	No
4. Transfer of money or value	Banks, including banks operating international remittance systems Institutions engaged in certain types of banking operations (properly licensed) Stock exchange, Central depository, Broker and (or) dealer authorized to maintain customers' accounts acting as nominee holder (subject to appropriate license)	Yes	FSA

	KazPost: 1) maintaining bank accounts of individuals 2) maintaining accounts of other (legal) persons 3) postal money transfers	1) Yes 2) No 3) No	1) FSA 2) No 3) Ministry of Communications
5. Issuing and managing means of payment (e.g. credit and debit cards, (e.g. credit and debit cards, cheques, traveller's cheques, money orders, bankers' drafts).	Banks	Yes	FSA
	KazPost	No	No
6. Financial guarantees and commitments	Banks Insurance companies	Yes	FSA
	Other persons that provide guarantees	No	No
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives, etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	Banks for transactions specified in items (a), (b), (c), (d) and (e). Institutions engaged in foreign exchange transactions (b). Professional securities market participants – items (a), (c), (d) Stock exchange – items (e), (c).	Yes	FSA
	KazPost – item (b)	No	No
8. Participation in securities issues and the provision of financial services related to such issues	Banks Professional securities market participants	Yes	FSA
	KazPost	No	No
9. Individual and collective portfolio management	Banks Professional securities market participants	Yes	FSA
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks Central depository	Yes	FSA
	KazPost	No	No
11. Otherwise investing,	Banks	Yes	FSA

administering or managing funds or money on behalf of other persons			
12. Underwriting and placement of life insurance and other investment related insurance	Insurance companies	Yes	FSA
	Insurance agents	No	No
13. Money and currency changing	Banks Institutions engaged in certain types of banking operations (properly licensed)	Yes	FSA
	KazPost	No	No

33. In addition to the institutions listed above, operating in Kazakhstan are organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals.

Banking Sector

34. The Republic of Kazakhstan has the two-level (two-tier) banking system. The National Bank of the Republic of Kazakhstan (the first tier) is the central bank of the state banking system. All other banks present the second tier of the banking system, except for the Kazakhstan Development Bank, which has a separate legal status specified in the legal act of the Republic of Kazakhstan. From the beginning of this year the assets of the banks grew by 388.4 billion tenge or by 3.4%, and as of April 1, 2010 amounted to 11,945.7 billion tenge.

35. The foreign currency exchange services may be provided by banks and exchange offices. The money transfer services may be rendered only through banks or by post offices.

36. The National Bank of the Republic of Kazakhstan issues licenses to banks and supervises and oversees their activities. As of April 1, 2010, operating in the Republic of Kazakhstan were 39 banks, of which 20 banks with foreign ownership and 1 bank 100% owned by the state. In addition to banks, institutions engaged in certain types of banking operations also operate at the territory of Kazakhstan.

Institutions Engaged in Certain Types of Banking Operations

37. As mentioned above, apart from banks, operating in Kazakhstan are also institutions engaged in certain types of banking operations. The list of banking operations, for engagement in which the respective licenses are issued, is set forth in the Law on Banks and Banking Activity. The said institutions include 6 mortgage institutions and 9 institutions engaged in certain types of banking operations that have licenses to carry out certain types of banking operations. As of April 2010, total assets of the mortgage institutions decreased by 2.1 billion tenge or by 2.6% and amounted to 78.2 billion tenge. The balance net worth of the mortgage institutions was equal to 18.6 billion tenge.

Insurance Sector

38. As of April 1, 2010, a total of 41 insurance (reinsurance) institutions operated in the financial market of the Republic of Kazakhstan under the licenses issued by the Financial Supervision Agency (FSA), of which 2 institutions were state owned, 2 with 100% foreign ownership and 4 with foreign ownership. Of 41 insurance institutions 7 companies have the license to carry out life insurance activities and 28 institutions have the licenses to engage in mandatory insurance of transport vehicle owners. Besides that, 13 insurance brokers operate in the insurance market.

Securities Sector

39. As of April 1, 2010, operating in Kazakhstan were 99 institutions licensed to carry out broker and dealer activities, 14 institutions licensed to maintain the system of registers of securities holders, 11 custodians, 13 institutions engaged in investment management of pension assets, 63 institutions involved in investment portfolio management, 3 transfer agents and 1 organizer of trading in securities (stock exchange).
40. As of April 1, 2010, total assets of the securities market participants (without assets of the second tier banks) amounted to 150.7 billion tenge (equal to 1.02 billion US dollars).
41. Amount of transactions (carried out since the III quarter of 2009 till the II quarter of 2010) with non-government and government securities amounted to 1,502.6 billion tenge (10.2 billion US dollars) and 22,721.3 billion tenge (154.2 billion US dollars) respectively.
42. No information on number of professional securities market participants is available.

Foreign Currency Exchange

43. Foreign currency exchange transactions in Kazakhstan are carried out through banks and institutions exclusively engaged foreign currency exchange transaction, properly licensed by the National Bank. The exchange offices perform transactions involving purchase, sales and exchange of foreign currency cash, inter alia, with the use of payment cards.

Money or Value Transfer (MVT) Service Providers

44. Money may be transferred (inter alia, without opening bank account (deposit)) through the second tier banks or stock exchange, the Central Depository, or by a broker and (or) dealer authorized to maintain customers' accounts and acting as a nominee holder (subject to proper license). (Laws on Banks and Banking Activity in the Republic of Kazakhstan and on Foreign Currency Regulation and Currency Control).
45. Besides that, money may be transferred through post offices as postal money transfers or transfer transactions (financial services) carried out by post offices (the Law on Post Office). Money transfers are conducted by the national postal operator – KazPost. However, the legislation of the Republic of Kazakhstan (the Law on Post Office) does not rule out possible establishment of other postal service providers at the territory of Kazakhstan.

1.3.2. Overview of Designated Non-Financial Businesses and Professions (DNFBP)

Dealers in Precious Metals and Precious Stones

46. Jewelry items made of precious metals and precious stones are sold in compliance with Resolution No.371 “On Approval of Domestic Trade Rules” issued by the Government of the Republic of Kazakhstan on April 21, 2005. The said Rules were developed in line with the Law of the Republic of Kazakhstan “On Regulation of Trading Activities” of April 12, 2004 and specify the procedures of domestic trade at the territory of the Republic of Kazakhstan.
47. The legislation of the Republic of Kazakhstan does not provide for licensing transaction with precious metals and precious stones, except for banking transactions. Taking this into consideration and also given the fact that there are no supervisory authorities, information about the size of the market, number of entities operating in this market and other data are not available.

Gambling Business

48. Pursuant to the Law on Gambling Business, casinos and slot shops can be located only in Almaty Region, on the coast of Kapshagai dam lake and in Schuchinsky District of Akmola Region within the territories designated by the local executive authorities.
49. Gambling business, and operation of casinos in particular, in Kazakhstan is regulated in compliance with the Law on Gambling Business and Order No. 1-2/35 “On Approval of the Rules for Maintaining Register of Gambling Business Licenses” issued by the Minister of Tourism and Sports of the Republic of Kazakhstan on February 28, 2007 (registered with Ministry of Justice of the Republic of Kazakhstan on March 16, 2007; No.4576).
50. As of April 1, 2010, total number of licenses issued by the Tourism Industry Committee of the Ministry of Tourism and Sports of the Republic of Kazakhstan included:
 - to operate casinos – 15 licenses;
 - to operate bookmaker’s offices – 16 licenses;
 - to operate betting houses – 10 licenses.
51. Licenses to organize and run lotteries, except for the state (national) lotteries, are issued by the Tax Committee of the Ministry of Finance of the Republic of Kazakhstan. Persons engaged in organization and running of lotteries shall be registered as carrying out certain types of activities.

Real Estate Agents

52. In Kazakhstan, the activities of the real estate agents are not licensed and are not subject to any general supervision and monitoring. Taking this into consideration and also given the fact that there are no supervisory authorities, information about the size of the market, number of entities operating in this market and other data are not available.

Notaries and Lawyers

Notaries

53. In Kazakhstan, notaries may certify legality, fairness and authenticity of documents and deeds and perform other notarial actions in compliance with the requirements set forth in the Law on Notaries. As of April 1, 2010, a total of 1,180 notaries were registered in Kazakhstan. Licenses granting the right to engage in the notarial activities (notary licenses) are issued by the Ministry of Justice of the Republic of Kazakhstan.
54. Pursuant to the RK Law on Notaries, a citizen of the Republic of Kazakhstan who has the University degree in law, has been certified by the justice certification committee, has undergone on-the-job training with a notary for at least one year and has obtained a license to conduct notarial activities may be a notary.

Lawyers

55. The lawyers' activities are regulated by the RK Law on Legal Practice. Pursuant to this Law, lawyers in the Republic of Kazakhstan shall support enforcement of the right (guaranteed by the state and stipulated in the Constitution of the Republic of Kazakhstan) of individual for legal protection of his/her rights, freedoms and obtaining qualified legal assistance.
56. Pursuant to the said Law, a lawyer is a citizen of the Republic of Kazakhstan who has the University degree in law, has obtained a license to engage in legal practice, is necessarily the member of the bar association and provides professional legal assistance as part of legal practice. Legal assistance provided by lawyers as part of their legal practice is not considered the entrepreneurial activities.
57. A license to be engaged in the legal practice is issued by the Ministry of Justice of the Republic of Kazakhstan based on the decision passed by the justice certification committee and is a permit to be involved in legal practice by a person specified in the license.
58. To provide the legal assistance the lawyers: give consultations and explanations on legal issues both orally and in writing; compile applications/petitions, complaints, requests and other legal documents; take part in the civil proceedings as representatives of clients; take part in the criminal and administrative proceedings as defense lawyers or representatives of clients; take part in hearing of cases in court of arbitration, international commercial arbitration (court) and other dispute settlement bodies as representatives of clients; represent clients' interests in the government agencies, courts and law enforcement agencies of foreign countries, unless otherwise is prescribed by the legislation of foreign countries, constituent documents of the international judicial authorities and other international organizations or international agreements/treaties signed by the Republic of Kazakhstan; take part in court enforcement proceedings and during execution of criminal penalties as representatives of clients.
59. As of April 1, 2010, a total of 3,901 lawyers were registered in Kazakhstan.

Independent Legal Experts

60. According to explanations of the representatives of the Republic of Kazakhstan legal experts are private lawyers, and in general this concept includes all persons theoretically capable of providing legal services who have the University degree in law but do not have a lawyer license. There is no supervisory authority that oversees the activities carried out by independent legal experts.

Accountants

61. Pursuant to the RK Law on Accounting and Financial Reporting, a professional accountant is an individual who has the professional accountant certificate. An accountant is authorized to render accounting and financial reporting services and shall be registered in the tax authority as an individual entrepreneur based on a one-time certificate or patent.

Auditors

62. Auditing activity is the entrepreneurial activity carried out by auditors and audit institutions to audit financial reports and statements. The RK Law on Auditing Activity regulates relations arising among the government agencies, legal entities, individuals, auditors and audit institutions in the course of auditing activity in the Republic of Kazakhstan.
63. Auditors and audit institutions that have the auditor license are authorized to conduct auditing activities. It is prohibited for auditors and audit institutions to be engaged in other types of entrepreneurial (business) activities.
64. An auditor is an individual who has been certified by the Qualification Committee and obtained the auditor qualification certificate. An auditor may conduct auditing activities as an individual entrepreneur or as an employee of an audit institution.
65. Audit institutions in the Republic of Kazakhstan are commercial entities established for performing auditing activities in any form of incorporation, except for producers' cooperative and state owned company.
66. Foreign audit institutions may conduct auditing activities in the Republic of Kazakhstan subject to establishing the respective audit institutions that shall be residents of the Republic of Kazakhstan.
67. There shall be at least two auditors in an audit institution. Auditors and (or) audit institutions shall have at least 51% interest in the authorized capital of an audit institution. The manager of an audit institution shall have the certificate of competency of auditor of the Republic of Kazakhstan.
68. Licenses are issued to auditors and audit institutions by the designated government agency – the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan.
69. As of May 1, 2010, a total of 122 audit institutions were registered in Kazakhstan. Besides that, operating in the Republic of Kazakhstan is the Chamber of Auditors which is the non-profit, independent, professional, self-regulatory and self-financing organization.

1.4. Overview of Commercial Laws and Mechanisms Governing Legal Entities and Arrangements

70. Pursuant to Article 33 of the Civil Code of the Republic of Kazakhstan, a legal entity is recognized as an institution that has in its ownership, economic management or operative management the independent property and which is liable, to the extent of such property, for its obligations and may, on its own behalf, acquire and exercise the property and the personal

non- property rights and duties, and may be a plaintiff and a defendant in the court. A legal entity shall have its independent balance-sheet or budget.

71. In the Republic of Kazakhstan legal entities exist as both for-profit and non-profit institutions. A legal entity, which is a for-profit institution, may be established only as a state-owned company, business partnership, joint-stock company and producers cooperative.
72. A legal entity, which in a non-profit institution, may be established as an institution, public association, joint-stock company, producers cooperative, public foundation, religious association and in other form provided for by the legislation. A non-profit institution may engage in entrepreneurial (business) activities as long as it is consistent with the objectives specified in its charter.
73. A legal entity, which is a non-profit institution and is funded from the state budget, may be established only as a state-owned institution.
74. Legal entities may create associations.
75. A legal entity operates based on the RK Civil Code, the law on each type of legal entities, other legislative acts and its instruments of incorporation.
76. The state registration of established, restructured and liquidated legal entities as well as record registration of branches and representative offices, including religious associations, and record registration of their branches and representative offices located in Kazakhstan is performed in compliance with Order No.112 “On approval of Instruction for registration of legal entities and record registration of branches and representative offices” issued by the RK Minister of Justice on April 12, 2007.
77. In order to register a legal entity the following documents shall be submitted to the registration authority:
 - application (for registration) in the prescribed form;
 - list of constituent documents (instruments of incorporation);
 - copies of ID documents of the manager and founders of a legal entity and their taxpayer certificates (except for ID documents of founders of business partnerships where the register of business partnership members is maintained by a professional securities market participant licensed to maintain the system of registers of securities holders).
78. The application (for registration of a legal entity) shall be signed by a founder or by a person authorized by the founder to do so. State-owned companies, state-owned institutions, business partnerships and joint stock companies in which the state holds a participation interest (hereinafter legal entities with the participation interest of the state) shall submit a registration application with a stamp of the keeper of the Register of state-owned companies and institutions, in which the state holds the participation interest.
79. For registration of a legal entity, the only business activity of which is the foreign currency exchange transactions, additional permit of the RK National Bank for the state registration in the justice authorities is required.
80. In the situations specified in the legislation of the Republic of Kazakhstan, for registration of a legal entity, which business activity involves the provision of financial services,

additional permit of the designated government agency for regulation and supervision of financial market and financial institutions is required.

81. In the situations specified in the legislation of the Republic of Kazakhstan, for registration of a legal entity, which business involves banking and insurance activities, additional permit of the designated government agency for regulation and supervision of financial market and financial institutions is required.
82. The state registration of market entities, which enjoy a monopoly in a respective commodity market, is performed by the registration agency upon a preliminary consent of the anti-monopoly authority. The state registration of entities that enjoy a natural monopoly is performed by the registration agency upon a preliminary consent of the designated authority for regulation and monitoring of natural monopolies.
83. For registration of a legal entity, which business activity involved collection of pension contributions and payment of pensions, additional permit of the designated government agency for regulation and supervision of financial market and financial institutions is required.
84. In situation where the founder of a legal entity is another legal entity, submitted to the registration agency, along with the instruments of incorporation and other documents, shall be the certificate from the tax authority confirming absence of any outstanding debts of the founder (a legal entity).
85. Registration of legal entities with foreign ownership is performed in a manner established for the registration of the national legal entities of the Republic of Kazakhstan. In addition to the documents prescribed under the established procedure, unless otherwise is provided for by the international agreements/treaties signed by the Republic of Kazakhstan, the following additional documents shall be submitted:
 - 1) a legalized extract form from a trade register or other legalized document certifying that a founder (legal entity) is the legal entity of a foreign country with notarized translation into the national and Russian languages;
 - 2) a copy of passport or other ID document of a founder (natural person) with notarized translation into the national and Russian languages.
86. In parallel, submitted to the registration agency shall be a document certifying the location of a legal entity and a payment receipt or other document confirming payment of the fee for state registration of legal entities and record registration of branches and representative offices.
87. Documents certifying location of a legal entity may include: notarized copies of a lease or sales and purchase agreement, a document certifying the title to real estate with a stamp confirming registration of the title to such real estate, or other document provided for by the civil legislation. If the owner of premises in a natural person, a notarized consent of such individual to provide the premises for accommodating a legal entity shall be submitted.

1.5. Overview of Strategy to Prevent Money Laundering and Financing of Terrorism

a. AML/CFT Strategies and Priorities

88. The unified anti-money laundering system in the Republic of Kazakhstan consists of the Law “On Counteracting Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism”, other Laws of the Republic of Kazakhstan, Decrees of the President of the Republic of Kazakhstan, AML/CFT Resolutions of the Government of the Republic of Kazakhstan, regulatory documents of the designated government agency – the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan, and regulations of other designated government agencies.
89. The Law “On Counteracting Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism” was subject to all relevant state procedures including verification for consistency with the Constitution of the country.
90. After the Law was recognized as consistent with the Constitution, it was recommended to modify a number of its provisions so that they were in line with the provisions of the Regulatory Resolution of the Constitutional Council on converting the Law into the directly applicable legislative act and ensured respect for and observance of the constitutional human and civil rights and freedoms.
91. The main efforts in the AML/CFT area are focused on further development of the regulatory framework, establishing the unified information and analytical system and training of personnel.

b. The Institutional Framework for Combating Money laundering and Terrorist Financing

Ministries

92. ***Ministry of Finance of the Republic of Kazakhstan (RK MoF)*** is the central executive authority of the Republic of Kazakhstan carrying out management and, to the extent provided for by the legislation, cross-industry coordination of activities assigned to its competence.
93. The RK Ministry of Finance performs its functions in compliance with the Constitution and laws of the Republic of Kazakhstan, Decrees and Resolutions of the President and the Government of the Republic of Kazakhstan, other regulations and the Regulation on the RK MoF.
94. The main objectives of the Ministry of Finance of the Republic of Kazakhstan include financial monitoring for the AML/CFT purposes, executing and maintaining accounting, budgetary accounting and drawing up statistical reports on public finances, drawing up reports on execution of the Republican budget and, within its competence, local budgets, conducting state regulation in the areas of customs control, government and state-guaranteed borrowing, granting budget credits, state property management, management of the government and state-guaranteed debt and debt due to the state, internal financial control, control of bankruptcy procedures (except for banks, insurance (reinsurance) institutions and pension savings funds), conducting regulation in the auditing area and exercising control (supervision) of audit and professional institutions, carrying out state property monitoring.

95. ***Ministry of Justice of the Republic of Kazakhstan (RK MoJ)*** is the central executive authority of the Republic of Kazakhstan carrying out management and, to the extent provided for by the legislation, cross-industry coordination of activities assigned to its competence.
96. The main objectives of the Ministry of Justice of the Republic of Kazakhstan include providing legal support for the functioning of the state, maintaining legality of activities carried out by the government agencies, institutions, officials and individuals, ensuring protection of rights and legitimate interests of individuals and institutions.
97. The Ministry performs, in a manner established by the legislation, the strategic functions that provide for the development of the state policy in the following areas:
- developing the national legislation;
 - arranging for the law drafting efforts, analysis, improvement, systematization of the national legislation, and legal expert review of laws and regulations;
 - providing legal support in the course of drafting and signing international agreements/treaties by the Republic of Kazakhstan, coordinating efforts related to provision of international legal assistance;
 - arranging for legal assistance and providing legal services to the public;
 - administering criminal penalties and placing people in temporary detention facilities;
 - performing the state registration of legal entities, titles to real estate and deeds with such estate, regulations, vital records, registering individuals, pledge of movables, documenting the RK citizens and other functions.
98. ***Ministry of Internal Affairs of the Republic of Kazakhstan (RK MIA)*** is the central executive authority of the Republic of Kazakhstan carrying out management of the system of internal affairs agencies of the Republic of Kazakhstan and, to the extent provided for by the legislation, cross-industry coordination for maintaining public order and ensuring public security in the Republic of Kazakhstan and also participating in the implementation the state law enforcement policy.
99. The main objectives of the Ministry of Internal Affairs of the Republic of Kazakhstan include maintaining public order and public security, combating crime and drug business, suppressing drug and arms trafficking, protecting the rights and legitimate interests of individuals and organizations.
100. ***Ministry of Foreign Affairs of the Republic of Kazakhstan (RK MFA)*** is the central executive authority of the Republic of Kazakhstan that pursues foreign policy and manages the unified system of diplomatic agencies of the Republic of Kazakhstan.
101. The main objectives of the Ministry of Foreign Affairs of the Republic of Kazakhstan include:
- developing the concept and main directions of the foreign policy of the Republic of Kazakhstan and submitting the respective proposals to the President and Government of the Republic of Kazakhstan;
 - pursuing foreign policy of the Republic of Kazakhstan, assisting in the implementation of foreign economic policy and strengthening the international standing of the Republic of Kazakhstan;

- protecting rights and interests of the Republic of Kazakhstan, its citizen and legal entities abroad;
- implementing through diplomatic means and methods the efforts undertaken by the Republic of Kazakhstan to ensure global peace and global and regional security;
- protecting by diplomatic means and methods sovereignty, security, territorial integrity and inviolability of borders of the Republic of Kazakhstan, its political, trade and economic and other interests in relations with other countries and in the international arena;
- developing, for the President of the Republic of Kazakhstan, proposals on foreign policy and foreign economy strategy of the Republic of Kazakhstan and implementing the international initiatives of the President;
- analyzing political, economic and social situation in the world, domestic and foreign policy of foreign countries, activities of the international organizations and providing the central government authorities of the Republic of Kazakhstan with necessary information.

Designated AML/CFT Government Agency

102. The designated government agency – ***Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (FMC)*** exercises the powers stipulated in the Law on Counteracting Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism (see section 2.5 for detailed description) and performs the functions of the financial intelligence unit (FIU) (Resolution No.387 “On certain issues pertaining to the Ministry of Finance of the Republic of Kazakhstan” issued by the Government of the Republic of Kazakhstan on April 24, 2008).
103. Pursuant to the RK Constitutional Law on the Government of the Republic of Kazakhstan, the Financial Monitoring Committee is the Department of the Ministry of Finance of the Republic of Kazakhstan, and in compliance with the Law on Administrative Procedures performs regulatory and implementation functions of the Ministry in the AML/CFT sphere. In particular, the FMC provides the regulatory support for the implementation of the state functions, executes regulations, conducts financial monitoring and takes other actions to prevent legalization (laundering) of illegally obtained proceeds and terrorist financing.
104. Pursuant to the legislation (Article 17 of RK Law No.191-IV on Counteracting Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism dated 28.08.2009) the Committee is authorized to:
- 1) request necessary information on a transaction subject to financial monitoring from the entities subject to financial monitoring, as well as from the government agencies of the Republic of Kazakhstan;
 - 2) make a decision to suspend transactions with funds and (or) other property, in the event of detection of indicators of legalization (laundering) of illegally obtained proceeds and terrorist financing, for a period of up to three calendar days;
 - 3) take part in the development of draft regulations and international agreements/treaties of the Republic of Kazakhstan on combating legalization (laundering) of illegally obtained proceeds and financing of terrorism;

4) upon request or independently exchange information with the AML/CFT agency of a foreign country;

5) enlist, inter alia on contractual basis, the services of research and other institutions as well as individual experts to perform expert review, develop training programs, training materials, software, and to establish financial monitoring information systems with due consideration for the requirements for protection of state, official commercial, bank and other secrets protected by the law;

6) notify the respective government agencies about violation of the legislation of the Republic of Kazakhstan on combating legalization (laundering) of illegally obtained proceeds and terrorist financing.

Criminal Justice Agencies and Operational Authorities

105. ***The General Prosecutor's Office of the Republic of Kazakhstan*** (GP of RK) is a public body accountable to the President of the Republic of Kazakhstan and responsible for supreme supervision over accurate and uniform application on the territory of the Republic of laws, decrees of the President of the Republic of Kazakhstan and other regulatory legal acts, as well as over the legitimacy of operational and search activities, inquiry, investigation, administrative and enforcement proceedings.

106. The General Prosecutor's Office of the Republic of Kazakhstan takes steps to identify and correct any violations of law; appeals against laws and other legal acts that contradict the Constitution and laws of RK; represents the interests of the state in court; and conducts prosecution in cases, within the limits and in the manner permitted by law.

107. The General Prosecutor's Office also monitors legitimacy of the operational and search activities, inquiry, investigation administrative and enforcement proceedings.

108. As part of arrangements for provision of legal assistance to the investigating bodies and courts of foreign countries the Republic of Kazakhstan has signed agreements on provision of legal assistance with, or on the basis of reciprocity, the General Prosecutor's Office may conduct certain procedural actions provided for by Criminal Procedure Code, as well as any other actions provided for by other laws and treaties of the Republic Kazakhstan.

109. The Prosecutor's Office of the Republic of Kazakhstan is a centralized system based on subordination of junior prosecutors to their seniors and to the Prosecutor General of the RK.

110. The Prosecutor General is appointed by the President of the Republic of Kazakhstan with consent of the Senate.

111. The Prosecutor General's term of office is five years.

112. ***The National Security Committee of the Republic of Kazakhstan*** (NSC of RK), a special public body directly subordinate and accountable to the President of the Republic of Kazakhstan, is an integral part of the security system of the Republic of Kazakhstan established to ensure, within the scope of the powers vested in it, the safety of the individual and society, as well as the protection of constitutional order, sovereignty, territorial integrity, economic, scientific, technical and military potential of the country.

113. Pursuant to the Criminal Procedure Code, investigations of all cases related to terrorist financing are conducted by investigators of the National Security Committee.

114. NSC of RK is engaged in combating terrorism through the development and implementation of preventive, security and other measures aimed at prevention and suppression of acts of terrorism; establishment and proper maintenance of the systems of preventive measures against terrorist crimes; provision of financial resources, information, transport, communication, medical equipment, medicines and medical services as well as logistical support.
115. The unified system of national security of the Republic of Kazakhstan comprises NSC of RK, its constituent departments and other structural subdivisions, the territorial bodies of NSC of RK in regions, cities of republican status and the capital of RK and subordinate to them municipal and regional units (departments, divisions), as well as bodies of the Military Counterintelligence Service, the "Barlau" service of NSC of RK, frontier service of NSC of RK, special task forces, educational institutions, research institutions and other organizations.
116. The activities of NSC are based on the principles of legitimacy, unity of command, equality before the law, respect for and observance of human rights and freedoms of the individual and citizen, and independence from political parties and other public organizations.
117. NSC of RK is headed by Chairman appointed by the President of RK with consent of the Senate, and dismissed by the President of the Republic of Kazakhstan.
118. ***The Agency of the Republic of Kazakhstan on Fighting Economic and Corruption Crimes*** (AFECC) is a central executive body of the Republic of Kazakhstan outside the structure of the Government of RK responsible for economic security of the Republic of Kazakhstan and, within the limits prescribed by law, inter-sectoral coordination and performance of other executive and licensing functions aimed at prevention, detection, combating and investigation of financial and economic crimes. The Agency has a status of a law enforcement authority.
119. Among AFECC's chief responsibilities are as follows:
- prevention, detection and suppression of economic and financial crimes;
 - effective functioning of the financial police as it pertains to ensuring the economic security of the Republic of Kazakhstan, investigating economic and financial crimes and offences related to evasion of taxes, customs duties and other obligatory payments to the budget, as well as the legalization (laundering) of monetary or other assets obtained by unlawful means;
 - search for perpetrators of economic and financial crimes or individuals suspected of their perpetration, as well as adoption of measures to redress the damage caused to the State;
 - analysis and forecast of the operational situation in the country, drafting of proposals for strengthening the rule of law in the area of economic and financial activities and adoption of rapid response measures in areas requiring financial police intervention.
120. ***The Customs Control Committee of the Ministry of Finance of the Republic of Kazakhstan*** (CCC) is an agency within the structure of MF of RK responsible, within its scope of competence, for implementation of measures and performance of oversight functions in the sphere of customs affairs of the Republic of Kazakhstan.
121. The main objectives of CCC are as follows:

- ensuring, within the scope of powers vested in it, the sovereignty and national and economic security of the Republic of Kazakhstan, as well as implementation of measures designed to protect human life and health as well as environment;
- ensuring compliance with customs and other laws of the Republic of Kazakhstan whose enforcement is the responsibility of the customs authorities of the Republic of Kazakhstan;
- implementation of the customs policy;
- customs clearance of goods and vehicles transported across the customs border of the Republic of Kazakhstan;
- fulfillment of international obligations of the Republic of Kazakhstan, as well as cooperation, within the scope of its jurisdiction, with customs and other competent bodies of foreign states and international organizations on issues of customs affairs;
- international cooperation;
- protection of the rights and interests of the participants in foreign trade and other activities in the field of customs affairs.

122. CCC of MF of RK possesses the following control and supervisory functions:

- performs, independently and in cooperation with other law enforcement agencies, the monitoring of compliance with the customs control zone regime; provides security to the customs infrastructure facilities, as well as implements, jointly with the national security agency, the measures aimed at protecting the State and the customs borders of the Republic of Kazakhstan;
- exercises control over the export of strategic and other essential to the existence of the Republic of Kazakhstan materials and cultural values;
- licensing of and control over, under the laws of the Republic of Kazakhstan and within the scope of its competence, the activities of licensees to ensure their compliance with the licensing requirements.

Financial Sector Bodies

123. ***The National Bank of the Republic of Kazakhstan*** (NB or RK) develops and implements the country's monetary policy, ensures the functioning of payment systems and carries out currency regulation and currency control. The functions, rights and authority of this body are defined in Article 8 of the Law "On National Bank of the Republic of Kazakhstan" dated March 30, 1995.

124. Pursuant to the above law, NB or RK applies, within the scope of its competence, measures and sanctions against licensees for violation of banking and currency laws of the Republic of Kazakhstan, as well as the law of RK on AML / CFT.

125. Pursuant to the Laws of the Republic of Kazakhstan "On National Bank of the Republic of Kazakhstan", "On Banks and Banking Activities in the Republic of Kazakhstan", "On Currency Regulation and Currency Control", NB of RK issues licenses to organizations executing certain types of banking operations to conduct the following types of banking operations:

- 1) exchange of foreign currencies for authorized organizations;

2) collection of banknotes, coins and valuables for legal entities that are not banks.

126. All exchange offices are subject to registration with the National Bank of Kazakhstan.
127. Pursuant to sub. par. 3 and 4 of Article 62 of the Law "On National Bank of the Republic of Kazakhstan", NB of RK has the right to conduct inspections of financial institutions and other persons on matters that fall within the competence of the National Bank of Kazakhstan, as well as to receive from government agencies, organizations and citizens information necessary for adequate performance of its monitoring and supervisory functions in the cases provided for by the legislative acts of the Republic of Kazakhstan.
128. ***Agency for Regulation of and Supervision over Financial Market and Financial Institutions***⁴ (Agency of Financial Supervision or AFS) carries out regulation of and supervision over the financial market and financial institutions. Pursuant to par. 2-1 of Article 9 of the Law of the Republic of Kazakhstan "*On State Regulation of and Supervision over Financial Market and Financial Institutions*" No. 474-II of July 4, 2003, the authorized agency oversees the compliance by financial institutions with the law of the Republic of Kazakhstan on AML / CFT as it pertains to recording, storing and provision of data on transactions involving monetary and (or) other assets subject to financial monitoring, as well as the organization of internal controls in accordance with the laws of the Republic of Kazakhstan.
129. Pursuant to the Law of the Republic of Kazakhstan "*On Banks and Banking Activities in the Republic of Kazakhstan*" No. 2444 of August 31, 1995, the AFS issues licenses to engage in banking activities (execute banking operations) to banks and institutions executing certain types of banking operations, except for organizations licensed by NB of RK.
130. Pursuant to the Laws of the Republic of Kazakhstan "*On Insurance Activities*" No. 126-II of December 18, 2000, "*On Securities Market*" No. 461-II of July 2, 2003, and "*On Pension Provision in the Republic of Kazakhstan*" No. 136-I of June 20, 1997, the AFS licenses the activities of the participants in the insurance market, securities market and pension savings funds. Additionally, the AFS regulates the activities of the central depository and mutual insurance companies that are not subject to licensing.

DNFBP and other Issues

131. The Ministry of Tourism and Sports of the Republic of Kazakhstan (MTS of RK) is a central executive body of the Republic of Kazakhstan responsible for supervision, and within the limits established by law, inter-sectoral coordination in the areas within its competence.
132. MTS of RK implements cross-sectoral coordination and control in the sphere of gambling business and performs the following functions:
- implementation of state policy in the sphere of gambling business;
 - conducts monitoring of compliance by gambling business organizers with the law of the Republic of Kazakhstan on gambling business;

⁴ Pursuant to Decree of the President of the Republic of Kazakhstan No. 25 of April 12, 2011 "*On Further Improvements to the System of Financial Market Regulation in the Republic of Kazakhstan*", the Agency for Regulation of and Supervision over Financial Market and Financial Institutions of the Republic of Kazakhstan has been abolished with the transfer of its functions and powers to the National Bank of Kazakhstan.

- drafts proposals for improving the law of the Republic of Kazakhstan on gambling business;
- approves the list and forms of documents intended to confirm compliance by organizers of gambling businesses with the qualification requirements established by Law;
- issues licenses to engage in activities in the area of gambling business in the Republic of Kazakhstan;
- approves the procedure for the maintenance of and maintains the register of licenses for the right to engage in activities in the area of gambling business;
- drafts and approves the forms of departmental and statistical reporting, checklists, risk assessment criteria and annual audit plans pursuant to the Law of the Republic of Kazakhstan "On Private Enterprise".

133. *The Ministry of Economic Development and Trade of the Republic of Kazakhstan* (MEDT RK) is a central executive body responsible for cross-sectoral and inter-regional coordination in the area of development of the principal directions of the state social and economic policies, whose mission is to create a coherent and effective system of state planning aimed at achieving strategic goals and fulfilling the priority tasks of social and economic development of the country, as well as development of trade.

134. Among the agencies comprising MEDT RK is the Trade Committee.

135. One of the priority objectives of MEDT of RK is the drafting of state policy proposals in the following areas:

- strategic planning and formation of key priorities of socio-economic development of the Republic of Kazakhstan;
- regional development;
- international economic and financial relations, including the regulation of international economic integration;
- regulation and development of foreign trade;
- regulation and development of domestic trade;
- development of and support for private enterprise;
- investment and public-private partnership;
- management of state assets in the sectors of the economy;
- development of the system of public administration;
- mobilization preparation and mobilization.

136. MEDT RK operates in accordance with the Constitution and laws of the Republic of Kazakhstan, Acts of the President and Government of the Republic of Kazakhstan and other normative legal acts.

137. *The Tax Committee of the Ministry of Finance of the Republic of Kazakhstan* (TC of MF of RK) is an agency responsible, within its scope of its competence, for implementation of measures and performance of oversight functions in the sphere of taxes and other mandatory payments collection, as well as for ensuring complete and timely transfer of

compulsory pension contributions and social contributions into the State Social Insurance Fund.

138. TC of MF of RK carries out, in the manner prescribed by the law, the licensing of activities related to the organization and holding of lotteries in the Republic of Kazakhstan.

139. The main objectives of TC of MF of RK are as follows:

- ensuring completeness of tax and other mandatory payments returns to the budget, completeness and timeliness of transfer of compulsory pension contributions and social contributions into the State Social Insurance Fund;
- performance of tax control measures in the manner established by the Code of the Republic of Kazakhstan "On Taxes and other Mandatory Payments to the Budget" (Tax Code);
- ensuring the economic security of the Republic of Kazakhstan;
- ensuring the state regulation over the production and distribution of ethyl alcohol and alcoholic beverages, tobacco products and certain types of petroleum products.

140. *The Financial Control Committee of the Ministry of Finance of the Republic of Kazakhstan (FCC)* is an agency within the structure of MF of RK responsible, within its scope of competence, for implementation of measures and performance of oversight functions in the sphere of public financial control.

141. The main tasks of FCC of MF of RK is to monitor compliance by the public financial control entities with the laws of the Republic of Kazakhstan with regard to the execution of, maintenance of records and filing of reports on the execution of national and local budgets, assessment of their execution, use of grants, state assets, state-guaranteed loans, proceeds from the sale by public organizations of the goods (works, services) remaining at their disposal.

142. FCC of MF of RK carries out the licensing of auditing activities in accordance with the procedure established by law.

Self-Regulating Bodies

143. *The Association of Financiers of Kazakhstan* is a non-profit organization authorized to represent the interests of financial sector entities of the Republic of Kazakhstan.

144. *The Union of Lawyers of the Republic of Kazakhstan* is a non-profit organization authorized to represent the interests of lawyers of the Republic of Kazakhstan.

145. *The Republican Notary Chamber* is a non-profit organization authorized to represent the interests of notaries public.

146. *The Chamber of Auditors of the Republic of Kazakhstan* is a non-profit organization authorized to represent the interests of auditors.

147. *The Association of Bookmakers and Sweepstakes of the Republic of Kazakhstan* is a non-profit organization authorized to represent the interests of bookmakers and sweepstakes.

148. The Exchange Union of Kazakhstan is a non-profit organization authorized to represent the interests of exchange houses.

The Judiciary

149. ***The Judiciary*** in the Republic of Kazakhstan is independent of the executive and legislative branches, political parties or other public associations

150. Pursuant to Constitutional Law "*On Judicial System and Status of Judges of the Republic of Kazakhstan*" No. 132-II of December 25, 2000, judicial powers in the Republic of Kazakhstan belong only to courts represented by permanent judges or jurors who participate in criminal proceedings in cases and in the manner provided by law.

151. The judicial system of the Republic of Kazakhstan comprises the Supreme Court of the Republic of Kazakhstan and local courts established in accordance with the Constitution of the Republic of Kazakhstan and Constitutional Law "*On Judicial System and Status of Judges of the Republic of Kazakhstan*".

152. RK is a home to the Interagency Committee (IC) on AML / CFT whose meetings are chaired by the Minister of Finance and whose decisions are not binding, with the members thereof entitled to a dissenting opinion. The main objective of the IC are defined as follows: drafting and approval of regulatory legal acts in the area of AML / CFT; ensuring cooperation, including information-based, between public bodies, public associations and SFMs in the area of AML / CFT; developing a unified approach to the issues of international cooperation in the area of AML / CFT; drafting proposals aimed at improving the national AML / CFT system.

Review of Policies and Procedures

153. In his address to the Kazakh Nation entitled "Kazakhstan-2030. Prosperity, Security and Improving the Welfare of all Kazakhs", the Head of State assigned to the Government of the Republic of Kazakhstan a number of key strategic objectives aimed at improving the quality of life for the people of Kazakhstan and building a competitive economy.

154. In its response to the objectives set by the President of the Republic of Kazakhstan, the country's Government is working towards minimizing the effects of the global economic crisis and developing preventive measures to protect the domestic economy against potential external risks.

155. The objective of establishing a system of financial monitoring is identified as one of the key strategic priorities in the 2009-2011 strategic development plan of MF of RK.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.1. Description and Analysis

Recommendation 1

156. On 29.06.1998 the Republic of Kazakhstan ratified the 1988 UN Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (the Vienna Convention) and on 04.06.2008 ratified the UN Convention against Transnational Organized Crime (the Palermo Convention). Those Conventions were ratified by the Republic of Kazakhstan without any reservations.
157. The Republic of Kazakhstan criminalized money laundering in Article 193 of the Criminal Code “Legalization of Illegally Obtained Funds or Other Property”. This Article defines money laundering as the performance of financial transactions and other deals with funds or other property, knowingly obtained in illegal way, as well as the use of such funds or other property for carrying out entrepreneurial (business) or other economic activities.
158. The provisions of Article 193 of the Criminal Code of the Republic of Kazakhstan provide for two different elements of ML crime.
159. Pursuant to Article 147 of the Civil Code of the Republic of Kazakhstan deals are understood as actions undertaken by individuals and legal entities to establish, change or terminate civil rights and obligations. However, the concepts of property “conversion” and “transfer” are not defined in the RK Civil Code.
160. The “financial transactions” concept is not defined in the legislation of the Republic of Kazakhstan.
161. Therefore, the provisions of Article 193 of the RK Criminal Code are general in their nature and do not directly criminalize actions involving conversion and transfer of property that is the proceeds of crime, which in practice may result in divergent interpretation and identification of ML crime elements.
162. Furthermore, the provisions of Article 193 of the Criminal Code of the Republic of Kazakhstan do not cover certain elements required by the Conventions. In particular, Article 193 does not cover such actions as concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights with respect to property, knowing that such property is the proceeds of crime (subsection II, section 1, Article 6 of the Palermo Convention and subsection b, section 1, Article 3 of the Vienna Convention).
163. Besides that, Article 193 does not cover ownership or use of property for personal benefit/advantages and not just for carrying out entrepreneurial (business) or other economic activities.
164. Such actions are neither covered by Article 183 of the Criminal Code “Acquisition or Sales of Property Knowingly Obtained by a Criminal Means”. The provisions of this Article

establish criminal liability only for actions involving acquisition or sales of property, without a prior agreement, knowingly obtained in a criminal manner.

165. Besides that, there is inconsistency between the definition of ML in Article 193 of the Criminal Code and in Article 1 of the Law of the Republic of Kazakhstan on Counteracting Legalization (Laundering) of Illegal Proceeds and Financing of Terrorism (hereinafter the basic AML/CFT Law).
166. Pursuant to Article 10 of the RK Civil Code entrepreneurship is the activity of individuals and legal entities carried out on their own initiative, irrespective of the form of ownership, which is aimed at earning net profit *by way of satisfying the demand for goods (work, services) and is based on the private property (private entrepreneurship) or on the right of economic management of a state-owned company (state entrepreneurship)*. Entrepreneurship activity is carried out on behalf of and at risk of an entrepreneur who is liable to the extent of his/her property.
167. At the same time, the “economic activity” concept used in Article 193 of the Criminal Code is neither defined nor set forth in the legislation of the Republic of Kazakhstan. Consequently, in practice the law enforcement agencies do not apply a common uniform approach to determining actions covered by the said concepts. According to the explanations of the representative of the Supreme Court actions are determined as the economic activity based on the results of the expert review, while the representatives of the General Prosecutor’s Office stated that actions are determined as the economic activity in each particular case. The representatives of the Financial Police (the law enforcement agency that has investigative jurisdiction over crimes covered by Article 193 of the Criminal Code) said that there is no statutory definition of the “economic activity” concept as applied to Article 193.
168. In practice it results in broad interpretation of the above terms by the law enforcement agencies and judicial authorities, which entails different determination of the nature of particular actions committed by criminals.
169. Pursuant to the Civil Code “property” envisages the property privileges and rights (Article 115) and includes property items, money, including foreign currency, securities, work, services, materialized results of creative and intellectual activity, brand names, trademarks and other product identities, property rights, and other assets. According to Article 117 of the Civil Code of the Republic of Kazakhstan property may be movable and immovable. In particular, Article 117 stipulates that immovable property (immovable property items, real estate) includes: land plots, buildings, structures, perennial plantings and other property connected to land, i.e. objects that cannot be moved without causing incommensurate detriment to their designated purpose. Aircraft and sea-craft, inland water vessels, river-sea vessels and spacecraft which are subject to state registration also fall into the immovable property category. Other property may also be referred by the legislative acts to immovable property. Property which does not fall into the immovable property category is movable property.
170. Thus, the term “property” is, to a large extent, covered by the legislation in line with the definition specified in the Glossary attached to the Methodology for Assessing Compliance with FATF Recommendations.

171. According to the representatives of the General Prosecutor’s Office of the Republic of Kazakhstan the ML crime extends to any type of property including property that indirectly represents the proceeds of crime.
172. At the same time, according to the provisions of Article 193 of the Criminal Code of the Republic of Kazakhstan the ML crime extends to funds and other property knowingly obtained in criminal manner.
173. However, pursuant to part 2 of section 10 of Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan No.2 dated 18.06.2004 “On some issues pertaining to classification of crimes in the economic activity area” the grounds for incurrance of criminal liability under Article 193 of the Criminal Code are legalization (laundering) of funds or other property derived only from the prohibited types of activity (smuggling, illicit arms trafficking, illicit trafficking in narcotic drugs, theft, tax evasion, etc.).
174. Thus, according to the provisions of Article 193 of the Criminal Code and pursuant to the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan the ML crime is not applicable to the property that indirectly represents the proceeds of crime.
175. The RK legislation does not require a person to be convicted of a predicate offence when proving that property is the proceeds of crime. This was also confirmed by the representatives of the law enforcement agencies of the Republic of Kazakhstan. In particular, they pointed out that in most instances the ML-related criminal proceedings were instigated on an aggregate basis with the inclusion of other detected crimes. Pursuant to part 3 of section 10 of the aforementioned Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan when a fact of legalization (laundering) of funds or other property is ascertained a guilty person shall bear criminal liability on an aggregate basis for cumulative crimes covered by Article 193 of the Criminal Code and under the relevant provision of the criminal law that establishes liability for illicit acquisition of such funds or property.
176. According to such approach used in the Republic of Kazakhstan predicate offences for money laundering are all offences set forth in the Criminal Code. Besides that, Article 193 provides that an administrative offence may also be the predicate offence for money laundering.
177. The Republic of Kazakhstan criminalized most of the predicate offences included by FATF in the designated categories of offences.

	Designated Categories of Offences as Defined by FATF	Predicate Offences under the Criminal Code
1.	Participation in an organized criminal group and racketeering	Article 235. Establishing and running an organized criminal group or criminal association (criminal organization), participation in a criminal association Article 181. Extortion
2.	Terrorism, including terrorist financing	Article 233. Terrorism Article 233-1. Promotion of terrorism or public appeals for commission of an act of terrorism Article 233-2. Establishing and running a terrorist

		group, participation in its activity Article 233-3. Financing of extremism or terrorist activity
3.	Trafficking in human beings and migrant smuggling	Article 128. Trafficking in human beings Article 330-2. Arranging for migrant smuggling
4.	Sexual exploitation, including sexual exploitation of children	Article 128. Trafficking in human beings (purchase and sale of a human being or other deals with respect of a human being and his/her exploitation) Article 133. Trafficking in minor children (purchase and sale of a minor child or other deals with respect of a minor child and his/her exploitation) Note in Article 125. Exploitation of a person under Articles 128 and 139 means forced labor, forced prostitution by other person or other services rendered by such person for appropriating of received proceeds by a guilty person.
5.	Illicit trafficking in narcotic drugs and psychotropic substances	Article 259. Illicit production, processing, purchase, storage, transportation, shipping or sales of narcotic drugs or psychotropic substances
6.	Illicit arms trafficking	Article 251. Illicit purchase, transfer, sales, storage, transportation or carrying of arms, ammunition, explosives and explosive devices
7.	Illicit trafficking in stolen and other goods	Article 183. Purchase or sales of property knowingly obtained by criminal means
8.	Corruption and bribery	Article 176 Appropriation or embezzlement of trusted property Article 307. Abuse of official powers Article 311. Receipt of a bribe
9.	Fraud	Article 177. Fraud
10.	Counterfeiting currency	Article 206. Production or distribution of counterfeit money or securities
11.	Counterfeiting and piracy of products	Article 184. Infringement of copyright and associated rights
12.	Environmental crime	Chapter 11. Environmental crimes
13.	Murder, grievous bodily injury	Article 96. Murder Article 102. Incitement to suicide Article 103. Deliberate infliction of grievous harm to health
14.	Kidnapping, illegal restraint and hostage-taking	Article 125. Kidnapping of a human being Article 126. Illegal restraint Article 234. Hostage-taking
15.	Robbery or theft	Article 175. Theft Article 178. Robbery Article 179. Armed robbery

16.	Smuggling	Article 209. Commercial smuggling Article 250. Smuggling of items withdrawn from circulation or items with limited circulation
17.	Extortion	Article 181. Extortion
18.	Forgery	Article 314. Forgery by an official Article 325. Forgery, production or sales of forged documents, stamps, seals, forms, state awards
19.	Piracy	Article 240. Piracy
20.	Insider trading and market manipulation	No

178. However, the Criminal Code of the Republic of Kazakhstan does not cover all designated categories of predicate offences specified in the FATF Recommendations. In particular, such offences as insider trading and market manipulation are not covered by the Criminal Code. But, according to the representatives of the General Prosecutor’s Office and law enforcement agencies of the Republic of Kazakhstan these actions are covered by Article 200 of the Criminal Code “Illegal receipt and disclosure of information that constitutes commercial or banking secret” and by Article 205 “Infringement of the rules of conducting transactions with securities”.

179. However, actions related to insider trading and market manipulation have their own specificities and cannot be completely covered by the said Articles of the Criminal Code of the Republic of Kazakhstan.

180. The “securities market manipulation”, “insider” and “insider information” concepts are set forth in Article 1 of RK Law No.461 “On Securities Market” dated July 2, 2003. Article 56 of the said Law prohibits carrying out transactions with securities for the market manipulation purposes, while Article 56-1 imposes restrictions on the use of insider information.

181. It should be noted that according to the current legislation of the Republic of Kazakhstan insider trading and market manipulation fall into the category of administrative offences.

182. In particular, Article 190 of the Code on Administrative Offences establishes liability for the misuse of insider information (amount of punitive sanctions ranges from 100 to 200 monthly calculated indices), while Article 195-1 imposes liability for carrying out transactions for the securities prices manipulation purpose (amount of punitive sanctions ranges from 150 to 200 monthly calculated indices).

183. As it was mentioned during the meeting with the representatives of the Agency of the Republic of Kazakhstan on Regulation and Supervision of Financial Market and Financial Institutions (hereinafter referred to as the Financial Supervision Agency (FSA)) some cases of securities market manipulation were detected and appropriate sanctions (penalties) were imposed in practice.

184. Presented below is statistics on cases related to securities price manipulation and insider information misuse detected in 2008-2010.

Article of the	2008	2009	2010
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Code on Administrative Offences	Number	Amount of Penalty (thousand tenge)	Number	Amount of Penalty (thousand tenge)	Number	Amount of Penalty (thousand tenge)
Article 190 “Misuse of insider information”	-	-	-	-	-	-
Article 195-1 “Transactions for securities price manipulation”	22	1 326.4	12	2 003.9	13	2 614.0

185. As one can see from the presented statistics no cases related to the misuse of insider information were detected by the FSA, but each year being detected is a certain number of cases associated with securities price manipulation, which poses risk of laundering the proceeds of these offences.

186. At the same time, the law enforcement agencies did not said that legalization (laundering) of proceeds obtained as a result of market manipulation and insider trading had been detected.

187. Additionally, based on the provisions of Article 193 of the Criminal Code of the Republic of Kazakhstan, which establishes that legalization/laundering of proceeds of crime or any other property means carrying out financial transactions and other deals with such proceeds and property as well as the use of them for conducting entrepreneurial and other economic activity, the crime of terrorist financing cannot be a predicate offence for money laundering. Legislation of the Republic of Kazakhstan does not treat as FT actions related to provision of funds to terrorists or terrorism organizations without intention to carry out terrorist activities or those that are not related to any specific terrorist act, i.e. they do not constitute an offence at all, which makes it impossible to treat them as predicate offences for ML.

188. The issues pertaining to imposition of criminal liability for crimes committed outside the Republic of Kazakhstan are regulated by Article 7 of the Criminal Code “Application of the criminal law in respect to persons who commit crimes outside the Republic of Kazakhstan”.

189. Pursuant to this Article citizens of the Republic of Kazakhstan who commit a crime outside the Republic of Kazakhstan are subject to criminal liability under the Criminal Code if their conduct is recognized as a crime in a country where it has been committed and if such persons have not been convicted in that other country. In case of conviction of such persons punishment may not exceed the upper limit of sanctions set forth in the law of the country where a given crime was committed. Stateless persons bear liability on the same basis.

190. Foreign nationals who commit a crime outside the Republic of Kazakhstan are subject to criminal liability under the Criminal Code if a crime committed by them is directed against the interests of the Republic of Kazakhstan, and also in cases provided for by an international treaty/agreement signed by the Republic of Kazakhstan if such persons are not convicted in other country and criminal proceedings are instituted against them on the territory of the Republic of Kazakhstan.

191. Pursuant to part 1 of Article 19 of the Criminal Code a person is subject to criminal liability only for those socially dangerous acts (actions or inactions) and those socially dangerous consequences with regard to which such person is found guilty.

192. Thus, only a person who directly commits a crime or is associated with a crime, including ancillary offences (conspiracy, attempt, abetting, etc.) may be considered a perpetrator of the crime covered by Article 193 of the Criminal Code of the Republic of Kazakhstan. The crime of money laundering may be applied to persons who commit the predicate offence (i.e. self-laundering), and no limitations in this respect are set forth in the legislation of Kazakhstan.

193. The Criminal Code of the Republic of Kazakhstan provides for criminalization of all required forms of association with/implication in a crime (the so-called ancillary offences). Complicity in a crime as well as aiding, abetting, facilitating or counseling the commission are covered by Articles 27-31 of the Criminal Code, while preparation of and attempt to commit a crime are covered by Article 24 of the Criminal Code.

194. Summary is provided in the Table below.

Ancillary Offences		
FATF Terminology	Article of the Criminal Code of the Republic of Kazakhstan	Explanation
Conspiracy to Commit	Article 31. Forms of complicity in crime 2. A crime is deemed to be committed by a group of persons by previous concert if perpetrators reached agreement on joint commission of such crime.	
Attempt	Article 24. Preparation and attempt 3. Actions (inactions) performed with direct intent and aimed directly at the commission of a crime are deemed to be an attempted crime, unless the crime is committed due to circumstances beyond control of a person.	
Aiding and Abetting	Article 28. Types of accomplices of crime 4. A person who has abetted another person in committing a crime by persuasion, bribery, threat or by other method is deemed an instigator. 5. A person who has assisted in the commission of a crime by advice, instructions, by providing information, instruments or means for committing a crime, or by eliminating impediments, or a person who has promised beforehand to conceal a perpetrator, vestiges, instruments or other means of such perpetration or items obtained by criminal means, as well as a person who has	

	promised beforehand to acquire or dispose of such items is deemed an accomplice.	
Facilitation	Article 28. Types of accomplices of crime	
Counseling the Commission	5. A person who has assisted in the commission of a crime by <i>advice, instructions, by providing information, instruments or means for committing a crime, or by eliminating impediments, or a person who has promised beforehand to conceal a perpetrator, vestiges, instruments or other means of such perpetration or items obtained by criminal means, as well as a person who has promised beforehand to acquire or dispose of such items is deemed an accomplice.</i>	Counseling is deemed to be facilitation of the commission of crime
Other	<p>Article 27. Complicity in crime</p> <p>Intentional joint participation of two or more persons in the commission of a deliberate crime is deemed to be complicity in a crime.</p> <p>Article 28. Types of accomplices of crime</p> <p>1. Along with a perpetrator an organizer, abettor and accomplice are deemed to be accessories in a crime.</p> <p>2. A person who has actually committed a crime or directly participated in its commission together with other persons (co-perpetrators), and also a person who has committed a crime by way of using other persons who are not subject to criminal liability due to their age, insanity or other circumstances provided for by the Criminal Code, as well as by way of using persons who have committed a given action through negligence, is deemed a perpetrator.</p> <p>3. A person who has organized the commission of a crime or has directed its commission as well as a person who has created an organized criminal group or criminal association (a criminal has organization) or has run them, is deemed an organizer.</p>	Complicity in crime

Additional Elements

195. Pursuant to Article 7 of the Criminal Code citizens of the Republic of Kazakhstan who commit a crime outside the Republic of Kazakhstan are subject to criminal liability under the

Criminal Code if their conduct is recognized as a crime in a country where it has been committed and if such persons have not been convicted in that other country. Stateless persons bear liability on the same basis. Foreign nationals who commit a crime outside the Republic of Kazakhstan are subject to criminal liability under the Criminal Code if a crime committed by them is directed against the interests of the Republic of Kazakhstan, and also in cases provided for by an international treaty/agreement signed by the Republic of Kazakhstan if such persons are not convicted in other country and criminal proceedings are instituted against them on the territory of the Republic of Kazakhstan.

Recommendation 2

196. Pursuant to part 1 of Article 14 of the Criminal Code of the Republic of Kazakhstan only a mentally competent (sane) person who attained the age envisaged by the Criminal Code of the Republic of Kazakhstan is subject to criminal liability.
197. In this context subject to criminal liability for the money laundering offence are only individuals who deliberately and intentionally commit crimes.
198. According to Article 24 of the Criminal Code of the Republic of Kazakhstan a court, prosecutor, investigator and inquiring officer shall take all measures provided for by the law to consider comprehensively, fully and impartially all circumstances of a case, which are necessary and sufficient for the fair resolution of such case. The criminal prosecution agencies shall identify factual data which form the basis for establishing circumstances relevant to a case.
199. According to Article 117 of the Criminal Procedure Code subject to proving in the proceedings on a criminal case shall be:
 - 1) and event and elements of a crime provided for in the criminal law (time, place, method and other circumstances of the commission of a crime);
 - 2) a person who committed an action prohibited by the criminal law;
 - 3) culpability of a person in the commission of an action prohibited by the criminal law, form of his/her guilt, motives for committing such action, legal and factual mistakes;
 - 4) circumstances which determine the extent and nature of liability of a defendant;
 - 5) circumstances which characterize the personality of a defendant;
 - 6) consequences of a committed crime;
 - 7) nature and scope of damage/harm caused by a crime;
 - 8) circumstances which rule out a criminal nature of a committed action;
 - 9) circumstances which entail release from the criminal liability and from the punishment.
200. With consideration for the above and pursuant to the legislation of the Republic of Kazakhstan the intentional element cannot be inferred from objective factual circumstances.
201. There are no fundamental principles in the Republic of Kazakhstan that do not allow for criminal proceedings to be instigated against legal entities. Imposition of criminal liability on legal entities is provided for in the Concept of Legal Policy for 2010-2020 approved by Decree No.858 issued by the President of the Republic of Kazakhstan on August 24, 2009. This Concept forms the basis for the development of legislative legal acts in a long-term perspective. On December 22, 2010, the draft Law "On Amendments to Certain Legislative Act of the Republic of Kazakhstan Concerning Imposition of Criminal Liability on Legal

Entities” was adopted by the Majilis of the Parliament of the Republic of Kazakhstan in the first reading.

202. At the same time, pursuant to the legislation of the Republic of Kazakhstan legal entities are subject to administrative and civil liability.

203. The Code on Administrative Offences establishes administrative liability of a legal entity for the commission of an administrative offence in the situations specified in the Special Part of the Code. However, the Special Part of the Code does not provide for liability of legal entities for the commission of ML offences. Article 168-3 of the Code on Administrative Offences establishes liability of just entities which are subject to financial monitoring for non-compliance with the requirements of the AML/CFT legislation.

204. According to Article 49 of the Civil Code of the Republic of Kazakhstan a legal entity may be liquidated by a court ruling for carrying out activities without appropriate permit (license), or for carrying out activities prohibited by the legislative acts, or with multiple or gross violation of the legislation.

205. Article 193 of the Criminal Code of the Republic of Kazakhstan provides for a wide range of sanction for money laundering - fines, detention under arrest, imprisonment and confiscation. Amount of the fines may be both fixed which is based on monthly calculated indices (MCI) (in 2010 the MCI amount is 1,413 tenge) and graded which depends on income of a guilty person for a certain period of time. The terms of imprisonment range from three to seven years.

206. The Table below shows the structure of criminal sanctions for ML in some EAG-member states.

Sanction	Russia	Uzbekistan	Belarus	Kazakhstan
Fine	From 100 thousand to 1 million rubles or in amount of income for a period from 1 to 5 years	No	Amount of fine is not fixed.	100-700 MCT (141.3 thousand – 989.1 thousand tenge) or in amount of income for a period from 2 to 7 months
Detention under Arrest	Up to 2 years	No	Up to 4 years	Up to 6 months
Imprisonment	4-10 years	5-7 years	2-10 years	3-7 years
Confiscation	No	No	Yes	Yes

207. Thus, the criminal sanctions for money laundering in the Republic of Kazakhstan are generally adequate.

208. As mentioned above, the legislation of the Republic of Kazakhstan does not provide for administrative sanction for money laundering.

209. The civil sanctions include only liquidation of a legal entity by a court ruling. At the same time, the provisions of Article 49 of the Civil Code are too general and the Article does not specify association of a legal entity with or its use for money laundering as the grounds for liquidation of such legal entity.

Effectiveness and Statistics

210. Statistics on number of criminal cases and persons against whom criminal actions were taken for the commission of predicate offences (data on the Republic of Kazakhstan):

Type of Offence under CC Articles	Number of Cases				Number of Persons			
	2007	2008	2009	9 months of 2010	2007	2008	2009	9 months of 2010
Article 176	1532	2189	2004	1643	689	733	1030	754
Article 177	9871	10679	9941	7532	2496	2729	3156	2149
Article 192	315	368	565	612	35	73	141	133
Article 206	802	1445	1767	950	41	56	82	17
Article 209	510	530	604	414	269	342	367	188
Article 235	51	51	73	54	53	10	18	12
Article 311	256	290	344	300	194	242	300	216

211. Statistics on crimes covered by Article 193 of the Criminal Code of the Republic of Kazakhstan, 2007 – 2010 (data on the Republic of Kazakhstan)⁵

Year	Number of Registered Crimes Covered by Article 193 of the Criminal Code	Number of Cases Considered by Court with Conviction	Number of Convicted Persons
2006	71	3	3
2007	66	14	11
2008	50	10	26

⁵ The information was provided with reference to the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan.

2009	113	12	11
2010	135	7	7

212. The presented statistics show that only 10.6% of criminal cases instituted in 2006 – 2010 were submitted to courts. This indicates that in most instances the ML-related criminal cases are dismissed at the preliminary investigation stage. This also implies that there are certain problems with classification of the ML-related offences due to criminalization shortcomings. At the same time, it is necessary to examine the ML crime investigation practice for more detailed assessment of the effectiveness.

213. In 2009, the number of detected crimes increased sharply and reached 113 criminal cases. A total of 333 crimes punishable under Article 193 of the Criminal Code of the Republic of Kazakhstan were detected in 2007-2010.

2.1.2. Recommendations and Comments

214. Kazakhstan should amend the wording of Article 193 of the Criminal Code to make it more specific and bring it formally in line with the provisions of the Vienna and Palermo Conventions. In particular, it is necessary to criminalize conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; the concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights with respect to property, knowing that such property is the proceeds of crime.

215. It is also recommended to make modifications in order to extend ML crime to property that indirectly represents the proceeds of crime.

216. In order to eliminate certain conflicts in the legislation it is necessary to make sure that the definitions of legalization (laundering) of criminal proceeds in the Criminal Code and in the basic AML/CFT law are consistent.

217. The Republic of Kazakhstan should criminalize insider trading and market manipulation to ensure that ML crimes cover the entire list of the designated categories of predicate offences specified in the FATF Recommendations.

218. It is also necessary to revise the relevant provisions of Regulatory Resolution No.2 of the Supreme Court of the Republic of Kazakhstan dated 18.06.2004 to eliminate limitations of the scope of predicate offences.

219. It is also recommended to maintain reliable statistics on ML-related cases and take measures for enhancing efficiency of the application of Article 193 of the Criminal Code, inter alia, through training of prosecutors and judges.

2.1.3. Compliance with Recommendations 1 and 2

Rating	Summary of factors underlying rating
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R.1	PC	<ul style="list-style-type: none"> • ML criminalization shortcomings: <ul style="list-style-type: none"> - conversion and transfer of property, knowing that it represents the proceeds of crime, are not directly (explicitly) criminalized; - concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights with respect to property, knowing that such property is the proceeds of crime, are not criminalized; - ownership or use of property obtained by criminal means for personal benefit/advantages is not covered and criminalized. All this indicates non-compliance with the requirements of the Vienna and Palermo Conventions. • ML offence does not extend to property that indirectly represents the proceeds of crime. • The crime of terrorist financing is not the predicate offence for money laundering. • Insider trading and market manipulation are not criminalized.
R.2	PC	<ul style="list-style-type: none"> • The legislation of Kazakhstan does not contain provisions imposing criminal or administrative liability on legal entities for money laundering. • The legislation does not permit the intention element to be inferred from objective factual circumstances. • Effectiveness of civil liability raises certain doubts due to too general wording of the relevant provisions of the civil legislation.

2.2. Criminalization of Financing of Terrorism (SR.II)

2.2.1. Description and Analysis

220. Kazakhstan ratified the Convention for the Suppression of the Financing of Terrorism through adopting Law of the Republic of Kazakhstan No.2 dated 2002. The Convention was ratified without any reservations.

221. In the Republic of Kazakhstan financing of terrorism is criminalized in Article 233-3 of the Criminal Code. However, the provisions of Article 233-3 of the Criminal Code do not define such terms as “financing of terrorism” and “terrorist activity”.

Article 233-3. Financing of extremism or terrorist activity

1. Financing of extremism or terrorist activity – is punishable by imprisonment for a period of up to five years.

2. The same action committed repeatedly – is punishable by imprisonment for a period from three up to eight years.

222. Law No.416 dated 13.07.1999 “On Counteracting Terrorism” contains definitions of the “terrorism”, “terrorist act”, “financing of terrorism” and “terrorist activity” concepts.

223. “Financing of terrorism (terrorist activity)” – provision of money and (or) other property, or provision of *financial* services to terrorists and (or) terrorist organizations for carrying out terrorist activity.
224. Similar definition is contained in the Law “On Counteracting Legalization (Laundering) of Illegal Proceeds and Financing of Terrorism” dated 29.08.2009.
225. The aforementioned definition is generally in line with the requirements of Article 2 of the Convention for the Suppression of the Financing of Terrorism and also covers action involving provision of funds/assets to an individual terrorist.
226. Pursuant to item 15) of Article 1 of the Law of the Republic of Kazakhstan on Counteracting Terrorism the terrorist activity is defined as the activity aimed at the commission of terrorist crimes which includes any of actions listed below:
- organization, planning, preparation, *financing* and commission of a terrorist act;
 - abetting with regard to commission of a terrorist act;
 - organization of an illegal paramilitary group, criminal association (criminal organization), organized group for committing a terrorist act as well as participation in such group/organization;
 - recruitment, arming, training and use of terrorists;
 - informational support and other types of aiding with regard to planning, preparation or commission of a terrorist act;
 - promotion of terrorist ideas, dissemination of materials or information which call to terrorist activity, or justification or support of the need for such activity.
227. Thus, pursuant to the legislation of the Republic of Kazakhstan, in order to institute criminal proceedings against a person accused of financing of terrorism, the funds or property shall necessarily be used for carrying out terrorist activity. Therefore, the legislation of the Republic of Kazakhstan does not cover actions related to provision of assets to terrorists or terrorist organizations that are not linked to carrying out or attempting a terrorist act.
228. The Criminal Code and the Law on Counteracting Terrorism do not define the “funds” term, but use the word “property”. As mentioned above, the term “property” is defined in part 2 of Article 115 of the Civil Code of the Republic of Kazakhstan – “the property privileges and rights (property) include property items, money, including foreign currency, securities, work, services, materialized results of creative and intellectual activity, brand names, trademarks and other product identities, property rights, and other assets. According to Article 117 of the Civil Code of the Republic of Kazakhstan property may be movable and immovable. The term “financial instruments” is defined in Article 128-1 of the RK Civil

Code⁶, and the definition of “immovable and movable property” is provided in Article 117 of the Civil Code of the Republic of Kazakhstan⁷.

229. Terrorist financing attempt is covered by Article 24 of the Criminal Code of the Republic of Kazakhstan “Preparation of and attempt to commit a crime”. In particular, according to item 3 of this Article “intentional actions (inactions) by a person, directed expressly towards the commission of a crime, are deemed to be an attempted crime, unless the crime has been carried out owing to circumstances beyond the control of such person”. The criminal liability for an attempted crime is incurred under the same Article of the Criminal Code that establishes criminal liability for the committed crime.
230. As mentioned in the summary on Recommendation 1, the Criminal Code of the Republic of Kazakhstan criminalizes all required forms of association with/implication in a crime including those set forth in Article 2(5) of the Convention. Complicity in a crime as well as aiding, abetting, facilitating or counseling the commission are covered by Articles 27-31 of the Criminal Code, while preparation of and attempt to commit a crime are covered by Article 24 of the Criminal Code.
231. The competent authorities of the Republic of Kazakhstan did not provide any information on ratification of the Conventions and accession to the Protocols listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism. However, the legislation of the Republic of Kazakhstan contains the provisions which criminalize actions specified in nine Conventions and Protocols (see Table below).

#	International Document	Articles of Criminal Code of the Republic of Kazakhstan
1	Convention for the Suppression of Unlawful Seizure of Aircraft, done at Hague on December 16, 1970	Article 233 “Terrorism”, Article 239 “Hijacking or seizure of aircraft, seacraft or railway train” and the relevant Articles covering complicity in such crimes
2	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971	Article 233 “Terrorism”, Article 234 “Hostage taking”, Article 238 “Seizure of buildings, installations and communication facilities”

⁶ **Article 128-1 Financial Instrument**

1. *Financial instrument – money, securities including derivative securities, derivative financial instruments and other financial instruments transactions with which result in simultaneous creation of financial asset of one organization and financial obligation or equity instrument of another organization.*

⁷ **Article 117 Immovable and Movable Property**

1. *Immovable property (immovable property items, real estate) includes: land plots, buildings, structures, perennial plantings and other property connected to land, i.e. objects that cannot be moved without causing incommensurate detriment to their designated purpose.*
2. *Aircraft and sea-craft, inland water vessels, river-sea vessels and spacecraft which are subject to state registration are also referred to immovable property. Other property may also be referred by the legislative acts to immovable property. Property which does not fall into the immovable property category is movable property. Registration of ownership title to movable property items is not required except for the situations specified in the legislative acts.*

3	Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on December 14, 1973	Article 163 “Assault on internationally protected persons or organizations”
4	International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on December 17, 1979	Article 233 “Terrorism”, Article 234 “Hostage taking”
5	Convention on the Physical Protection of Nuclear material, adopted at Vienna on march 3, 1980	Article 171 “Sabotage”, Article 233 “Terrorism”, Article 247 “Illicit handling of radioactive materials”, Article 248 “Theft or extortion of radioactive materials”, Article 285 “Deterioration of soil”
6	Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on February 24, 1988	Article 233 “Terrorism”, Article 234 “Hostage taking”, Article 238 “Seizure of buildings, installations and communication facilities”
7	Convention for The Suppression of Unlawful Acts against the safety of Maritime Navigation, done at Rome on March 10, 1988	Article 240 “Piracy”, Article 233 “Terrorism”, Article 239 “Hijacking or seizure of aircraft, seacraft or railway train”, Article 284 “Violation of legislation on continental shelf of the Republic of Kazakhstan and on exclusive economic zone of the Republic of Kazakhstan” Actions related to provision of knowingly false information which threatens the safety of maritime navigation are not covered.
8	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on The Continental Shelf, done at Rome on March 10, 1988	Article 171 “Sabotage”, Article 233 “Terrorism” and Article 238 “Seizure of buildings, installations and communication facilities” Actions related to destruction and damaging of fixed platforms are not covered as a separate element of a crime.
9	International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the	Article 171 “Sabotage”, Article 233 “Terrorism”, Article 250 “Smuggling”, Article 251 “Illicit purchase, transfer, sales,

	United Nations on December 15, 1997	storage, transportation or carrying of arms, ammunition, explosives and explosive devices”
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232. Thus, the legislation of the Republic of Kazakhstan in general criminalizes the actions set forth in the Conventions and Protocols listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism, except for certain elements.
233. Pursuant to Article 7 of the Criminal Code of the Republic of Kazakhstan citizens of the Republic of Kazakhstan who commit a crime outside the Republic of Kazakhstan are subject to criminal liability under the Criminal Code if their conduct is recognized as a crime in a country where it has been committed and if such persons have not been convicted in that other country. In case of conviction of such persons punishment may not exceed the upper limit of sanctions set forth in the law of the country where a given crime was committed. Stateless persons bear liability on the same basis. Foreign nationals who commit a crime outside the Republic of Kazakhstan are subject to criminal liability under the Criminal Code if a crime committed by them is directed against the interests of the Republic of Kazakhstan, and also in cases provided for by an international treaty/agreement signed by the Republic of Kazakhstan if such persons are not convicted in other country and criminal proceedings are instituted against them on the territory of the Republic of Kazakhstan.
234. As noted in the summary on item 2.2 of Recommendation 2, the legislation of the Republic of Kazakhstan does not permit the intention element to be inferred from objective factual circumstances, inter alia, as applied to the crime of terrorist financing.
235. In accordance with the aforementioned fundamental principles of the law legal entities are not subject to criminal liability, including criminal liability for financing of terrorism (see the summary on Recommendation 2).
236. At the same time, pursuant to Article 21 of the Law of the Republic of Kazakhstan “On Counteracting Terrorism” an organization is recognized as the terrorist organization and is subject to liquidation (its activities shall be prohibited) by a court ruling in a manner established by the law. If an organization is recognized as a terrorist one, it is subject to liquidation and property owned by it shall be confiscated and transferred to the state. Similar measures apply to international and foreign organizations.
237. No administrative liability of legal entities for the FT-related offences is provided for by the legislation of the Republic of Kazakhstan.
238. Comparative analysis of criminal penalties envisaged for the crime of terrorist financing in the Republic of Kazakhstan and in other EAG-member states shows that sanctions for financing of terrorism (in terms of imprisonment) in Kazakhstan are proportionate.

Effectiveness and Statistics

239. According to the presented statistics, in 2006-2010 the law enforcement agencies of the Republic of Kazakhstan instituted no criminal cases for the crimes punishable under Article 233-3 of the Criminal Code of Kazakhstan and no court hearings of such cases took place.
240. The presented statistics indicate low efficiency of the law enforcement efforts and confirms certain shortcomings in criminalization of the FT crime.

241. The competent authorities of the Republic of Kazakhstan provided no information on the amount of assets seized and confiscated for committing the FT crimes.

2.2.2. Recommendations and Comments

242. Despite the fact that the Republic of Kazakhstan criminalized financing of terrorism, the provisions of Article 233-3 of the Criminal Code of Kazakhstan do not cover actions related to provision of funds to terrorists or terrorist organizations without intention to carry out terrorist activity or not linked to a specific terrorist act.

243. Besides that, certain actions specified in the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done in Rome on March 10, 1988 and in the Protocol for the Suppression of Unlawful Acts against Fixed Platforms Located on the Continental Shelf, done in Rome on March 10, 1988, are not criminalized as well. The legislation should be amended to criminalise such activity.

244. The crime of terrorist financing shall be the predicate offence for money laundering.

245. In this context it is recommended to the Republic of Kazakhstan to consider amending Article 233-3 of the Criminal Code, which should also more clearly define the “financing” concept. In particular, the provisions of Article 233-3 of the Criminal Code of the Republic of Kazakhstan should be amended to: cover actions related to provision of funds to terrorists or terrorist organizations without intention to carry out terrorist activity or not linked to a specific terrorist act; establish criminal or administrative liability of legal entities for financing of terrorism; permit the intention element to be inferred from objective factual circumstances, inter alia, as applied to the crime of terrorist financing; and make the crime of terrorist financing a predicate offence for money laundering. Kazakhstan should also take steps to improve its effectiveness in detecting FT crimes.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> • The provisions of Article 233-3 of the Criminal Code of the Republic of Kazakhstan do not cover actions related to provision of funds to terrorists or terrorist organizations without intention to carry out terrorist activity or not linked to a specific terrorist act. • The legislation of the Republic of Kazakhstan does not contain provisions establishing criminal or administrative liability of legal entities for financing of terrorism. • The legislation of the Republic of Kazakhstan does not permit the intention element to be inferred from objective factual circumstances, inter alia, as applied to the crime of terrorist financing. • Certain unlawful acts against fixed platforms located on the continental shelf and also related to provision of knowingly false information which threatens the safety of maritime navigation are not criminalized.

		<ul style="list-style-type: none"> • The presented statistics indicated low efficiency of detecting FT crimes.
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2.3. Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1. Description and Analysis

246. In the Republic of Kazakhstan confiscation may be implemented through the procedural and criminal procedures.

247. Procedural confiscation in the Republic of Kazakhstan is provided for by the Criminal Procedure Code. Pursuant to Article 121 of the Criminal Procedure Code money and other valuables obtained by criminal means as well as property items obtained as a result of illegal entrepreneurship (illegal business activities) and smuggling, upon a court ruling, shall be recovered in favor of the state. The remaining property items shall be returned to lawful owners, and if the lawful owners are not identified shall be recovered in favor of the state. If the ownership of such property items is disputed the dispute shall be resolved through civil court proceedings.

248. In the event of failure on the part of an inquiring officer, investigator or prosecutor to take measures aimed at ensuring compensation for a damage caused by a crime and possible confiscation of property a judge shall oblige them to take such measures (Article 305 of the Criminal Procedure Code).

249. Pursuant to Article 161 of the Criminal Procedure Code in order to enforce a court verdict as it pertains to a civil claim, recovery of property or possible confiscation of property an inquiring officer, investigator, with the prosecutor's approval, and a court may seize the property belonging to a suspect, defendant or persons liable materially for their actions. A seizure of property consists of the following: informing the owner or possessor of property of prohibition on the disposition, and if necessary, on the use of such property, or confiscation of property and its placement under a safe keeping arrangement. In case of seizure of funds and other valuables on accounts and deposits in banks and credit institutions debit transactions to such account are terminated in the amount of seized funds. Pursuant to Article 51 of the Law "On Banks and Banking Activity of the Republic of Kazakhstan" money and other assets of legal and physical persons being placed with a bank may be seized only on the basis of decrees of the inquiring and preliminary investigation agencies and decrees of the court enforcement agencies approved by a prosecutor as well as on the basis of decrees, orders and verdicts of courts. In the situations specified in part 3 of Article 232 of the Criminal Procedure Code property may be seized without prosecutor's approval, but the prosecutor shall be informed thereof within twenty four hours following such seizure. Not subject to confiscation is property of vital need listed in the legislation⁸.

⁸ ***Annex to The Penal Execution Code of the Republic of Kazakhstan***

LIST of property not subject to confiscation by court ruling

Not subject to confiscation are the following types of property of vital need to a convict or his/her dependants owned by a convict or being his/her share in common property:

- 1. A residential house, apartment or parts thereof, if a convict and his/her family permanently reside therein;*
- 2. Land plots on which a house and outbuildings that are not subject to confiscation are located as well as land plots needed for private subsidiary farming;*
- 3. In respect of persons whose core activity is farming – outbuildings and livestock in number required for meeting the needs of his/her family and livestock fodder;*

250. In addition to the procedural confiscation the criminal confiscation of property is also provided for by the legislation of the Republic of Kazakhstan.

251. Pursuant to Article 51 of the Criminal Code of the Republic of Kazakhstan confiscation is forcible uncompensated taking of all or part of property owned by a convict and transfer of such property to the State. Pursuant to part 2 of Article 51 of the Criminal Code of the Republic of Kazakhstan confiscation may be ordered only in the cases specified by the relevant articles of the Special Part of the Criminal Code.

252. In general, confiscation as a type of penalty is provided for by 57 Articles of the Special Part of the Criminal Code of the Republic of Kazakhstan. However, confiscation does not cover financing of terrorism and a number of predicate offences such as illicit arms trafficking, abuse of office, forgery and others (see attached Table).

253. Penalty in Form of Confiscation for Predicate Offences

	Designated Categories of Offences as Defined by FATF	Predicate Offences under the Criminal Code	Confiscation
1.	Participation in an organized criminal group and racketeering	Article 235. Establishing and running an organized criminal group or criminal association (criminal organization), participation in a criminal association Article 181. Extortion	Confiscation is provided for
2.	Terrorism, including terrorist financing	Article 233. Terrorism Article 233-1. Promotion of terrorism or public appeals for commission of an act of terrorism Article 233-2. Establishing and running a terrorist group, participation in its activity Article 233-3. Financing of extremism or terrorist activity	Confiscation is provided for only by Article 233-2

4. Seed grains required for next seeding of farm crops;

5. Household furnishing, utensils, clothing:

a) Clothing, foot wear, underwear, bedding items, used cooking and dining utensils. Fur and other valuable clothing, dinner sets, items made of precious metals and items of artistic value may be confiscated;

b) Minimum essential furniture needed for a convict and his/her family;

c) All children belongings;

6. Food products in amount needed for a convict and his/her family till a new harvest season, if the core activity of a convict is farming; in other cases – food products and money in a total amount specified by the Government of the Republic of Kazakhstan;

7. Fuel intended for cooking and heating the residential premises of a family;

8. Equipment and supplies (including textbooks and books) needed for professional activities of a convict, unless it is prohibited by a court ruling for a convict to carry out certain types of activities or if such equipment and supplies were used for the commission of a crime;

9. Means of transportation specially intended for disabled people;

10. International, state and other awards of a convict

3.	Trafficking in human beings and migrant smuggling	<p>Article 128. Trafficking in human beings</p> <p>Article 128 Part 3 Actions stipulated in parts 1 and 2 of this Article committed for the purpose of bringing a person outside the Republic of Kazakhstan, bringing a person inside the Republic of Kazakhstan or transit of a person through the territory of the Republic of Kazakhstan from one country to another as well as bringing a person outside the Republic of Kazakhstan, bringing a person inside the Republic of Kazakhstan or transit of a person through the territory of the Republic of Kazakhstan from one country to another for committing such actions</p> <p>Article 330-2. Arranging for migrant smuggling</p>	Confiscation is provided for only by Article 128
4.	Sexual exploitation, including sexual exploitation of children	<p>Article 128. Trafficking in human beings (purchase and sale of a human being or other deals with respect of a human being and his/her exploitation)</p> <p>Article 133. Trafficking in minor children (purchase and sale of a minor child or other deals with respect of a minor child and his/her exploitation)</p> <p>Note in Article 125. Exploitation of a person under Articles 128 and 139 means forced labor, forced prostitution by other person or other services rendered by such person for appropriating of received proceedings by a guilty person.</p>	Confiscation is provided for
5.	Illicit trafficking in narcotic drugs and psychotropic substances	Article 259. Illicit production, processing, purchase, storage, transportation, shipping or sales of narcotic drugs or psychotropic substances	Confiscation is provided for
6.	Illicit arms trafficking	Article 251. Illicit purchase, transfer, sales, storage, transportation or carrying of arms, ammunition, explosives and explosive devices	Confiscation is not provided for
7.	Illicit trafficking in stolen and other goods	Article 183. Purchase or sales of property knowingly obtained by criminal means	Confiscation is provided for
8.	Corruption and bribery	<p>Article 307. Abuse of official powers</p> <p>Article 311. Receipt of a bribe</p>	Confiscation is provided for by Article 311

9.	Fraud	Article 177. Fraud	Confiscation is provided for
10.	Counterfeiting currency	Article 206. Production or distribution of counterfeit money or securities	Confiscation is provided for
11.	Counterfeiting and piracy of products	Article 184. Infringement of copyright and associated rights	Confiscation is provided for
12.	Environmental crime	Article 11. Environmental crimes	Confiscation is provided for only by Articles 287, 288, 290, 291
13.	Murder, grievous bodily injury	Article 96. Murder Article 102. Incitement to suicide Article 103. Deliberate infliction of grievous harm to health	Confiscation is provided for only by Article 96
14.	Kidnapping, illegal restraint and hostage-taking	Article 125. Kidnapping of a human being Article 126. Illegal restraint Article 234. Hostage-taking	Confiscation is provided for only by Articles 125 and 126
15.	Robbery or theft	Article 175. Theft Article 178. Robbery Article 179. Armed robbery	Confiscation is provided for
16.	Smuggling	Article 209. Commercial smuggling Article 250. Smuggling of items withdrawn from circulation or items with limited circulation	Confiscation is provided for
17.	Extortion	Article 181. Extortion	Confiscation is provided for
18.	Forgery	Article 314. Forgery by an official Article 325. Forgery, production or sales of forged documents, stamps, seals, forms, state awards	Confiscation is not provided for
19.	Piracy	Article 240. Piracy	Confiscation is provided for

254. Pursuant to the provisions of Article 193 only the use of funds (property) knowingly obtained in illegal manner is recognized as a crime, i.e. it does not extend to indirect proceeds of a crime.

255. As stated by the representatives of the Financial Police it creates practical difficulties for seizure and confiscation of property discovered to be held or owned by third parties.

256. It should also be noted that this problem is, to a certain extent, caused by the aforementioned shortcomings in criminalization of the crime of money laundering.

257. According to paragraph 2 of part 1 of Article 51 of the Criminal Code of the Republic of Kazakhstan property obtained by criminal means or acquired with the use of funds gained in a criminal manner which has been transferred with the title to such property by a convict to other persons is subject to confiscation only for the commission of corruption crimes.
258. As mentioned above seizure consists of the following: informing the owner or possessor of property of prohibition on the disposition and on the use of such property. This allows for making a conclusion that decision is made by the competent authorities ex-parte without prior notice.
259. Powers vested in the law enforcement agencies to freeze assets under criminal proceedings are specified in the Criminal Procedure Code and defined above.
260. Certain powers authorizing the law enforcement agencies to trace property are also specified in the legislation on the operational and detective activities and in the regulations on the activities of the law enforcement agencies.
261. Pursuant to Article 11 of the Law on Operational and Detective Activities of the Republic of Kazakhstan one of the types of the operational and detective actions is detection, covert registration and seizure of vestiges of unlawful actions, their preliminary examination which involves detection and withdrawal from circulation or possession by a specific person of material items that bear traces of a crime, or are instruments of crime or results of criminal activity, and recording their characteristic signatures and attributes in a form established by the law.
262. Pursuant to Article 9 of the Law on Financial Police Authorities of the Republic of Kazakhstan the financial police agencies (that have investigative jurisdiction over crimes covered by Article 193 of the Criminal Code) are empowered, based on documents and criminal case files at hand, to have access to documents, data, statistics and other information and to require managers and other executive officers of organizations and physical persons to provide such materials, make copies, receive explanations as well as to collect and seize documents, goods, material items or other property in compliance with the criminal procedure legislation.
263. Article 64 of the Criminal Procedure Code stipulates that in order to enforce a court verdict as it pertains to a civil claim, recovery of property or possible confiscation of property an investigator shall take measures to identify the property belonging to a suspect, accused or persons liable materially for their actions. In the course of preliminary investigation of criminal cases involving corruption crimes an investigator shall take measures to identify and trace the property obtained by criminal means or acquired with the use of funds gained in a criminal manner which has been transferred with the title to such property to their parties.
264. Pursuant to part 7 of Article 161 of the Criminal Procedure Code of the Republic of Kazakhstan where necessary when there are grounds to suspect that property is concealed by its owner or holder the criminal prosecution agency may carry out search or seize such property in a manner specified in Article 232 of the Criminal Procedure Code.
265. The regulations do not explicitly specify the FIU powers to identify and trace property that is or may be subject to confiscation or when there are grounds to suspect that it constitutes the proceeds of crime. Pursuant to the AML/CFT Law in case of detection of money laundering and terrorist financing indicators the FIU is just authorized to take a decision on

suspension of transactions with funds and (or) other property for a period of up to three calendar days.

266. At the same time, the legislation of the Republic of Kazakhstan contains no specific provisions aimed at protection of the rights of bona fide persons in compliance with the requirements of the Vienna and Palermo Conventions.
267. There is no mechanism to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of such actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
268. Pursuant to the provisions of Article 158 of the Civil Code of the Republic of Kazakhstan a transaction shall be invalidated if its contents does not comply with the requirements of the legislation or it is carried out for the purpose deliberately opposite to the fundamentals of the order and moral standards. In the event that one of the parties to a transaction enters into it with the intent to evade from its obligation or liability to a third party or to the state, and the other party to the transaction knows or should have known about such intention, the interested party (the state) shall be entitled to require invalidation of such transaction. The requirements of Article 158 of the Civil Code of the Republic of Kazakhstan do not cover actions carried out without a contract.

Additional Elements

269. Provisions pertaining to confiscation of property of organizations recognized as criminal ones are applied to terrorist organizations. Pursuant to Article 21 of the Law of Counteracting Terrorism property of an organization recognized as a terrorist one is subject to confiscation and transfer to the State.
270. In the situations specified in the legislative acts property may be taken without compensation from its owner by a court order as a sanction for the commission of a crime or other offence (Article 254 of the Civil Code of the Republic of Kazakhstan).
271. As stipulated in section 3.1 of Article 157 of the Civil Code of the Republic of Kazakhstan if a transaction is aimed at pursuing criminal goals, then, where the intention exists on the part of both parties everything received by them in the transaction or intended to be received, shall, upon the decision or verdict of the court, be subject to confiscation. In case of execution of such transaction by one party, everything that is received by the other party or everything which is due to it in the transaction by the first party shall be subject to confiscation. Where none of the parties proceeds with the implementation, everything which is envisaged by the transaction for implementation shall be subject to confiscation. Where the intention to pursue criminal goal exists on the part of just one party, everything received by it in the transaction shall be returned to the other party, or what is received by the latter or is due to it in accordance with the transaction shall be confiscated.

Effectiveness and Statistics

272. The law enforcement agencies, the judicial authorities and the financial intelligence unit of the Republic of Kazakhstan did not provide statistics on confiscated funds and property as well as on the provisional measures (freezing of assets). Instead, being presented was only statistics on amount of damage compensation under Article 193 of the Criminal Code of the

Republic of Kazakhstan which does not allow for making a conclusion whether the provisional measures are proportionate and effective or not.

Assessed Amount of Damage under Criminal Cases Instituted under Article 193 of the RK Criminal Code (bln. tenge)				Compensated Amount of Damage under Criminal Cases Instituted under Article 193 of the RK Criminal Code (bln. tenge)			
2007	2008	2009	2010	2007	2008	2009	2010
0.92	3.5	3.3	3.2	0.147	3.4	2.1	2.6

2.3.2. Recommendations and Comments

273. The Republic of Kazakhstan should introduce in its criminal procedure legislation a provision that provides for confiscation of property of corresponding value as well as for confiscation of property that is derived indirectly from proceeds of crime.

274. It is also necessary to introduce a provision that permits to confiscate property held or owned by third parties and introduce provisions for protection of the rights of bona fide persons as required by the Palermo Convention.

275. The law or measures should provide for a mechanism for prevention or invalidation of actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of such actions the authorities would be prejudiced in their ability to recover property subject to confiscation.

2.3.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> Confiscation of revenues (income, profits) that are derived indirectly from proceeds of crime is not provided for. There is no mechanism to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of such actions the authorities would be prejudiced in their ability to recover property subject to confiscation. There are no specific provisions in the legislation that protect the rights of bona fide third parties in compliance with the requirements of the Vienna and Palermo Conventions. Comprehensive statistics on confiscated, frozen and seized property is not presented.

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

2.4.1. Description and Analysis

276. The main instrument for implementing the provisions of the UN Security Council Resolution 1267 and 1373 is the mechanism for suspending the transactions conducted by persons listed as terrorists.
277. According to Article 12 of the AML/CFT Law of the Republic of Kazakhstan the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (hereinafter the FMC) is the agency responsible for compiling the list of organizations associated with financing of terrorism and extremism. The FMC draws up the list using the information provided to it by the government agency which maintains, within the terms of its reference, legal statistics and special records and also by other competent government authorities.
278. Besides that, the Financial Monitoring Committee is also in charge of providing the list of organizations and persons associated with financing of terrorism and extremism to the relevant government agencies which, in their turn, make it available to the entities subject to financial monitoring.
279. Thus, according to the law it is the three-level system which makes it difficult to rapidly make the list available directly to the entities subject to financial monitoring and to freeze assets of terrorists.
280. The list consists of two parts: the international list compiled based on the UN information and the national list of the Republic of Kazakhstan.
281. The national list is drawn up in accordance with section 4 of Article 12 of the AML/CFT Law pursuant to which the grounds for inclusion of an organization or an individual in the list or organizations and persons associated with financing of terrorism and extremism are:
- 1) A valid decision of the court of the Republic of Kazakhstan on liquidation of organization due to its involvement in terrorist activity and (or) extremism;
 - 2) A valid decision of the court of the Republic of Kazakhstan recognizing a foreign or an international organization, carrying out terrorist or extremist activity at the territory of the Republic of Kazakhstan and (or) another country, as a terrorist or extremist one, inter alia, establishing the fact of change of the name of such organization;
 - 3) A valid verdict of the court of the Republic of Kazakhstan adjudging an individual guilty of crime that contains elements of extremism, or a crime punishable under Articles 233-233-3 of the Criminal Code of the Republic of Kazakhstan;
 - 4) Verdicts (decisions) of courts and decisions of other competent authorities of foreign countries in respect of organizations or individuals engaged in terrorist activities recognized in the Republic of Kazakhstan in accordance with the international treaties/agreements and the laws of the Republic of Kazakhstan;
 - 5) Lists of organizations and individuals associated with terrorist organizations or terrorists compiled by the international anti-terrorist organizations or by agencies authorized by them and recognized by the Republic of Kazakhstan
282. However, the Republic of Kazakhstan did not establish grounds for inclusion of an individual in the list of organizations and individuals associated with financing of terrorism and extremism when a criminal proceedings are instituted against such individual under the

“terrorist” articles of the Criminal Code and under other procedural cases where there are reasonable grounds to believe that such individual is associated with terrorist activity. Thus, even being a “suspect”, individuals still have access to their funds.

283. At the same time, the legislation of the Republic of Kazakhstan does not specify the grounds for removal of individuals and legal entities from the list of organizations and individuals associated with financing of terrorism and extremism which may lead to violation of the human rights and freedoms in a situation when a criminal record is expunged but an individual is still in the list. Kazakhstan adopted regulations which establish liability of employees of financial institutions for disclosing official, commercial, bank and other secrets protected by the law. However, the legislation of Kazakhstan does not contain provision that explicitly prohibits tipping-off a person about suspension of a transaction with funds and (or) other property if such person is included in the list of organizations and individuals associated with financing of terrorism and extremism. Sanctions are established only for informing by executive officers of the entities subject to financial monitoring of their customers and other persons about the information (report) filed with the designated financial monitoring agency (section 3 of Article 168-3 of the Code of Administrative Offences).
284. However, Kazakhstan did not establish sanctions in respect to executive officers of the entities subject to financial monitoring for disclosing information to third parties about suspension of a suspicious transaction.
285. Suspicious transactions are suspended in a manner established by the designated authority in coordination with other government agencies.
286. Suspicious transactions include, inter alia, transactions in respect to which there are reasons to believe that such transaction is aimed at financing of terrorism and (or) extremism (section 4 of Article 4 of the AML/CFT Law).
287. The Suspicious Transaction Suspension Rules (hereinafter the Rules) were adopted by Order No.58 of the Ministry of Finance of the Republic of Kazakhstan. Pursuant to these Rules the entities subject to financial monitoring shall suspend transactions with funds and (or) other property till the relevant decision is made by the Committee, if one party (parties) to a transaction is the organization or the individual included in the list of organizations and individuals associated with financing of terrorism and extremism (the List), or a legal entity directly or indirectly owned or controlled by such organization or individual, or an individual or legal entity acting on behalf or at instruction of such organization or individual (section 4 of the Rules).
288. Article 51 of the RK Law “On Banks and Banking Activity” provides for suspension of transactions via back accounts and grants the right to suspend transactions via bank accounts in the situations specified in the anti-money laundering legislation of Kazakhstan.
289. In the event of detecting such transaction the entity subject to financial monitoring is empowered not to carry it out during 24 hours till such entity receives information from the FMC.
290. According to the Rules the FMC analyzes information on suspended transaction received from the entity subject to financial monitoring, and if the information contains one of the criteria of the suspicious transaction definition indicated in section 4 of Article 4 of the AML/CFT Law, makes, within 24 hours after receipt of the STR, a decision on suspension of

a suspicious transaction for a period of up to 3 calendar days and submits information on such transaction to the law enforcement agencies.

291. The detailed list of codes of indicators of suspicious transactions is contained in Annex 7 to the Rules of providing reports and information on transactions subject to financial monitoring by the entities subject to financial monitoring. The said Rules were approved by Order No.59 of the Ministry of Finance.
292. The follow-up seizure or confiscation of funds is possible only under the criminal procedure mechanisms, which raises the question about the effectiveness of the freezing system.
293. If, within 24 hours from the moment of filing the report, the entity subject to financial monitoring does not receive a decision of the FMC on suspension of a suspicious transaction or on no need to suspend such transaction, the transaction shall be proceeded with.
294. The FIU is not authorized to communicate information on measures taken under the freezing mechanisms.
295. The regulations specifying the suspicious transaction suspension procedure contain no guidance for the financial institutions on measures to be taken in the event of detection of a transaction related to persons listed as terrorists.
296. Kazakhstan has no mechanisms that grant access to the part of funds needed to satisfy the person's basic living requirements, as required by the terms of the UN Security Council Resolutions. The rights of bona fide third parties are reflected in the mechanism applicable to the requirements of Recommendation 3. However, if the freezing mechanism is applied by mistake, then after 4 days (24 hours suspension by an entity subject to financial monitoring and 3 days suspension by the FMC) from the freezing and in absence of any notification from the FIU, the funds will be unfrozen automatically.
297. Kazakhstan established in the Code of Administrative Offences provisions imposing sanctions for disclosure of information and non-compliance with the rules and terms for filing information (report) with the designated authority. However, there are no administrative and criminal sanctions for failure to suspend a suspicious transaction.

Effectiveness

298. The Republic of Kazakhstan provided the following statistics on suspended transactions (statistical data are as of December 10, 2010):

Number of reports based on which the entities subject to financial monitoring made decisions to suspend suspicious transactions	74
Number of reports based on which the Financial Monitoring Committee (FMC) made decisions to suspend suspicious transactions	11

299. Since the Republic of Kazakhstan did not provide information on the follow-on actions taken by the government agencies upon suspension of suspicious transactions, it is impossible to determine the effectiveness of the system.

2.4.2. Recommendations and Comments

300. The current regime for freezing transactions applied to individuals listed as terrorists does not meet the requirements of Resolutions 1267 and 1373, nor the Special Recommendation III in general. It is necessary to develop a full range of administrative measures for indefinite and immediate freezing of assets belonging to such individuals, as well as to provide detailed instructions to financial institutions and the DNFBP sector. It is also advisable to introduce specific mechanisms for reviewing and utilizing the information received from foreign countries in respect of entities subject to freezing measures. It is necessary to establish procedures for reviewing de-listing petitions. It is necessary to develop and implement mechanisms for granting access to the part of the funds needed to satisfy the person's basic living requirements, as required by the terms of the UN Security Council Resolution 1452.
301. Besides that, Kazakhstan should develop clear guidance for financial institutions on measures to be taken in the event of transactions related to persons listed as terrorists and authorize the FIU to communicate information on actions taken under the freezing mechanisms.
302. At the same time, it is recommended to establish sanctions in respect to executive officers of the entities subject to financial monitoring for disclosure to third parties of information on suspension of suspicious transaction.
303. As for the list of organizations and individuals associated with financing of terrorism and extremism it is necessary to extend this list to individuals who are suspects under terrorism related criminal cases. Besides that, Kazakhstan should define the grounds for de-listing.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none"> • The current regime for suspension of transactions and application of criminal-procedural mechanisms in respect to individuals listed as terrorists raises questions as to the effectiveness of the implementation of Resolutions 1267 and 1373. • There are no effective laws and procedures to examine and give effect to, if applicable, the actions initiated under the freezing mechanisms of other jurisdictions. • The FIU is not authorized to communicate actions taken under the freezing mechanisms. • There is no clear guidance for financial institutions on actions to be taken in the event of detection of a transaction related to persons listed as terrorists. • There are no procedures for removal of individuals from the list of persons associated with terrorism and extremism. • Kazakhstan has no mechanisms for authorizing access to the portion of funds necessary for basic expenses, as required by the UN Security Council resolution 1452.

Authorities

2.5. The Financial Intelligence Unit and its Functions (R.26, 30 and 32)

2.5.1. Description and Analysis

304. The financial intelligence unit (FIU) of Kazakhstan – the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan (hereinafter the FMC) is the FIU of administrative type. The FMC was established as the department of the central executive authority (the Ministry of Finance) in compliance with Resolution No.378 of the Government of the Republic of Kazakhstan “On Certain Issues Pertaining to the Ministry of Finance of the Republic of Kazakhstan” dated April 24, 2008. Pursuant to Constitutional Law No.2688 dated December 18, 1995 “On the Government of the Republic of Kazakhstan” the FMC terms of reference and the procedure of its coordination and interaction with other government agencies are set forth in Regulation on the FMC approved by Order No.258 of the Minister of Finances of the Republic of Kazakhstan issued on May 26, 2008. After the basic AML/CFT Law (Law No.191-IV) was adopted the Regulation on the FMC was amended as appropriate by Order No.96 of the Minister of Finances of the Republic of Kazakhstan issued on March 2, 2010. Pursuant to the said Order and amendments introduced by it the basic objectives and functions of the FIU, including collection, requesting, processing and analyzing of information as well as dissemination to the national competent authorities materials of financial investigations carried out based on the analysis of suspicious transaction reports and information supplied from other sources, were assigned to the headquarters of the FMC.
305. At the same time, pursuant to the aforementioned Regulation the implementation functions, particularly the regulations enforcement functions, assigned to the FMC are limited by the terms of reference of the Ministry of Finance of the Republic of Kazakhstan. The Ministry of Finance, in its turn, conducts financial monitoring for the AML/CFT purposes, which is its core objective, without specific reference to Law No.191-IV. Furthermore, it should be noted that such important powers and duties of the designated authority as information exchange with foreign FIU, compilation of the list of organizations and individuals associated with financing of terrorism and extremism, suspension of suspicious transactions are not directly included in the terms of reference of the RK Ministry of Finance. Meanwhile, according to subsection 2-1 of Article 1 of RK Law No.107-II dated 27.11.2000 “On Administrative Procedures” the terms of reference of the government agency mean a combination of assigned powers, i.e. rights and duties that determine the objects of the activities of such agency, while the objectives mean the main areas of its activities within the terms of reference established by the law. Lack of clearly defined terms of reference of the FMC is also evidenced by the fact the “parallel” Law No.192-IV uses the term “designated financial monitoring agency”, while the “financial monitoring” concept used in Law No.191-IV does not include the AML/CFT measures.
306. According to section 2 of Article 10 of Law No.191-IV procedure for submission of reports and standard form of reports filed with the FMC are defined in the “Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring” approved by Order No.59 issued by the Minister of Finance of the Republic of Kazakhstan on February 16, 2010. At present, most reports are filed in an electronic form (primarily by banks). A technique has been developed that helps to monitor the incoming reports for completion errors. The “hot telephone line” to be used by the

entities subject to financial monitoring for requesting clarifications on the application of certain provisions of legislative acts and regulations has been established.

307. Pursuant to Article 18 of Law No.191-IV the government agencies of the Republic of Kazakhstan are obliged to provide, at the request of the designated agency, information from their own information systems, while the government agencies in charge of monitoring, within their respective terms of reference, compliance by the entities subject to financial monitoring with the RK AML/CFT legislation are obliged to provide the designated agency with any information needed for conducting financial monitoring and combating money laundering and terrorist financing. According to Law No.191-IV the scope of such information and the information submission procedure shall be determined by the Government of the Republic of Kazakhstan. However, Regulatory Resolution No.5 dated August 20, 2009 of the Constitutional Council of the Republic of Kazakhstan (hereinafter the Resolution of the Constitutional Council) refers this issue to the exclusive jurisdiction of the legislative authorities.

308. Since Law No.191-IV does not define the scope of data and information and the procedure of provision of such data and information by the government agencies, the FMC receives from them free of charge the necessary information in compliance with legislative acts that regulate information exchange among the government agencies as well as in compliance with the regulations developed on the basis of the aforementioned legislative acts. At present the FMC requests and receives the relevant information from the Ministry of Justice, the Ministry of Internal Affairs, the Agency for Combating Economic Crime and Corruption and the General Prosecutor's Office. Besides that, the FMC is connected to the "electronic government" service portal that provides for secure and reliable communication channel between the state databases and the information systems of the ministries and government agencies. Pursuant to joint Order No.P-95 dated July 23, 2010, that approved the rules of information exchange for the AML/CFT purpose, the FMC already has indirect (via the Ministry of Finance) access, and after fulfillment of the necessary technical requirements will have direct access to the information systems of the Tax Committee of the Ministry of Finance of the Republic of Kazakhstan including access to the Register of Taxpayers and Taxable Activities and Assets which contains data on registered movable and immovable property owned by taxpayers. Besides that, customs cargo declarations, money and value import/export declarations, the passport (including lost passport) databases are also available to the FMC. After adopting the uniform rules binding upon all interested government agencies the FMC will have remote access to the information system of the Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan. Joint orders on connection of the FMC to the automated databases of a number of other government agencies of the Republic of Kazakhstan are currently being reviewed.

309. Pursuant to section 1 of Article 17 of Law No. 191-IV the FMC may request in writing the entities subject to financial monitoring and the government agencies of the Republic of Kazakhstan to provide additional information only on transactions that are subject to financial monitoring. The time periods for execution by the entities subject to financial monitoring of the FMC requests established in the Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring:

- within 24 hours from the moment of receipt of a request concerning a transaction where there are grounds to believe that as a result of such transaction illicit proceeds are integrated into legal circulation, or such transaction is aimed at financing of terrorism and (or) extremism;

- within 3 business day from the date of receipt of a request concerning other transactions specified in Article 4 of Law No.191-IV

310. Pursuant to the aforementioned Rules (Order No.59 of the Ministry of Finance) the written requests of the FMC for submission of information and documents (or copies of documents certified in the established manner) are drawn up using the officially approved form, signed by the FMC Chairman or by a person authorized by him and are sent to organizations electronically, by courier or by mail with return receipt requested and with taking security measures to prevent unauthorized access. Similar requirements are established for sending responses to the FMC requests. At the same time, Law No.191-IV and other legislative acts do not explicitly oblige the entities subject to financial monitoring to provide additional information requested by the FMC, but just release them from liability for disclosing official, commercial, bank and other secrets protected by the law.
311. According to item 5) of Article 16 of Law No.191-IV where there are grounds to believe that a transaction is related to legalization (laundering) of illicit proceeds and (or) financing of terrorism the FMC shall file information (report) with the relevant law enforcement agencies for making a procedural decision. However, neither the Regulation on the FMC nor other documents presented to the assessors explicitly specify the procedure of approval (power to sign a protocol or other document) of collectively made decisions to file information and (or) materials with the law enforcement agencies. Decisions to suspend suspicious transactions, which are also passed collectively by executive officers appointed by the FMC Chairman, shall be approved by orders of the FMC Chairman.
312. The assessors noted a number of potential limitations affecting operational independence of the FMC. For example, monitoring of compliance with the Minister's orders that regulate such key functions of the FIU as collection of information from the entities subject to financial monitoring and making decisions on suspension of suspicious transactions is assigned to the Vice Minister of Finance in charge of supervision of the FIU activities. Besides that, as follows from sections 41 and 45 of the Regulation on the FMC some categories of the limited dissemination documents, including requests filed with the government agencies, are subject to control and shall be submitted to the Minister of Finance or his Deputies for signature or approval. Furthermore, pursuant to section 5 of Article 24 of the Constitutional Law "On the Government of the Republic of Kazakhstan" the Ministry of Finance is authorized to suspend or revoke, partly or fully, any regulations being in effect.
313. The FMC is a separate legal entity and has its own settlement account with the Treasury. However, the Law on Budget of the Republic of Kazakhstan does not provide for a separate budget item for funding the FMC activity: funds are allocated by the Ministry of Finance from the budget of the Republic of Kazakhstan against the request and the FMC financing plan that shall be approved by the Minister of Finance. The organizational structure of the FMC is approved by the Executive Secretary of the Ministry of Finance in compliance with the staffing schedule of the Ministry approved by the Government. The procedure of coordination and interaction of the FMC with other government agencies is determined by the Ministry of Finance. The above mentioned facts may also affect operational independence and autonomy of the FIU.
314. Despite the fact that the FMC is the structural department of the Ministry of Finance, it is located in a separate building access to which is provided only to the FMC employees who use electronic access cards. Pursuant to item 2 of section 2 of Article 17 of Law No.191-IV the designated agency shall ensure appropriate storage, protection and security of information

received in the course of its activity, being an official, commercial, bank or other secret protected by law. To comply with this provision of the law on 25.01.2010 the Ministry of Finance issued Order No.19 which approved the Rules of protection of limited dissemination information obtained by the FMC in the course of its activity. Access to the internal databases and the levels of access are determined by the FMC Chairman's Orders. Analysts may access the internal databases only through the terminal stations, which ensures high level of information protection. The Internal Security Department was established within the FMC. Pursuant to section 2 of Article 20 of Law No.191-IV the FMC employees bear liability established by the RK laws for disclosure of official, commercial, bank or other secrets protected by the law which become known to them by virtue of fulfillment of their official duties. The maximum penalty for this offence is established in part 2 of Article 200 of the Criminal Code of the Republic of Kazakhstan and envisages imprisonment for a period of up to three years with or without imposition of a fine in the amount of up to one hundred monthly calculated indices or in the amount of monthly wages or income of a convict.

315. Pursuant to section 5 of Article 16 of the AML/CFT Law the FMC is obliged to provide necessary information on transactions subject to financial monitoring requested by judicial authorities in the course of criminal proceedings. The law enforcement agencies may request and receive from the FMC information on transactions subject to financial monitoring only when criminal proceedings are instituted and in compliance with the limitations established by the RK legislation.
316. As prescribed by the Regulation on the FMC the Committee reports to the Ministry of Finance on the strategic, administrative and budget issues. To provide access for individuals and organizations to the information on the activities carried out by the FMC the Internet-portal www.kfm.gov.kz was opened. The Report presented by the FMC Chairmen at the extended meeting of the RK Ministry of Finance held on February 2, 2011 is posted on the FMC web-site. However, the said Report contains no statistics on information (reports) received from the entities subject to financial monitoring and filed with the law enforcement agencies as well as no statistics on information exchange with foreign FIU. The results of typology and trend studies are not published as well.
317. At the time of the on-site mission the established procedure for assessment of the FMC compliance with the criteria of the Egmont Group membership was nearly completed. On October 13, 2010 both respective working groups confirmed readiness of the FMC for joining the Egmont Group and recommended to pass the appropriate decision at the next Plenary Session to be held in July 2011. Starting from March 9, 2010 the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan actively exchange information with foreign FIUs (both on its own initiative and responding to requests) in compliance with the established Principles of information exchange between the Egmont Group FIUs.
318. However, certain concerns are caused by the provisions of section 4 of Article 19 of Law No.191-IV which authorize the FMC to reject a request of the competent authorities of a foreign country if it considers that facts and circumstances mentioned in the request, that substantiate the need for providing information, are "insufficient for suspicion of legalization (laundering) of illicit proceeds and financing of terrorism". Misuse of such authority may be inconsistent with the current standards of the Egmont Group and, therefore, in order to impartially assess the situation it is necessary to have particular examples of information exchange between the FMC and foreign competent authorities including the FIUs of the EAG-member states.

Structure and Resources

319. Initially the total staff of the Committee consisted of 90 persons, but in the middle of 2010 the number of employees of the FMC was reduced by 15 percent as part of the national reduction of the number of the civil servants. At the time of the on-site mission the key functions of the FIU were assigned to 25 employees, of whom 13 persons were in charge of tactical analysis and 2 persons were responsible for conducting strategic analysis. The total staff of Almaty Department was reduced from 15 to 12 employees. It may be necessary for the FMC to recruit more staff for the analytical departments of its headquarters in view of the increasing number of reports filed by the entities subject to financial monitoring including large number of suspicious transaction reports. For the local offices of the FMC it is important to recruit more personnel who will be in charge of coordination and interaction with the main supervisory authorities of the Republic of Kazakhstan – the Financial Supervision Agency and the National Bank as well as with the financial institutions, large number of which is located in Almaty city.
320. The Financial Monitoring Committee is sufficiently equipped with modern high-capacity hardware and software systems enabling it to collect, securely store, process and analyze large number of reports and additional information on transactions subject to financial monitoring. The FMC purchased and installed computers, remote facilities and office equipment. All employees of the FMC have work or terminal stations. Being purchased was licensed software including analytical software tools. The efforts to further develop the unified information and analytical system and to establish the FMC situation analysis center are implemented according to the approved plans.
321. In order to ensure proper international cooperation and information exchange with the competent authorities of foreign states in the domain of AML/CFT, a special department was set within the structure of the FMC with a staff consisting of 4 employees. Employees of Almaty Department are also actively engaged in the interactions with international organizations as well as in the international AML/CFT cooperation programs.
322. A number of employees of the IT and analytical departments received special training in operation of Oracle, i2 software at the International Training and Methodological Center for Financial Monitoring. In April 2010, Kazakhstan hosted the workshop on the Tactical Analysis Program develop and approved by the Egmont Group. With the support of the US Embassy Kazakhstan considers the issue pertaining to the development and implementation of the financial analyst training program at Astana University named after Nazarbaev.
323. The core of the FMC staff consists of young specialists, primarily those who received training under the Bolashak presidential international fellowship program and the graduates of the President's Public Administration Academy. Each newly hired employee shall sign the commitment to comply with the established procedure for storing, use and protection of information containing official, commercial, bank and other secrets protected by the law. The mandatory screening procedure rules out possible recruitment of persons with criminal record. Once in three years the full-time employees of the FMC shall undergo certification intended for assessing their individual professional level, knowledge of law and public outreach skills.

Effectiveness

324. Kazakhstan submitted the following statistics on received reports, their analysis and transfer to law enforcement agencies (for the period from March 9 till October 1, 2010):

Threshold reports received	STR received	STR accepted for initial processing	Materials filed with law enforcement agencies	Criminal proceedings instituted as a result of examination
177,746	9,152	476	13	3

325. According to the explanations given by the FMC representatives most of the received STRs were related to transactions without obvious economic rationale as well as to actions aimed at evading financial monitoring procedures. Out of 13 financial investigation files submitted by the FMC to the law enforcement agencies only 3 files formed the basis for instituting criminal proceedings.

326. During 9 months of 2010, the law enforcement agencies of the Republic of Kazakhstan instituted a total of 104 criminal proceedings under Article 193 of the Criminal Code of the Republic of Kazakhstan (“Legalization (laundering) of illegally obtained funds or other property”).

327. Based on the above data, we can draw a preliminary conclusion that the effectiveness of the FMC efforts is low, inter alia, due to poor coordination and interaction with the law enforcement and supervisory agencies, primarily with the Agency for Combating Economic Crime and Corruption and the Financial Supervision Agency.

328. Relatively small number of files submitted by the FMC to the law enforcement agencies as a result of analysis of reports received from the entities subject to financial monitoring may also be the evidence of poor quality of STR or of existing difficulties with STR analysis. Although the independently developed Unified Information and Analytical System is important for rapid processing and initial analysis of large number of reports filed with the FMC, it is unlikely to obliterate the special role of a human factor in the in-depth analysis in the course of financial investigations.

2.5.2. Recommendations and Comments

329. With consideration for the recommendation of the Constitutional Council of the Republic of Kazakhstan on converting the basic AML/CFT law into the directly applicable regulatory legal act, the terms of reference of the Financial Monitoring Committee as the designated authority not only in the financial monitoring area but in the AML/CFT sphere as well shall be specified in full and more explicitly. For example, the provisions which determine the terms of reference of the RK Ministry of Finance in this area may directly refer to the AML/CFT law.

330. The mentioned potential limitations of the operational independence of the Financial Monitoring Committee are explicitly set forth in the constitutional law “On the Government of the Republic of Kazakhstan” and may be removed only if the FMC becomes the agency that is not part of the RK Government but is subordinated directly to the President of the Republic of Kazakhstan. However, their actual impact on resource allocation, rapid decision

making and, eventually, effectiveness of performance by the Committee of the FIU key functions can be assessed only on the basis of practical experience and during long enough period of time.

331. Since the FMC has no statutory obligation to provide information and materials requested by the law enforcement agencies, the so-called proactive approach to financial investigations plays important role. To enhance the value of materials provided to the criminal prosecution agencies the FMC should pay special attention to training of the employees of the analytical departments in the following areas:

- assessment of effectiveness and improvement of criteria used for identifying/detecting suspicious transactions;
- selection of STR with due consideration for new typologies and trends;
- effective application of special analytical tools, data treatment and in-depth analysis methods

332. It is necessary to more actively interact with the Financial Supervision Agency and other supervisory authorities, including information sharing and targeted inspections of the entities subject to financial monitoring initiated by the FMC.

333. The FMC should periodically (at least once a year) publish reports on its activity including statistics on interactions with the entities subject to financial monitoring and with the national and foreign competent authorities and description of ML/FT typologies and trends.

334. Pursuant to section 3.4 of Regulatory Resolution No.5 of the Constitutional Council of the Republic of Kazakhstan dated 20.08.2009 the basic AML/CFT law should include the exhaustive list of the grounds for refusal to provide information requested by the foreign competent authorities if the requested information affects the constitutional human and civil rights and freedoms, including privacy of deposits and savings. Prior to making appropriate amendments to the legislation it is advisable for Kazakhstan to thoroughly examine and, where possible, take into account the standards adopted by FATF and Egmont Group on information exchange between FIU, primarily, exchange of information on suspicious transactions and on persons engaged in such transactions.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	LC	<ul style="list-style-type: none"> • Scope and procedure of execution of the terms of reference (the rights and duties) assigned to the FMC under the terms of reference of the RK Ministry of Finance should be clarified and more clearly specified. • The powers vested in the FMC Chairman raise questions as to operational independence of the FIU. • The published reports on the results of the FMC activity do not contain basic statistics and identified typologies and trends. • Vague language of the legislative acts concerning a subject of information exchange with foreign FIU and misuse of the recommendations of the Constitutional Council may, from the

		<p>FAFT and Egmont Group viewpoint, result in unreasonable rejection of other FIU requests.</p> <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> The number of materials submitted by the FMC to the law enforcement agencies which formed the basis for instituting criminal proceedings is disproportionately small compared to the number of reports received from the entities subject to financial monitoring.
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2.6. Law Enforcement, Prosecution and Other Competent Authorities – the Framework for Investigation and Prosecution of Offences as well as for Confiscation and Freezing (R.27, 28, 30 and 32)

2.6.1. Description and Analysis

Recommendation 27

335. Pursuant to Article 191 of the Criminal Procedure Code of the Republic of Kazakhstan preliminary investigation into criminal cases is carried out by investigators of the National Security Committee, the Interior Ministry and the Financial Police, and in the situations specified in the RK Criminal Procedure Code by prosecutors.

336. Pursuant to Article 192 of the Criminal Procedure Code investigations into ML-related offences are carried out by the Financial Police investigators, preliminary investigations into FT-related crimes are conducted by the National Security Committee investigators. If separate cases, under which one or more persons are accused of committing crimes to be investigated by different preliminary investigation agencies, are combined into one, investigative jurisdiction is determined by a prosecutor. Powers vested in a prosecutor at a preliminary investigation stage are specified in Article 197 of the RK Criminal Procedure Code.

337. According to item 12 of section 1 of Article 197 of the Criminal Procedure Code of the Republic of Kazakhstan in course of criminal prosecution and supervision over compliance with the laws during criminal investigations a prosecutor takes a criminal case from the inquiring agency and transfers it to the investigation agency; in exceptional cases to ensure completeness and impartiality of investigation, at a written request of a preliminary investigation agency or at his own initiative, a prosecutor transfers a criminal case from one preliminary investigation agency to another one or takes it to himself and investigates the case irrespective of the investigative jurisdiction specified in the Criminal Procedure Code.

338. The assessors were informed that the Agency of the Republic of Kazakhstan on Combating Economic Crime and Corruption plays the main role in identification/detection and investigation of ML-related offences, while the FT-related crimes are the prerogative of the National Security Committee of the Republic of Kazakhstan.

339. The Agency has no special unit or department in charge of combating money laundering.

340. Pursuant to Article 132 of the RK Criminal Procedure Code a criminal prosecution agency is empowered to detain a person suspected of committing offences at any stage of

preliminary investigation, which gives the right to undertake operational and detective actions in compliance with the RK Law “On Operational and Detective Activities”.

341. According to Article 139 of the RK Criminal Procedure Code when there are sufficient grounds to suspect that an accused person may flee from inquiry, preliminary investigation or the court, or prevent impartial investigation or hearing of a case in the court, or will continue criminal activity, and also for enforcing execution of the sentence, a criminal prosecution agency may impose on such person one of the preventive restraint measures set forth in Article 140 of the Criminal Procedure Code of the Republic of Kazakhstan.
342. The preventive restraint measures set forth in Article 140 of the RK Criminal Procedure Code include recognizance not to leave and behave properly, personal guarantee, putting a serviceman under surveillance of the command of a military base, placing a minor child under custody, bail, home detention and arrest.
343. In order to detect, deter and resolve crimes as well as to detect and identify persons who prepare, commit or have committed crimes including ML/FT-related crimes the law enforcement agencies of Kazakhstan use, to full extent, the operational and detective methods.
344. In compliance with the Law “On Operational and Detective Activities” in order to detect and investigate crimes of this type the law enforcement agencies undertake general and special operational and detective measures.
345. General operational and detective actions include:
 - 1) questioning individuals;
 - 2) establishing overt and covert relations with individuals and their use in the operational and detective efforts;
 - 3) infiltration;
 - 4) use of a crime simulation model;
 - 5) establishing conspiratorial companies and organizations;
 - 6) controlled supply;
 - 7) application of technical facilities for obtaining data not related to protected by the law privacy, personal and family secrets, as well as privacy of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages and communications;
 - 8) making inquiries;
 - 9) taking samples;
 - 10) controlled purchase;
 - 11) use of sniffer dogs;
 - 12) identity verification;
 - 13) search for illegal information collection devices;
 - 14) detection, covert registration and seizure of vestiges of illegal activities and their preliminary examination;

- 15) pursuit of an individual who prepares, commits or has committed a crime and his/her detention;
- 16) body search, in the presence of witnesses, of detained persons, inspection and seizure of belongings and documents carried by them which may be related to criminal activity as well as inspection of residential premises, work or other places, inspection of transportation vehicles.

In course of an anti-terrorist operation body search and inspection of belongings carried by an individual, inspection of transportation vehicles, inter alia, with the application of special equipment may be performed without witnesses.

- 17) capturing armed criminals;
- 18) surveillance

346. Special operational and detective actions include:

- 1) control of postal and telegraph messages and communications;
- 2) taking information off communication channels;
- 3) covert eavesdropping and wiretapping with the application of video and audio equipment or other technical facilities, eavesdropping and wiretapping of communications via telephones and other communication devices as well as obtaining data on telephone calls made;
- 4) taking information off technical communication channels, computer systems and other technical facilities;
- 5) operational infiltration

347. To detect and deter sources of criminal proceeds and their legalization (laundering) a controlled supply (Article 11 of the Law “Om Operational and Detective Activities”) of proceeds of crime may be used with infiltration of agents in a criminal community with the application of crime simulation model and various methods and techniques in line with the applicable legislation.

348. Presented to the assessors were positive examples of the AML/CFT efforts, however, no statistics on FT-related cases were provided.

349. Article 198 of the RK Criminal Procedure Code establishes that preliminary investigation into a complex or large criminal case may be assigned to a group of investigators (investigation team).

350. The investigation team may include investigators from several agencies performing preliminary investigation. A decision to establish such team may be made both on instructions of a prosecutor and on initiative of heads of investigation departments of such agencies.

351. In exceptional situations when investigation is incomplete and not impartial and/or when the investigated case is complex or important, the General Prosecutor of the Republic of Kazakhstan may establish an investigation team consisting of investigators from several preliminary investigation agencies and headed by a prosecutor.

352. The Financial Supervision Agency, jointly with the National Security Committee and the Agency on Combating Economic Crime and Corruption of the Republic of Kazakhstan, undertakes organizational, interdepartmental, preventive and special actions aimed at blocking access of terrorist organizations to the services provided by banks and other financial and business institutions.
353. Ways and methods of using of business entities operating in the financial and credit sector by terrorist organizations are studied; control mechanisms to detect such unlawful actions are developed; efforts to detect illegal funding of non-government organizations and political parties and associations by foreign investors have been arranged for.

Structure and Resources

354. It appears that the law enforcement authorities have sufficient resources and are well aware of their responsibilities in respect to AML/CFT-related investigations. Their structure, in general, is adjusted to meet the AML/CFT-related objectives. The need for the staff to receive training in the use of ML/FT-related investigation procedures is considerable.

Resources and Internal Structure of the General Prosecutor's Office of the Republic of Kazakhstan

355. Established within the General Prosecutor's Office of the Republic of Kazakhstan is the Unit for supervision of application of financial legislation. This Unit is the structural unit of the Division for supervision of compliance with the legislation in the economic area, which, in its turn, is part of the Department for supervision of compliance with the legislation in the social and economic area.
356. Employed by the said unit is a designated officer in charge of considering issues pertaining to coordination of the efforts undertaken by the government agencies to combat laundering the proceeds of crime and financing of terrorism.
357. Besides that, established within the RK General Prosecutor's Office in the Department of Special Prosecutors. The employees of this Department are empowered to investigate into criminal cases, inter alia, into ML/FT-related cases.
358. The assessors were informed that the regulation on establishing the Interdepartmental AML/CFT Committee is being developed and reviewed. This regulation will specify the composition and the terms of reference of the said Committee. Currently there are certain problems in interaction with the law enforcement agencies pertaining to coordination of efforts, operational cooperation and feedback.
359. Adequacy of the professional skills of the employees of the prosecution agencies is confirmed through certification that takes place once in 3 years by the certification committees established within the RK General Prosecutor's Office, regional prosecutor's offices and equivalent offices.
360. There is the Professional Development Training Institute named after S. Yeskaraev with the RK General Prosecutor's Office, which was established specially for enhancing professional skills of prosecutors through lectures, workshops and other training events.
361. Along with this, there is also the Code of conduct of the prosecutor's offices employees that includes the binding requirements of the anti-corruption legislation.

362. Training of the prosecutor's offices employees is conducted on ongoing basis through participation in all major AML/CFT workshops and training events, including those held at the international level.

363. The assessors were informed that the Legal Statistics Center with the RK General Prosecutor's Office operates on a permanent basis.

Resources and Internal Structure of the Agency on Combating Economic Crime and Corruption

364. Pursuant to the Regulation on the Agency on Combating Economic Crime and Corruption, approved by Presidential Decree No.1551 dated April 21, 2005, the Agency on Combating Economic Crime and Corruption is the government agency of the Republic of Kazakhstan that is directly subordinated and reports to the President of the Republic of Kazakhstan and exercises guidance for ensuring economic security and performs, within the scope provided for by the legislation of the Republic of Kazakhstan, inter-industry coordination and other special executive and licensing functions aimed at prevention, detection, deterrence, resolution and investigation of economic, financial and corruption crimes and offences.

365. Funds required for financing the activities of the Agency on Combating Economic Crime and Corruption are allocated from the state budget.

366. The organizational structure and staffing table of the Agency on Combating Economic Crime and Corruption are approved by the President of the Republic of Kazakhstan as advised by the Agency Chairman.

367. The organizational structure of the Agency on Combating Economic Crime and Corruption includes the Headquarters, the local offices and the Financial Police Academy.

368. The staffing table of the Financial Police of the Republic of Kazakhstan allows to effectively pursue the assigned tasks.

369. Positive examples of the anti money laundering efforts undertaken by the employees of the Agency on Combating Economic Crime and Corruption were presented to the assessors.

370. Besides that, the Financial Police Academy, which was established in 1999, provides training to young specialists for the customs and financial police authorities. Among other topics, the students of the Academy also study a special subject "Laundering of proceeds and financing of terrorism".

Additional Elements

371. Pursuant to Article 198 of the RK Criminal Procedure Code preliminary investigation into a complex or large criminal case may be assigned to a group of investigators (investigation team). The investigation team may include investigators from several agencies performing preliminary investigation. A decision to establish such team may be made both on instructions of a prosecutor and on initiative of heads of investigation departments of such agencies. In exceptional situations when investigation is incomplete and not impartial and/or when the investigated case is complex or important, the General Prosecutor of the Republic of Kazakhstan may establish an investigation team consisting of investigators from several preliminary investigation agencies and headed by a prosecutor.

Effectiveness

372. The main role in detecting and investigating money laundering related offences is played by the Agency of the Republic of Kazakhstan on Combating Economic Crime and Corruption.

373. The assessors were informed that ML-related offences can also be detected and investigated by the Ministry of Internal Affairs, the General Prosecutor's Office and the National Security Committee of the Republic of Kazakhstan, respectively, however, no statistics on the results of the efforts undertaken in this area were presented.

374. Statistics on ML-Related Criminal Cases

	2006	2007	2008	2009
Criminal proceedings instituted by the Agency	66	57	40	104
Guilty verdict criminal cases examined by courts	3	14	10	12

375. The number of investigated ML-related criminal cases is small. This indicates the fact that, in general, the anti-money laundering efforts are not among the priorities identified by the management of the law enforcement agencies. In almost all instituted criminal proceedings money laundering is the ancillary offence.

376. Insignificant number of ML-related criminal cases examined by courts is most likely due to low quality of investigation of the crime of this type, or due to other reasons the assessors were not informed about.

Recommendation 28

377. Pursuant to Articles 29-30 of the RK Criminal Procedure Code the law enforcement agencies engaged in preliminary investigation into criminal cases including those related to money laundering, terrorist financing and predicate offences are authorized to: collect and seize objects and documents (as well as force the collection or seizure of the aforementioned), search persons, premises or other places, arrest, search and seize post-and-telegraph dispatches, intercept messages, eavesdrop and record conversations and communications.

378. Pursuant to Article 211 of the RK Criminal Procedure Code a witness, victim as well as an accused and defendant at large are summoned to interrogation with the writ of summons. Article 158 of the RK Criminal Procedure Code provides that in case of failure to appear upon the summon without justified reason an accused, defendant as well as a witness and victim are subject to compulsory delivery in compliance with the reasoned decree of an inquiring officer, an investigator or a court.

379. According to Article 82 of the RK Criminal Procedure Code any person who might be aware of any circumstances relevant to a case can be summoned to give the testimonies.

380. Article 221 of the RK Criminal Procedure Code stipulates that for the purpose of detecting crime signs, other tangible objects as well as for substantiating the facts related to a case a crime site, surroundings, premises, items, documents and live persons shall be examined. Such examination may take place both prior to the institution of criminal proceedings and in the course of investigation.
381. No limitations are established with regard to search under instituted criminal cases related to money laundering, terrorist financing and related offences.
382. However, there are certain limitations with regard to collection of information in the course of investigation conducted prior to the institution of criminal proceedings, which require additional clarification.
383. In course of assessment the assessors were informed that when conducting investigation prior to the institution of criminal proceedings the personnel of the Interior Ministry may not require to provide information on financial and business activities of business entities and obtain necessary documents.
384. Pursuant to the criminal laws of Kazakhstan any statements, reports and other information related to any crime shall be registered and dealt with immediately. The law enforcement agencies and the Prosecutor's Office are authorized, for the purposes of investigation and to use as evidence in the prosecution of crimes, including ML, FT and other predicate offences or related to them activities, to take witness statements, accept testimonial evidence and interrogate individuals involved.

Additional Elements

385. To upgrade the judicial education and training system and enhance quality of training and re-training of judges the Judicial Education and Training Strategy for 2009-2011 was approved on August 18, 2008.
386. The said Strategy systematize the existing educational and training programs, identifies the main areas and specifies the entities that shall arrange for the ongoing judicial educating and training, namely: the Supreme Court of the Republic of Kazakhstan, the Justice Institute of the Public Administration Academy with the RK President, the training centers of the regional and equivalent courts and the Union of Judges of the Republic of Kazakhstan.
387. The Supreme Court of the Republic of Kazakhstan uses the training centers to hold regional training workshops in order to cover as many judges as possible by the training programs. Invited to such workshops are the representatives of the government agencies, scientists and businessmen depending of a particular topic of a workshop. The workshop proceedings published in form of the "Supreme Court Library" are available to each judge. Besides that, the workshops and conferences proceedings are posted on the Supreme Court web-site.
388. Vital training topics are planned as a rule with consideration for summarized judicial practice, law enforcement problems and opinion of the judicial community.
389. Presented to the assessors was joint Order of the General Prosecutor of the Republic of Kazakhstan No.50 dated December 14, 2007, of the Chairman of the Agency of the Republic of Kazakhstan on Combating Economic Crime and Corruption (Financial Police) No.11

dated January 28, 2008, of the Minister of Justice of the Republic of Kazakhstan No.9 dated January 22, 2008, of the Emergency Minister of the Republic of Kazakhstan No.9 dated January 23, 2008, of the Chairman of the National Security Committee of the Republic of Kazakhstan No.225 dated December 29, 2007, of the Minister of Internal Affairs of the Republic of Kazakhstan No.507 dated December 27, 2007 and of the Minister of Finance of the Republic of Kazakhstan No.40 dated January 25, 2008, with approved the “Regulation on the Coordination Council of Law Enforcement Agencies of the Republic of Kazakhstan”. Pursuant to this Regulation the basic functions of the Coordination Council are the development, review and implementation of joint measures for combating the most grave and widespread criminal offences, economic crime, corruption, illicit drug trafficking, migrant smuggling and activities of criminal groups and communities.

390. Besides that, the Interdepartmental Committee on Combating Legalization (Laundering) of Illegally Obtained Proceeds and Financing of Terrorism was established by Order No.358 issued by the Minister of Finance of the Republic of Kazakhstan on July 20, 2010.
391. It is impossible to assess the effectiveness of the efforts undertaken by the Committee for studying and communicating ML/FT methods, techniques and trends to the interested parties due to a short period of its operation.

2.6.2. Recommendations and Comments

392. The Criminal Procedure Code specifies the law enforcement agencies authorized to investigate ML and FT crimes, however, none of them are directly obliged by the law to develop and implement a combination of AML/CFT measures.
393. Investigation of ML/FT offences should be set as one of the priorities by a decision of the heads of the law enforcement agencies (decisions of the coordination meetings).
394. Special ML/FT investigation departments should be established within the General Prosecutor’s Office and the Agency.
395. It is necessary to provide law enforcement authorities with the opportunity to request information on financial and economic activities of financial institutions and other companies at the stage of pre-investigative checks.
396. It is necessary to arrange for educational courses and training of inquiring officers, investigators, prosecutors and judges in investigation and hearing of ML/FT-related cases.
397. The assessors were informed that professional development training is provided to the AML/CFT employees on an ongoing basis and methodological recommendations on investigation of ML/FT-related cases are developed, however, no details were provided.
398. The Financial Monitoring Committee arranged for a number of AML/CFT workshops with participation of the international experts of the World Bank, IMF, OSCE and EAG, however, no information was provided on participation of the representatives of the law enforcement agencies in those workshops.
399. Lack of statistics makes it impossible to assess the results of the AML/CFT efforts of all law enforcement agencies.

2.6.3. Compliance with Recommendations 27 and 28

	Rating	Summary of factors underlying rating
R.27	LC	<ul style="list-style-type: none">• Lack of statistics makes it impossible to assess the results of the AML/CFT efforts of all law enforcement agencies.
R.28	LC	<ul style="list-style-type: none">• There are certain limitations with regard to obtaining information in the course of investigation conducted prior to the institution of criminal proceedings.

2.7. Cross-Border Declaration and Disclosure (SR.IX)

2.7.1. Description and Analysis

400. In October 2007, the leaders of the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation signed the documents specifying the procedure for the establishment and functioning of the Customs Union within the Eurasian Economic Community and establishing the institutional structure of the Customs Union.

401. In July 2010, the Customs Code of the Customs Union was put into force; the mechanism for accrual and distribution of import customs duties was put into effect; customs clearance of goods originated from the Russian Federation, the Republic of Belarus and the Republic of Kazakhstan was abolished; the customs control was transferred to the external border of the Republic of Belarus and the Republic of Kazakhstan.

402. However, despite the fact that the customs control was transferred to the external border of the Customs Union, Kazakhstan did not take measures to enhance AML/CFT control.

403. As for the cross-border movement of cash, pursuant to the Agreement on the Procedure for Movement by Individuals of Cash and (or) Monetary Instruments Across the Customs Border of the Customs Union, only the amount of cash and (or) traveler's checks exceeding the equivalent of U.S.\$10,000 are subject to mandatory declaration .

404. A one-time import by an individual of cash and (or) traveler's checks totalling or not exceeding the equivalent of U.S.\$10,000 may be declared in writing if desired by the individual.

405. Any import by an individual of monetary instruments, except for traveler's checks, must be subject to customs declaration in writing by filing the passenger customs declaration.

406. The said Agreement governs the procedure for the movement by individuals of cash and (or) monetary instruments across the customs border of the customs union.

407. Pursuant to Article 6 of the said Agreement, in order to combat money laundering and terrorist financing during movement by individuals of cash⁹ and (or) financial instruments¹⁰

⁹ "Cash" – money in form of banknotes, treasury notes and coins, except for coins made of precious metals, which are in circulation and are legitimate means of payment in the Customs Union-member states or foreign states (group of foreign states) including money that have been or are withdrawn from circulation but exchangeable by money in circulation.

subject to mandatory declaration across the customs border of the Customs Union, the following additional data shall be indicated in the passenger customs declaration:

- 1) Date and place of birth of an individual, details of a document certifying the right of a foreign national or a stateless person to stay (reside) at the territory of the Customs Union-member state; residential address or place of staying at the territory of the Customs Union-member state;
- 2) Information on financial instruments, except for traveler checks (type of a financial instrument, name of issuer, date of issue and identification number, if any);
- 3) Information on origin of cash and (or) financial instruments, on their owners (in the event of movement of cash and (or) financial instruments not owned by a declarant), and on their intended use;
- 4) Information on a route and method of transportation (means of transport) of cash and (or) financial instruments.

408. Exchange of information between the customs authorities (Article 46 of the Customs Union Customs Code) is carried out in compliance with the international agreements/treaties signed by the Customs Union-member states.

409. Pursuant to the Customs Code of the Customs Union the customs authorities are engaged in the international exchange of information with the customs authorities and international and other organizations in a manner and under the terms and conditions set forth in the legislation of the Customs Union-member states.

410. For enhancing the effectiveness of the customs control the customs authorities coordinate and interact with other government oversight authorities.

411. The customs authorities perform, within their respective terms of reference, other types of control including export, foreign currency and radiation control in compliance with the legislation of the Customs Union-member states.

412. Pursuant to Article 103 of the Customs Union Customs Code in course of customs control of goods¹¹ that are moved across the customs border and are subject to control by other government oversight agencies the customs authorities ensure general coordination of such actions and their simultaneous performance in a manner established by the legislation of the Customs Union-member states. For enhancing the effectiveness of the customs control over goods moved across the customs border the customs authorities and the government oversight agencies exchange information (data) and (or) documents necessary for the customs and other types of state control with the use of information systems and technologies.

¹⁰ “Financial instruments”- traveler checks, bills of exchanges, checks (bank checks) as well as documentary securities certifying obligation of an issuer (debtor) to pay funds without indication of a person whom to such payment is due.

¹¹ “Goods” – any movable property transported across the customs border, including currency of the Customs Union-member states, securities and (or) currency valuables, traveler checks, electric power and other types of energy, as well as items equated with immovable property.

413. Pursuant to Article 106 of the Customs Union Customs Code¹² in course of customs control the customs authorities collect information on persons.
414. In the event of failure to declare (or false declaration of) goods or other items on a large scale (over 1000 monthly calculated indices) a declarant is subject to criminal liability under Article 209 (Commercial Smuggling) or under Article 214 (Evasion of Payment of Customs Duty) of the Criminal Code of the Republic of Kazakhstan. The follow-on actions (preliminary investigation) including seizure and taking of moved goods are undertaken by the customs authorities in a manner established by the Criminal Procedure Code of the Republic of Kazakhstan.
415. In similar situations when there is no element of crime (less than 1000 monthly calculated indices) a declarant is subject to administrative liability under Articles 426-429 of the Code of Administrative Offences. In such situation moved property is subject to administrative measures: compensated taking or seizure under Articles of 49-50 of the Code of Administrative Offences. Besides that, falsely declared (or not declared) items are used as a physical evidence, and in accordance with the imperative provision of section 3 of Article 613 of the Code of Criminal Offences: an officer who handles the administrative case shall take measures to ensure integrity of physical evidences till the case is examined on its merits and make a decision with regard to the physical evidences after completion of the case.
416. The committal of the aforementioned criminal and administrative torts provides for the confiscation of goods and other items.
417. Pursuant to section 2 of Article 4 of the AML/CFT law transactions with funds and (or) other property subject to financial monitoring also include import in or export from the Republic of Kazakhstan of cultural valuables and import in or export from the Republic of Kazakhstan of foreign exchange cash.

¹² 1. For performing the customs control the customs authorities are authorized to collect information on persons engaged the foreign economic activity involving movement of goods across the customs border or in business activities in respect of goods subject to customs control, including information on:

- 1)founders of an organization;
- 2)state registration of a legal entity or of individual entrepreneur;
- 3)property used for business/entrepreneurial activities;
- 4)open bank accounts;
- 5)foreign economic activities;
- 6)location of an organization;
- 7)registration with the tax agency as a taxpayer and taxpayer identification (registration, reference) number;
- 8)solvency of persons listed in the registers of persons engaged in the activities in the customs area;
- 9) with regard to individuals – personal details of an individual (last name, first name, middle name, date and place of birth, sex, residential address, details of the identification document, taxpayer identification (registration, reference) number as well as frequency of movement of goods across the customs border by such individuals

2. Persons listed in item 1 of this Article are authorized to familiarize themselves with the documented information on them which is stored with the customs authorities and to clarify such information for ensuring its completeness and accuracy.

3. The customs authorities collect information on persons during performance of the customs clearance of goods moved across the customs border and also receive such information from other government agencies of the Customs Union-member states.

418. Section 2 of Article 10 of the AML/CFT law obliges the government agencies of the Republic of Kazakhstan:
- 1) Inform the designated authority on independently identified/detected suspicious transactions, including transactions involving export (import) of goods (work, services) at prices which obviously differ from the market prices;
 - 2) Inform the designated authority on independently detected violations of the provisions of the AML/CFT law by the entities subject to financial monitoring;
 - 3) Provide, at a request of the designated authority, information contained in their own information systems in a scope and in manner determined by the Government of the Republic of Kazakhstan.
419. In course of the assessment the assessors were informed that the FMC is provided with access to the customs declarations database. Such information is not provided in a centralized manner to the customs authorities of Russia and Belarus.
420. Being currently applied is the Agreement on movement by individuals of cash and (or) financial instruments across the customs border of the Customs Union, which was ratified by RK Law No.389-VI dated January 17, 2011.
421. The Agreement on combating money laundering and financing of terrorism during import to the territory of the Customs Union and export from the territory of the Customs Union of cash and (or) financial instruments is currently under development.
422. The representatives of the customs authorities stated that there is no imperative statutory provision that obliges to inform about the origin (legitimacy) of moved cash. Besides that, the customs authorities are not authorized to stop or restrain currency or bearer negotiable instruments where there is a suspicion money laundering and terrorist financing.

Structure and Resources

423. Kazakhstan did not provide information on the structure, funding and staffing of the customs authorities engaged in combating money laundering and terrorist financing. No information on the requirements set for the personnel of these authorities and on the conducted AML/CFT professional development training courses was provided.

Effectiveness and Statistics

424. Detailed statistics was not presented, therefore, it was impossible to assess the effectiveness.
425. No information about international agreements concluded with other foreign customs authorities was provided. Also due to the lack of information, it was not possible to assess the degree of coordination between customs, immigration and other government agencies in regard to the fulfillment of the requirements of the reviewed recommendation

2.7.2. Recommendations and Comments

426. The customs authorities should be authorized to seize or restrain cash and financial instruments upon receipt of information on their relation to money laundering and terrorist financing. As well, the authorities should take measures to ensure that the customs system is used for AML/CFT-related purposes, and should ensure that such measures are working effectively.

427. It is necessary to guarantee the application of effective asset seizing and confiscation sanctions against individuals involved in the movement of cash or bearer negotiable instruments linked to money laundering or terrorist financing.

428. .Due to the fact that the customs system, in general, is not used for AML and CFT purposes, it is not possible to review individual essential criteria of the said recommendation.

2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	PC	<ul style="list-style-type: none">• The customs system as a whole is not used for AML/CFT-related purposes.• The customs authorities are not empowered to seize or restrain funds where there is a suspicion of money laundering and terrorist financing.• No information about the structure of the customs authorities or the detailed statistics concerning the results of their work are available, making the evaluation of their effectiveness impossible.• No information about international agreements concluded with other foreign customs authorities was provided. Also due to the lack of information, it was not possible to assess the degree of coordination between customs, immigration and other government agencies in regard to the fulfillment of the requirements of the reviewed recommendation.•

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer Due Diligence and Record Keeping

3.1. Risk of Money Laundering and Terrorist Financing

429. The national AML/CFT system of the Republic of Kazakhstan does not use a risk-based approach to assess the risk of various financial sectors. In this regard, all AML/CFT measures provided for in the law apply equally to all financial institutions.

3.2. Customer Due Diligence Including Enhanced or Reduced Measures (R.5 - 8)

3.2.1. Description and Analysis

Preamble: Types of financial institutions subject to AML/CFT measures

430. Pursuant to Article 3 of the AML/CFT Law of the Republic of Kazakhstan financial institutions covered by the AML/CFT regime include:

- 1) banks and organizations carrying out certain types of banking operations (the second level banks as per Law on Banks and Banking Activity and exchange offices operating under the Law on Foreign Currency Regulation and Currency Control);
- 2) stock exchanges;
- 3) insurance (reinsurance) organizations, insurance brokers;
- 4) pension savings funds;
- 5) professional securities market participants, the central depository;
- 6) post office operators providing money remittance services

431. The AML/CFT Law labels these categories of financial institutions as the “entities subject to financial monitoring”.

Organizations carrying out certain types of banking operations

432. The assessors found out that the “organizations carrying out certain types of banking operations” as minimum include:

- Exchange offices;
- Mortgage institutions;
- Subsidiaries of the National Agro-Industry Management Holding Company;
- Organizations the only shareholder (participant) of which is Samruk-Kazyna National Welfare Foundation;
- Kazakhstan’s Center for Interbank Settlements of the National Bank of the Republic of Kazakhstan

433. Pursuant to Article 30 of the RK Law on Banks and Banking Activity banking operations include 16 types of transactions.

434. It is impossible to ascertain availability and to assess the requirements for internal control systems in the organizations carrying out certain types of banking operations since no relevant regulations were provided to the assessors.
435. The RK AML/CFT Law does not cover consumer credit unions; pawnshops; micro credit organizations; leasing companies; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals (several such companies operate in Kazakhstan).
436. The representatives of the RK Financial Monitoring Committee explained that at the initial stage of establishment of the AML/CFT system a decision was made to extend the AML/CFT Law only to those financial institutions that at the time of adoption of the Law already had the supervisory authority.
437. The requirements of the AML/CFT Law equally apply to all entities subject to financial monitoring.

Preamble: Characteristics of AML/CFT legislative instruments

438. The hierarchy of the legislative instruments of the Republic of Kazakhstan in the context of the FATF Requirements is assessed as follows: pursuant to Article 3 of the Law on Regulatory Legal Acts of the Republic of Kazakhstan the category of "law or regulation" includes:
- Laws amending the Constitution;
 - Constitutional Laws of the Republic of Kazakhstan and Decrees of the President of the Republic of Kazakhstan that have the force of the Constitutional Law;
 - Codes of the Republic of Kazakhstan;
 - Laws of the Republic of Kazakhstan (including the AML/CFT Law) and Decrees of the President of the Republic of Kazakhstan that have the force of the Law;
 - Regulatory Resolutions of the Parliament of the Republic of Kazakhstan and its Chambers;
 - Regulatory Decrees of the President of the Republic of Kazakhstan;
 - Regulatory Resolutions of the Government of the Republic of Kazakhstan
439. Other binding instruments include Regulatory Orders of the Ministers of the Republic of Kazakhstan and Regulatory Orders of other heads of the central government agencies, Regulatory Resolutions of the central governmental agencies and Regulatory Resolutions of the Central Election Committee of the Republic of Kazakhstan which are not referred to in law and resolution.

Recommendation 5

440. The entities subject to financial monitoring undertake the customer due diligence measures in compliance with the requirements set forth in Article 5 of the AML/CFT Law and in compliance with the internal control rules which are independently developed by the entities subject to financial monitoring.

Anonymous accounts

Banks

441. Pursuant to section 11 of the Rules for opening, maintaining and closing of customers' bank accounts in banks of the Republic of Kazakhstan, approved by Resolution No.266 of the National Bank Board dated June 2, 2000 (hereinafter Rules No.266), the mandatory condition for opening a bank account is a customer original ID document (for individuals), a copy of a document of a standard form issued by the designated authority and certifying the state registration (for legal entities) and also a copy of a document certifying assignment of taxpayer registration number to a customer (for both individuals and legal entities).
442. However, there is no direct prohibition of the Republic of Kazakhstan to open anonymous accounts or accounts in fictitious names.

When CDD is required

443. Pursuant to the AML/CFT Law (Article 5) of the Republic of Kazakhstan the entities subject to financial monitoring shall undertake the customer due diligence measures when:
- establishing business relations with a customer;
 - carrying out transactions with funds and (or) other property subject to financial monitoring, including suspicious transactions;
 - there are grounds to doubt the veracity of the previously obtained information on an individual and a legal entity.
444. Therefore, there is no established obligation to conduct CDD when carrying out transactions in amount exceeding 15,000 US dollars.
445. Since in Kazakhstan the entities subject to financial monitoring are not obliged to file reports on ML-related suspicious transactions (see summary on Recommendation 13), the CDD measures are not undertaken when financial institutions suspect ML (there is the established obligation to perform CDD when there is suspicion of FT – see summary on Special Recommendation 4).
446. Pursuant to section 22 of Article 3 of the RK Law on Payments and Remittances a payment instrument is a document on the basis and with the use of which payments are effected and money are transferred.
447. Section 14 of the Rules for using payment instruments and effecting non-cash payments and money transfer at the territory of Kazakhstan (approved by Resolution No.179 of the National Bank Board dated 25.04.2000) and Section 11 of the Rules for effecting non-cash payments and money transfer at the territory of Kazakhstan without opening bank account (approved by Resolution No.395 of the National Bank Board dated 13.10.2000) (hereinafter Rules No.395) establish binding requirements for the contents of payment instruments including information on the originator.
448. According subsection 7 of section 2 of Article 4 of the AML/CFT Law of the Republic of Kazakhstan transactions with funds and (or) other property subject to financial monitoring include cross-border money transfer to anonymous accounts. Subject to control are both

occasional transactions and a transactions carried out during seven consecutive calendar days.

Required CDD measures

449. The basic CDD measures include customer identification measures.

450. The AML/CFT Law stipulates that the entities subject to financial monitoring shall undertake the customer due diligence measures in compliance with the RK legislation on combating legalization (laundering) of illegally obtained proceeds and financing of terrorism.

451. The CDD measures include:

- 1) Recording of information required for identification of an individual carrying out transactions with funds and (or) other property: details of his/her ID document, taxpayer registration number and individual identification number (except for the situations when no taxpayer registration number and no individual identification number are assigned to a customer in compliance with the legislation of the Republic of Kazakhstan);
- 2) Recording of information required for identification of a legal entity carrying transactions with funds and (or) other property: details of instruments of incorporation, taxpayer identification number, business identification number (except for the situations when no taxpayer identification number and no business identification number are assigned to a customer) and also address of its location;
- 3) Recording of information required for identification of a recipient of money transferred under a transaction with funds and (or) other property and recipient's representative, including taxpayer identification number and individual identification number (if any) of a recipient and its representative and record (if any) on verification of signature of a recipient or its representative.

Timing of CDD measures

452. Article 6 of the AML/CFT Law obliges the entities subject to financial monitoring to perform customer identification procedures prior to establishing business relations with customers.

453. Besides that, pursuant to Article 10 of the AML/CFT Law as part of the CDD measures the entities subject to financial monitoring are obliged to document information on a customer. Thus, the CDD measures are undertaken each time when a transaction specified in Article 4 of the AML/CFT Law is carried out.

Natural person identification measures

454. The CDD measures as related to identification of natural persons include recording of information required for identification of a natural person.

455. The legislation of the Republic of Kazakhstan establishes three different lists of necessary documents depending on a type of a natural person (List of documents necessary for undertaking CDD measures approved by Order No.56 dated February 15, 2010 of the RK Ministry of Finance). (The said Order applies to all entities subject to financial monitoring).

456. For natural persons being residents of the Republic of Kazakhstan:

- ID document;
- taxpayer certificate, document with identification number

457. For natural persons being non-residents of the Republic of Kazakhstan: all documents listed above plus and document certifying registration with the designated agencies of the Republic of Kazakhstan that grants a non-resident individual the right to entry, exit and stay at the territory of the Republic of Kazakhstan.

458. For self-employed natural persons being residents of the Republic of Kazakhstan:

- ID document;
- document certifying state registration issued by the designated agency;
- taxpayer certificate, document with identification number

Legal entity identification measures

459. The CDD measures (pursuant to Order No.56) in respect of legal entities include recording of information required for identification of a legal entity.

460. For legal entities being residents and non-residents of the Republic of Kazakhstan and their standalone divisions (branches and representative offices):

- ID document(s) of executive officer(s) authorized to sign documents of a legal entity for conducting transactions with funds and (or) other property;
- taxpayer certificate, document with identification number (except for the situations when no taxpayer identification number and no business identification number are assigned to a customer in compliance with the Code of the Republic of Kazakhstan on Taxes and Other Mandatory Budget Payments and the Law of the Republic of Kazakhstan on National Identification Numbers Registers);
- document certifying state registration (re-registration) of a legal entity issued by the designated authority;
- statistics card;
- instruments of incorporation;
- ID documents of founders of a legal entity;
- documents certifying authority of persons to sign documents of a legal entity for conducting transactions with funds and (or) other property

461. Kazakhstan also established that documents required for undertaking the CDD measures in respect of branches and representative offices of non-government organizations and religious associations are documents certifying authority of a manager of a branch or a representative office of a non-government organization or religious association elected (appointed) in a manner specified in the charter of non-government organization or religious association and in the Regulation on its branch or representative office.

462. For branches and representative offices of other types of legal entities the required documents include a power of attorney issued by a legal entity that is the resident of the Republic of Kazakhstan to a manager of a branch or representative office, a document certifying address of a legal entity and a state license.

463. Minimum requirements with regard to the CDD measures that shall be contained in the internal control rules of all financial institutions are specified in the Requirements for the development, adoption and implementation of internal control rules by the entities subject to financial monitoring (approved by Order No.57 issued by the Minister of Finance of the Republic of Kazakhstan on February 15, 2010).

Identification of customer representative and beneficiary owner, ongoing monitoring

464. Article 5 of the AML/CFT Law does not oblige employees of financial institutions to verify the authority of a person who acts as a representative of a customer. No other provisions that empower financial institutions to verify the authority of a customer representative were presented.

465. It should be noted that neither the Civil Code nor the basic AML/CFT Law define the “beneficiary owner” or “beneficiary” concept. Therefore, the entities subject to financial monitoring are not obliged to identify a beneficiary.

466. The AML/CFT legislation of the Republic of Kazakhstan does not oblige financial institutions subject to financial monitoring to determine ownership and control structure of a customer.

467. Pursuant to subsection 4) of section 8 of the Credit Record Keeping Rules a credit file (including unsecured credit file), except for interbank credits and credits specified in section 9 of the said Rules, shall contain, among other things, notarized copies of instruments of incorporation or a copy of a register of shareholders holding ten and more percent of common shares of a borrowing entity that disclose information on all owners of interest in the authorized capital of such borrowing entity who hold ten and more percent of common shares (interest) and beneficial owners of common shares (interest in) the authorized capital of such borrowing entity (copies of such documents, if available with a bank).

468. It should be noted that the aforementioned provision applies to only one type of legal relations (pertaining to crediting) and establishes the requirement to disclose information on owners. However, there is no requirement to take all possible measures to determine a natural person who ultimately owns, holds or controls a customer, i.e. a person who exercises ultimate effective control over a legal person or arrangement.

469. Nevertheless, the representatives of the banking sector informed the assessors that pursuant to the internal rules credit institutions do not establish business relations with a legal entity if it is impossible to identify the owner of at least 5% interest in a company or group of companies.

470. The legislation of the Republic of Kazakhstan does not require financial institutions to scrutinize, as part of ongoing customer due diligence, transactions undertaken through the course of that relationships to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer.

Risks

471. The legislation of the Republic of Kazakhstan does not provide for a risk-based approach to the development of the CDD measures and internal control rules. Enhanced identification and simplified/reduced identification are not used. The legislation of the Republic of

Kazakhstan contains no provisions establishing that the entities subject to financial monitoring (financial institutions) shall pay special enhanced attention to transactions with funds and other property if a party to such transaction is a resident of a country that does not comply with the FATF Recommendations.

472. Besides that, the legislation of the Republic of Kazakhstan does not establish requirements for updating documents and information obtained under the CDD process by undertaking reviews of existing data, particularly for higher risk categories of customers or business relations.

Updating information and existing customers

473. The legislation does not specify frequency of updating information on the existing customers and applying the full range of CDD measures to such customers. According to the representatives of the banking community, information is updated annually on their own initiative. The CDD measures do not provide for mandatory identification and recording of information on customers that have been already served by a financial institution at the time of adoption of the AML/CFT Law.

Effectiveness

474. The AML/CFT legislation of the Republic of Kazakhstan is relatively young. Since the basic AML/CFT Law was adopted just in March 2010, at the time of the on-site mission the legal and regulatory framework that establishes, in particular, the customer due diligence requirements was still under development.

475. Besides that, the supervisory authorities conducted no inspections of compliance by financial institutions with the AML/CFT legislation and with CDD requirements in particular. Therefore, it is difficult to draw a conclusion about extent to which these institutions comply with the existing requirements.

Recommendation 6

476. The legislation of the Republic of Kazakhstan obliges the entities subject to financial monitoring to identify foreign public officials.

477. Pursuant to Article 8 of the AML/CFT Law of the Republic of Kazakhstan the entities subject to financial monitoring, in addition to measures undertaken under the customer due diligence procedure, are obliged to undertake a number of due diligence measures in respect of foreign public officials.

478. The legislation provides for verifying whether a customer is a foreign public official as well as for assessing reputation of such foreign public official with regard to his/her involvement in money laundering and financing of terrorism.

479. Besides that, financial institutions are obliged to obtain approval of a senior manager for establishing and continuing business relationships with public officials. Financial institutions are required to take available measures to identify the source of funds of public officials (Article 8 of the AML/CFT Law).

480. The legislation of the Republic of Kazakhstan does not require financial institutions to identify persons, including customers with whom business relationships are already established, for determining whether a person is a public official.

481. Enhanced ongoing monitoring of relationships with public officials is not provided for.

482. The AML/CFT law does not apply to the national public officials of the Republic of Kazakhstan.

Banks

483. In the course of the meetings with the representatives of the banking community the assessors were informed about methods used by credit institutions to identify foreign public officials.

484. Being mainly used for this purpose are data from the completed forms. Besides that, banks also use the purchased software, for example Word Check. The legislation does not provide for mandatory determination of a percentage of ownership of a legal entity by natural persons.

485. In the course of the interviews with the representatives of the entities subject to financial monitoring it was established that the provisions of Article 8 of the AML/CFT Law of the Republic of Kazakhstan are not implemented in practice. Several representatives of credit institutions stated that they had commercial products and technical capabilities for ensuring on-line compliance with the requirements set forth in the Law.

Recommendation 7

486. In Kazakhstan relationships of organizations (including banks) with correspondent banks are regulated by the Law on Banks and Banking Activity, Law on Foreign Currency Regulation and Currency Control, Law on Payments and Remittances as well as by the Rules for using payment instruments and effecting non-cash payments and money transfer at the territory of Kazakhstan, Rules for opening, maintaining and closing of customers' bank accounts in the banks of the Republic of Kazakhstan and the Rules for establishing correspondent relations between the National Bank of the Republic of Kazakhstan and banks and institutions engaged in certain types of banking operations approved by Resolution No.37 issued by the Board of the National Banks of the Republic of Kazakhstan on March 28, 1999.

487. Pursuant to Article 30 (section 2, subsection 3) of the Law on Banks and Banking Activity opening and keeping correspondent accounts of banks and institutions engaged in certain type of banking operations is referred to banking activity.

488. It should be noted that the relations arising in course of payments and remittances, except for the relations connected with remittances made by the postal service institutions, are regulated by the Law and Payments and Remittances. Pursuant to Article 2 of the said Law relations connected with payments and remittances effected between banks of the Republic of Kazakhstan, institutions engaged in certain types of banking operations and foreign banks (financial institutions) are regulated by respective agreements between them and the business practices applicable in the banking sector.

489. Pursuant to Article 6 of the Law on Payments and Remittances a correspondent account is an account opened for a bank in other bank under a correspondent account agreement under which banking operations of the bank and its customers are performed.
490. Pursuant to section 6 of the Rules for opening, maintaining and closing of customers' bank accounts in the banks of the Republic of Kazakhstan (approved by Resolution No.266 issued by the Board of the National Bank of the Republic of Kazakhstan on June 2, 2000) particulars and details of opening, maintaining and closings of correspondent accounts are established by separate regulations of the National Bank of the Republic of Kazakhstan.
491. One of the main regulations of the Republic of Kazakhstan is the Rules for establishing correspondent relations between the National Bank of the Republic of Kazakhstan and banks and institutions engaged in certain types of banking operations (approved by Resolution No.37 issued by the Board of the National Banks of the Republic of Kazakhstan on March 28, 1999) which establish procedure for opening, maintaining and closing of correspondent accounts of banks and institutions engaged in certain types of banking operations with the National Bank of the Republic of Kazakhstan.
492. Pursuant to section 4 of the Rules for opening, maintaining and closing of customers' bank accounts in the banks of the Republic of Kazakhstan a correspondent account is a bank account and can be kept both in the national (tenge) and foreign currency.
493. It should be noted that the Rules for establishing correspondent relations between banks as well as between banks and institutions was approved by Resolution No.428 issued by the Board of the National Banks of the Republic of Kazakhstan on 25.11.2001 (registered with the Ministry of Justice on 05.01.2001, Reg.No.1351). Pursuant to section 4 the said Rules the requirements set forth in these regulations "do not apply to correspondent relations established by banks and non-banking institutions with non-resident banks. Correspondent relations of banks and non-banking institutions with non-resident banks are regulated by the respective agreements between them and the business practices applicable in the banking sector".
494. Kazakhstan has adopted certain regulations governing the CDD measures to be taken by the entities subject to financial monitoring (financial institutions) in respect of correspondent banks.
495. The entities subject to financial monitoring shall gather data on the reputation of a correspondent bank and assess its possible involvement in money laundering and terrorist financing cases (Article 9 of the AML/CFT Law).
496. The legislation provides for obtaining approval of the senior manager for establishing new correspondent relationships (section 3 of Article 9 of the AML/CFT Law).
497. The legislation of Kazakhstan does not require financial institutions to collect sufficient information on a respondent institution to fully understand the nature of the respondent's business and information on sanctions that could possibly be applied to it for non-compliance with the AML/CFT legislation. Furthermore, there are no requirements to assess the respondent institution's AML/CFT controls and to ascertain that they are effective enough. Besides that no requirements are established for documenting the respective AML/CFT responsibilities of each institution.

Recommendation 8

498. Relationships covered by Recommendation 8 are regulated in the Republic of Kazakhstan by the Law on Payments and Remittances.
499. The RK regulations do not contain provisions that oblige financial institutions to develop and apply special procedures to prevent the misuse of technological developments in money laundering and terrorist financing schemes.
500. The Rules for exchanging electronic documents in course of payments and remittances in the Republic of Kazakhstan were approved by Resolution No.146 issued by the Board of the National Bank of the Republic of Kazakhstan on April 21, 2000. These Rules establish requirements for electronic submission of payment and remittance instructions as well as requirements for electronic transmission of messages related to revocation or suspension of such instructions, confirmation of authenticity of previously transmitted instructions or authority to give instructions.
501. Besides that, on March 28, 2008 the Board of the National Bank of the Republic of Kazakhstan issued Resolution No.18 that approved the Rules of provision of electronic banking services by the second-level banks and institutions engaged in certain types of banking operations.
502. Article 4 of the said Rules establishes the following requirements for financial institutions:
- requirements for the development and contents on the internal rules (shall contain description of security procedures including administrative measures and software and hardware systems that ensure information security in course of rendering electronic banking services);
 - requirements for the security procedures:
 - 1) reliably identify a customer and his right to receive the respective electronic banking services;
 - 2) detect tampering with and/or modifications in electronic documents against which electronic banking services are rendered to a customer;
 - 3) ensure protection of information constituting a banking secret against unauthorized access and ensure integrity of such information.
503. The above requirements may be considered as a specific requirement for the CDD procedures in respect of customers carrying out non-face to face transactions. However, the RK regulations do not explicitly state that these measures shall be used for preventing the misuse of technological developments in money laundering and terrorist financing schemes.
504. Pursuant to section 10 of the aforementioned Rules in the course of rendering transaction banking services information is exchanged between a bank and its customer with the use of electronic digital signature and/or through dynamic identification of the customer.
505. At the meeting with the representatives of the credit institutions it was established that their banks actively use digital signature for operating the customer-bank system.

3.2.2. Recommendations and Comments

Recommendation 5

506. Kazakhstan should directly prohibit opening of anonymous accounts or accounts in fictitious names since absence of direct prohibition is not an appropriate deterrent for opening such accounts even if all CCD measures prescribed by the law are undertaken by an entity subject to financial monitoring.
507. It is recommended for Kazakhstan to oblige the entities subject to financial monitoring to undertake CDD measures when carrying out occasional transactions which amount exceeds 15,000 US dollars as well as when there is suspicion of money laundering and terrorist financing.
508. Pursuant to the AML/CFT Law financial institutions shall undertake the CDD measures before establishing business relationships with customer, and if it is impossible to conduct due diligence shall not establish business relationships. It is not directly prohibited to carry out transactions with funds and (or) other property for already accepted customers in a situation where an entity subject to financial monitoring fails to undertake the CDD measures. Such measures should be undertaken in respect of customers when an employee has grounds to doubt the veracity and adequacy of previously obtained information on a natural person and legal entity.
509. It is necessary to enact the customer verification requirement for all financial institutions and such provision should be set forth in the Law or Resolution. It is necessary to establish requirements for all financial institutions to identify beneficiary owners including natural persons who exercise ultimate effective control over legal entities which own a legal entity that is the customer of a financial institution. Besides that, such concept as “beneficiary owner” as well as requirements for undertaking CDD measures in respect of such person and a customer’s representative should be introduced into the AML/CFT legislation.
510. It is necessary to establish requirement for the entities subject to financial monitoring (both financial and non-financial institutions) to undertake the CDD measures in respect of a customer and customer’s representatives if there are reasonable grounds to believe that a transaction is carried out for the ML/FT purposes.
511. It is recommended to Kazakhstan to develop requirements for the entities subject to financial monitoring regarding the development of the internal control rules with consideration for the requirements of the AML/CFT legislation, particularly as related to CDD measures, while the supervisory authorities in coordination with the FMC should issue minimum requirements for such internal control rules with due consideration for the specificities of financial and non-financial activities.
512. It is necessary to ensure that all financial institutions perform special (enhanced) due diligent for high-risk customers as it is required by FATF Recommendations.
513. Financial institutions should be obliged to verify customers before or during the course of establishing business relationships.

Recommendation 6

514. Despite the fact that the AML/CFT legislation in Kazakhstan is still under development, Kazakhstan has taken measures to establish requirements for identification of foreign public officials. For further improvement of the AML/CFT system it is recommended to establish requirements for identification of person, including already existing customers, to determine whether a person is a politically exposed person. Kazakhstan should also oblige financial institutions to perform enhanced due diligence and ongoing monitoring of the relationships with politically exposed persons.
515. In practice there may be a situation where a PEP has been served for a long enough period of time or has become a customer of a financial institution before the adoption of the AML/CFT Law, or has become a PEP when being a customer. The regulations of the Republic of Kazakhstan should specify frequency of updating information and identification data by financial institutions for the purpose of PEP identification.
516. It is recommended to Kazakhstan to specify frequency of updating information and identification data by financial institutions for the purpose of PEP identification.

Recommendation 7

517. Given the fact that Article 9 of the AML/CFT Law does not distinguish between relationships of the Kazakhstani financial institutions with the national correspondent banks and the Kazakhstani financial institutions with the cross-border correspondent banks, it is recommended to Kazakhstan to distinguish such relationships with consideration for the specificities of the national legislation as related to interactions between financial institutions. Kazakhstan should adopt a regulation that will govern relationships with foreign correspondent banks or amend, as appropriate, the *Rules for establishing correspondent relations between banks and between banks and institutions engaged in certain types of banking operations* (approved by Resolution No.428 issued by the Board of the National Banks of the Republic of Kazakhstan on 25.11.2001; registered with the Ministry of Justice on 05.01.2001, Reg.No.1351).
518. At the same time it is recommended to establish requirement for financial institutions to assess the respondent institution's AML/CFT controls and their effectiveness.
519. Financial institutions should be obliged to assess the correspondent institution's controls over compliance with the AML/CFT requirements.
520. Kazakhstan should establish requirements for gathering sufficient information on a respondent institution to fully understand the nature of its business, and whether it has been subject to AML/CFT sanctions.

Recommendation 8

521. Kazakhstan should introduce into its regulations provisions that oblige financial institutions to develop and apply special procedures for preventing the misuse of technological developments in money laundering and terrorist financing schemes. Special requirements should be established for performing due diligence on customers carrying out non-face to face transactions. It is recommended to Kazakhstan to establish requirement for documenting the responsibilities of each institution.

3.2.3. Compliance with Recommendations 5 – 8

	Rating	Summary of factors underlying rating
R.5	NC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to consumer credit unions; pawnshops; micro credit organizations; leasing companies; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals. • There is no direct prohibition to open anonymous accounts and accounts in fictitious names. • There is no obligation to undertake the CDD measures when carrying out transactions in amount exceeding 15,000 US dollars and also when there is a suspicion of money laundering. • “Beneficiary owner” is not defined for the AML/CFT system purposes. • There is no obligation to understand the ownership and control structure of the customer, or to verify the authority of someone acting as a representative of a customer. • There is no obligation to verify information obtained as a result of undertaken CDD measures. • There is no requirement to undertake enhanced CDD measures for high-risk customers. • There is no requirement to perform ongoing monitoring (i.e. ongoing due diligence) of transactions carried out by customers. • The legislation does not specify frequency of updating information on the existing customers and applying the full range of CDD measures to such customers. • The CDD measures do not provide for identification and recording of information on customers that have been already served by a financial at the time of adoption of the AML/CFT Law. • Since the respective requirements were put in force just recently, the effectiveness of the system is low.
R.6	PC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to consumer credit unions; pawnshops; micro credit organizations; leasing companies; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic

		<p>terminals.</p> <ul style="list-style-type: none"> • No identification of existing customers is performed for recording information on them as well as for determining whether they are politically exposed persons. • Measures for enhanced ongoing monitoring of the relationships with PEPs are not developed. • No timeline is established for regular verification of information of customers to identify PEPs among them.
R.7	PC	<ul style="list-style-type: none"> • The legislation of Kazakhstan does not provide for gathering sufficient information on a respondent institution to fully understand the nature of its business, and information on whether it has been subject to AML/CFT sanctions. • There are no requirements to assess the respondent institution's AML/CFT controls and their effectiveness and ascertain that they are adequate and effective. • The legislation of Kazakhstan does not require financial institutions to document the AML/CFT responsibilities of each institution.
R.8	NC	<ul style="list-style-type: none"> • Financial institutions are not obliged to develop and apply special procedures for preventing the misuse of technological developments for money laundering and terrorist financing purposes. • Financial institutions are not obliged to develop procedures for managing the risks associated with non-face to face business relationships and transactions.

3.3. Third Parties and Introduced Business (R.9)

3.3.1. Description and Analysis

Recommendation 9

522. Pursuant to section 1 of Article 7 of the *AML/CFT Law* the entities subject to financial monitoring shall undertake customer due diligence measures. Therefore, intermediaries operating in the financial market (e.g. insurance brokers acting as intermediaries for the insurance institutions, custodians acting as intermediaries for the central depository) are themselves the entities subject to financial monitoring and are subject to all CDD obligations.

523. Besides that, the Rules for opening, maintaining and closing of bank accounts in the banks of the Republic of Kazakhstan (NB, No.266) include provisions that require customers to submit necessary documents to a bank when opening a bank account. Therefore, customer non-face to face identification (which is the first stage of CDD measures) is indirectly prohibited.

524. Nevertheless, the legislation of the Republic of Kazakhstan does not contain a provision that allows all financial institutions to rely on third parties to perform CDD process or to

introduce business. At the same time, there is no provision that directly prohibits the use of third parties for the aforementioned purposes.

Effectiveness

525. In the course of the meetings and interviews with the representatives of the Financial Supervision Agency, the Kazakhstan Financiers Association (banks) and the securities market participants the respective officials assured the assessors that in practice financial institutions do not use intermediaries to undertake the CDD measures.

3.3.2. Recommendations and Comments

526. Given that financial institutions in practice do not use third parties for undertaking CDD measures and with consideration for the specificities of the RK legislation, which does not regulate the aforementioned relationships, the assessors consider that Recommendation 9 is not applicable. Such conclusion with regard to Recommendation 9 was made with consideration for similarity of the legal systems and business practices in the former Soviet Union Republics as well as with consideration for MER of other EAG-member states.

3.3.3. Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	N/a	<ul style="list-style-type: none"> • Not applicable

3.4. Financial Institution Secrecy or Confidentiality (R.4)

3.4.1. Description and Analysis

Recommendation 4

527. In general, the legislation of the Republic of Uzbekistan on financial institution secrecy does not inhibit the implementation of the FATF Recommendations.

528. Pursuant to the AML/CFT Law the entities subject to financial monitoring file with the financial intelligence unit (FIU) data and information on transactions subject to financial monitoring (section 2 of Article 10) and suspicious transaction reports (section 2 of Article 13), which does not constitute the disclosure of official, commercial, bank and other secrets protected by the law (section 6 of Article 16).

529. Obligation of the entities subject to financial monitoring to provide the FIU and other government agencies with the information that constitutes financial institution secrets is set forth in a number of Laws of the Republic of Kazakhstan (Article 50 of the Law on Banks and Banking Activity, Article 50 of the Pension Law, Article 43 of the Law on Securities Market, Article 24 of the Law on Commodity Exchanges, Article 830 of the Civil Code of the Republic of Kazakhstan).

530. Information on transactions and bank accounts of individuals and legal entities as well as other information that constitutes financial institution secrets is provided to: the inquiring and preliminary investigation agencies (in relation to criminal cases being investigated by them,

as a rule upon the approval of a prosecutor), the courts (in relation to cases being in their proceedings, upon a court ruling), the prosecution agencies (upon a prosecutor's decree on examination, within the respective terms of reference, of considered materials), the financial intelligence unit (for the purposes and in a manner established by the RK AML/CFT legislation) and to the Financial Supervision Agency (upon its request).

531. Pursuant to Article 50 of the Law on Banks and Banking Activity information on transactions and bank accounts of individuals and legal entities as well as other information that constitutes bank secrets shall be also provided, upon approval of a prosecutor, to the customs authorities in relation to export and (or) import operations.
532. Besides that, pursuant to Article 54 of the Law on Banks and Banking Activity, banks are obliged to provide, upon requests of the Financial Supervision Agency and (or) the National Bank of the Republic of Kazakhstan forwarded within their respective terms of reference, any information on their funds, including funds outside Kazakhstan, on amounts of accepted deposits and issued loans, on amounts of transactions performed and being performed as well as other data, including information that constitutes bank secrets.
533. At the same time, the Law on Banks and Banking Activity does not oblige banks to submit to the FIU data and information on transactions subject to financial monitoring and suspicious transaction reports that contain bank secrets and does not provide for immunity of banks from criminal prosecution for disclosure of bank secrets (part 2 of Article 200 of the RK Criminal Code) when filing with the FIU the aforementioned data, information and reports. The respective provisions concerning bank secrets are provided for only in the AML/CFT Law (section 6 of Article 11).
534. The current wording of subsection 1-1 of section 4 of Article 50 of the Law on Banks and Banking Activity stipulates that mandatory notification by banks of the FIU about transactions subject to financial monitoring does not constitute the disclosure of bank secrets. However, the Law does not clarify the terms "disclosure of bank secrets" and "mandatory notification".
535. Inconsistency between the AML/CFT Law and the Law on Banks and Banking Activity, given that the AML/CFT related amendments have been introduced into Article 50 of the Law on Banks and Banking Activity after the adoption of the AML/CFT Law, may seriously affect the regime of filing by banks with the FIU information on transaction subject to financial monitoring and suspicious transaction reports that contain bank secrets in general and the effectiveness of this regime in particular.
536. Pursuant to subsection 1 of section 1 of Article 17 of the AML/CFT Law the FIU is authorized to request necessary information on transaction subject to financial monitoring from the entities subject to financial monitoring as well as from the government agencies of the Republic of Kazakhstan.
537. A number of Laws of the Republic of Kazakhstan authorize the FIU, the supervisory authorities (the Financial Supervision Agency and the National Bank of the Republic of Kazakhstan) and the law enforcement agencies to request information, including data that constitute financial institution secrets.
538. Pursuant to the provisions of section 21 of Article 43 of the Law on Insurance Activity the Financial Supervision Agency is authorized to obtain from the government agencies and

institutions information needed for performing its supervision and oversight functions, including information that constitutes official or commercial secrets.

539. Pursuant to Article 70 of the Law on the National Bank of the Republic of Kazakhstan, for proper and timely performance of the oversight and supervision functions assigned to it as well as for the implementation of the requirements of the said Law, the National Bank of the Republic of Kazakhstan is authorized to obtain free of charge from any individuals, legal entities and government agencies necessary information including information that constitutes official, commercial, bank and other secrets protected by the law, subject to non-disclosure of the received information.
540. According to Article 8 of the Law on Operational and Detective Activities, when performing the operational and detective operations the agencies entitled to carry out such activities are authorized to obtain free of charge and use information relevant for the operational and detective efforts from other institutions and organizations subject to compliance with the statutory requirements concerning disclosure of information that constitutes commercial, bank and other secrets protected by the law.
541. The government agencies share information, including information that constitutes financial institution secrets, between themselves in a manner established by the law.
542. Upon request of the criminal court, the FIU provides such court with necessary information on transactions with funds and (or) other property subject to financial monitoring for resolution of cases in court proceedings, and where there are grounds to believe that a transaction with funds and (or) other property is carried out for the ML and (or) FT purposes the FIU provides information to the law enforcement agencies in accordance with their respective terms of reference for taking a procedural decision (section 4 of Article 16 of the AML/CFT Law).
543. The government agencies of the Republic of Kazakhstan that exercise, within their terms of reference, control over compliance by the entities subject to financial monitoring with the RK AML/CFT legislation are obliged to provide information required by the FIU for conducting financial monitoring and combating money laundering and terrorist financing (subsection 1 of section 1 of Article 18 of the AML/CFT Law).
544. Besides that, pursuant to section 2 of Article 18 of the AML/CFT Law the government agencies of the republic of Kazakhstan are obliged to inform the FIU on independently identified/detected suspicious transactions, including transactions involving export (import) of goods (work, services) at prices which obviously differ from the market prices and are also obliged to provide, at a request of the FIU, information contained in their own information systems in a scope and in manner determined by the Government of the Republic of Kazakhstan. Submission by the government agencies of suspicious transaction reports to the FIU does not constitute the disclosure of official, commercial, bank or other secrets protected by the law.
545. Article 19 of the AML/CFT Law lists the situations when the FIU may reject the requests of the competent authorities of foreign countries. The financial institution secrecy laws are not included in the said list. However this Article provides that the FIU may impose additional conditions and restrictions on the use of information provided to the competent authorities of a foreign country.

546. Pursuant to section 10 of Article 50 of the Law on Banks and Banking Activity, information that constitutes bank secrets is provided in compliance with the international agreements/treaties signed by the Republic of Kazakhstan that envisage information exchange.
547. The Financial Supervision Agency provides information that constitutes official and commercial secrets in the securities market in compliance with the international agreements/treaties signed by the Republic of Kazakhstan that envisage information exchange (Article 106 of the Law on Securities Market).
548. The legislation of the Republic of Kazakhstan also provides for protection of obtained information that constitutes financial institution secrets: the FIU shall ensure appropriate storage, protection and safety of obtained, in the course of its activity, information that constitutes official, commercial, bank or other secrets protected by the law (Article 17 of the AML/CFT Law); the government agencies of the Republic of Kazakhstan that exercise, within their terms of reference, control over compliance by the entities subject to financial monitoring with the RK AML/CFT legislation shall ensure appropriate storage, protection and safety of obtained, in the course of their activity, information that constitutes official, commercial, bank or other secrets protected by the law (Article 18 of the AML/CFT Law).
549. At the same time, the competent authorities of the Republic of Kazakhstan may face certain legal problems when obtaining information from the entities subject to financial monitoring and interacting/cooperating with foreign countries due to absence of clear and uniform terminology in the AML/CFT Law, such as “the competent authority of a foreign country” and “transaction subject to financial monitoring”.

3.4.2. Recommendations and Comments

550. The Republic of Kazakhstan should clearly stipulate in the Law on Banks and Banking Activity that filing with the FIU data and information on transactions subject to financial monitoring and suspicious transaction reports does not constitute the disclosure of bank secrets.
551. The Republic of Kazakhstan should analyze and ensure uniform terminology in the AML/CFT Law (in particular “the competent authority of a foreign country”, “transaction subject to financial monitoring”) to eliminate possible legal problems that may impede obtaining information from the entities subject to financial monitoring and cooperation with foreign countries.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> Inconsistent legislation and different terminology defining the same subject or object may be a legal impediment and seriously affect the effectiveness of obtaining information from the entities subject to financial monitoring and cooperation with foreign partners.

3.5. Record Keeping and Wire Transfer Rules (R.10 & SR.VII)

3.5.1. Description and Analysis

Recommendation 10

552. The requirements of record keeping of transactions and (or) other property as well as identification data are defined in laws and the RK industry regulations.
553. Pursuant to the legislation of the Republic of Kazakhstan the record keeping requirement extends to a certain segment of identification data, while other identification data and transactions records are not covered by the statutory record keeping requirements.
554. The obligation of the entities subject to financial monitoring and, in particular financial institutions, to maintain information obtained through the customer identification process is limited by storage of documents certifying information needed for identification of individuals and legal entities only when they carry out transactions as well as for identification of recipients under such transactions and their representatives (sections 1-3 of Article 5 and section 4 of Article 11 of the AML/CFT Law).
555. Besides that, section 4 of Article 11 of the AML/CFT Law requires to store copies of documents needed for identification of personality (without indicating whose personality), which actually mirrors the requirement to store documents that certify information needed for identification, since in practice financial institutions (as all entities subject to financial monitoring) store copies and not the original documents.
556. The time period of retention of the aforementioned documents and copies of documents is at least five years following the date of termination of relationships with a customer.
557. At the same time, section 1 of Article 10 of the AML/CFT Law obliges the entities subject to financial monitoring, and financial institutions in particular, to document information on a customer during the CDD process, inter alia, when establishing business relationships with a customer and when there are grounds to doubt the veracity of previously obtained information on an individual or a legal entity (subsections 1 and 3 of Article 5 of the AML/CFT Law). The list of documents required for undertaking the CDD measures in respect of different types of entities subject to financial monitoring is specified in Order No.56 issued by the Minister of Finance of the Republic of Kazakhstan on February 15, 2010).
558. However, the requirement set forth in Article 11 of the AML/CFT Law (retention of identification data for at least five years following termination of relationships with a customer) does not apply to information obtained through the CDD process when establishing business relationships with a customer and when there are grounds to doubt the veracity of previously obtained information on an individual or a legal entity.
559. The AML/CFT Law does not oblige financial institutions (and the entities subject to financial monitoring in general) to maintain records of transactions with funds and (or) other property and suspicious transaction records.
560. Besides that, pursuant to the Order of the Minister of Finance of the Republic of Kazakhstan the entities subject to financial monitoring are required to store, for at least five

years following termination of relationships with a customer, only documents that certify data and information on transactions subject to financial monitoring which have been filed with the FMC by the entities subject to financial monitoring.

561. In addition to the requirements set forth in the AML/CFT legislation, the procedure and period of retention of identification data and records of transactions with funds and (or) other property by financial institutions are specified in the industry regulations pertaining to registration and storage of accounting records and other documents. However, these industry regulations may be referred to the “laws and regulations” as required by the FATF Recommendations, because they are approved by the collective body, which consists of the Ministers of the Government of the RK.

562. Pursuant to Article 11 of the Law on Accounting, the source accounting documents (including transferable documents) shall be maintained for a time period established by the RK legislation.

Banking sector

563. Pursuant to Article 56 of the Law on Banks and Banking Activity, banks shall ensure strict registration and storage of documents used for book accounting. The basic regulation that specifies the period of document retention in the banking sector is Resolution No.320 “List of documents to be retained and period of their retention in the second-level banks” of the Board of the Financial Supervision Agency dated August 27, 2005. Pursuant to this Resolution the banks shall retain:

- Customer files (i.e. customer account files) – for 5 years after closing an account;
- Source documents and attachments thereto that establish a fact of a business transaction and form the grounds for making accounting records – for 5 years (subject to completion of audits by the tax authorities; in case of disputes, disagreements, investigations and litigations – shall be retained till a final decision is made);
- Documents related to credit and financial issues, cash transactions, transactions with securities, international agreements and settlements, foreign currency transactions, cash and settlement services for legal entities and deposit transactions – for at least five years (except for agreements with foreign correspondent banks that shall be retained for 3 years).

564. Pursuant to sections 54-55 of the Rules of exchange transactions with foreign currency cash in the Republic of Kazakhstan (approved by Resolution No.106 issued by the Board of the National Bank of the Republic of Kazakhstan on October 27. 2006), when buying or selling foreign currency cash in amount exceeding the equivalent of 10,000 US dollars, the last name and initials of a customer and details of his/her ID document shall be recorded in the register logs. Completed register logs shall be retained by a legal entity authorized to carry out exchange transactions (its branch) for three years following their completion.

565. The rules of storage of accounting records and other documents in banks does not fully meet the requirements for retention of all documentation pertaining to customers and their transactions for at least five years following termination of business relationships with a customer.

566. ***Insurance sector***

567. Pursuant to Article 77 of the Law on Insurance Activity, the professional insurance market participants and insurance brokers are obliged to develop data on insurance (re-insurance) and insurance brokerage as well as to ensure registration and storage of documents related to their activities in a manner established by the RK legislation.

568. The list of documents subject to mandatory retention as well as the procedure and time period of their retention by the professional insurance market participants and insurance agents engaged in business activity are specified in Resolution No.224 “On approval of Instruction on documenting and document management and storage by professional insurance market participants and insurance agents engaged in business activity” issued by the Board of the National Bank of the Republic of Kazakhstan on July 14, 201. Pursuant to this Resolution the respective documents shall be retained by insurance institutions and insurance brokers for five years.

569. *Securities market and pension funds*

570. Pursuant to section 9 of Article 36 of the Law on Securities Market, documents (except for documents identifying a registered person) that form the grounds for a registrar (a nominee holder) to make a record (entry) in customer personal accounts shall be retained for five years. Article 58 of the Law on Securities Market stipulates that a nominee holder shall retain information that is contained in the nominee holding system and allows for establishing or reconstructing the sequence of changes made in a customer personal account.

571. The list of documents that constitute the system of registers of securities holders, the procedure for creating, storing and maintaining this system, forms of personal account statements and the list of information to be indicated in such statements are specified in Resolution No.62 “Rules for maintaining the system of registers of securities holder” of the Board of the Financial Supervision Agency issued on February 25, 2006.

572. Pursuant to section 63 of the aforementioned Rules the following documents constituting the system of registers shall be retained for at least five years (following the date when a holder of securities is no more a securities holder or following the date of termination of agreement between a registrar and an issuer):

- instructions to perform transactions;
- instruction fulfillment reports;
- refusals to fulfill instructions;
- other documents pursuant to which transactions are performed within the register system;
- documents received by a registrar from an issuer (previous registrar) and provided by a registrar to an issuer during the term of the agreement;
- transaction register;
- register of incoming documents;
- register of instructions given by issuers and registered persons;
- register of powers of attorney;
- register of outgoing documents;
- archive maintenance register;
- documents certifying that the information entered into the register system is reflected in the unified personal account system.

573. Pursuant to the Law on Securities Market the system of registers of securities holders is a set of information about the issuer, equity securities and their holders to ensure the identification of the holders' rights at a certain time, the registration of securities transactions, as well as the nature of the reported restrictions on treatment or exercise of rights on these securities, and other information in accordance with the regulations of the designated authority.
574. Pursuant to Article 22 of the Law on Commodity Exchange, brokers and dealers are obliged to register performed exchange transactions separately per each customer and shall retain the information on such transactions for five years following the transaction date.
575. Pursuant to section 46 of Resolution No.317 "On approval of the Rules of broker and dealer activity in the securities market of the Republic of Kazakhstan" issued by the Board of the Financial Supervision Agency on August 27, 2005, documents provided by a customer for carrying out transactions with securities as well as for opening and maintaining a personal account shall be retained by a broker and (or) a dealer for five years following the date of closing of such personal account.
576. A broker and (or) a dealer shall register the appropriate records in a reliable and timely manner (on the same day when grounds for modifying the accounting data occur) by keeping the registers of:
- customers' instructions and their fulfillment (non-fulfillment);
 - concluded deals with financial instruments and their performance (nonperformance);
 - financial instruments in personal accounts and change of their number;
 - funds in personal accounts and change of their amount;
 - receipt and distribution of yield on financial instruments;
 - customers' complaints and claims and measures undertaken to satisfy them;
 - customer instruction fulfillment reports provided to customers;
 - concluded broker and nominee holding agreements;
 - investment decisions with regard to deals closed with the use of own assets of a broker and (or) a dealer;
 - orders and (or) instructions to perform transactions with financial instruments transferred to other broker and (or) dealer.
577. Nominee holding is accounted for in compliance with the Rules of registration by professional securities market participants rendering nominee holding services of transactions with securities, drawing up and issuing of securities holder account statement and disclosure of information by a nominee holder. The said Rules were approved by Resolution No.61 issued by the Board of the Financial Supervision Agency issued on February 25, 2006.
578. Pursuant to section 18 of the aforementioned Rules, a nominee holder shall register the appropriate records in a reliable and timely manner by keeping the registers of:
- accepted orders of customers for registration of personal account transactions and information operations and their fulfillment (non-fulfillment);
 - personal account transactions;
 - powers of attorney for signing documents for registration personal account transactions

and information operations.

579. A period of retention of the respective registers and documents is not established.
580. Pension savings funds shall retain customer and transaction documents for at least five years (Resolution No.377 “On establishing list of basic documents subject to retention and period of their retention by pension savings funds” of the Board of the Financial Supervision Agency issued on December 27, 2004). However, there is not always a condition to calculate the established 5-years period from the date of termination of business relationships with a customer.
581. The rules and procedures of storage of accounting and other documents by the professional securities market participants do not fully meet the requirements for retention of all customer and transaction documentation for at least five years following termination of business relationships with a customer.
582. The rules and procedures of storage of accounting and other documents by the pension savings funds do not fully meet the requirements for retention of all customer and transaction documentation for at least five years following termination of business relationships with a customer.
583. The direct requirement to retain business correspondence with customers for at least five years is established by the RK laws and industry regulations only for the pension savings funds in respect of payers of pension contributions and depositors/recipients.

Institutions carrying out certain types of banking operations

584. The Rules of exchange transactions with foreign currency cash in the Republic of Kazakhstan (approved by Resolution No.106 issued by the Board of the National Bank of the Republic of Kazakhstan on October 27, 2006) provide that transactions involving purchase, sales and exchange of foreign currency cash carried out by exchange offices shall be recorded in register logs (section 53). The said Rules specify and regulate the specificities of maintaining an electronic register log.
585. The last name and initials of a customer and details of his/her ID document shall be recorded in the register log only in the event of purchase or sales of foreign currency cash in amount exceeding the equivalent of 10,000 US dollars calculated as per market exchange rate (section 54).
586. The register log is the source accounting document (section 41).
587. Completed register logs shall be retained by a legal entity authorized to carry out exchange transactions (its branch) for three years following their completion.
588. It was impossible to establish existence and assess the document retention requirements in other types of institutions engaged in certain types of banking operations since the relevant regulations were not provided to the assessors.

Access of the designated agency to customer and transaction records and information

589. The legislation of the Republic of Kazakhstan does not directly require the entities subject to financial monitoring to keep information in such way as to ensure that it is available on a timely basis to the competent authorities.
590. Besides that, there is no requirement to keep information on business transactions in such way and in such scope as to permit their reconstruction and use as evidence for prosecution of criminal activity.
591. At the same time, the requirements for keeping accounting records and source documents set forth in the industry regulations allow, in general, to say that transaction details can be reconstructed and used as evidence for prosecution of a criminal activity in a scope currently established by the RK legislation.
592. Pursuant to Article 125 of the Criminal Procedure Code of the Republic of Kazakhstan, the agency that handles a criminal case, upon request of parties to criminal proceedings or on its own initiative, is authorized to require, in particular, institutions, their managers and executive officers to provide documents and items relative to the case, subject to compliance with the procedure of disclosing commercial, bank and other secrets protected by the law established by the legislation of the Republic of Kazakhstan.
593. Given that the laws and regulations of the Republic of Kazakhstan do not specify a time frame for submission by financial institutions of information requested by the supervisory and law enforcement agencies, one can make a conclusion that the timeline is set by the originator of a request.

Special Recommendation VII

594. Pursuant to section 14 of the Rules of non-cash payments and money transfer (National Bank, No.179) and Section 11 of the Rules of non-cash payments and money transfer without opening bank account (National Bank, No.395), banks and institutions engaged in certain types of banking operations carry out wire transfers (irrespective of the amount of a transfer) with the use of payment instruments that shall contain full originator information (first name, last name, name, state identification number of originator, amount, payment instrument number, purpose of payment and name of recipient bank). However, there is no requirement to transmit this information along with wire transfers between financial institutions.
595. Pursuant to section 22 of Rules No.179 a recipient bank shall refuse to accept a payment instrument if it does not contain full originator information.
596. Thus, transmittal of the message on the originator is ensured by the obligation of a recipient bank to refuse to accept a wire transfer if there is no information on the originator. However, it is obvious that such mechanism of implementation of Special Recommendation VII is not applicable in the context of international wire transfers.
597. Pursuant to Article 8 of the Law on National Bank, the National Bank supervises the functioning of payment systems to ensure prompt and uninterrupted execution of money transfers between banks and institutions engaged in certain types of banking operations in tenge as well as imposes, within its terms of reference, on financial institutions sanctions and enforcement actions provided for by the RK banking legislation. Pursuant to section 3 of Article 62 of the Law on National Bank, the National Bank conducts inspections of activities

carried out by financial institutions and other persons in respect to issues that fall under authority of the National Bank. It should be noted that sanctions imposed for non-compliance with the statutory requirements in respect of wire transfers are non-classified information and are published on the National bank web-site.

598. The Law on Payments and Remittances and Rules No.179 of NB (*The Rules Governing the Use of Payment Instruments and Execution of Cashless Payments and Money Transfers in the Republic of Kazakhstan*) and No.395 of NB (*The Rules Governing the Execution of Cashless Payment and Money Transfers in the Republic of Kazakhstan without Opening Bank Account*), approved under this Law, do not apply to the National Postal Service of Kazakhstan (KazPost) and, therefore, issues related to obtaining full originator information and transmitting such information with related wire transfers carried out by KazPost are not regulated by the legislation of the Republic of Kazakhstan, except for wire transfers in foreign currency where pursuant to section 7 of Rules No.129 full originator information shall be provided to a bank.

Effectiveness

599. In the course of the meetings with the representatives of the Kazakhstan Financiers Association and KazPost the Kazakhstani officials assured the assessors that in practice full originator information is contained in payment messages transmitted to beneficiary banks.

600. The current legislation does not provide for specific measures for monitoring compliance by the banks with wire transfer rules and regulations. Small number of staff (8 persons) employed by the Payment System Supervision Department of the National Bank and failure to provide the assessors with information on sanctions imposed for non-compliance with the wire transfer rules results in low rating of the effectiveness of implementation of Special Recommendation VII.

3.5.2. Recommendations and Comments

Recommendation 10

601. The AML/CFT Law and the industry regulations should clearly and explicitly require financial institutions to retain all identification data obtained under the CDD process, account files and business correspondence for at least five years following termination of business relationships with a customer.

602. The law should clearly and explicitly require financial institutions to maintain all necessary information on transactions with funds and (or) other property, including information on suspicious transactions, for at least five years following completion of such transactions.

603. The law should clearly and explicitly require financial institutions to provide all identification data and information on customers and transactions with funds and (or) other property upon request of the Financial Monitoring Committee and other competent authorities of the Republic of Kazakhstan.

604. Financial institutions should be required to maintain information in scope sufficient for providing it as evidence for prosecuting criminal activity.

Special Recommendation VII

605. Given poor effectiveness of monitoring of compliance with the requirements set forth in Recommendation VII and the fact that there is no direct provision to transmit complete originator information along the entire payment chain, the assessors consider that the rating of compliance with Special Recommendation VII is partially compliant.

606. At the same time, it is recommended: (1) to amend the wire transfer legislation in so far as it relates to KazPost, and cross border wire transfers; (2) to implement specific measures for monitoring compliance with the requirements of Special Recommendation VII; and (3) to introduce explicit provision requiring that full originator information shall be transmitted along the entire payment chain.

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to a number of institutions that fall within the financial institution category: leasing companies; consumer credit unions; pawnshops; micro credit organizations; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals (several such institutions operate in Kazakhstan). • There are no clear and explicit statutory requirements to retain information on transactions with funds and (or) other property for at least five years. • There are no clear and explicit statutory requirements to retain all identification data obtained through the CDD process. • There are no clear and explicit statutory requirements to provide all customer and transaction information upon request of the competent authorities.
SR.VII	PC	<ul style="list-style-type: none"> • The requirement for transmitting originator information along with a wire transfer is implemented only for domestic wire transfers but does not apply to international wire transfers. • There are no specific measures for monitoring compliance by banks with the wire transfer rules. • There is a lack of legislative clarity in respect of transactions carried out by the KazPost. • There is no requirement for transmitting full originator information along the entire payment chain.

Unusual and Suspicious Transactions

3.6. Monitoring of Transactions and Relationships (R.11 & 21)

3.6.1. Description and Analysis

Recommendation 11

607. The legislation of Kazakhstan does not directly require financial institutions to pay special attention to all complex, unusual large transaction or patterns of transactions that have no apparent and visible economic or lawful purpose. This requirement is indirectly implemented under the STR filing procedures since unusual nature of a transaction is one of the indicators of a suspicious transaction.

608. Kazakhstan has not established requirements for financial institutions to examine background and purpose of all complex and unusual transactions and to set forth their findings in writing.

609. There is no direct requirement in Kazakhstan for the entities subject to financial monitoring to retain findings obtained in the course of examination of all complex and unusual transactions and financial institutions are not obliged to keep such findings.

Recommendation 21

610. The legislation of the Republic of Kazakhstan does not define the “non-cooperative (high-risk) countries”, therefore, financial institutions are not obliged to pay special attention and examine background and purpose of transactions with persons from the “non-cooperative countries”, i.e. countries that do not or insufficiently apply the FATF Recommendations. Notification of financial institution about countries listed as those with weak AML/CFT system is not provided for as well.

611. The legislation of the Republic of Kazakhstan does not provide for appropriate counter-measures to be applied in respect of countries that are non-cooperative in the AML/CFT area.

3.6.2. Recommendations and Comments

Recommendation 11

612. The Republic of Kazakhstan should establish requirements for financial institutions to pay special attention to all complex, unusual large transaction or patterns of transactions that have no apparent and visible economic or lawful purpose. In addition to that, financial institutions should independently examine and analyze such transactions and keep information on them for a period of five years. This requirement is not identical to the general requirement for retention of accounting records and information obtained through a CDD process. Besides that, financial institutions should be obliged to provide access for the competent authorities to maintained information throughout the entire retention period.

Recommendation 21

613. Taking into account the fact that the current legislation does not oblige financial institutions to pay special attention to transactions with persons from countries with weak AML/CFT system and the fact there are no lists of such countries and appropriate counter-measures, the assessors consider that the application of Recommendation 21 does not meet the FATF criteria.

614. At the same time, it is recommended to establish direct obligations related to: (1) paying special attention to transactions with persons from countries with weak AML/CFT system; (2) provision by the Financial Monitoring Committee of lists of such countries to financial institutions; (3) application of appropriate counter-measures to persons from such countries; and (4) establishing timeline and procedure of keeping the result of such measures in writing to support the AML/CFT efforts of other agencies.

3.6.3. Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	NC	<ul style="list-style-type: none"> • There is no direct and explicit requirement for financial institutions to pay special attention to all complex and unusual large transactions. • There is no requirement to examine all complex and unusual large transactions and to set forth findings in writing. • There is no requirement to keep findings, obtained in the course of examination and analysis by financial institution of complex and unusual large transactions, for five years.
R.21	NC	<ul style="list-style-type: none"> • The “non-cooperating countries” concept is not defined and set forth in the legislation and there is no obligation to pay special attention to transactions with persons from such countries. • There is no requirement to examine transactions with persons from “non-cooperative” countries and to keep the findings in such way as to make them available to the designated agency or an auditor. • Kazakhstan has not established counter-measures to be applied to countries that do not or insufficiency apply the FATF Recommendations.

3.7. Suspicious Transaction and Other Reporting (R.13-14, 19, 25 & CP.IV)

3.7.1. Description and Analysis

Recommendation 13

Requirement to file STR (on ML and FT)

615. Pursuant to Article 13 of the AML/CFT Law (section 2), in order to prevent and deter legalization (laundering) of criminal proceeds the entities subject to financial monitoring shall promptly report a suspicious transaction to the designated agency (FIU) before such transaction is carried out.

616. A suspicious transaction with funds and (or) other property is a transaction that meets criteria according to which there are grounds to believe that as a result of such transaction illegally obtained proceeds will be integrated in legal turnover or such transaction is carried out for the terrorist and (or) extremist financing purpose (Article 1 of the AML/CFT Law).

617. Pursuant to section 7 of the aforementioned procedure the entities subject to financial monitoring shall promptly file a suspicious transaction report with the Financial Monitoring Committee before such transaction is completed. If a suspicious transaction cannot be suspended, a report on such transaction shall be filed within three hours after its completion or within 24 hours following detection of a suspicious transaction.
618. Reports on suspicious transaction shall be filed with the Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan irrespective of the amount of such transactions.
619. The suspicious transaction criteria include:
- transactions with no obvious economic rationale;
 - actions to avoid financial monitoring procedures provided for in the AML/CFT Law;
 - transactions that give grounds to believe that they are aimed at financing of terrorism and (or) extremism.
620. The detailed list of codes of suspicious transaction indicators is presented in Annex 7 to the Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring (approved by Order No.59 of the Ministry of Finance).
621. However, the list of codes of suspicious transaction indicators does not include such criterion as grounds to suspect that funds are proceeds of criminal activity and transaction is carried out for the money laundering purpose.
622. Therefore, the entities subject to financial monitoring are not obliged to file STR with the Financial Monitoring Committee when they suspect that funds are obtained as a result of any predicate offence and transaction is carried out for laundering criminal proceeds.
623. There is no requirement to report attempted suspicious transaction to the designated agency.
624. No limitations for filing STR by the entities subject to financial monitoring in situations when transactions are related to tax liabilities are set forth in the legislation of Kazakhstan. According to the representatives of the private sector they have no problem with filing STR where a transaction is related to tax liabilities.

Effectiveness

625. Despite the fact that Kazakhstan has implemented the mechanism for filing by the entities subject to financial monitoring of STR with the Financial Monitoring Committee, absence of such suspicion criteria as possible relation of funds to predicate offences or money laundering assumes that such system will be ineffective.
626. Kazakhstan provided the following statistics on received reports, their analysis and submission to the law enforcement agencies (for a period from March 9 till October1, 2010):

Entities subject to financial monitoring	Number of filed reports, including:		
	Threshold	STR	FT related

Banks, institutions engaged in certain types of banking operations	176 481	9 148	17
Professional securities market participants, central depository	1 208	1	
Insurance (reinsurance) institutions, insurance brokers	37	-	

Special Recommendation IV

627. The system of filing the FT-related STR by the entities subject to financial monitoring, as it is set forth in the legislation of the Republic of Kazakhstan, is not fully identical to the system described in Recommendation 13, since it provides for filing STR if there are suspicions of terrorist financing.
628. Pursuant to Article 13 of the AML/CFT Law (section 2), in order to prevent and deter financing of terrorism the entities subject to financial monitoring shall promptly report a suspicious transaction to the designated agency (FIU) before such transaction is carried out.
629. Pursuant to Article 4 of the AML/CFT Law a transaction is suspicious if there are grounds to believe that such transaction is carried out for the terrorist and (or) extremist financing purposes.
630. Pursuant to subsection 3 of Annex 7 to the Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring (approved by Order No.59 of the Ministry of Finance), the entities subject to financial monitoring are obliged to file STR on a transaction (deal) with funds and (or) other property where there are grounds to suspect that such transaction (deal) is carried out for the terrorist and (or) extremist financing purposes.
631. According to the provisions of the aforementioned Annex the following types of transactions (deals) are considered to be transactions (deals) with funds and (or) other property with regard to which there are grounds to suspect that they are carried out for the terrorist and (or) extremist financing purposes:
- transactions (deals) and (or) a series of interrelated transactions, one of the direct or indirect parties to which are persons and (or) organizations included, based on the information available to the law enforcement and judicial authorities of the Republic of Kazakhstan and international organizations recognized by the Republic of Kazakhstan, in the List of persons associated with terrorist and (or) extremist activities;
 - transactions (deals) and (or) a series of interrelated transactions, one of the parties to which are legal entities which founders (owners) include persons and (or) organizations included, based on the information available to the law enforcement and judicial authorities of the Republic of Kazakhstan and international organizations recognized by the Republic of Kazakhstan, in the List of persons associated with terrorist and (or) extremist activities;
 - transactions (deals) with funds and (or) other property which give the grounds to believe that such transactions (deals) are carried out for the terrorist and (or) extremist purposes

Effectiveness

632. Kazakhstan has established the legal framework for filing by the entities subject to financial monitoring of STR with the Financial Monitoring Committee when financial institutions have suspicions of terrorist financing. However, since statistics provided by the FMC do not contain full information on what particular entities subject to financial monitoring have filed the reports, it is impossible to assess the system effectiveness.

Recommendation 14

633. Kazakhstan has taken measures to protect executive officers and directors of financial institutions from liability for executing their duties related to filing information and reports with the FIU.

634. Pursuant to section 7 of Article 11 of the AML/CFT Law filing by the entities subject to financial monitoring of information and documents with the designated agency does not constitute the disclosure of official, commercial, bank or other secrets protected by the law.

635. In the event of filing reports with the Financial Monitoring Committee in compliance with the AML/CFT Law the entities subject to financial monitoring and their executive officers are immune, irrespective of the outcome of such reports, from liability established by the laws of the Republic of Kazakhstan and contracts/agreement under the civil legislation (section 6 of Article 11 of the AML/CFT Law).

636. Thus, financial institutions and their executive officers are protected by the legislation of the Republic of Kazakhstan if they file STR with the designated agency.

637. Pursuant to section 5 of Article 11 of the AML/CFT Law the entities subject to financial monitoring that provide information to the designated agency are not authorized to tip off customers and other persons in respect to whom the information is being reported.

638. However, the said section does not directly prohibit executive officers and directors from informing (tipping off) customers and other persons in respect to whom information is being reported to the Financial Monitoring Committee.

639. Besides that, the entities subject to financial monitoring are just not authorized to notify (tip off) persons in respect to whom information is being provided, while Recommendation 14 prescribes to prohibit disclosure of the fact that information is being reported to anyone. The wording of section 5 of Article 11 of the AML/CFT Law does not prohibit informing a third party that is not related to the transaction. Liability for notifying customers and other persons about information provided to the designated financial monitoring agency is established in part 3 of Article 168-3 of the Code on Administrative Offences of the Republic of Kazakhstan. At the same time, Article 168-3 establishes liability for disclosing information to other persons, without any limitations.

640. The Code on Administrative Offences of Kazakhstan imposes serious sanctions on executive officers for disclosing the customer information reported to the FMC to such customer.

Recommendation 25

641. STR related feedback is limited to the following measures:

- the FMC verifies accuracy of incoming STRs, i.e. the FMC notifies the entities subject to financial monitoring about acceptance (non-acceptance) of the submitted information. (the Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring, approved by Order No.59 of the RK Minister of Finance dated 16.02.2010);
 - the FMC notifies the entities subject to financial monitoring about its decision to suspend suspicious transaction or informs the entities that there is no need to suspend transactions. (Suspicious Transaction Suspension Rules approved by Order No.58 of the RK Minister of Finance dated 16.02.2010).
642. The legislation of the Republic of Kazakhstan provides for no other elements of feedback (including general feedback) to be provided to the entities subject to financial monitoring.
643. The supervisory authorities (and the FIU) have issued no guidelines describing ML and FT methods and techniques that could be used by the entities subject to financial monitoring for enhancing the effectiveness of the AML/CFT measures. Furthermore, lack of practice and statistics with the competent authorities (and the FIU) does not allow them to provide the entities subject to financial monitoring with information on current techniques, methods and trends (typologies) and sanitized examples of actual money laundering cases.
644. The legislation of the Republic of Kazakhstan establishes no requirements for FIU to provide feedback to the entities subject to financial monitoring.
645. In the course of the on-site mission the assessors established no facts of cooperation between the FIU, competent authorities and financial institutions, DNFBP that are required to report suspicious transactions in terms of provision of adequate and appropriate feedback having regard to the FAFT Best on Providing Feedback to Reporting Financial Institutions.
646. However, a number of entities stated that the representatives of the Financial Monitoring Committee of the Republic of Kazakhstan jointly with the representatives of the interested government agencies meet with them on a regular basis to clarify and explain the provisions of the RK AML/CFT legislation.

Recommendation 19

647. Pursuant to section 2 of Article 10 of the AML/CFT Law the entities subject to financial monitoring shall file with the FMC reports on transactions subject to financial monitoring in compliance with the Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring (Ministry of Finance, No.59). Thus, Kazakhstan considered implementation of a system where the entities subject to financial monitoring shall report all listed transactions in currency above the respected thresholds. Transactions in currency subject to financial monitoring are listed in sections 1 and 2 of Article 4 of the AML/CFT Law:
- Cash transactions in the amount equal to or exceeding one million tenge:
 - 1) receipt of money, inter alia in electronic form, won as a result of a bet, gambling in gambling venues and participation in lottery.
 - Cash transactions in the amount equal to and exceeding seven million tenge:
 - 1) purchase, sales and exchange of foreign currency cash through exchange offices;

- 2) check or bill collection as both one-off transaction and transaction carried out during seven consecutive calendar days;
 - 3) exchange of banknotes of one denomination to banknotes of other denomination as both one-off transaction and transaction carried out during seven consecutive calendar days;
 - 4) crediting or debiting money to a customer bank account as both one-off transaction and transaction carried out during seven consecutive calendar days;
 - 5) opening a savings (deposit) account in favor of third party and (or) crediting money to such account as both one-off transaction and transaction carried out during seven consecutive calendar days;
 - 6) purchase (sales), import to or export from the Republic of Kazakhstan of items of cultural value;
 - 7) import to or export from the Republic of Kazakhstan of foreign currency cash, except for import/export by the RK National Bank, banks and the National Postal Service Operator;
 - 8) insurance payment or receipt of insurance premium;
 - 9) deposition, transfer of voluntary pension contribution to pension savings funds and effecting pension payments by pension savings funds from voluntary pension contributions;
 - 10) receipt or provision of property under a financial lease contract/agreement;
 - 11) transactions involving provision of services including contracting, transportation, freight forwarding, storage, commission, property trust management services;
 - 12) purchase and sales and other transactions with precious metals, precious stones and items made of them.
- Cash transactions in the amount equal to or exceeding forty five million tenge:
- 1) transactions with securities.

648. However, the legislation of the Republic of Kazakhstan does not oblige financial institutions to report all transactions in cash above a fixed threshold to the Financial Monitoring Committee.

649. Pursuant to Article 15 of the AML/CFT Law and section 2 of the Rules for providing information on transactions subject to financial monitoring by the entities subject to financial monitoring (Ministry of Finance No.59), one of the objectives of the Financial Monitoring Committee is to establish the unified information system and to maintain the national AML/CFT database. The establishment of the Financial Transaction Data Collection subsystem will enable the FMC to exchange information on-line with the entities subject to financial monitoring. Pursuant to section 3 of MoF Rules No.59 some entities subject to financial monitoring (including, foreign currency exchange institutions, notaries, auditors, lawyers, casinos, etc.) provide information in electronic form and in hard copy.

650. The Rules for ensuring security of limited dissemination information obtained in the course of the FMC activity with the use of computer equipment (Ministry of Finance, No.19) establish requirements for ensuring protection of information that constitute official, commercial, bank or other secrets protected by the law when using computer equipment including both separate devices or systems and the unified automated information system of the RK MoF FMC.

Effectiveness

651. In the course of the meetings with the Kazakhstani officials (National Bank, Financial Supervision Agency, Chamber of Notaries, Bar Association, Chamber of Auditors, etc.) and based on the results of analysis of the statistics on reports filed with the FMC by the entities subject to financial monitoring the assessors discovered a number of factors that affect the effectiveness of application of this Recommendation:

- not all financial institutions operating in the Republic of Kazakhstan are included in the category of entities subject to financial monitoring, and instead of reporting all cash transactions the exhaustive list of specific transactions subject to reporting is drawn up;
- for some types of entities subject to financial monitoring the AML/CFT Law does not specify the list of transactions subject to reporting and, therefore, such entities decide themselves what particular transactions they shall report;
- some transactions included in the list have too high threshold (e.g. exchange of foreign currency cash through exchange offices, import to or export from the Republic of Kazakhstan foreign currency cash in the amount exceeding seven million tenge) and, therefore, cannot be effective in terms of providing necessary information;
- submission of information in hard copy may significantly impede storage and provision of timely access to received information.

3.7.2 Recommendations and Comments

Recommendation 13

652. Since there are no requirement in Kazakhstan to file STR with the designated agency when there are suspicions or reasonable grounds to believe that funds are proceeds of criminal activity and transaction with such funds is carried out for legalization (laundering) of such proceeds, it is recommended to amend the AML/CFT law, so that it directly provides for filing STR with the designated agency by the entities subject to financial monitoring in case of suspicion of money laundering.

653. It is recommended to Kazakhstan to establish requirement to file STR on attempted transactions when there are suspicions that such transactions are carried out for the ML purposes, regardless of the amount of transactions.

654. It is recommended to Kazakhstan to establish statutory requirement to report suspicious transactions irrespective whether they are considered, among other things, as related to tax issues. This requirement also applies to Special Recommendation IV.

Special Recommendation IV

655. It is recommended to Kazakhstan to establish requirement to file STR on attempted transactions when there are suspicions that such transactions are carried out for the FT purposes, regardless of the amount of transactions.

Recommendation 14

656. Since the requirement not to disclose to their customers and other persons the fact that information on them is being reported to the designated agency applies only just to the entities subject to financial monitoring as such, it is recommended to the Republic of

Kazakhstan to extend this requirement also to directors, executive officers and employees of financial institutions.

657. At the same time, it is recommended to directly prohibit disclosure of the fact that STR or related information is being reported or provided to the FIU.

Recommendation 25

658. The FIU and supervisory authorities should develop a comprehensive AML/CFT guideline for the entities subject to financial monitoring.

659. The FIU should consider provision to the entities subject to financial monitoring information on course and results of financial investigations conducted based on their reports and to extend feedback having regard to examples/case studies listed in the FAFT Best on Providing Feedback to Reporting Financial Institutions and Other Persons.

Recommendation 19

660. This Recommendation is fully observed.

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

	Rating	Summary of factors underlying rating
R.13	NC	<ul style="list-style-type: none"> • There is no direct requirement to file STR if there is suspicion of money laundering. • Shortcoming in criminalization of money laundering may affect the STR filing regime. • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to a number of institutions that fall within the financial institution category: leasing companies; consumer credit unions; pawnshops; micro credit organizations; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals. • There is no requirement to file STR on attempted ML-related transactions. • Low effectiveness of application of Recommendation.13.
SR.IV	PC	<ul style="list-style-type: none"> • Shortcoming in criminalization of terrorist financing may affect the STR filing regime. • The requirements of the RK AML/CFT Law apply to not all financial institutions. • There is no requirement to file STR on attempted FT-related transactions. • Low effectiveness of application of Special Recommendation IV.

R.14	LC	<ul style="list-style-type: none"> • There is no requirement for directors, executive officers and employees of financial institutions not to notify their customers and other persons about the fact that information on them is being reported to the designated agency.
R.25	NC	<ul style="list-style-type: none"> • The supervisory authorities have developed no guidelines for the private sector. • The supervisory authorities issued no guidelines describing AM and FT methods and techniques.
R.19	C	<ul style="list-style-type: none"> • Recommendation is fully observed.

3.8. Internal Control, Compliance, Audit and Foreign Branches (R. 15 & 22)

3.8.1. Description and Analysis

Recommendation 15

661. Pursuant to section 2 of Article 11 of the AML/CFT Law, in order to prevent legalization (laundering) of illegally obtained proceeds and financing of terrorism the entities subject to financial monitoring shall develop internal control rules (ICR) and internal control implementation programs and also are responsible for ensuring compliance with the rules and implementation of the programs.

662. The internal control rules are developed, adopted and implemented by the entities subject to financial monitoring with due consideration for the requirements approved by Order No.57 dated February 15, 2010 of the RK Minister of Finance in coordination with the Ministry of Justice, Ministry of Industry and Trade, Financial Supervision Agency, Ministry of Tourism and Sports and National Bank of the Republic of Kazakhstan.

663. Pursuant to Order No.57 the internal control rules shall include the following procedures, policies and controls:

- list of transactions subject to financial monitoring;
- criteria of suspicious transactions;
- CDD measures;
- grounds for refusal to carry out customer transactions;
- reporting suspicious transactions to the FMC;
- providing access for executive officers of an entity subject to financial monitoring to identification data and other CDD information;
- measures ensuring compliance with procedure of keeping and protecting information obtained through the CDD process;
- establishing the system of education and training of AML/CFT employees of an entity subject to financial monitoring;
- requirements for appointing, qualification and training of executive officers

664. The fact that the internal control rules developed and adopted by the entities subject to financial monitoring have not been reviewed and approved by the FIU or the supervisory authorities and the fact that requirements for the contents of the ICR are too general raises the question as to the quality of such documents developed and adopted by the entities subject to financial monitoring virtually on the basis of their own understanding of the statutory requirements and international standards. Since in the course of the on-site mission the assessors did not manage to review the internal control rules adopted by any entity subject to financial monitoring, except for Kazakhstan Stock Exchange, it was impossible to assess practical value of the requirements for the internal control rules.
665. The laws and regulations of the Republic of Kazakhstan, including those that establish requirements for the internal control rules, do not require to appoint a special officer at the management level responsible for implementation of the AML/CFT policies and internal control rules in a financial institution. In Kazakhstan, some industry regulations governing the procedure of establishing the risk management system in financial institutions, in some cases provide for the designation of a AML/CFT compliance officer or unit and an ICR auditing unit with appointment of the unit manager. At the same time analysis of functions and objectives of such units (and their managers) does not always permit to identify them as responsible for implementation of AML/CFT policies and internal control rules in an institution.
666. There are no requirements to communicate internal control rules to the employees of financial institutions.
667. The requirement for establishing within the IRC a system of education and training of AML/CFT personnel is implemented by financial institutions independently without any special requirements established by the Financial Monitoring Committee or other government agencies.
668. Requirements for appointing, qualification and training of executive officers of financial institutions envisaged by the internal control rules are partly detailed in the industry laws and other regulations of the Republic of Kazakhstan (Instructions No.4, No.5, No.135, No.209, No.244 and No.359).
669. However, there are no common requirements established by a government agency that apply to employees of financial institutions in general and to the internal control employees in particular.
670. The laws and other regulations of the Republic of Kazakhstan do not provide for grading of types and scope of AML/CFT measures undertaken by financial institutions depending of the level of ML/FT risk as well as on the size of such financial institutions.
671. The existing requirements for the development of internal control rules do not require to maintain mandatory audit function to test internal control system. At the same time, the industry regulations of the Republic of Kazakhstan (Instructions No.4, No.5, No.135, No.209, No.244 and No.359), that govern the procedure of establishing risk management systems, provide for such function.

Banking sector

672. Issues pertaining to establishing AML/CFT internal control in banks are partly regulated by the Instruction on requirements for establishing risk management and internal control systems in the second level banks approved by Resolution No.359 issued by the Board of the Financial Supervision Agency on September 30, 2005.
673. The aforementioned Instruction obliges banks to have the internal control system functioning in form of the ongoing three-stages process:
- building the internal control system (with due consideration of assessment of effectiveness) by introducing appropriate procedures into the internal regulations of a bank;
 - applying the internal regulations to the operations of a bank;
 - assessing effectiveness of the internal control system
674. The internal control system includes measures aimed at preventing legalization (laundering) of illegally obtained proceeds and financing of terrorism (subsection 8 of section 17 of Instruction No.359).
675. Pursuant to Instruction No.359 while performing their functions employees of a bank shall comply with the AML/CFT requirements set forth in the legislation of the Republic of Kazakhstan.
676. Adequacy of the internal control system in a bank is tested by the internal audit unit which performs impartial assessment and consulting activities for improvement of the business activity of a bank and also arranges for and conducts internal audit in a bank. The internal control unit is independent of the every-day activities of a bank and has access to all types of transactions carried out by a bank including those conducted by its branches and subsidiaries.
677. The purpose of internal audit is to assess adequacy and effectiveness of the internal control and risk management systems with regard to all aspects of bank activities, to provide timely and reliable information on performance by bank departments of assigned functions and objectives and to give efficient and effective recommendations on improvement of quality of operations.
678. However, the IRC audit function as related to AML/CFT compliance is not provided for.
679. Personnel of the internal audit unit are appointed by the board of directors of a bank. The manager and employees of the internal audit unit may not simultaneously manage (supervise) other departments of a bank and may not be the members of the credit committee and other bodies of a bank. The manager and employees of the internal audit unit shall have higher education, know the civil and banking legislation, have professional skills (know the regulations and have at least one year experience of working in the financial service rendering and regulation area). Besides that, they shall have no unexpunged or unspent (in a manner prescribed by the law) conviction for the commission of economic and corruption crimes and crimes against the civil service and public administration.
680. Besides that, pursuant to Instruction No.359 banks shall have the compliance unit, consisting of the compliance controller and compliance personnel, exclusively authorized to exercise internal control over compliance of the activities of a bank with the RK legislation, including the FSA regulations, as well as with the internal regulations and procedures of a bank.

681. It is assumed that the compliance unit performs the function of a bank AML/CFT department, although Instruction No.359 does not explicitly provides this.
682. The compliance unit enjoys independence when performing compliance risk management in a bank and has access to any information needed for performing compliance risk management functions assigned to it within the compliance risk management powers vested in it.
683. Instruction No.359 requires allocation of sufficient and appropriate resources to the compliance unit for effective compliance risk management.
684. Compliance controller and compliance personnel shall have appropriate qualification, work experience and professional and personal skills for performing their respective duties and shall also know the legislation of the Republic of Kazakhstan and the internal regulations and procedures of a bank. Professional skills of compliance controller and compliance personnel are maintained and upgraded through regular and systematic training.
685. However, specific qualification requirements for the compliance unit employees as well as requirement for compliance controller and compliance personnel to undergo AML/CFT training are not explicitly provided for.
686. Requirements for appointment and qualification of managers of banks are set forth in the Law on Banks and Banking Activity (Article 20) and include, among other things, the education, work experience and reputation requirements.

Insurance sector

687. Issues pertaining to establishing AML/CFT internal control in insurance institutions are partly regulated by the Instruction on requirements for establishing risk management and internal control systems in insurance (reinsurance) institutions approved by Resolution No.4 issued by the Board of the Financial Supervision Agency on February 1, 2010.
688. The aforementioned Instruction obliges insurance institutions to have the internal control system functioning in form of the ongoing three-stages process:
- building the internal control system (with due consideration of assessment of effectiveness) by introducing appropriate procedures into the internal regulations of an institution;
 - applying the internal regulations to the operations of an institution;
 - assessing effectiveness of the internal control system
689. The management board of an institution ensures compliance of the institution activity with the RK AML/CFT legislation and is responsible for ensuring involvement of executive officers and other employees in the AML/CFT efforts (for reference only: in this way the AML/CFT rules and procedures are communicated to all employees) as well as for upgrading the software for timely automatic identification of transaction subject to mandatory internal control and detection of suspicious transactions.
690. The AML/CFT measures in an institution are undertaken by the compliance controller who develops a set of measures for compliance risk management and implementation of the AML/CFT program in compliance with the requirements set forth in the RK legislation, and

also, on his own initiative, contacts with any employee and have access to documents and archives.

691. Compliance controller is appointed by the board of directors.
692. Pursuant to Instruction No.4 while performing their functions employees of an institution shall comply with the AML/CFT requirements set forth in the legislation of the Republic of Kazakhstan.
693. Adequacy and effectiveness of the internal control system with regard to all aspects of the activities carried out by an institution is assessed by the internal audit unit, one of the main functions of which include:
- testing and assessing effectiveness of the internal control system;
 - verifying reliability, completeness of disclosure, credibility and timeliness of submission by institution departments of respective reporting or requested information to the designated agency (including information subject to financial monitoring) as well as to the management and other interested parties; the manager of the internal control unit has unlimited access to all records, information, documents (files) in local area networks and standalone computer systems, without authority to modify them.
694. There is no requirement for the compliance controller to undergo AML/CFT training, and similar requirement for all employees of an institution is not established as well.
695. Qualification requirements for the compliance controller are not established. Requirements for appointment and qualification of managers of insurance institutions are set forth in the Law on Insurance Activity (Article 34) and include, among other things, the education, work experience and reputation requirements.

Securities market, pension funds and stock exchange

696. Issues pertaining to establishing AML/CFT internal control in institutions engaged in brokerage and dealing activities in the securities market and investment portfolio management activity, in the central depository, in pension savings funds, in institutions involved in investment management of pension funds and at stock exchange are partly regulated by:
- the Instruction on requirements for establishing risk management system in institutions engaged in brokerage and dealing activities in the securities market and investment portfolio management activity approved by Resolution No.209 issued by the Board of the Financial Supervision Agency on September 26, 2009;
 - the Instruction on requirements for establishing risk management system in the central depository approved by Resolution No.5 issued by the Board of the Financial Supervision Agency on February 1, 2010;
 - the Instruction on requirements for establishing risk management system at stock exchange approved by Resolution No.244 issued by the Board of the Financial Supervision Agency on November 30, 2009;
 - the Instruction on requirements for establishing risk management system in pension savings funds and in institutions involved in investment management of pension funds approved by Resolution No.135 issued by the Board of the Financial Supervision Agency on July 7, 2009.

697. The internal control systems, inter alia, for the AML/CFT purposes, in the aforementioned institutions function in form of the ongoing three-stages process:
- building the internal control system (with due consideration of assessment of effectiveness) by introducing appropriate procedures into the internal regulations of an institution;
 - applying the ICS procedures, specified in the internal documents, to the operations of an institution;
 - assessing effectiveness of the internal control system.
698. For some types of institutions (the central depository, stock exchange) specific types of AML/CFT activities are provided for by the regulations, in particular, identifying transaction subject to financial monitoring and filing information on such transactions with the FIU. However, designation of a special AML/CFT executive officer and/or establishing a special AML/CFT unit is not provided for.
699. There is no requirement to communicate the AML/CFT internal control rules to all employees of an institution.
700. Adequacy and effectiveness of the internal control systems with regard to all aspects of the activities carried out by an institution (including the AML/CFT efforts) is assessed by the internal audit unit, the manager and personnel of which have access to all necessary documents.
701. There is no requirement for the executive officers in charge of the AML/CFT efforts to undergo AML/CFT training, and similar requirement for all employees of an institution is not established as well.
702. Qualification requirements for the AML/CFT compliance executive officers in an institution are not established.
703. Requirements for appointment and qualification of managers of professional securities market participants and pension savings funds are set forth in the Law on Securities Market (Article 54) and in the RK Pension Law (Article 40) and include, among other things, the education, work experience and reputation requirements.

Institutions carrying out certain type of banking operations

704. It is impossible to establish existence and assess requirements for establishing the internal control systems in institutions engaged in certain types of banking operations since the assessors have not been provide with the relevant regulations.

Effectiveness

705. It is impossible to assess effectiveness of application of the requirements for establishing internal control in financial institutions due to the fact that such requirements were established just recently.

Recommendation 22

706. Banks (subject to availability of information exchange agreement between the Republic of Kazakhstan and a foreign country) and insurance institutions may open branches and representative offices abroad without approval by the Financial Supervision Agency/ the National Bank (sections 1 and 1-8 of Article 29 of the Law on Banks and Banking Activity; section 1 of Article 33 of the Law on Insurance Activity). Issues pertaining to opening foreign branches by other types of financial institutions are not regulated by the legislation of the Republic of Kazakhstan.
707. Nevertheless, there is no direct provision in the RK legislation obliging financial institutions to ensure that their foreign subsidiaries and branches observe the AML/CFT measures consistent with the requirements of the Republic of Kazakhstan.
708. The legislation of the Republic of Kazakhstan does not oblige financial institutions to require their branches and subsidiaries to observe the RK AML/CFT requirements if a host country has weak AML/CFT system, or to apply a higher standards of a host country. There are no obligations to inform the Financial Supervision Agency/ the National Bank when it is impossible to observe the respective AML/CFT measures because it is prohibited by the legislation of a host country.
709. There is not direct provision in the legislation of the Republic Kazakhstan obliging financial institutions to apply consistent CDD measures at the group, foreign branches and subsidiaries level.
710. Despite it was requested by the assessors, Kazakhstan did not provide the list of countries where financial institutions of Kazakhstan have subsidiaries and branches. This fact raises a question as to adequacy and observance of the requirements by subsidiaries and branches of Kazakhstani financial institutions, particularly, by those registered in the international financial and offshore centers (Luxemburg, Cayman Islands).

3.8.2. Recommendations and Comments

Recommendation 15

711. The Republic of Kazakhstan should establish clear and explicit requirements for:
- a) designating in financial institutions a special officer at the management level (or establishing a special unit) responsible for the implementation of AML/CFT policies and internal control rules, allocation of sufficient resources to such officer and empowering him to have timely access to customer identification data and other CDD information, records and other relevant information;
 - b) establishing in financial institutions the system of AML/CFT education and training of employees of financial institutions;
 - c) putting in place in financial institutions screening procedures to ensure high standards when hiring employees;
 - d) communicating the internal control rules to all employees of financial institutions;
 - e) applying by financial institutions the AML/CFT internal control measures depending on level of ML and FT risk and size of financial institutions.

712. More clear requirements for the contents of the internal control rules should be established at the regulatory authority level.

713. Specific qualification requirements and requirements for AML/CFT training and professional development training of employees of financial institutions should be established at the regulatory authority level.

Recommendation 22

714. Taking into consideration the fact that the current legislation does not regulate the requirements of Recommendation 22 in respect of foreign subsidiaries and branches of Kazakhstani financial institutions, the assessors consider that application of Recommendation 22 does not meet the FATF criteria.

715. At the same time, it is recommended to introduce a provision obliging foreign subsidiaries and branches of Kazakhstani financial institutions to observe the AML/CFT measures of the home country and a host country. It is also necessary to establish a mechanism of informing the Financial Supervision Agency / the National Bank when a foreign subsidiary or branch is unable to observe the appropriate AML/CFT measures because this is prohibited by local legislation. Compliance with these requirements may be verified through on-site inspections, reports on application of AML/CFT measures by foreign subsidiaries and braches and by requesting auditor opinion, etc.

3.8.3. Compliance with Recommendations 15 and 22

	Ratingr	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to a number of institutions that fall within the financial institution category: leasing companies; consumer credit unions; pawnshops; micro credit organizations; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals. • There is no requirement to appoint a special executive officer in charge of implementing AML/CFT policies and procedures in financial institutions (except for banks). • There are no requirements for financial institutions to educate and train AML/CFT personnel. • There are no screening procedures when hiring employees. • No requirement to communicate the internal control rules to financial institution employees is established. • It is impossible to assess effectiveness of application of requirements for establishing internal control in financial institutions since these requirements have been put in effect just recently.
R.22	NC	<ul style="list-style-type: none"> • The AML/CFT requirements in respect of subsidiaries and

		<p>branches are not regulated by the RK legislation.</p> <ul style="list-style-type: none"> • There is no obligation to inform the FSA/NB when it is impossible to observe the appropriate AML/CFT measures in a host country.
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3.9. Shell Banks (R.18)

3.9.1. Description and Analysis

Recommendation 18

716. Pursuant to section 2 of Article 26 of the Law on Banks and Banking Activity, in order to obtain a license to carry out banking operations an applicant shall, among other documents, submit documents of persons nominated as bank executive officers and also documents certifying readiness of premises in compliance with the requirements of the Financial Supervision Agency. Therefore, it is impossible to establish a bank with the shell bank characteristics (no management and business premises) because of the existence of the mandatory licensing requirements.
717. Besides that, pursuant to section 3 of Article 1 and section 1 of Article 6 of the Law on Banks and Banking Activity no legal entity may name itself “the bank”, characterize itself as the entity engaged in banking operations or use the word “bank” in its activities without obtaining the FSA license to carry out banking operations. Thus, establishment of shell banks at the territory of Kazakhstan is actually ruled out.
718. However, the legislation of the Republic of Kazakhstan does not contain a direct provision that prohibits establishment and operation of shell banks at the territory of the Republic of Kazakhstan. It is important to note that direct prohibition of establishment and operation of shell banks is needed to ensure that operation of shell banks is prohibited regardless of any theoretically possible circumstances. In other words, under the current legislation a bank meets all licensing requirements and as such is established as a “normal” bank and after that is converted into a shell bank. Although such situation makes no economic sense, still the direct prohibition is needed to mitigate various legal risks.
719. Pursuant to Article 9 of the AML/CFT Law, the entities subject to financial monitoring shall assess reputation of a correspondent bank and its possible involvement in ML/FT activities.
720. Besides that, pursuant section 4 of the Rules for establishing correspondent relations between banks and also between banks and institutions engaged in certain types of banking operations (National Bank, No.428), correspondent relations of banks and non-banking institutions with non-resident banks are regulated by the respective agreements between them and the business practices applicable in the banking sector.
721. Nevertheless, the legislation of the Republic of Kazakhstan does not contain explicit (direct) or implicit (indirect) provisions that prohibit relationships with shell banks and respondent institutions which permit their accounts to be used by shell banks. In other words, pursuant to the current legislation a bank shall, among other measures, assess reputation of its correspondent but, at the same time, the law provides for no specific counter-measures to be applied if a corresponding bank has, for example, bad AML/CFT reputation.

Effectiveness

722. Pursuant to the current legislation, banks in Kazakhstan are de jure not obliged to refuse to establish correspondent relationships with shell banks and respondent institutions which allow their accounts to be used by shell banks and, therefore, are not subject to sanctions for such actions.

723. In the course of the meetings with the representatives of the Financial Supervision Agency the respective officials assured assessors that no shell banks exist in the country.

3.9.2. Recommendations and Comments

724. It is recommended to directly prohibit: (1) establishment and operation of shell banks in the Republic of Kazakhstan, (2) establishing and maintaining correspondent relationships with shell banks and (3) with respondent institutions that allow their account to be used by shell banks.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none">• No prohibition of:<ul style="list-style-type: none">- correspondent relationships with shell banks;- relationships with respondent institutions that have accounts in shell banks.

Regulation, Supervision, Guidance, Monitoring and Sanctions.

3.10. The Supervisory and Oversight System – Competent Authorities and SROs. Role, Functions, Duties and Powers (Including Sanctions) (R.23, 29, 17 & 25)

3.10.1. Description and Analysis

Recommendation 23

725. At the time of the evaluation, the *Law on AML / CFT* did not apply to certain types of entities engaged in certain financial activities; nor are they subject to supervision in the area of AML / CFT. In particular, the following are not subject to supervision:

- insurance agents;
- persons executing financial leasing transactions;
- consumer cooperatives that provide loans to its members;
- micro-credit organizations;
- pawn shops;
- operators rendering services related to acceptance of payments;
- persons executing transactions involving electronic money.

726. In Kazakhstan, the responsibility for enforcing compliance by the subjects of financial monitoring with the law on AML / CFT, as it pertains to recording, storage and provision of information on transactions involving monetary and (or) other assets subject to financial monitoring, as well as for organizing internal controls lies with the relevant state bodies (Article 14 of the Law on AML / CFT).

727. The sole regulator of financial institutions (except for those listed above) included in the list of SFM, i.e. banks, organizations engaged in certain types of banking operations, insurance companies, professional participants of securities market, pension savings funds and the Central Depository is the Agency for Regulation and Supervision of Financial Market and Financial Institutions of the Republic of Kazakhstan (AFS¹³). Also, the AFS acts as competent authority responsible for enforcing compliance by the above financial institutions with the requirements of the law in the area of AML / CFT. Under the current law, the supervision of financial institutions in several sectors is also carried out by the National Bank and Ministry of Communications of the Republic of Kazakhstan, within the scope of their competence, but not in the area of AML / CFT. That said, under the country's law, these two government bodies are vested with powers to impose sanctions for AML / CFT-related violations, which, given that they possess no relevant oversight powers, appears to be a shortcoming of the system of government regulation.

729. Currently, the structure of the system of oversight over financial institutions in the Republic of Kazakhstan is as follows:

Financial Institutions	Supervisory Authority
Banks	AFS – within the scope of its competence, including in the area of AML / CFT. NB – within the scope of its competence
Institutions executing certain types of banking transactions	AFS – within the scope of its competence, including in the area of AML / CFT. NB – within the scope of its competence
Insurance companies	AFS – within the scope of its competence, including in the area of AML / CFT.
Professional participants of the securities market	AFS – within the scope of its competence, including in the area of AML / CFT.
Pension savings funds	AFS, including in the area of AML / CFT
Central Depository	AFS, including in the area of AML / CFT
Stock Exchange	AFS, including in the area of AML / CFT
Postal service operators providing money remittance services (KazPost JSC)	Ministry of Communications – within the scope of its competence

¹³ Pursuant to Decree of the President of the Republic of Kazakhstan No. 25 of April 12, 2011 "On Further Improvements to the System of Financial Market Regulation in the Republic of Kazakhstan", the Agency for Regulation and Supervision of Financial Market and Financial Institutions of the Republic of Kazakhstan is to be abolished with the transfer of its functions and powers to the National Bank of Kazakhstan.

	<p>AFS – within the scope of its competence, including in the area of AML / CFT.</p> <p>NB – within the scope of its competence</p>
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730. Additionally, there is no competent authority responsible for supervision over the Kazpost in the area of financial services provision. The AFS supervises the activities of the national postal service operator only in the areas of deposit taking and opening and maintaining bank accounts held by individuals and legal entities. It should be noted that financial services (provided for in sub. par. 1-5 and sup. par. 7-18 of par. 3 of art. 4 of the Law of RK "On Postal Service", i.e. borrowing, leasing, factoring, teller, remittance transactions, etc.) provided by the Kazpost JSC are not subject to supervision by the Ministry of Communications. According to the information, additionally provided by the representatives of Kazakhstan, the Kazpost JSC has the license for broker and dealer activities on the securities market with the right to manage client accounts as nominee and transfer agency activity, and the control of the Kazpost JSC activity is exercised by the AFS.

Financial Supervision Agency

731. Pursuant to par. 1 of art. 9 of the *Law on State Regulation and Supervision of Financial Market and Financial Institutions*, the AFS is responsible for enforcing compliance by financial institutions with the law of the Republic of Kazakhstan on AML / CFT as it pertains to recording, storage and provision of data on transactions involving monetary and (or) other assets subject to financial monitoring, as well as for organizing internal controls in accordance with the laws of the Republic of Kazakhstan.

732. Also, the AFS is responsible, within the scope of its competence, for overall regulation of the activities of banks, institutions executing certain types of banking transactions, professional securities market participants, insurance (reinsurance) companies, insurance brokers, pension savings funds, the national postal service operator in accordance with the laws "On State Regulation and Supervision of Financial Market and Financial Institutions", "On Banks and Banking Activities in the Republic of Kazakhstan", "On Securities Market", "On Insurance Activities" and "On Pension Provision in the Republic of Kazakhstan."

733. However, the supervisory powers of the AFS, including in the area of AML / CFT, are not contained in several sectoral laws. In particular, the powers to verify, receive and request information are not provided for in the Law "On Pension Provision." Also, the AFS's powers to monitor implementation of measures in the area of AML / CFT are not established in the Law "On Securities Market" (Article 3). It should be noted that the Law "On State Regulation and Supervision of Financial Market and Financial Institutions" provides for monitoring of the supervised institutions by the AFS (except for some of the factors listed below).

734. The AFS supervises the activities of the national postal service operator (Kazpost JSC) only in the area which is subject to licensing by the AFS (deposit taking and opening and maintaining bank accounts held by individuals and legal entities).

735. In the course of the mission, AFS's representatives pointed out that supervision of the activities of the national postal service operator (Kazpost JSC) is only carried out in the area

where there is a license issued by the AFS (deposit taking and opening and maintaining bank accounts held by individuals and legal entities).

736. During the evaluation, representatives of the AFS noted that the AFS had not taken steps to review the situation on AML / CFT existing in supervised institutions.

National Bank of the Republic of Kazakhstan

737. Pursuant to art. 61 and 62 of the *Law on National Bank of the Republic of Kazakhstan*, the NB of RK is involved in the regulation of and supervision over financial institutions and applies enforcement measures and sanctions in accordance with the Kazak law. The NB of Kazakhstan is responsible for licensing, control and supervision of financial institutions in accordance with this Law and other legislative acts of the Republic of Kazakhstan.

738. Its regulatory functions are carried out through adoption of regulatory legal acts, which are mandatory for financial institutions, as well as through inspections of activities of financial institutions and other persons in the areas that lie within the competence of the National Bank of Kazakhstan.

739. Within the scope of its competence, the NB of RK exercises supervision over organizations executing certain types of banking transactions, i.e. organizations providing foreign currency exchange services, as well as collection of banknotes, coins and valuables.

740. Pursuant to the Law "*On National Bank of the Republic of Kazakhstan*", the NB of RK is responsible for the licensing of, control and supervision over the activities of organizations providing foreign currency exchange services, as well as organizations collecting banknotes, coins and valuables.

741. According to the information provided by representatives of the NB of RK, the requirements of the currency legislation apply to the Kazpost JSC, including those related to performance by it of the functions of a currency control agent. All payments and money transfers carried out by the Kazpost as part of its own or clients' foreign currency transactions (including export-import), as well as exchange operations involving foreign currency in cash must be executed in accordance with the currency legislation. The NB organizes inspections, monitors conformity of the transactions carried out by the postal service operator with the requirements of currency legislation and, if necessary, imposes sanctions and penalties for its violation.

Ministry of Communications and Information of the Republic of Kazakhstan

742. Pursuant to the Law "On Postal Service", the competent authority, the Ministry of Communications and Information, is responsible for state regulation of activities in the field of postal communication in the Republic of Kazakhstan, and also for monitoring compliance with the law of the Republic of Kazakhstan on provision of postal services, including postal money transfers.

743. Pursuant to par. 13 of the *Regulation "On the Ministry of Communications and Information of the Republic of Kazakhstan"* approved by Decree of the Government of RK No. 427 of May 18, 2010, among the main objectives of this ministry are the implementation of the state policy in the area of postal communications, state control, coordination and regulation of the

activities of postal service operators. However, this document does not contain a clause stipulating that supervision in the area of AML / CFT is one of its functions.

744. At the time of evaluation, no supervisory authority had a special unit responsible for AML/CFT. In addition, the direct responsibility for supervision in the area of AML/CFT is not assigned to any of the units of the supervisory authorities (AFS) whose provisions were submitted.

Recommendation 30 (structure and resources of supervisory authorities)

Financial Supervision Agency

745. The AFS is not part of the Government of the Republic of Kazakhstan and reports directly to the President of the Republic of Kazakhstan

746. Its budget is formed from the funds of the National Bank. All important decisions of the AFS are taken by the AFS Board, which includes: AFS Chairman, AFS Vice-Chairman, Chairman of the National Bank of RK, Minister of Finance of RK, Vice-Minister of Economic Development and Trade of RK, Chairman of the Kazakhstan Agency for RFCA regulation and an aide to the President of the Republic of Kazakhstan.

747. There are three Departments that are responsible for regulation and supervision within the AFS: Department for Bank Supervision; Department for Supervision over Securities Market and Pension Savings Funds Entities; and Department for Supervision over Insurance Market Entities and other Financial Institutions. Each department contains separate units responsible for remote supervision and inspection.

748. The personnel strength of the AFS's Department for Bank Supervision is 63 employees, of whom 24 work in the office for remote supervision, and 36 in the inspection office. The personnel strength of the Department for Supervision over Insurance Market Entities and other Financial Institutions is 34 employees. There are 3 structural units in this Department: an office of remote supervision with responsibilities for distance supervision and control; an inspection office; and a development office, which is tasked with improving regulation of and supervision over insurance activities. No data pertaining to the personnel strength of the Department for Supervision over Securities Market and Pension Savings Funds Entities was provided.

749. According to the provisions provided by the three supervisory departments of the AFS, the principal objective of these departments is to oversee compliance by the supervised entities with the established for them in the law requirements. However, the provisions of the supervisory departments do not contain a provision for monitoring compliance by SFMs with the requirements of the law in the area of AML / CFT.

750. Pursuant to the *Law "On State Regulation and Supervision of Financial Market and Financial Institutions"* (Article 14), employees of the AFS are liable under the law of the Republic of Kazakhstan for disclosure of information that constitutes company, trade, banking or other secrets protected by law that has been obtained by them while performing supervisory functions.

751. In accordance with the information provided by representatives of Kazakhstan, the AFS staff is subject to the same requirements that apply to public service employees, i.e. requirements for qualification, professionalism and experience. All vacancies in the public service are filled in a competitive selection process (Law of RK "On Public Service"). All applicants are tested for their knowledge of basic laws: Constitution of RK, Laws of RK "On Public Service" and "On Combating Corruption", the Code of Ethics for Public Servants, as well as for their knowledge of the Kazak laws governing the financial sector.
752. The AFS's staff receive training in the methodology of supervision over financial institutions organized by such organizations as the IAIS (International Association of Insurance Supervisors) and the FSI (Financial Stability Institute, Vienna), as well as at workshops organized by supervisory authorities of other countries (Canada, Malaysia , UK). In addition, the AFS's staff received training at the workshop dedicated to the issues of AML / CFT, which was organized by the World Bank and the FIU of Kazakhstan and held February 9-11, 2010 in Astana.
753. There is no information that the AFS's staff received training on the subject of supervision in the area of AML / CFT.

National Bank of the Republic of Kazakhstan

754. According to the data provided by the National Bank of Kazakhstan, control and supervisory functions within the central office of NB of RK are performed by 4 units, i.e.: the Department of Balance of Payments and Foreign Currency Regulation, Money Remittance Department, Accounting Department and Cash Department. The total personnel strength of these units of the NB of RK is 126 people.
755. All of the above departments of NB of RK (except for the Cash Department) have Offices responsible for field inspections and a workforce of 31 employees.
756. Also, according to the data provided, NB of RK has departments responsible for carrying out inspections and employing 237 inspectors (except for the central office staff who are involved in inspections related to the law on payments and remittances in the city of Almaty).
757. According to the data provided by representatives of NB of RK, employees of NB of RK received training at workshops dedicated to AML / CFT, i.e. 13 employees participated in 7 workshops in 2008, 5 employees in 4 workshops in 2009, and 10 employees in 5 workshops in 2010. There is no information that the NB RK staff received training on the subject of supervision in the area of AML / CFT.
758. The submitted provisions of the supervisory departments do not contain provisions for monitoring compliance by the SFM with the requirements of the law in the area of AML / CFT.
759. The Law "On National Bank of Kazakhstan" contains a requirement for non-disclosure of information received from individuals and legal entities.
760. Pursuant to "*NB RK Internal Code of Labor Conduct*" approved by decision of the Board of Directors of NB of RK No. 8 of January 28, 2008, all vacant administrative public positions within the National Bank shall be filled in accordance with the *Law on Public Service and Rules for Holding a Contest for a Vacant Administrative Public Position*

approved by the decision of the Chairman of the Agency for Public Service of the Republic of Kazakhstan No. A-202 of November 24, 1999.

Ministry of Communications

761. Due to the fact that no information concerning the structure of the supervisory units, personnel strength or technical resources of the Ministry of Communications, or the measures taken to upgrade the personnel's skills in the area of AML / CFT, etc. was provided, it is not possible for the evaluation team to assess the effectiveness of supervision over postal service operators.

762. At the time of evaluation, no competent authority had a special unit responsible for AML / CFT.

Recommendation 29

763. The mechanism for control and application of sanctions within the AML / CFT system in the Republic of Kazakhstan is still being developed.

764. The AFS and NB RK have certain powers to carry out inspections of and request relevant information from the supervised entities.

Banking and Insurance Sectors, Securities Markets, Pension Funds

765. Pursuant to sub. par. 8 of par. 1 of Article 9 of the *Law "On State Regulation and Supervision of Financial Market and Financial Institutions"*, the AFS must, for the purpose of regulation of and supervision over the activities of financial institutions, inspect financial institutions and their affiliates in the cases and within the limits provided by law of the Republic of Kazakhstan, including through involvement of audit firms (below are given the relevant provisions of the laws governing financial institutions).

766. Art. 13-1, the *Law "On State Regulation and Supervision of Financial Market and Financial Institutions"*, establishes the procedure for organizing and conducting inspections of financial institutions and their affiliates, legal persons providing services in the securities market, securities issuers, credit bureaus, banks' liquidation committees, insurance (reinsurance) companies and pension savings funds.

767. Pursuant to par. 2 of art. 9 of the *Law "On State Regulation and Supervision of Financial Market and Financial Institutions"*, the AFS has the right to conduct inspections of financial institutions and their affiliates, including through involvement of audit firms, in order to:

- 1) determine the financial state of financial institutions and their affiliates;
- 2) determine conformity of the management structure and decision-making procedures of financial institutions and their affiliates with the laws of the Republic of Kazakhstan;
- 3) identify the affiliates of financial institutions;
- 4) identify and prevent violations of the rights of consumers of financial services;
- 5) identify and prevent any unauthorized activities connected with provision of financial services or issuance of financial instruments.

768. It should be noted that the above sub. paragraphs set no AML / CFT-related goals.

Inspection of Banks

769. The Law of RK *"On Banks and Banking Activities in RK"* (Article 44) provides for the AFS to have powers to audit banks. When auditing banks, the AFS has the right to inspect the activities of banks' affiliates solely for the purpose of determining the extent and nature of their influence on banks. Banks and their affiliates are required to assist the inspection body with all issues specified in the AFS's inspection specification, as well as to provide the opportunity to interview any officials and employees and guarantee access to any sources of information that may be necessary for successful inspection.

Inspection of Institutions Executing Certain Types of Banking Transactions

770. According to the information provided by the representatives of the RK, the inspection of institutions executing certain types of banking transactions is exercised in conformity with the Article 13.1 of the Law *"On State Regulation and Supervision of Financial Market and Financial Institutions"*. Also the information request from these organizations AFS exercises in accordance with the Article 14 of the Law *"On State Regulation and Supervision of Financial Market and Financial Institutions"*. However the industrial law *"On Banks and Banking Activities in the Republic of Kazakhstan"* does not provide for inspection of organizations executing certain types of banking transactions or a possibility to request information from them.

Inspection of Insurance (reinsurance) Companies and Insurance Brokers

771. Pursuant to the Law of RK *"On Insurance Activities"* (par. 14 of art. 43), the AFS conducts inspections of insurance entities, insurance brokers, separate divisions of insurance entities and insurance brokers. Also, pursuant to art. 44 of the Law *"On Insurance Activity"*: inspection of insurance (reinsurance) companies, insurance brokers, and their separate divisions is the responsibility of the AFS. All insurance (reinsurance) companies, insurance brokers and their separate divisions are required to assist the AFS with all matters related to the on-going inspection, provide the opportunity to interview any employees and guarantee access to any documents and sources of information that may be necessary for successful fulfillment of the objectives of the inspection. Pursuant to par. 14-4 of art. 43 of the Law of RK *"On Insurance Activity"*, the AFS is responsible for monitoring compliance by insurance (reinsurance) companies and insurance brokers with the requirements of the law of RK on AML / CFT.

Inspection of Pension Savings Funds

772. The Law of RK *"On Pension Provision"* does not provide powers for the AFS to inspect pension savings funds. The procedure for conducting inspections of pension savings funds is defined in Article 13.1 of the Law *"On State Regulation and Supervision of Financial Market and Financial Institutions"* (reviewed above).

Inspection of Professional Securities Market Participants and the Central Depository

773. Pursuant to par. 1 of art. 108 of the Law *"On Securities Market"*, the AFS has the right to inspect the activities of issuers, licensees, central depository, self-regulatory organizations and legal entities carrying out professional activities in the securities market without a license in accordance with the laws of the Republic of Kazakhstan.

774. The Stock Exchange is not included in the above list. However, representatives of the Stock Exchange noted that the Stock Exchange was a licensee and was licensed to organize trade. Also, they pointed out the Stock Exchange was a professional securities market participant.

775. Also, pursuant to sub. par. 8 of par. 1 of art. 45 of the Law "On Securities Market", the activities relating to organizing trading in securities and other financial instruments, i.e. the activities of the Stock Exchange, are subject to licensing by an authorized body (the AFS), and the same agency supervises the activities of the Stock Exchange.

Obtainment of Information by the AFS

776. The right of the AFS to obtain the necessary information is defined in the Law "*On State Regulation and Supervision of Financial Market and Financial Institutions*", as well as in other relevant laws governing the supervisory role of the Agency (except for the Law "On Pension Provision").

777. More specifically, pursuant to art. 14 of the Law "*On State Regulation and Supervision of Financial Market and Financial Institutions*", in order to ensure proper and timely performance by the AFS of its functions related to regulation of and supervision over financial markets and financial institutions, and fulfillment of the requirements of the said Law, the AFS is entitled, without compensation, to obtain from individuals and legal entities, as well as government agencies the information necessary to carry out its supervisory functions. The obtained thereby information cannot be disclosed.

778. The enforcement of these rights does not require court approval.

Application of Sanctions by the AFS

779. Pursuant to sub. par. 9 of par. 1 of art. 9 of the Law "On State Regulation and Supervision of Financial Market and Financial Institutions", the AFS determines the procedure for application of and applies restricted enforcement measures and sanctions provided for in the law of the Republic of Kazakhstan against financial institutions.

780. The procedure for application of restricted measures against certain financial institutions is defined in the relevant rules approved by the AFS. However, no procedure, defined by the AFS, for application of sanctions against financial institutions was presented. (For more information, see Sec. 17)

781. The laws "On Banks and Banking Activities in Kazakhstan", "On Insurance Activities", "On Securities Market" and "On Pension Provision" provide for appropriate enforcement measures and sanctions to be applied by the AFS against supervised institutions. Having said that, it should be noted that the AFS itself cannot apply penalties for violation of the law on AML / CFT. (For more information, see Sec. 17)

National Bank of the Republic of Kazakhstan

Inspection by the National Bank of the Republic of Kazakhstan

782. Pursuant to art. 62 (Basic Powers of the National Bank of Kazakhstan Concerning Regulation of and Supervision over Financial Institutions) of the Law "On National Bank of the Republic of Kazakhstan", NB is responsible for licensing of control and supervision over

financial institutions in accordance with this Law and other legislative acts of the Republic of Kazakhstan. For these purposes, the National Bank's responsibility extends to the following: auditing the activities of financial institutions and other persons in relation to all matters that fall within the scope of competence of NB of Kazakhstan.

783. Pursuant to art. 62-2 of the Law "On National Bank of the Republic of Kazakhstan", NB exercises, in accordance with this Law and other laws of the Republic of Kazakhstan, control over all matters whose regulation falls within its competence through on-the-spot inspections or in documentary form of the following:

- financial institutions and persons engaged in currency transactions to ensure their compliance with requirements of the law of the Republic of Kazakhstan;
- organizations executing certain types of banking transactions under the license issued by NB of Kazakhstan in order to study their activities in general or to focus on specific issues, as well as to test the reliability of reports and information submitted by them to the National Bank of Kazakhstan.

784. The procedure for conducting inspections is defined in article 62-3 of the Law "On National Bank of the Republic of Kazakhstan."

785. According to the information provided by NB of RK, all inspections are carried out by the departments of the central office and territorial divisions of NB of RK.

Obtainment of Information by the National Bank of Kazakhstan

786. Pursuant to article 70 of the Law of RK "On National Bank of the Republic of Kazakhstan", the National Bank is entitled, without compensation, to obtain from any individuals or legal persons, as well as government agencies the necessary information, including information that constitutes a company, trade, banking or any other secret protected by law. The obtained thereby information cannot be disclosed.

787. During the field mission, the representatives of NB of RK pointed out that NB received only monthly statistical reports from organizations providing currency exchange services.

788. The enforcement of these rights does not require court approval.

Application of Sanctions by the National Bank

789. Pursuant to par. 9 of Article 8 of the Law "On National Bank of the Republic of Kazakhstan", NB applies, within its scope of competence, enforcement measures and sanctions against licensees for violation of banking or currency laws of the Republic of Kazakhstan, as well as the law of RK on combating money laundering and terrorist financing.

790. It should be noted that the law does not provide NB of RK with powers to determine the procedure for application, within its scope of competence, of enforcement measures and sanctions against financial institutions for violation of the law on AML / CFT (*it has the authority to determine the procedure for application of enforcement measures and sanctions provided in the banking law of the Republic of Kazakhstan, as well as laws on currency regulation and currency control; insurance and insurance activities; pension provision; and securities market*).

791. Pursuant to par. 2 of art. 48 of the Law "On Banks and Banking Activities in the Republic of Kazakhstan", the National Bank or AFS have the right to suspend or revoke a license to carry out all or certain types of banking operations, depending on the nature of violation.
792. Also, sub. par. 1-2 and 1-3 of art. 48 of the above law provides that in the event of systematic (three or more times during twelve consecutive calendar months) violations of the requirements provided for in the law of the Republic of Kazakhstan on AML / CFT, the license to carry out all or certain banking operations shall be suspended.
793. Pursuant to the "*Guidelines for Application by the National Bank of the Republic of Kazakhstan of Enforcement Measures and Sanctions against Financial Institutions*" approved by decision of the Board of NB of RK No. 95 of September 14, 2006, the National Bank of RK shall, within its scope of competence, apply enforcement measures or sanctions against financial institutions in the event of violation by the latter of the requirements of regulatory legal acts in the area of banking activities, payments and money transfers, currency regulation and currency control, monetary policy, currency circulation, accounting, financial reporting and accounting automation. It should be noted that the above guidelines do not provide for application of any measures for violations in the area of AML / CFT.
794. The Code of the Republic of Kazakhstan "On Administrative Offences" (art. 572) defines the powers of NB of RK pertaining to reviewing administrative cases. According to the information submitted separately by representatives of NB of RK, in 2009-2010, NB filed 10 administrative proceedings against financial institutions for violations in the area of payments and money transfers, which are punishable under the Code of Administrative Offences, that resulted in imposition of administrative penalties.
795. It should be noted that under this Code the National Bank of RK has no right to review cases related to violations of the law on AML / CFT.

Ministry of Communications and Information of the Republic of Kazakhstan

Inspection, Obtainment of Information and Application of Sanctions by the Ministry of Communications

796. The Law of the Republic of Kazakhstan "*On Postal Service*" does not provide the supervisory authority (Ministry of Communications) with powers in the area of AML / CFT, or to conduct inspections and impose sanctions in the area of AML / CFT, or to perform other functions in accordance with the FATF Recommendations. The evaluation team was informed that there was also no practice of conducting supervisory inspections in area of AML / CFT.
797. The law "*On Postal Service*" does not provide the supervisory authority (Ministry of Communications) with powers to obtain the necessary data, documents or information relating to compliance monitoring or obtainment of access to such data, documents or information.
798. Pursuant to par. 2 of the Regulations "*On the Ministry of Communications and Information of the Republic of Kazakhstan*" approved by decision of the Government of the Republic of Kazakhstan No. 427 of May 18, 2010, for the purpose of meeting the objectives assigned to it and performance of its function, the Ministry has the right, in accordance with the established procedure, to:

- 1) adopt binding regulatory legal acts within its scope of competence;
- 2) request and receive, in accordance with the procedure established by law, the necessary information and materials from government authorities, organizations and their officials;
- 3) exercise other rights provided for in the existing legislative acts.

799. Pursuant to the Regulations *"On the Ministry of Communications and Information of the Republic of Kazakhstan"* approved by decision of the Government of the Republic of Kazakhstan No. 427 of May 18, 2010, one of the functions of the Ministry is the drafting and approval of departmental statistical reporting forms, checklists, risk level evaluation criteria and annual audit plans in accordance with the Law of the Republic of Kazakhstan *"On Private Enterprise"*. It should be mentioned that there are no issues in the authority of the Ministry of Communications concerning the monitoring of compliance with the RK legislation in the field of the AML/CFT

800. Given that there is no competent authority responsible for supervising the activities of the Kazpost in the area of financial services provision, the issue of conducting inspections in this area remains unresolved. At the same time, it should be noted that during the field mission, representatives of the Kazpost JSC stated that the AFS had studied all activities of the postal service operator related to provision of financial services in the course of its comprehensive audit of the Kazpost JSC conducted in March-April 2010.

801. Due to failure on the part of Kazakh representatives to provide required information, the evaluation of the Communications Ministry's system of supervision over the activities of postal service operators, as it pertains to provision of money remittance services, is not possible.

802. The practice of conducting oversight inspections in the area of AML / CFT is absent.

Recommendation 17

803. The regime of sanctions for non-compliance with the law on AML / CFT in Kazakhstan is not established in all sectors.

804. Pursuant to the AML/CFT Law (art. 14), the responsibility for monitoring compliance with the internal control rules is assigned to the relevant government authorities as per their competence and in accordance with the procedure established by Kazakhstan. However, this law does not contain provisions on the application of sanctions.

805. Article 20 of the AML / CFT Law establishes liability for violation of the law in the area of AML / CFT. In particular, any violation of the law of the Republic of Kazakhstan on AML / CFT is punishable under the laws of the Republic of Kazakhstan.

806. Responsibility for violation of the law is defined in article 168-3 of the Code *"On Administrative Offences"* and article 193 of the *Criminal Code of RK*.

807. The supervisory authorities have the right to apply sanctions against supervised entities under the law of the Republic of Kazakhstan. However, they are not entitled to apply penalties for violation of the law in the area of AML / CFT, or independently review cases and implement measures under article 168-3 of the Administrative Code.

808. Article 168-3 of the Code "On Administrative Offences" establishes sanctions for violation of the law on AML / CFT only as it pertains to documentary recording, submission of information on transactions subject to financial monitoring, non-performance by the SFM of responsibilities concerning drafting, adoption and (or) fulfillment of internal control rules and a program for its implementation, as well as notification by the SFM's employees of their clients and other persons of the submitted to the financial monitoring authority information.
809. Pursuant to article 541 of the Code "On Administrative Offences", all cases falling under Article 168-3 are to be reviewed by specialized or equivalent to them administrative judges.
810. Pursuant to art. 636 of the Code "On Administrative Offences", protocols of administrative violation falling under art. 168-3 of this Code may be drawn up by the following:
- 1) authorized officials of:
 - the gambling industry authority;
 - bodies of the Ministry of Finance of the Republic of Kazakhstan;
 - Financial Supervision Agency;
 - judiciary;
 - industry and trade authority;
 - 2) as well as by authorized officials of the National Bank of Kazakhstan. All of the above persons and entities are entitled to initiate administrative proceedings under Article 168-3.
811. Article 168-3 provides for separate sanctions for violation of the AML / CFT law as it pertains to documentary recording and provision of information, for non-performance by the SFM of the responsibilities concerning drafting, adoption and (or) fulfillment of internal control rules and a program for its implementation, as well as for notification by the SFM's employees of their clients and other persons of the submitted to the FIU information. Additionally, this article provides for imposition of appropriate sanctions in case of repeated violations occurred in the course of the year.
812. The sanctions provided for in Article 168-3 are proportionate. In particular, the sanctions of Article 168-3 provide for a penalty ranging from 100 to 2000 MCI, which in absolute terms at this point is between 141,300 tenge (about US\$1000) and 2,826,000 tenge (about US\$20,000). Also, in case of repeated violations, three or more times in the course of the year, committed after the imposition of administrative penalty, there exist measures for suspension of a license for a particular activity, or a temporarily revocation of a certificate of competence, for up to six months, or termination of activities of a legal entity for the same term.
813. Given that the internal control rules are not a regulatory act, the application of any measures by supervisory authorities against supervised entities for non-conformity with these rules may be controversial.

Financial Supervision Agency

814. The list of administrative violations defined in Article 573 of the Code "On Administrative Offences" and subject to review by the AFS does not contain Article 168-3 of the above Code. This means that the AFS cannot independently review cases related to non-compliance

with legislative requirements on AML / CFT and cannot apply penalties. In this case, the AFS can file a protocol for court review.

Banking Sector

815. Pursuant to par. 1 of art. 46 of the Law of RK "On Banks and Banking Activities in the Republic of Kazakhstan", in the event of detection by the authorized body (AFS) of any violations of prudential standards or any other mandatory standards and limits; violations of any regulatory legal acts of the authorized body; detection of any wrongful acts or omissions committed by officials and employees of the bank, that threaten its financial security and stability or the interests of its depositors, clients or correspondents; as well as non-compliance with other requirements of the AFS provided for in this Law, the AFS has the right to apply against the bank in question one of the following restricted enforcement measures: (a) request a letter of commitment; (b) draw up a written agreement with the bank; (c) issue a warning; and (d) give a binding written order. However, it should be noted that in the above list of violations contains no violations in the area of AML / CFT.
816. Pursuant to par. 1 of art. 47 of the Law of RK *"On Banks and Banking Activities in the Republic of Kazakhstan"*, the AFS may impose sanctions against the bank irrespective of the enforcement measures applied against it before. Also, pursuant to sub. par. "a" of par. 2 of Article 47 of this Law, among the sanctions available to the authorized body is the imposition and collection of penalty on the grounds established in the legislative acts of the Republic of Kazakhstan. It should be noted that the representatives of Kazakhstan failed to present a legislative act that establishes the procedure for imposition of penalties by the AFS because the AFS is not allowed under the Code of Administrative Offences to independently impose or collect fines for non-compliance with AML / CFT.
817. Among the sanctions available to the AFS is the right to suspend from duty the bank's executives (sub. par. "e" of par. 2 of art. 47 of the Law *"On Banks and Banking Activities in the Republic of Kazakhstan."* It should be noted that pursuant to art. 20 of the Law *"On Banks and Banking Activities in the Republic of Kazakhstan"*, neither the chief accountant of the bank nor the top managers of the bank's separate divisions and their chief accountants are recognized as executives of the bank. The persons who have the right to sign documents authorizing banking operations and responsible for overseeing the activities of only one structural unit can neither be considered as the executives of the bank.
818. It should be noted that under the law "On Banks and Banking Activities in the Republic of Kazakhstan", the measure for suspension of executives may only be applied against executives of banks, i.e. cannot be used against executives of organizations executing certain types of banking transactions.
819. In the course of its field mission, the evaluation team were shown the Guidelines¹⁴, approved by Decision of the Board of the AFS No. 42 of February 25, 2006, pursuant to which the AFS is entitled to apply restricted enforcement measures against banks,

¹⁴ *"Guidelines for Application of Restricted Enforcement Measures against Second-Tier Banks, Institutions Executing Certain Types of Banking Operations, Major Members of the Bank, Bank Holding Company and their Affiliates, Member Organizations of the Banking Conglomerate; as well as Compulsory Measures against Major Bank Members, Bank Holding Companies and Organizations Members of the Bank Conglomerate."*

organizations executing certain types of banking operations, major members of the bank, bank holding company and their affiliates, member organizations of the banking conglomerate; as well as compulsory measures against major bank members, bank holding companies and organizations members of the bank conglomerate.

820. Under the above Guidelines, in respect of banks, organizations executing certain types of banking operations, major members of a bank, bank holding company and their affiliates, as well as member organizations, the AFS may:

- 1) request commitment letter;
- 2) conclude a written agreement;
- 3) issue a written warning informing of possible sanctions;
- 4) issue a written order requiring adoption of mandatory remedial measures to address identified deficiencies within the prescribed period.

821. It should be noted that under the above guidelines, the AFS may apply restricted enforcement measures only against banks, organizations executing certain types of banking operations, major members of a bank, bank holding company and their affiliates, member organizations of the banking conglomerate; and may apply compulsory measures against major bank members, bank holding companies and organizations members of the bank conglomerate.

822. Furthermore, under the Law *"On Banks and Banking Activities in the Republic of Kazakhstan"*, among the AML / CFT-related measures that can be applied by the AFS against banks are the suspension of a license to execute certain types of banking operations, as well its revocation in cases of systematic violations. In particular, in the event of systematic violations of the requirements of the AML / CFT law, the AFS may suspend a license. Failure to timely remedy the AML / CFT law-related violations that resulted in suspension of the license, as well as any repeated violation of the requirements of the AML / CFT law whose initial violation caused the suspension of the license, may result in the revocation of the license.

823. It should be noted that the above law does not provide for imposition of fines by the AFS against banks for non-compliance with AML / CFT.

Insurance Sector

824. Pursuant to sub. par. 23 of art. 43 of the *Law of the Republic of Kazakhstan "On Insurance Activities"*, the AFS has the right to apply restricted enforcement measures against professional insurance market participants. Restricted enforcement measures can be imposed for any violation of the law of the Republic of Kazakhstan, while the procedure for their application is defined in article 53-2 of the *Law "On Insurance Activities."* The AFS has the right to issue a written order, a written warning, request a written commitment or conclude a written agreement.

825. Pursuant to sub. par. 15 and 16 of art. 43 of the *Law of the Republic of Kazakhstan "On Insurance Activities"*, the AFS may impose sanctions against professional insurance market participants and suspend or revoke licenses issued to professional insurance market participants.

826. Sanctions against insurance (reinsurance) companies and insurance brokers can be imposed by either the AFS or the court in accordance with this Law (art. 53-3 of the Law of the Republic of Kazakhstan "On Insurance Activities"). Among the sanctions available for application by the authorized body are as follows: (1) imposition of an administrative fine on the grounds and in accordance with the procedure established in the law of the Republic of Kazakhstan; (2) suspension of a license; (3) revocation of a license; (4) suspension from duty of executives on the basis of evidence sufficient to deem the actions of such executive(s) of an insurance (reinsurance) company to be in breach of the existing law.
827. It should be noted that under art. 34 of the Law "On Insurance Activities", neither the top executives of branches and representative offices of insurance (reinsurance) companies nor their chief accountants are recognized as executives of insurance (reinsurance) companies. Accordingly, the AFS may not suspend from duty such executives of insurance (reinsurance) companies.
828. The evaluation team was not provided with a document establishing the grounds and procedure for imposition by the AFS of administrative fines in respect of insurance (reinsurance) companies or insurance brokers. Pursuant to the Code of Administrative Offences, the AFS may not independently impose any fines.
829. The Law of the Republic of Kazakhstan "On Insurance Activities" (sub. par. 11 of par. 1 of art. 54) stipulates that the license of an insurance (reinsurance) company or an insurance broker may be suspended for up to six months for systematic (three or more times during twelve consecutive calendar months) violation of the law of the Republic of Kazakhstan on AML / CFT.
830. Also, pursuant to the Law "On Insurance Activities" (sub. par. 7 of par. 1 of art. 55), in the event of repeated, in the course of the last twelve consecutive months, violation of the requirements of the law of the Republic of Kazakhstan on AML / CFT, whose initial violation caused suspension of the license, the AFS may choose to revoke the license. In this case also, the law "On Insurance Activities" does not provide for imposition of fines by the AFS for non-compliance with AML / CFT. The AFS does not have the powers to self-impose fines for non-compliance with AML / CFT (pursuant to the Code on Administrative Offences).

Securities Sector

831. Pursuant to par. 1 of art. 3-1 of the *Law of the Republic of Kazakhstan "On Securities Market"*, in the event of detection by the AFS of any violations of prudential standards or any other mandatory standards or limits; violations of any regulatory legal acts of the AFS; detection of any wrongful acts or omissions committed by officials and employees of the securities market entities, the AFS has the right to apply restricted enforcement measures against the securities market entities. However, this article does not provide the AFS with the authority to impose restricted enforcement measures for violation of the law on AML / CFT.
832. Representatives of Kazakhstan separately presented the Guidelines¹⁵, approved by decision of the AFS No. 68 of March 30, 2007, authorizing the AFS to impose restricted enforcement

¹⁵ "Guidelines for Application of Restricted Enforcement Measures against Securities Market Entities"

measures against securities market entities. Pursuant to par. 1 of the above Guidelines, the AFS is authorized to apply restricted enforcement measures in the event of:

833. detection of violations of prudential standards or any other mandatory standards or limits; (b) violations of any regulatory legal acts of the AFS; (c) detection of any wrongful acts or omissions committed by officials or employees of the securities market entities.
834. Given that the AFS does not have a regulation in the area of AML / CFT, we can assume that the above guidelines do not provide for application by the AFS of restricted enforcement measures in the event of violation of the AML / CFT law, i.e. the AFS may not apply any AML / CFT-related restricted enforcement measures against securities market entities.
835. Pursuant to the above paragraph of the Law "On Securities Market", among the restricted enforcement measures that can be applied by the AFS against securities market entities are as follows:
- 1) issue a binding written order to remedy the identified deficiencies in a timely manner;
 - 2) put the issue of dismissal of securities market entity executives up for a shareholder vote;
 - 3) request a commitment letter;
 - 4) conclude a written agreement with a securities market entity.
836. Also, pursuant to par. 7 and 8 of article 3-1 of this Law, the AFS has the right to impose sanctions against a securities market entity irrespective of the enforcement measures applied against it before. Among the sanctions available to the AFS are as follows:
- 1) impose and collect fines in accordance with the procedure established in the law of the Republic of Kazakhstan;
 - 2) suspend a license;
 - 3) revoke a license;
 - 4) withdraw its consent to the appointment of executives of securities market entities.
837. The evaluation team did not receive a legislative act establishing the procedure for imposition of fines by the AFS.
838. It should be noted that pursuant to par. 1 of art. 54 of the *Law "On Securities Market"*, the top management of separate divisions and their chief accountants are not regarded as executives, and, therefore, the AFS will not be able apply appropriate measures against these employees.
839. The AFS may suspend a license for up to six months in the event of systematic violations of the requirements of the law of the Republic of Kazakhstan on AML / CFT (sub. par. 11 of par. 1 of art. 51 of the Law "On Securities Market").
840. Additionally, the AFS may revoke a license in the following cases: repeated (in the course of the last twelve consecutive months) violation of the national requirements in the area of AML / CFT, whose initial violation caused suspension of the license; involvement of the licensees in transactions connected with money laundering or terrorist financing.

Pension Savings Funds

841. In the event of detection by the AFS of any violations of prudential standards or any other mandatory standards or limits, violations of the regulatory legal acts of the AFS, detection of any wrongful acts or omissions committed by officials and employees of pension savings funds, as well as non-compliance with any other requirements of the AFS provided for in the Law "On Pension Provision", the AFS has the right to apply restricted enforcement measures against pension savings funds. The procedure for application of restricted enforcement measures is established in regulatory legal acts of the authorized body (par. 1 and 5 of art. 42 of the Law "On Pension Provision"). Violations of the law in the area of AML / CFT are not covered by the above restricted enforcement measures.

842. Representatives of Kazakhstan separately presented the Guidelines¹⁶, approved by decision of the AFS No. 67 of March 30, 2007, authorizing the AFS to impose restricted enforcement measures against pension savings funds and major participants of open pension savings funds. Pursuant to par. 1 of the above Guidelines, the AFS may apply restricted enforcement measures against pension funds and major participants of an open pension savings fund in the following cases:

- detection by the authorized body (AFS) of violations of prudential standards or any other mandatory standards or limits;
- violations of the regulatory legal acts of the authorized body (AFS);
- detection of wrongful acts or omissions committed by officers and employees of a pension savings fund.

843. The above guidelines (67 and 68) do not provide for the AFS to use restricted enforcement measures in cases of AML / CFT law violations, i.e. the AFS may not apply restricted enforcement measures in the area of AML / CFT against pension savings funds and major participants of an open pension savings fund.

844. Also, pursuant to sub. par. 6 and 7 of art. 42 of the Law "On Pension Provision", the AFS has the right to apply sanctions against a pension savings fund irrespective of the enforcement measures applied against it before. Among the sanctions available to the AFS are as follows:

- 1) temporary shutdown;
- 2) impose and collect fines in accordance with the procedure established by the law of the Republic of Kazakhstan;
- 3) suspend or revoke a license;
- 4) suspend executive personnel from duty.

845. It should be noted that pursuant to par. 1 of art. 40 of the *Law "Pension Provision"*, neither the top manager nor chief accountant of a separate division of a pension savings fund is recognized as an executive of a pension savings fund. . Therefore, the AFS will not be able to apply relevant measures in respect of these executives.

846. The Law "On Pension Provision" provides the AFS with authority to suspend a pension savings fund's license to attract pension contributions for up to six months in case of

¹⁶ "Guidelines for Application of Restricted Enforcement Measures against Pension Savings Funds and Major Participants of Open Pension Savings Funds"

systematic violations by the latter of the requirements provided for in the law of the Republic of Kazakhstan on AML / CFT (sub. par. 8 of par. 8 of art. 42).

847. Failure on the part of a pension savings fund to timely remedy the causes of license suspension may serve as the grounds for revocation of its license by the AFS (sub. par. 11 of art. 42 of the Law "On Pension Provision").

National Bank of the Republic of Kazakhstan

848. Pursuant to par. 9 of Article 8 of the Law "On National Bank of the Republic of Kazakhstan", NB may apply, within its scope of competence, enforcement measures and sanctions against licensees for violation of the banking or currency laws of the Republic of Kazakhstan, as well as the law of RK on AML / CFT.

849. Pursuant to the *Guidelines*¹⁷, approved by Decision of NB of RK No. 95 of September 14, 2006, for violation of the law, whose regulation is the responsibility of NB of RK (payments and money transfers, currency regulation and currency control, teller transactions and collection, accounting in financial institutions, etc.).

850. Pursuant to art. 61 of the Law "On National Bank of the Republic of Kazakhstan, NB of RK is involved in the regulation of and supervision over financial institutions and applies enforcement measures and sanctions in accordance with the Kazak law. Upon application, within its scope competence, of sanctions against financial institutions, NB of RK shall notify the AFS.

Banks and Institutions Executing Certain Types of Banking Transactions

851. Pursuant to par. 9 of art. 46 of the Law "On Banks and Banking Activities in the Republic of Kazakhstan", upon detection by the National Bank of RK of violations of the requirements of the law of the Republic of Kazakhstan in the area whose regulation falls within its competence, the National Bank of RK may apply against a bank or institution executing certain types of banking transactions the following measures:

- a) request a commitment letter;
- b) conclude a written agreement with a bank;
- c) issue a warning;
- d) issue a mandatory written order.

852. Irrespective of the enforcement measures applied earlier, NB of RK has the right to apply sanctions against a bank or institution executing certain types of banking operations. As a sanction against a bank or an institution executing certain types of banking operations, NB of RK may impose and collect fines on the grounds established in the law of the Republic of Kazakhstan (par. 6-1 of art. 47 of the Law "On Banks and Banking Activities in the Republic of Kazakhstan").

853. Additionally, NB of RK may suspend or revoke a license to execute certain types of banking operations of a licensed by NB institution executing certain types of banking

¹⁷ "Guidelines for Application by the National Bank of the Republic of Kazakhstan of Enforcement Measures and Sanctions against Financial Institutions"

operations (par. 6-1 of art. 47 of the *Law "On Banks and Banking Activities in the Republic of Kazakhstan"*).

Insurance (reinsurance) Companies and Insurance Brokers

854. In the event of violation by an insurance (reinsurance) company of the requirements of the law in the area which falls within the competence of NB of RK, the latter may apply against such insurance (reinsurance) company or insurance brokers the following restricted enforcement measures: (a) request a written commitment, (b) issue a mandatory written order, (c) draft a written agreement (par. 8 of art. 53-2 of the *Law "On Insurance Activities"*). The law "On Insurance Activities" does not provide the National Bank with any other measures against violations of the law (sanctions or suspension of a license to execute certain types of banking operations).

Securities Market Entities

855. Also, in the event of violation of the requirements of the law in the area which falls within the competence of NB of RK, the latter has the right to apply against securities market entities the following measures:

- a) issue a binding written order to remedy the identified deficiencies in a timely manner;
- b) request a commitment letter;
- c) conclude a written agreement with a securities market entity (par. 9 of art. 3-1 of the *Law "On Securities Market"*).

856. The above law does not provide NB of RK with any other measures to be applied against securities market entities.

Pension Savings Funds

857. Pursuant to par. 14 of art. 42 of the *Law "On Pension Provision"*, in the event of violation of the requirements of the law in the area which falls within the competence of NB of RK, the latter has the right to apply against a pension savings fund the following enforcement measures:

- issue a binding written order to remedy the identified deficiencies in a timely manner;
- request a commitment letter;
- conclude with a pension savings fund a written agreement. However, the above law does not provide for imposition of any penalties or any other compulsive measures.

858. It should be noted that NB of RK cannot independently review cases of administrative violations falling under Article 168-3 of the above code; neither can it independently apply penalties. Instead, in this case, the NB of RK can only refer the case to court.

Ministry of Communications and Information

859. The Law of the Republic of Kazakhstan "On Postal Service" does not provide the Ministry of Communications with authority to apply any sanctions against the postal service operators.

860. The regulation "On the Ministry of Communications and Information of the Republic of Kazakhstan" approved by decision of the Government of the Republic of Kazakhstan No.

427 of May 18, 2010 does not provide the Ministry with powers to apply any sanctions against postal service operators.

861. The list of officials authorized to draw up protocols under art. 168-3 contained in the Code "On Administrative Offences" does not include authorized officials of the Ministry of Communications. Additionally, the Ministry of Communications has no authority to review cases pertaining to administrative violations that fall under Article 168-3 (in accordance with art. 549-1 of the Code).

Recommendation 23 (market entry)

862. The law of the Republic of Kazakhstan contains provisions intended to prevent criminal capital, criminals or their representatives from entering the capital or management of financial institutions and, in particular, banking institutions.

Banking, Insurance, Pension Savings Funds Sectors and Securities Market Entities

863. The laws "On Banks and Banking Activities in Kazakhstan", "On Insurance Activities", "On Securities Market" and "On Pension Provision" contain requirements for persons who are being appointed to senior positions.

864. The above laws also establish appropriate requirements for major participants of these financial institutions.

865. Pursuant to par. 5 of art. 17 of the *Law "On Banks and Banking Activities in the Republic of Kazakhstan"*, legal entities registered in offshore zones, or whose affiliates are registered in offshore zones, or individuals who are members (founders, shareholders) of legal entities registered in offshore zones are not allowed to own, directly or indirectly, and (or) use, and (or) dispose of the voting shares of banks residents of the Republic of Kazakhstan. This restriction does not apply to banks that are subsidiaries of non-resident banks of the Republic of Kazakhstan whose individual credit rating, set by a rating agency from a list of rating agencies to be compiled by the authorized body, is not lower than "A".

866. Pursuant to par. 2 of art. 47 of the *Law "On Securities Market"*, the following persons cannot be founders or shareholders of the applicant (licensee): legal entities registered in offshore zones, the list of which is compiled by an authorized body; persons affiliates of legal entities registered in offshore zones; persons who are the founders (participants, shareholders) of legal entities registered in offshore zones.

867. Also, pursuant to par. 1-1 of art. 36 of the *Law "On Pension Provision"*, legal entities registered in offshore zones, or whose affiliates are registered in offshore zones, or individuals who are members (founders, shareholders) of legal entities registered in offshore zones are not allowed to own, directly or indirectly, and (or) use, and (or) dispose of the voting shares of pension savings funds of residents of the Republic of Kazakhstan

868. Pursuant to the Guidelines for Issuance of Consent to the Appointment (election) of Executive Personnel of Financial Institutions approved by decision of the Board of the AFS No. 157 of June 12, 2004, a procedure has been established for issuance of consent by the AFS to the appointment (election) of executive personnel of banks, insurance (reinsurance) companies, insurance brokers, pension savings funds, legal entities applying for or

possessing a license to operate in the securities market, and institutions responsible for investment management of pension assets.

869. The AFS grants consent to the appointment (election) to a position of executive employee of a financial institution to individuals who meet the requirements established in the legislative acts of the Republic of Kazakhstan. The list of executives of financial institutions subject to approval by the AFS is determined by legislative acts of the Republic of Kazakhstan.

870. Prior to being approved by the AFS, the candidates must take tests. The following documents must be provided by financial institutions to the AFS for candidate approval procedure:

- 1) a petition, to be prepared in any form, confirming that the candidate data has been documentarily verified by the financial institution;
- 2) a copy of the job description of the candidate, except for candidates for the posts of the managing board executive (insurance broker executive), executive and members of the board of directors or chief accountant;
- 3) a copy of the decision of the financial institution authority concerning the election (appointment) of a candidate;
- 4) candidate data in electronic and hard copy forms;
- 5) a copy of the candidate's identity card (passport);
- 6) a document confirming the absence or clearance of criminal convictions for economic, corruption-related and other crimes against the interests of the public service or public administration issued in the form of certificate by the authorized public body responsible for compilation of legal statistics and maintenance of special accounts (such document's issuance date shall not be more than 3 (three) months older than the petition launch date). All foreign nationals must additionally submit a document of like tenor issued by the relevant government authority of the country of their nationality, or country of residence for stateless persons;
- 7) a copy of the certificate of competency of appropriate grade (for approval of candidates who are legal entities applying for a license or possessing a license to operate in the securities market).

871. Pursuant to the Law "On Banks and Banking Activities in the Republic of Kazakhstan" (par. 11 of art. 20), identical approval criteria is set for both the executives of institutions executing certain types of banking operations and executives of bank management boards. The appointment of these executives requires no consent of the authorized agency (AFS). Also, pursuant to the same law, an institution executing certain types of banking operations is required, at the request of the AFS, to dismiss its executive in case of his / her non-conformity with the requirements of the law.

872. The law contains no requirement for possession of significant stakes in the authorized capital of institutions executing certain types of banking operations.

873. Also, pursuant to sub. par. 4 of par. 5 of the Guidelines¹⁸ approved by decision of the Board of the National Bank of Kazakhstan No. 401 of October 10, 2002, one of the requirements for obtaining a license is that the executive of the authorized body of the applicant should not have any valid criminal convictions for crimes against property, interests of the agency in commercial and other organizations, corruption crimes or crimes committed in the sphere of economic activity
874. The Guidelines (par. 6) approved by decision of the Board of the National Bank of Kazakhstan No. 106 of October 27, 2006 establish requirements for founders of the organizations carrying out exchange operations. In particular, pursuant to the requirements of these guidelines, individuals or legal entities residents and non-residents of the Republic of Kazakhstan, except for persons specified in part two of this paragraph, may be founders of the authorized organization. No persons previously acting as founders (one of the founders) of an authorized organization whose license to carry out foreign currency exchange operations had been revoked less than 3 (three) years prior to submittal of documents for issuance of a permit for state registration of an authorized organization with judicial authorities (hereinafter the "permit"), or a license to carry out foreign currency exchange operations are allowed to be founders of an authorized organization.
875. Also, pursuant to sub. par. 3 of par. 8 of the above Guidelines, for approval of the constituent documents and issuance of a permit, the founders of the authorized organization shall, besides an application for a permit and a notarized copy of the statute in the official and Russian languages, provide information on the founders containing the following:
- for individuals: founders: full name, date of birth; passport details; taxpayer identification number; place of residence; share in charter capital; personal identification number (if available).
 - for legal entities: entity's name, form of legal incorporation; General Classification Code of Enterprises and Organizations; ref. No. and date of issue of the state registration certificate; place of business; share in charter capital; business identification number (if available).

Postal Operator Service Sector

876. Neither the law "On Postal Service" nor regulation "On Ministry of Communications and Information of the Republic of Kazakhstan" approved by the decision of the Government of the Republic of Kazakhstan No. 427 of May 18, 2010 provides the Ministry of Communications and Information with powers to establish requirements for executives and major members.
877. Banks and institutions executing certain types of banking operations, providing services of money transfer or currency exchange are subject to licensing and registration under the laws of the Republic of Kazakhstan (Laws of the Republic of Kazakhstan "On Banks and Banking Activities in the Republic of Kazakhstan" "On State Regulation and Supervision of Financial Market and Financial Institutions" and "On the National Bank of Kazakhstan").

¹⁸ "Guidelines for Regulating the Activities of Entities other than Banks Concerning Collection of Banknotes, Coins and Valuables"

878. The licensing of these entities is carried out by the AFS and NB of RK within each agency's scope of competence, with the judiciary responsible for their registration.
879. There is no mechanism for licensing of and supervision over the activities of certain types of entities involved in provision of financial services and not subject to financial monitoring.
880. It should be noted that provision of certain financial services in Kazakhstan requires no licensing. In particular, pursuant to the Law "On Licensing" (par. 2 of art. 7), all activities or operations subject to licensing may only be performed / carried out under license, except for activities (operations) conducted by public authorities, credit partnerships, mutual insurance companies, the national postal service operator and the Development Bank of Kazakhstan within the scope of authority established in legislative acts of the Republic of Kazakhstan.
881. Pursuant to the Law "On Postal Service", the national postal service operator is entitled to carry out financial operations referred to in this Law. Furthermore, pursuant to art. 10 of the Law "On Financial Leasing", legal entities (excluding banks) and individuals who are self-employed entrepreneurs are allowed to carry out leasing activities as a lessor without a license.
882. Not subject to either licensing or supervision are the activities of the following: micro-credit organizations; pawnshops; operators providing services related to acceptance of payments.
883. Also, pursuant to the Law of the Republic of Kazakhstan "On State Regulation and Supervision of Financial Market and Financial Institutions", financial services carried out by the central depository and mutual insurance companies are not subject to licensing.

Recommendation 23 (on-going supervision and monitoring)

884. There are no regulations in the laws of RK requiring credit institutions, the insurance and securities sectors to apply the Basic Principles in the framework of the system of measures on AML / CFT.

Effectiveness

885. At the time of evaluation, it became known that the competent authorities (AFS, NB) did not request any information from the supervised entities on compliance with the national law in the area of AML / CFT. The competent authorities did not take any steps to review the measures undertaken by financial institutions aimed ensuring compliance with requirements of the national law in the area of AML / CFT.
886. Also, at the time of the field mission, the competent authorities stated that due to recent entry into force of the law on AML / CFT, no inspections of financial institutions for the purpose of ensuring compliance with this law were carried out.
887. No compulsive measures or sanctions had been applied by the competent authorities against financial institutions prior to the field mission.
888. At the time of evaluation, there was no practice of or statistics on the implementation of oversight measures and sanctions for violations in the area of AML / CFT. Therefore, it is impossible to comprehensively analyze effectiveness of the oversight, monitoring and sanctions systems.

889. According to the information provided separately by representatives of Kazakhstan after the field mission, only one unit, which is responsible for supervising insurance companies, identified violations of the law on AML / CFT in the course of inspections, i.e. in the area of adoption and approval of internal rules and appointment of complaints officer. As a result of the inspections, the AFS issued written orders to these insurance companies. No data pertaining to inspections in the area of AML / CFT in other financial institutions was provided.

890. Also, according to the information provided by representatives of the National Bank of Kazakhstan separately, the NB conducted 11 inspections of financial institutions in the area of payments and money transfers in 2009. No inspections in the area of AML / CFT were carried out by NB of RK.

891. As a result of the inspections carried out by NB of RK, one restricted enforcement measure was applied. No sanctions were applied as a result of inspections carried out in 2009 in the area of payments and money transfers.

892. Furthermore, according to the information provided by representatives of NB of RK separately, on the subject of compliance by the authorized organizations with requirements of the currency law, the National Bank of Kazakhstan conducted 83 inspections in 2008, 417 in 2009 and 322 in 2010. As a result of these inspections, sanctions and enforcement measures were applied by NB against the authorized organizations (see below).

893. Information on the applied by NB of RK sanctions / enforcement measures for violations in the area of compliance with the currency law of the Republic of Kazakhstan identified in the course of inspections of authorized organizations.

Years / Information	Information on applied enforcement measures			Information on applied administrative penalties		Information on applied sanctions		
	Requested commitment letters	letters-directives	written warnings	penalties in the form of fines	penalties in the form of warnings	license suspensions	registration certificate suspensions	license revocations
2008	21	13	8	6	2	0	1	0
2009	95	41	45	70	64	1	25	0
2010	79	7	8	56	62	3	14	1

894. At the time of evaluation, no monitoring of compliance with the AML / CFT law was carried out by the National Bank of Kazakhstan, and, accordingly, no sanctions or enforcement measures against authorized organizations for non-compliance with this law were applied.

Recommendation 25

895. No guidelines for the private sector were developed by the supervisory agencies.

896. Nor did the supervisory agencies issue any guidelines in the area of ML and FT techniques and methods.

3.10.2. Recommendations and Comments

Recommendation 17

897. It is necessary to provide a clear opportunity to apply the entire range of sanctions (from fines through license revocation) against all types of financial institutions for violations in the area of AML/CFT, including thorough adoption of individual regulations by the competent authorities

898. The officials at the Ministry of Communications and Information should be given the right to draw up reports of administrative violations falling under article 168-3.

899. It is necessary to broaden the scope of application of art. 168-3 (as it pertains to non-compliance with requirements to refuse the execution of transactions in the cases stipulated in par. 1 of art. 13 of the AML / CFT law, and to suspend transactions), and, also, consider increasing the penalties for its violation.

900. It is necessary to include the scope of application of administrative sanctions in the area of AML / CFT against FIU officials, law enforcement and supervisory authorities.

Recommendation 23

901. The system of oversight in the area of AML/CFT in the Republic of Kazakhstan is under development. There is no practice of application of sanctions, and, therefore, it is impossible to assess effectiveness of these sanctions.

902. It is necessary to extend the regime of supervision over and monitoring of compliance with the requirements of the AML/CFT law to include all entities providing financial services (entities providing capital leasing services; consumer cooperatives that provide loans to its members; micro-credit institutions; pawnshops; insurance agents; persons executing transactions involving electronic money; entities that accept payments from the public).

903. The standards for ensuring control over compliance with the AML / CFT requirements in the following areas should be enshrined in law: refusal to execute operations allowed under the law; requirements for suspension of operations; further implementation of internal controls; document protection; compliance with requirements of the FIU and supervisory bodies.

904. All regulatory bodies should develop regulatory legal acts governing fulfillment of oversight functions in the area of AML / CFT requirements.

905. The competent authority responsible for monitoring financial operations conducted by the national postal service operator (Kazpost JSC) should be legislatively identified.

906. The Ministry of Communications and Information should be given the authority to exercise controls, including when it comes to verifying and requesting information and documents and applying sanctions in the area of AML / CFT.

907. It is necessary to ensure proper application by financial institutions of the Basic Principles for the purposes of AML / CFT.

Recommendation 25

908. The supervisory authorities should issue special guidelines for the private sector, which would facilitate more effective performance by financial institutions of their duties, including descriptions of new ML/FT trends and typologies. Such guidelines should take into account the specifics of the supervised entities' activities.

Recommendation 29

909. The powers of the AFS to monitor compliance with the AML / CFT law should be enshrined in law.

910. The powers of the AFS to directly apply penalties against the supervised organizations for non-compliance with the requirements of the AML / CFT law should be enshrined in law.

911. The Ministry of Communications and Information should be given powers of oversight in the area of AML / CFT standards.

912. It is necessary to identify the competent body responsible for monitoring the activities of Kazpost JSC in the area of financial services provision, as well as compliance with the AML / CFT law at the time of provision of these financial services.

3.10.3. Compliance with Recommendations 17, 23, 25 & 29

	Rating	Summary of Facts Underlying Overall Rating
R.17	NC	<ul style="list-style-type: none"> • Entities not included in the SFM list are not subject to sanctions (entities executing capital leasing transactions; consumer cooperatives that provide loans to its members; micro-credit institutions; pawnshops; insurance agents; persons carrying out transactions involving electronic money; persons accepting payments from the public). • The internal control rules are not a regulatory act, and, therefore, the application of any measures by supervisory authorities against supervised entities for non-conformity with these rules may be controversial. • Article 168-3 of the Code "On Administrative Offences" does not provide for liability for non-compliance with the requirements of the law on AML / CFT as it pertains to meeting the requirements of supervisory agencies and the FIU. • The law "On Banks and Banking Activities in the Republic of Kazakhstan" does not provide for application of restricted measures (preceding suspension and (or) revocation of the license) for violation of the law in the area of AML / CFT. • The subordinate acts (Guidelines 67 and 68) that establish the procedure for application of restricted measures against pension savings funds, major participants of the open pension

		<p>savings fund and securities market entities do not provide for application by the AFS of restricted measures in case of violations of the law in the area of AML / CFT.</p> <ul style="list-style-type: none"> • Given that no procedure for application of sanctions determined on by the AFS was presented (sub. par. 9 of par. 1 of art. 9 of the Law "On State Regulation and Supervision of Financial Market and Financial Institutions"), it is impossible to assess the mechanism for application of sanctions. • The AFS is not provided with authority to apply restricted measures against securities market and pension savings funds entities for non-compliance with the AML / CFT law. This means that sanctions in respect of these sectors are not proportionate to the seriousness of the situation. • The AFS will not be able to apply appropriate measures against certain executives (top executives and chief accountants of separate divisions) of financial institutions (banks, insurance / reinsurance companies, securities market and pension savings fund entities). • The Ministry of Communications has no authority to apply any sanctions against postal service operators. • Due to lack of practice of sanction application, it is not possible to assess the level of effectiveness.
<p>R.23</p>	<p>PC</p>	<ul style="list-style-type: none"> • Persons executing capital leasing transactions; consumer cooperatives that provide loans to its members; micro-credit institutions; <u>pawnshops</u>; insurance agents; persons carrying out transactions involving electronic money and persons accepting payments from the public are not subject to licensing, monitoring or supervision in respect of AML / CFT. • The Law on AML / CFT and other relevant laws ("On the AFS") do not contain provisions concerning the monitoring by competent authorities of compliance with the law in the area of transaction execution denial or transaction suspension. • Furthermore, the powers of the AFS and other competent authorities to oversee not only the organization, but also the practical implementation of internal rules for control and protection of the relevant documents, as well as compliance with the requirements of the supervisory bodies and the FIU need further clarification. • There is no competent authority responsible for overseeing the activities of the Kazpost JSC in the area of financial services provision. • No steps were taken by the competent authorities to review the situation with AML / CFT existing in the supervised organizations. • A regulatory system in the area of AML / CFT-related

		<p>supervision and monitoring has not been created for all types of financial institutions yet.</p> <ul style="list-style-type: none"> • No information is available as to the application of the Basic Principals for the purpose of AML / CFT in the banking, insurance and securities sectors. • There are no restrictive measures in place to prevent criminals and their accomplices from entering the market of postal service operators that provide money transfer services. • National postal service operators are entitled to offer remittance services without a license. • The existing law has no requirement concerning possession of a significant share in the statutory capital of organizations executing certain types of banking transactions. • The activity of national postal operator (Kazpost JSC) in the field of providing financial services is not under control. The issue of regulating the activity of Kazpost on providing postal transactions is not clear. • The national postal service operator and mutual insurance companies may carry out certain types of financial transactions without a license. • At the time of evaluation, there was no practice of or statistics on the oversight measures implemented in the area of AML / CFT.
R.25	NC	<ul style="list-style-type: none"> • No guidelines for the private sector were developed by the supervisory agencies. • Nor did the supervisory agencies issue any guidelines in the area of ML and FT techniques and methods.
R.29	NC	<ul style="list-style-type: none"> • The list of inspection objectives contained in the Law "On State Regulation and Supervision of Financial Market and Financial Institutions" (par. 2 of art. 9) features no detection or prevention of violations in the area of AML / CFT. • The supervisory authorities cannot independently consider and apply compulsive measures or sanctions under article 168-3 of the Code "On Administrative Offences." • The Ministry of Communications has no authority to monitor compliance by the postal service operators with the law on AML / CFT. • The competent authorities (AFS, NB) did not request data on compliance with the national law on AML / CFT from the supervised agencies. The competent authorities did not take any steps to review the measures undertaken by financial institutions to enforce the national law in the area of AML / CFT.

		<ul style="list-style-type: none"> • There is no practice of auditing financial institutions in the area of AML / CFT. • The supervisory bodies are not able to self-impose penalties against accountable financial institutions. • The Law of the Republic of Kazakhstan "On Postal Service" does not provide the Ministry of Communications with powers in the area of AML / CFT, or to conduct inspections and impose sanctions in the area of AML / CFT, or to perform other functions in accordance with the FATF Recommendations. • The law "On Postal Service" does not provide the Ministry of Communications with powers to obtain the necessary data, documents or information relating to compliance monitoring or obtainment of access to such data, documents or information. • The practice of conducting oversight inspections of postal service operators in the area of AML / CFT is absent. • Due to non-provision by the representatives of Kazakhstan of the necessary regulatory framework to conduct on-site inspections, request the provision of necessary documents and perform other functions in accordance with the FATF Recommendations, it is not possible to assess effectiveness of the supervision conducted by the Ministry of Communications over the activities of postal service operators as it pertains to provision by them of money remittance services.
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3.11. Money or Asset Transfer Services (SR. VI)

3.11.1. Description and Analysis

Special Recommendation VI

913. Pursuant to sub. par. 6 of par. 2 of art. 30 of the *Law on Banks and Banking Activities*, all remittance transactions shall be carried out under a license issued by the AFS (banks, Kazakhstan Stock Exchange JSC, Central Securities Depository JSC, brokers / dealers managing client accounts as nominee, operator of interbank money transfer system Republican State Enterprise "Kazakhstan Interbank Settlement Centre of the National Bank of the Republic of Kazakhstan" (RSE KISC NBRK), or without a AFS license but on the basis of the relevant laws of RK (Kazpost JSC (under the *Postal Service Law*) , Development Bank of Kazakhstan JSC (under the *Law on Development Bank of Kazakhstan*), e-government payment gateway operator National Information Technologies JSC (under the *Law on Informatization*), credit cooperatives for their members (under the *Law on Credit Cooperatives*).

914. Nevertheless, the following types of operators providing money or asset transfer services are not subject to licensing in RK:

- Electronic payment terminals. Pursuant to sub. par. 2 of par. 3 of art. 30 of the *Law on Banks and Banking Activities*, acceptance from customers of cash as payment for services rendered does not constitute a banking operation.
- Western Union, MoneyGram, etc. Banks and Kazpost JSC offer money remittance services on the basis of agreements concluded with international money transfer systems.
- Alternative and unofficial money transfer services (Hawala, Hundis, etc.). Such activities are not registered in Kazakhstan.

915. Only a certain number of operators providing money and asset transfer services belong to the SFM list and are subject to the requirements of the *Law on AML / CFT*; these are banks, Kazakhstan Stock Exchange JSC, brokers / dealers managing client accounts as nominee, Central Securities Depository JSC and Kazpost JSC. Other providers of TMV services, e.g., electronic payment terminals and informal money transfer services, are not subject to the Law on AML / CFT, and therefore, the FATF recommendations do not apply to them. International money remittance services providers (Western Union, MoneyGram, etc.) are not subject to mandatory registration and not directly covered by the Law on AML / CFT. Nevertheless, given the fact that these operators operate within banks and KazPost, the requirements of the AML / CFT law may apply to them, too..

916. Article 6 of the *Law on Banks and Banking Activities* imposes a ban on all banking operations (including transfer of funds) carried out without a license from the AFS or authorized by relevant laws of RK. Therefore, there exists an indirect ban on provision of alternative and unofficial money remittance services (hawala hundis, etc.), even though their clandestine presence is not in doubt. It should be noted that the issue of provision of money remittance services via Western Union remains unresolved.

917. Monitoring and sanctions for non-compliance with the requirements of the *Law on AML / CFT* may only apply to those MAT service operators that are subjects of financial monitoring (SFM). Appropriate sanctions are established in paragraph 3 of art. 168 of the *Code on Administrative Offences*.

918. All AML / CFT measures-related deficiencies identified in the banking system are applicable to banks in the context of money remittances.

Effectiveness

919. At meetings held with NB, the Kazakh side said that the work to assess the volume of alternative and unofficial money transfers in the country for the purpose of integrating this sector into the registration and monitoring regime was ongoing.

920. Since Jan 1, 2009, the National Bank of Kazakhstan has been compiling data from banks and Kazpost JSC on money remittances carried via the international money transfer system on a quarterly basis (number and amount of remittances, currency type, country of destination and name of money remittance system).

921. It should be noted that the KISC was used as the base for Avanguard Plat system, established with the goal of accepting and processing retail transfers made by private customers. This project has been operating in a pilot mode for more 18 months. As of October 2010, the number of service providers connected to the system stood at 17, including mobile network, digital TV and other operators.

922. The evaluation team was shown a draft law on amendments to the legislative acts of RK intended to govern issuance, use and redemption of electronic money, which can also be attributed to money remittance services. As an example, we can cite the practice of using Web-Money for settlements involving bookmakers, etc.

923. At meetings with the AFS, NB and Kazpost, it also became clear that under the existing legislation there existed difficulties with monitoring the Kazpost in the area of remittance operations.

3.11.2. Recommendations and Comments

924. Given that only a portion of MAT service operators belongs to the list of SFM, which are subject to the requirements of the *Law on AML / CFT*, and the absence of the legislative framework for registration / licensing of alternative and unofficial MAT services, the evaluation team believes that this recommendation does not conform to the FATF criteria.

925. The existing legal framework in the area of oversight over remittance operations carried out by the Kazpost should be examined as part of fulfillment of the requirements of the AML / CFT law for possibility of further clarification. The activities of international money transfer systems should be registered. Regarding the alternative / unofficial MAT services, we recommend the following: (1) take steps (the FATF Best SR. VI Practice Document can be used as auxiliary material) to assess the volume of this unofficial sector, (2) consider the option of registering alternative / unofficial MAT services, or the possibility of more intensive criminal probes into "hawala" cases .

926. All AML / CFT measures-related deficiencies identified in the banking system that are also applicable in the context of bank money remittances should be corrected by Kazakhstan.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of Facts Underlying Overall Rating
SR.VI	NC	<ul style="list-style-type: none"> • A portion of MAT service operators are not licensed. • The requirements do not apply to some MAT service operators. • The system of compliance monitoring lacks effectiveness. • All AML / CFT measures-related deficiencies identified in the banking system are applicable to banks in the context of money remittances.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Preamble: types of DNFBPs subject to AML / CFT measures

927. The Kazakh system for combating money laundering and terrorist financing affects a wide range of financial and non-financial institutions. Institutions and DNFBPs operating within the AML / CFT system are listed in Article 3 of the Law on AML / CFT of Kazakhstan.

Under the Law on AML / CFT (art. 3), the DNFBP category includes the following:

- notaries public providing notary services involving currency and (or) other assets;
- lawyers and other independent legal professionals, in cases when they are involved in transactions with currency and (or) other assets pertaining to the following activities on behalf or on instruction of the client:
 - purchase and sale of real estate property;
 - management of money, securities or other assets of the client; management of bank or securities accounts;
 - accumulation of funds for the establishment, maintenance, operation or management of a company;
 - establishment, operation or management of legal persons or entities and the sale and purchase of enterprises;
- auditing firms;
- gambling business and lottery organizers.

928. It should be noted that under art. 3, not all recommended by the FATF DNFBPs are present in the "anti-money laundering" legislation of Kazakhstan. There are no real estate agents, service providers of trusts or companies, dealers in precious stones and precious metals.

929. In relation to lawyers and other independent legal professionals, the requirements of the *Law on AML / CFT* apply only if the information or service provided is not subject to conditions of professional secrecy with respect to the above activities applicable to lawyers and independent legal professionals.

4.1. Customer Due Diligence and Record-Keeping (R.12)

(applying R.5, 6 & 8-11)

4.1.1. Description and Analysis

Recommendation 12

930. Since the Kazakh law on AML / CFT does not provide for separation of the subjects of financial monitoring into financial and non-financial entities, all the requirements established for financial institutions apply, therefore, to DNFBPs also.

931. The relevant requirements are described in Section 3.

932. The sole representative of DNFBPs that provided the requirements for the ICR is the Republican Chamber of Notaries. Nevertheless, the presented ICR do not contain any additional requirements for the client identification and are a duplication of the requirements of the AML / CFT law.

Effectiveness

933. In view of the fact that the AML / CFT system has been in place only for a short period of time, it is not possible to establish the level of its effectiveness.

4.1.2. Recommendations and Comments

934. Kazakhstan needs to take urgent action to implement all the requirements of Recommendations 5,6, 8-11 in respect of DNFBPs to correct identified deficiencies

4.1.3. Compliance with Recommendation 12

	Rating	Summary of Facts Underlying Overall Rating
R.12	NC	<p>Recommendation 5:</p> <ul style="list-style-type: none"> • Requirements of the Kazakh law on AML / CFT do not apply to dealers in precious metals and precious stones, trusts (trust management of property), organizations establishing and servicing legal entities, and real estate agents. • The requirement to carry out CDD measures upon execution of occasional transactions in the amount exceeding US\$15,000 or in the case of suspected ML is missing. • The term "beneficial owner" is not defined for the purposes of the AML / CFT system. • The requirement to verify information obtained as the result of CDD measures is absent. • The requirement to carry out CDD measures if the client is classified as high risk is absent. • The requirement to conduct on-going monitoring of clients' transactions is absent; • The legislation does not specify how frequently the data on the existing clients should be updated, and contains no provision for application against such clients of the entire set of CDD measures. • The CDD measures do not include responsibility to identify and record information on clients who were already clients of the financial institution at the time of the enactment of the AML / CFT law. • Low effectiveness of the system caused by the recent entry into force of the relevant requirements. <p>Recommendation 6:</p> <ul style="list-style-type: none"> • No identification of the already existing clients for the purpose of recording their data and determining their relation to PEPs is carried

		<p>out.</p> <ul style="list-style-type: none"> • No intensive measures for on-going monitoring of PEP relations have been developed. • No timescale for conducting regular review of clients to identify among them the PEPs is set. <p>Recommendation 8:</p> <ul style="list-style-type: none"> • The responsibility of DNFBPs to develop and apply special procedures intended to prevent the use of technological breakthroughs for the purposes of AML / CFT is not defined. • Legal requirements for storing identification data are limited. <p>Recommendation 10:</p> <ul style="list-style-type: none"> • there are no legal requirements for DNFBPs concerning storage of data on transactions involving monetary and (or) other assets for a minimum of 5 years. • there is no clear legal requirement to store all the identification data obtained as the result of CDD measures. • there is no clear legal requirement for the timely provision at the request of the competent authorities of all customer and transaction data. <p>Recommendation 11:</p> <ul style="list-style-type: none"> • There is no direct requirement for financial institutions to pay special attention to all complex and unusually large transactions • There is no requirement to study all complex and unusually large transactions and record the results of the study in writing. • There is no requirement to store the results of the study and analysis of complex and unusually large transactions conducted by non-financial institutions for a period of 5 years.
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4.2. Suspicious Transaction Reporting (R.16)

(applying R.13-15 & 21)

4.2.1. Description and Analysis

Recommendation 16

935. The Kazakh requirements of the Law on AML / CFT do not isolate DNFBPs as a separate subject of financial monitoring. In general, DNFBPs are not subject to the same rights and responsibilities as financial institutions.

936. With respect to DNFBPs, the Kazakh legislation provides for the same requirements as for financial institutions. All requirements and deficiencies are described in the relevant subsections of Section 3 of the report.

937. The only difference from financial institutions lies in the requirement for DNFBPs concerning the procedure for submission of data to the FIU. DNFBPs submit transaction data both electronically and on paper. The data to be submitted on paper is sent by the subjects of financial monitoring to the Committee by mail, return receipt requested, or courier, with application of measures intended to prevent uncontrolled access to documents at the time of delivery. The documents must be placed in envelopes secure enough to prevent their possible damage or retrieval of information from them without destroying the integrity of the package (The Terms for Submission by the Subjects of Financial Monitoring of Data on Transactions Subject to Financial Monitoring approved by decision of the Ministry of Finance of RK No. 59).

938. The terms for submission by the subjects of financial monitoring of data on transactions subject to financial monitoring approved by decision of the Ministry of Finance of RK No. 59

Effectiveness

939. The level of development of the AML / CFT system in the Republic of Kazakhstan in terms of compliance by DNFBPs with its requirements cannot be determined at this stage.

940. In accordance with the presented statistical data, STRs are filed only by notaries.

Financial Monitoring Subject Name	Filed Reports, including:		
	threshold amounts	STR	FT-related STR
Notaries public providing notary services involving currency and (or) other assets;	20	3	-

4.2.2. Recommendations and Comments

941. Kazakhstan needs to take urgent action to implement all the requirements of Recommendations 13-15 & 21 in respect of DNFBPs to correct identified deficiencies

4.2.3. Compliance with Recommendation 16

	Rating	Summary of Facts Underlying Overall Rating
R.16	NC	<ul style="list-style-type: none"> Requirements of the Kazakh law on AML / CFT do not apply to dealers in precious metals and precious stones, trusts (trust management of property), organizations establishing and servicing legal entities, and real estate agents. <p>Recommendation 13:</p> <ul style="list-style-type: none"> There is no direct requirement for submission of STR in case of suspected ML. The deficiencies related to criminalization of ML may affect the STR submission regime. There is no requirement for submission of STR when attempts are

		<p>being made to execute transactions connected with ML.</p> <ul style="list-style-type: none"> • Effectiveness of application of the requirements for implementation of R.13 is low. <p>Recommendation 14:</p> <ul style="list-style-type: none"> • There is no requirement for directors of financial institutions, officials and employees to avoid notifying their clients or other persons in case of submission of the related to them data to the authorized agency. • The STR-related statistics from DNFBPs (except notaries) is missing. <p>Recommendation 15:</p> <ul style="list-style-type: none"> • There is no requirement for appointment of a special official responsible for implementation of policies and regulations in the area of AML / CFT within DNFBPs. • The requirements for DNFBPs concerning qualifications and training of personnel involved in AML / CFT are not established. • There is not procedure for screening all DNFBP staff at the time of their hire. • There is no requirement for bringing the ICR to the attention of the DNFBP staff. • The concept of "uncooperative countries" is not defined, and there is no requirement to pay special attention to transactions with persons from such countries.
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4.3. Regulation, Supervision and Monitoring (R.24-25)

4.3.1. Description and Analysis

Recommendation 24

Casino

942. Pursuant to the Law "On Gambling", casinos and slot-machine parlors may only be located on the territory of Almaty region, on the coast of the Kapshagay Reservoir and in the Shchuchyn district of Akmola region, within the areas defined by the local government administrations.

943. The Ministry of Tourism and Sports of the Republic of Kazakhstan (MTS of RK) is the authorized body responsible for licensing of the gambling business in the Republic of Kazakhstan. Pursuant to the Law "On Gambling" (art. 9), licensing of the gambling business is carried out in accordance with this Law and the law on licensing. Also, all gambling-related activities are carried out under a license issued to the applicant for each gambling establishment for a period of ten years (art. 9 of the Law "On Gambling").

944. Pursuant to art. 28 of the Law "On Licensing", the following activities are subject to licensing: 1) casino operations, 2) slot machines operations, 3) bookmaker business and 4) betting house business (Art. 28 of Law).

945. Pursuant to the Law "On Gambling" (sub. par. 2 of par. 1 of art. 8), MTS of RK oversees compliance by gambling business organizers with the laws of the Republic of Kazakhstan on gambling, as well as the law of the Republic of Kazakhstan on AML / CFT.
946. The above-mentioned law stipulates that gambling business organizers must comply with the requirements of the law on AML / CFT (par. 12 of art. 12).
947. Also, under the "Law on Gambling", MTS of RK develops and approves the forms of departmental reports, checklists, risk assessment criteria and annual audit plans in accordance with the Law of the Republic of Kazakhstan "On Private Enterprise."
948. The activities of gambling business organizers are audited in accordance with the law "On Private Enterprise" (art. 16-1 of the Law on Gambling").
949. Pursuant to art. 636 of the Code "On Administrative Offences", the authorized officials of MTS of RK may draw up protocols of administrative violations falling under art. 168-3 of this Code. However, MTS of RK lacks the authority to review cases and impose penalties under art. 168-3.
950. Additionally, the Law "On Gambling" does not provide MTS of RK with powers to request information and impose sanctions specifically in regard to AML / CFT.
951. The law "On Gambling Business" does not contain provisions intended to prevent criminals or their accomplices from having significant or dominant equity participation, occupying leadership positions in, or acting as operators of a casino business.
952. According to the information provided by representatives of MTS of RK, there are 16 casinos currently operating in the country. In the period from June to July of this year, MTS of KR conducted 6 scheduled inspections and drew up 3 protocols of administrative violations. No data on sanctions applied against casinos was provided. However, the said inspections did not touch on the issue of compliance with the law on AML / CFT.
953. According to the information provided by representatives of Kazakhstan separately, the country's law enforcement authorities initiated 6 criminal proceedings under art. 193 of the CC of RK (legalization of monetary or other assets acquired by illegal means) in 2010. A total of 156 illegal gambling establishments were identified. 5 of them were charged under art. 190 of the Criminal Code of RK (illegal enterprise), another 8 are being investigated by the financial police.

Notaries Public

954. The Ministry of Justice of RK is responsible for licensing of notaries public. Also, it is responsible for the decisions concerning suspension, revocation and termination of the license to provide notary services.
955. The territorial judicial authorities are responsible for monitoring the legality of the notary acts committed by public and private notaries, as well as officials of the local government administrations of towns, settlements, villages and rural districts, and the state of their record keeping.
956. The territorial judicial authorities monitor compliance by notaries public with the law of the Republic of Kazakhstan on AML / CFT. However, representatives of the Justice Ministry

categorically denied that its territorial authorities had the authority to carry out oversight in the area of AML / CFT¹⁹ (sub. par. 4-1 of par. 1 of art. 33 of the Law "On Notaries"). In view of the above, it seems possible to conclude that the level of supervision in the area of notaries is extremely low. MJ of RK is responsible for establishing the procedure for overseeing the activities of the notaries in accordance with the Law "On Notaries" and in coordination with the Republican Notary Chamber.

957. Based on the requirements of par. 2 of art. 3 of the Law on AML / CFT, notaries public are not SFMs, and therefore, are not subject to the requirements of the law on AML / CFT.

958. Pursuant to the Code "On Administrative Offences", judicial authorities cannot independently review cases under art. 168-3, and can refer protocols for review by court

959. Pursuant to the Law "On Notaries" (sub. par. 3-1 of par. 2 or art. 10), the notary's license may be suspended for up to six months in case of systematic (three or more times in the course of twelve consecutive calendar months) violations of the laws of the Republic of Kazakhstan on AML / CFT.

Lawyers

960. The Ministry of Justice of RK is responsible for licensing of lawyers. The license is issued to individuals who have successfully undergone certification and received training at the Collage of Lawyers lasting between three months to one year. The procedure for undergoing the said certification is approved by the Government of the Republic of Kazakhstan.

961. The revocation of the license to engage in provision of advocacy services is carried out in accordance with the Code on Administrative Offences of RK. Termination of the license to engage in provision of advocacy services is carried out in accordance with the Code on Administrative Offences of RK. In addition to the above grounds, the termination of the license to engage in provision of advocacy services is carried out by the Ministry of Justice of Kazakhstan itself, or by judicial means in response to the suit brought by the MJ of RK, to the extent permitted by art. 12 of the Law "On Advocacy".

962. Pursuant to the Code "On Administrative Offences", judicial authorities cannot independently review cases under art. 168-3, and can refer protocols for review by court.

963. It should be noted that the Law "On Lawyers" does not provide MJ of RK with authority to monitor or govern the activities of lawyers, including in the area of AML / CFT. Also, this Law provides MJ of RK with no authority to apply compulsory measures and sanctions against lawyers for non-compliance with the law.

964. De facto, there is no competent authority responsible for overseeing the activities of lawyers, including for ensuring their compliance with the law on AML / CFT.

Independent Legal Professionals

¹⁹ **Article 33. Powers of the Territorial Judicial Authority in the Area of Notaries Regulation**

1. Territorial Judicial Authority:

4-1) monitors compliance by notaries with the laws of the Republic of Kazakhstan on combating money laundering and terrorist financing;

965. According to the information provided by representatives of Kazakhstan, the list of legal professionals includes private lawyer; and, in general, this term applies to all individuals who are theoretically capable of providing legal services, hold a degree in law but no lawyer's license. Again, there is not supervisory body for these SFMs.

The measures to prevent criminals or their accomplices from having significant or dominant equity participation or occupying senior positions in organizations (DNFBPs).

966. Pursuant to par. 2 of art. 42 of the Law "On Licensing", to obtain a license or license supplements (with sub-activities), the following documents must be provided to the licensor:

- 1) application;
- 2) notarized copies of the Statute (except for export and import transactions) and a certificate of state registration of a legal entity – for legal entities;
- 3) a copy of the identity document – for individuals;
- 4) a notarized copy of a certificate of state registration of an individual entrepreneur – for individual entrepreneurs;
- 5) a notarized copy of the certificate of tax registration of the applicant;
- 6) a document confirming payment of license fee for the right to engage in certain activities;
- 7) information and documents as per qualification requirements.

967. Also, in the event of failure to submit all required documents, meet the set qualification requirements, or upon existence of an enforceable court decision prohibiting the applicant to engage in certain activity, the court may, on the basis of representation made by bailiff, refuse to issue a license to the applicant (art. 45 of the Law "On Licensing").

968. It should be noted that these measures may only be applied at the time of obtaining a license and (or) license supplement.

969. Representatives of the Republic of Kazakhstan failed to provide any other similar information on the requirements for implementation of measures intended to prevent criminals or their accomplices from having significant or dominant equity participation or occupying senior positions in organizations (DNFBPs)

970. In view of the non-provision by the representatives of the evaluated country of any information on technical and other resources available to the competent authorities, it was not possible to assess this criterion.

Recommendation 25

971. No guidelines for the private sector were developed by the supervisory agencies. Nor did either the supervisory agencies or FIU issue any guidelines in the area of ML and FT techniques and methods.

4.3.2. Recommendations and Comments

Recommendation 24

972. The law on gambling business must include a requirement for implementation of measures to prevent criminals or their accomplices from having significant or dominant equity participation or occupying senior positions in casinos.
973. The powers of the authorized agency (MTS) to request information and apply against supervised entities sanctions, specifically in the area of AML / CFT, should be established at a legislative level (in the Law "On Gambling Business"). Dealers in precious metals and precious stones, real estate agents, accountants and notaries public should be included in the list of subjects of financial monitoring.
975. The competent authorities responsible for monitoring compliance by dealers in precious metals and precious stones, real estate agent and accountants with the law on AML / CFT should be defined at a legislative level. They should also be given appropriate powers to request information, verify data and apply sanctions.
976. It is necessary to take measures to ensure effective monitoring of compliance by DNFBPs with the law on AML / CFT, including measures to prevent criminals or their accomplices from having significant or dominant equity participation and occupying senior positions in organizations.
977. It is necessary to effectively monitor the activities of all DNFBPs for compliance with measures in the area of AML / CFT.
978. The competent authority responsible for monitoring compliance by lawyers' organizations with the law on AML / CFT should be defined at a legislative level. They should also be given appropriate powers to request information, verify data and apply sanctions.

Recommendation 25

979. The supervisory authorities should issue special guidelines for DNFBPs to facilitate more effective performance by them of their obligations, including description on new ML/FT trends and typologies. Such guidelines should take into account the specifics of the supervised entities' activities.

4.3.3. Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBPs)

	Rating	Summary of Facts Underlying Overall Rating
R.24	NC	<ul style="list-style-type: none"> • Dealers in precious metals and precious stones, real estate agents and accountants are not included in the SFM list. • There is no effective monitoring of compliance by DNFBPs with measures in the area of AML / CFT. • All regulatory authorities lack the necessary regulatory and internal acts governing the procedure for carrying out monitoring and applying sanctions for violations in the area of AML / CFT. • The competent authorities (MTS RK, MJ RK, TC, MF RK, etc.) lack the authority to review cases and implement measures under art. 168-3 of the Code "On Administrative Offences." • Public notaries are not subject to supervision in the area of AML / CFT.

		<ul style="list-style-type: none"> • The law of RK "On Gambling Business" does not contain provisions intended to prevent criminals or their accomplices from having significant or dominant equity participation, occupying leadership positions in, or acting as operators of a casino business. • The Law of RK "On Notaries" does not provide the Ministry of Justice with powers to request information from the notaries. • The Law "On Lawyers" does not provide MJ of RK with powers to monitor the activities of lawyers and apply compulsive measures and sanctions against lawyers for non-compliance with the legislation, including in the area of AML / CFT. De facto, there is no competent authority to monitor compliance by lawyers with legal requirements of the law on AML / CFT. • There is no supervisory authority responsible for overseeing the activities of independent legal professionals. In view of the non-provision of information on the competent authority responsible for supervision of independent legal professionals, as well as the legislation governing the activities of these individuals, it was not possible to assess the system of oversight in this sphere. • Representatives of the Republic of Kazakhstan failed to provide detailed information on the requirements for implementation of measures intended to prevent criminals or their accomplices from having significant or dominant equity participation or occupying senior positions in organizations (DNFBPs) • The practice of carrying out inspections and initiating analytical studies to monitor compliance by DNFBPs with the requirements in the area of AML / CFT, as well as the practice of applying compulsive measures or sanctions is missing in all sectors.
R.25	NC	<ul style="list-style-type: none"> • The special guidelines for the private sector, which would facilitate more effective performance by financial institutions of their duties, including description of new ML/FT trends and typologies have not been issued.

4.4. Other Non-Financial Businesses and Professions. Modern Secure Transaction Techniques (R.20)

4.4.1. Description and Analysis

Recommendation 20

980. Pursuant to art. 3 of the *Law AML / CFT*, bookmakers, lottery organizers, betting and other gambling establishments that use gaming machines offering games of chance are subject to all AML / CFT measures.

981. The fact that the above-mentioned activities were assigned to the AML / CFT law shows that Kazakhstan has considered the desirability of the inclusion of certain activities in the

SFM list. Nevertheless, the dealers in high-value goods, auctions and pawnshops (in particular) were not included in this list and may also be at high risk of ML / FT.

982. The activities of the above entities in Kazakhstan as subjects of accounting are not licensed, nor are they monitored by any supervisory bodies.

983. The maximum amount of cash settlements executed within a single transaction between legal entities in the Republic of Kazakhstan may not exceed 4000 MCI (approximately 4.6 million tenge or US\$32,000). These requirements for legal entities contribute to minimization of ML risk involved in cash settlements.

984. The highest nominal value of a banknote in the Republic of Kazakhstan does not exceed 10,000 tenge (about US\$70). This currency is not convertible and almost never used abroad. Thus, the tenge is less exposed to the risk of ML.

985. The Kazakh authorities promote the use of bank payment cards among the population. As of September 2010, the number of cards issued stood at more than 8,200,000 units (aprx. a 21 percent year-on-year rise since September 2006). As for the number of POS terminals, there were more than 26,400 POS terminals operating in Kazakhstan as of September 2010 (aprx. a 28 percent year-on-year rise since September 2006).

Effectiveness

986. The Kazakh economy remains, however, predominantly cash-focused, which creates a major obstacle to reducing the risk of ML / FT in the real economy. Nevertheless, the measures aimed at promoting modern and safe practices and restricting cash transactions have resulted in the reduction of the cash share in the economy. As of September, monetary aggregates M0 (cash in circulation) and M2 (cash in circulation, as well as demand deposits and short term deposits) stood at 1.1bn and 6.4bn tenge respectively, while in the period between 2006 through 2010, the M0/M2 index declined from around 25 percent to 17 percent.

4.4.2. Recommendations and Comments

987. Kazakhstan is recommended to strive to further reduce reliance on cash and introduce more efficient payment systems.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of Facts Underlying Overall Rating
R.20	LC	<ul style="list-style-type: none"> The current system measures aimed reducing the cash volume are not sufficient.

5. LEGAL ENTITIES AND FORMATIONS, NON-PROFIT ORGANIZATIONS

5.1. Legal Entities - Access to information on beneficial owners and control (R.33)

5.1.1. Description and Analysis

Recommendation 33

988. Pursuant to art. 5 of the *Law On State Registration of Legal Entities*, the Ministry of Justice of RK is responsible for state registration of legal entities and record registration of branches and representative offices, as well as provision of data to the state control and supervisory authorities at their request.
989. The Kazakh law does not make it mandatory for legal entities to provide information on beneficial owners and controllers, instead only on founders. Pursuant to art. 6 of the *Law on State Registration of Legal Entities*, requesting for documents or information, except for those provided for under the Law and other legislative acts, is prohibited.
990. Thus, the registering authority (MJ) has no information on the beneficial owners of legal entities and, accordingly, no transparency with respect to beneficial ownership and control of legal entities is assured.
991. Paragraph 2 of article 18 of the *Law on AML / CFT* states that the state authorities of RK (including the Ministry of Justice) are required to provide information requested by the KFM from their own databases. It must be emphasized that Pursuant to art. 42 of the *Civil Code*, legal entities are required to re-register within a month in case of any changes to their name, authorized capital or founders. Any changes made to the constituent documents on the grounds specified above without re-registration of the legal entity are invalid. Legal entities are also required to inform the registering authority within a month of any other changes or supplements made to the constituent documents.
992. However, given that the Ministry of Justice does not have information on beneficial owners, such information cannot be provided.
993. Pursuant to art. 139 of the *Civil Code*, all shares may be issued only as registered equity securities. Thus, there is an indirect ban on the issuance of bearer shares.
994. Pursuant to art. 57 of the *Law on Securities Market*, the central depository, custodian and broker / dealer may provide services of a nominee. At the same time, professional securities market participants must, within three calendar days following conclusion of a nominee agreement with the client, open for the client a personal account in the register of unit holders and a sub-account in the central depository register, with disclosure of all required for opening a sub-account identity information of the client. Registration of transactions involving nominee-held securities is carried out through both above accounts. The Law also provides for transfer of information on the clients and their nominee-held securities to the registrar, central depository, issuer (article 62) and law enforcement authorities (article 43).
995. Financial institutions may request the Ministry of Justice for information on the founders since there is no data on beneficial owners.

Effectiveness

996. There are more than 300,000 legal entities in the country, but, under the existing law, no data on the beneficial owners of these companies is available, which simply exacerbates such urgent problem in the country as the existence of false and fly-by-night companies.

5.1.2. Recommendations and Comments

997. In view of the fact that under the existing legislation information on beneficial owners of legal entities is neither requested nor recorded, and cannot be passed to state agencies and other users, the evaluation team believes that Recommendation 33 does not meet the set criteria.

998. At the same time, we recommend (1) to amend the law on AML / CFT to include the definition of "beneficial owner", (2) establish the procedure for providing such information upon registration of legal entities and at the start of business relations with financial institutions, (3) consider providing unhindered access to the information on legal entities, their founders and beneficial owners for all users of such information.

5.1.3. Compliance with Recommendation 33

	Rating	Summary of Facts Underlying Overall Rating
R.33	NC	<ul style="list-style-type: none">• The term "beneficial owner" is absent.• There are no legislative requirements for requesting and registering timely and credible information on beneficial ownership.• Public authorities have no information on beneficial owners of legal persons.

5.2. Legal Formations - Access to information on beneficial owners and control (R.34)

5.2.1. Description and Analysis

Recommendation 34

999. The legal system of Kazakhstan does not provide for the establishment of trusts, while the legal concept of trust does not exist under the civil legislation of RK. Kazakhstan has not ratified the 1985 Hague Convention in respect of the law applicable to trusts and on their recognition.

1000. The term "trust management" is defined in chapter 44 of the *Civil Code*, but it differs from the traditional legal concept of the trust because the property rights are not assigned to the trustee.

5.2.2. Recommendations and Comments

1001. Given the absence of either the law or practice in this area, the evaluation team believes that Recommendation 34 is inapplicable.

5.2.3. Compliance with Recommendation 34

	Rating	Summary of Facts Underlying Overall Rating
R.34	N/A	<ul style="list-style-type: none">• Not applicable

5.3. Non-Profit Organizations (SR.VIII)

5.3.1. Description and Analysis

Special Recommendation VIII

1002. RC did not assess the adequacy of its law on non-profit organizations in terms of provision of appropriate measures in the area of AML / CFT, nor did it carry out any studies to assess vulnerability of this sector to the risk of ML / FT. Although such studies were not conducted, article 41 of the *Law on NPOs* makes it possible to obtain information on the activities of NPOs. Pursuant to this article, NPOs provide information on their activities to the state tax and statistical authorities, while subdivisions of foreign and international NPOs annually publish information on their founders, property, as well as the origin and areas of expenditure of financial resources. The information on the management and the board of governors is stored in the unified state register of legal entities, which is maintained by MJ RK.

1003. The government authorities did not take any steps to improve oversight over large NPOs, nor did they hold any training sessions for NPOs to raise awareness about the risk of FT.

1004. Pursuant to art. 41 of the *Law on NPOs*, the information on the size and composition of income and property of the NPO, its expenditures, personnel or pay structure may not constitute a trade secret. Therefore, this information must be made available to law enforcement and other government agencies. With regard to the transparency of such information, the same article establishes the requirement for NPOs to publish information on their activities only if they are branches of international organizations.

1005. Pursuant to art. 43 of the *Law on NPOs*, NPOs are held liable for any violation of the existing law pursuant to the legislative acts of the Republic of Kazakhstan, whereas the responsibility for violation of the law on NPOs is borne by the natural and legal persons guilty of such violation.

1006. Pursuant to art. 42 of the *Law on NPOs*, the activities of the NPO may be suspended for a period of three to six months by a court decision on the basis of representations made by the prosecution authorities in connection with violations of the Constitution and laws of RK, or in the event of repeated performance by the non-profit organization of activities incompatible with the purpose and objectives of such organization specified in its charter.

1007. Pursuant to art. 31 of the *Law on NPOs*, state registration and re-registration of non-profit organizations is carried out by the Ministry of Justice, which is obliged to provide the

information on NPOs requested by the KFM from its own information databases (paragraph 2 of article 18 of the *Law on AML / CFT*). Moreover, Pursuant to art. 5 of the *Law on State Registration of Legal Entities*, the Ministry of Justice is also obliged to provide information requested by the government authorities vested with control and supervisory functions.

1008. Pursuant to art. 11 of the *Law on Accounting*, the primary accounting records must be kept for a period to be determined by the laws of RK, which, as was reported to the evaluation team, is five years.

1009. No specific measures for cooperation, coordination or information exchange between relevant government agencies that possess information on NPOs at risk of FT were undertaken by the government authorities. There is also no data available on whether there exist any mechanisms for provision of information on specific NPOs to international partners, nor were there any procedures developed to enable such provision.

Effectiveness

1010. In the course of the meetings held with the Ministry of Justice and ACECC (Agency for Combating Economic and Corruption Crimes) it became clear that there were more than 45,000 NPOs registered in the country. The number is excessive and raises a question as to the necessity of and justification for so many NPOs in the country. The evaluation team was also informed that no specific measures to identify and analyze their activities were conducted, but that there was unofficial and general information on the activities of the non-profit sector.

5.3.2. Recommendations and Comments

1011. Simultaneously, the following are recommended: (1) assess the effectiveness of the established system for registration and monitoring of the NPO sector for the purpose of AML / CFT, (2) establish mechanisms for reporting and monitoring the activities of larger NPOs, (3) include topics on the risks posed by ML / FT to the sector into the regular schedules of awareness-raising programs attended by NPOs, (4) establish specific mechanisms for the timely exchange of information on NPOs at the international level in the case of suspicion of ML / FT.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of Facts Underlying Overall Rating
SR.VIII	NC	<ul style="list-style-type: none"> • No regular analysis of the NPO sector to identify FT risks or any awareness-raising activities on issues of AML / CFT were conducted. • A system for monitoring the activities of larger NPOs does not exist. • No special mechanisms for the timely exchange of information on NPOs, both at a national and international level, in case of suspicion of ML / FT are available. • The range of sanctions for violations of the law is too narrow, and is not used for AML / CFT.

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1. National Cooperation and Coordination (R. 31)

6.1.1. Description and Analysis

1012. Some elements of the regulatory framework and practical solutions to ensure access by the KFM to the information resources of the government agencies are reflected in section 2.5.1. of this report in relation to R.26. Information on cooperation between law enforcement agencies is reflected in the review of Recommendation 27. However, the evaluators did not receive materials on other bilateral mechanisms of operational coordination and on feedback generated by KFM, law enforcement and regulatory authorities, including information exchange on the basis of the rights and obligations provided for in art. 17 and 18 of Law 191-IV.

1013. The permanent Inter-Ministerial Commission (IC) on Combating Money Laundering and Terrorist Financing was established by decree of the Ministry of Finance No. 358 of July 20, 2010. It consists of deputy heads of all the competent bodies members of the national AML / CFT system and heads or deputy heads of professional associations representing the subjects of financial monitoring. IC meetings are chaired by the Minister of Finance. Its decisions are not binding and members are entitled to a dissenting opinion. The main objectives of the IC are as follows: supporting the drafting and approval of regulatory legal acts in the area of AML / CFT; ensuring cooperation, including information-based, between public bodies, public associations and SFMs in the area of AML / CFT; developing a unified approach to the issues of international cooperation pertaining to AML / CFT; drafting proposals aimed at improving the national AML / CFT system.

1014. At present, the FIU, law enforcement and oversight agencies and other competent bodies have no existing effective mechanisms allowing them to work together within the country on the development and implementation of policies and activities to combat money laundering and terrorist financing.

6.1.2. Recommendations and Comments

1015. It is necessary to accelerate the process of interagency agreements negotiation and signing. Given the fact that a large part of the financial sector, the National Bank and the AFS, are located in Almaty, we recommend to explore the possibility of establishing permanent working arrangements for operational cooperation between the FIU and authorized oversight bodies at the regional level.

6.1.3. Compliance with Recommendation 31

	Rating	Summary of Facts Underlying Overall Rating
R.31	PC	<ul style="list-style-type: none">• The process of coordination of interagency regulations governing the interaction in the area of AML / CFT falls behind the needs of the national AML / CFT system.• It is not possible to evaluate the effectiveness of the Interagency Commission on AML / CFT since, in the time

		before the mission, only one session had been held, with no information on the session, its agenda and the main results of the future sessions provided to the evaluation team.
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6.2. Conventions and UN Special Resolutions (R.35 and SR.I)

6.2.1. Description and Analysis

Recommendation 35

1016. The Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988) was ratified by the Republic of Kazakhstan June 29, 1998, Palermo Convention (UN Convention against Transnational Organized Crime of 2000), ratified June 4, 2008. The above conventions were ratified by the Republic of Kazakhstan without any reservations. Pursuant to art. 4 of the Constitution of the Republic of Kazakhstan, international conventions ratified by the Republic have priority over the country's laws and are applied directly, except to the extent that their application is required by such international treaties to be preceded by the adoption of a law. Given that the above conventions were ratified without any reservations, they are directly applicable in the Republic of Kazakhstan.

1017. As mentioned in the review to Recommendation 1, the Republic of Kazakhstan has not fully implemented the requirements of the Vienna and Palermo Conventions regarding the criminalization of ML crimes.

1018. The implementation of the Palermo Convention requirements regarding AML / CFT is given in the reviews to recommendations Nos. 1, 2, 3, 26 and 40.

Additional Elements

1019. Kazakhstan signed the Shanghai Convention on Combating Terrorism, Separatism and Extremism on June 15, 2001 and ratified it on April 18, 2002.

1020. Kazakhstan signed the UN Convention against Corruption on October 31, 2003 and ratified it on May 4, 2008.

1021. Kazakhstan signed the Treaty of CIS Countries in Combating Terrorism on June 4, 1999 and ratified it on October 23, 2000.

1022. Kazakhstan signed the Treaty of the Member States of CIS on Combating Money Laundering and Financing of Terrorism on October 5, 2007. Currently, this document is undergoing intrastate ratification procedures.

Special Recommendation I

1023. The Republic of Kazakhstan ratified the Convention for the Suppression of Financing of Terrorism in the Law of the Republic of Kazakhstan dated October 2, 2002. This convention was ratified without any reservations. Kazakhstan has not fully implemented the provisions of the Convention pertaining to the criminalization of FT mentioned above (see review of SR II). Also, not all acts provided for in nine conventions and agreements and specified in the

Annex to the Convention for the Suppression of the Financing of Terrorism are criminalized to a full extent. In light of the existing deficiencies in the area of preventive and prophylactic measures, with regard to identification, establishment of beneficial owners and control over transboundary movement of physical cash, the requirements of Art. 18 of the Convention are not observed.

1024. The Kazakh legislation provides only for suspension of transactions by the FIU for a period of 3 calendar days. The Republic of Kazakhstan has not implemented a full range of measures for freezing FT funds required by the UN Security Council Resolutions No. 1267 and 1373 and subsequent documents adopted for their further development. In particular, there is no specifically defined legal mechanism for informing the subjects of financial monitoring of the individuals included in the list of terrorists; the de-listing procedure is absent; the law contains no provisions governing the procedure for indefinite freezing / de-freezing of funds; no penalties are provided against the subjects of financial monitoring for failure to comply with the freezing requirements. Therefore, the deficiencies identified in the application of SR III are also applicable in the context of compliance with UN SC Resolutions No. 1267 and 1373.

6.2.2. Recommendations and Comments

Recommendation 35

1025. Kazakhstan should take steps to criminalize the crime of ML in accordance with the Vienna and Palermo Conventions.

Special Recommendation I

1026. Kazakhstan should take measures to ensure the following:

- criminalization of terrorist crimes and FT in accordance with the requirements of the Convention for the Suppression of the Financing of Terrorism;
- implementation of the requirements of SR III with respect to the establishment of a legal mechanism for informing the subjects of financial monitoring of the individuals included in the list of terrorists, as well as the procedure for de-listing; the competent authorities should issue guidance on freezing / de-freezing of funds, introduce penalties against the subjects of financial monitoring for failure to comply with freezing requirements.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of Facts Underlying Overall Rating
R.35	PC	<ul style="list-style-type: none"> • The provisions of the Vienna and Palermo conventions with regard to criminalization of the crime of ML, identification of beneficial owners, storage of data and reporting of suspicious transactions are not fully implemented. • The acts related to provision of funds to terrorists or terrorist organizations without the intention of carrying out terrorist activities, or not related to a specific terrorist act are not criminalized as required by the Convention for the Suppression of the FT • There are deficiencies in compliance with the requirements of art. 18

		of the Convention on FT.
SR I	PC	<ul style="list-style-type: none"> • There are deficiencies in compliance with the requirements of art. 18 of the Convention on FT. • A series of legal mechanisms required by UN SC Resolutions No. 1267 and 1373 are missing. • There are no procedures for de-listing citizens from the list of individuals associated with terrorism and extremism. • There are no mechanisms in Kazakhstan allowing access to the part of the funds needed to satisfy basic living needs as required by the terms of UNSCR No.1452.

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

6.3.1. Description and Analysis

Recommendation 36

1027. Over the years of independence, the Republic of Kazakhstan has concluded 23 bilateral agreements on legal assistance and legal relations and 2 agreement on transfer of prisoners.

1028. Mutual legal assistance between members of the CIS is provided in accordance with the Convention on Legal Assistance and Legal Relations in Civil, Domestic and Criminal Matters signed in Minsk in 1993 and Kishinev in 2002. The latter of these conventions is used in the relations between the countries that have ratified it: Azerbaijan, Armenia and Belarus.

1029. There are bilateral agreements concerning legal assistance in criminal matters with India, China, North Korea, Pakistan, Lithuania, Mongolia, Turkey, Iran and Germany.

1030. These agreements provide for the provision of the following legal assistance:

- 1) receiving evidence and statements from individuals;
- 2) providing information, documents, records and physical evidence;
- 3) identification of individuals and objects;
- 4) serving documents;
- 5) executing requests for search and confiscation of objects;
- 6) creating conditions for individuals to give evidence, or assisting the requesting side in criminal prosecution, filing of charges and judicial proceedings;
- 7) detention, imposition of fines and confiscation of proceeds and instrumentalities of criminal activity;
- 8) any other assistance related to the purpose of the Agreement that does not contradict the law of the requested party.

1031. Additionally, on June 17, 2008, the Republic of Kazakhstan ratified the Convention on the Protection of Participants in Criminal Proceedings "(Minsk, November 28. 2006).
1032. As was reported to the evaluators, the main regulatory document governing issues related to MLA is the Criminal Procedure Code. Pursuant to the CPC of RK, the General Prosecutor's Office, Ministry of Justice and the Ministry of Foreign Affairs of RK are responsible for provision of MLA.
1033. The main regulations on the procedure for mutual assistance between the agencies conducting a criminal trial and competent institutions and officials of foreign states in criminal proceedings are specified in Chapter 55 of the CPC. The Criminal Procedure Code governs the provision of various types of MLA, resulting in timely, meaningful and effective measures. The performance periods are determined by international agreements.
1034. As part of arrangements for provision of legal assistance to the investigating bodies and courts of foreign countries the Republic of Kazakhstan has signed agreements on provision of legal assistance with, or on the basis of reciprocity, certain procedural actions provided for under this Code can be performed, as well as any other actions provided for by other laws and treaties of the Republic Kazakhstan. Pursuant to art. 525 of CPC of RK, execution of a request may involve the application of procedural rules of a foreign state to the extent permitted by the international agreement concluded between the Republic of Kazakhstan and such state.
1035. Furthermore, pursuant to par. 10 of article 50 of the Law "On Banks and Banking Activities in the Republic of Kazakhstan", the information containing bank secrecy is provided under international treaties concluded by the Republic of Kazakhstan and containing a provision for exchange of information.
1036. At the same time, the analysis of the country's law has revealed that the best mechanism for determining the territorial jurisdiction is not defined.
1037. Furthermore, pursuant to par. 10 of article 50 of the Law "On Banks and Banking Activities in the Republic of Kazakhstan", the information containing bank secrecy is provided under international treaties of the Republic of Kazakhstan containing a provision for exchange of information. MLA is not limited to requests concerning tax violations.
1038. Pursuant to par. 1, 2 and 3 of art. 19 of the Law on AML / CFT, co-operation between the authorized agency, other government bodies of RK and the competent authorities of foreign countries in the area of prevention, detection, suppression and investigation of offenses related to legalization (laundering) or criminal proceeds and terrorist financing, as well as the confiscation of these proceeds is carried out in accordance with the laws of the Republic of Kazakhstan and international agreements of the Republic of Kazakhstan.
1039. The study of international agreements to determine the territorial jurisdiction has revealed that the majority of them contain a provision, under which the requested side may independently decide the request of which state should be satisfied. However, the mechanism for determining the best territorial jurisdiction is not defined.

Recommendation 37

1040. According to the information provided to the evaluation team, in the absence of a mutual recognition of a certain act as a crime (dual criminality), MLA may be provided, but its mechanism and limits are not defined.
1041. Additionally, pursuant to art. 6 of the Convention "On Legal Assistance and Legal Relations in Civil, Domestic and Criminal Matters" (Kishinev Convention), the parties shall provide MLA through the implementation of procedural and other actions provided for in the legislation of the requested party. The parties may provide MLA also in other forms and types, depending on the specific circumstances, the interests of justice and society in general and in accordance with domestic law of the parties.

Recommendation 38

1042. Petitions by prosecuting agencies and courts of foreign governments for performance on the territory of the Republic of Kazakhstan of procedural actions, including those related to the detection and seizure of property, are performed by the authorities conducting criminal proceedings in accordance with the requirements of the CPC concerning the seizure of property, as well as international agreements.
1043. Pursuant to art. 121 of the CPC of RK, money and other valuables acquired by criminal means, as well as articles of illegal enterprise and smuggling, shall, upon decision of the court, be treated as income of the state.
1044. Pursuant to art. 161 of the CPC of RK, for the purpose of ensuring the execution of the sentence with regard to a civil claim, other economic sanctions or a possible confiscation of property, the prosecuting agency is entitled, upon authorization of the prosecutor, to seize the property of a suspect, accused person or persons who bear pecuniary responsibility for their actions. Pursuant to part 3 of this article, the cost of property seized to enforce a civil claim cannot exceed the amount of the claim.
1045. The Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs" dated April 2, 2010 provides for the procedure for repossession of property. For example, art. 55 of the Law provides that debtor's property is repossessed to the extent necessary to execute the warrant, cover the execution costs and the private bailiff's fee.
1046. It should be noted that the Republic of Kazakhstan has concluded bilateral treaties with several countries, according to which the country has undertaken to provide legal assistance in regard to the recognition and enforcement of court decisions in civil cases and the seizure of property obtained by criminal means, including cash in bank accounts, to enforce the claim.
1047. In addition, the Conventions ratified by Kazakhstan provide for provision of legal assistance related to the application of interim (restrictive) measures in respect of property, money and valuables obtained by criminal means, as well as the proceeds from criminal activities belonging to the accused (defendants, convicted).
1048. According to the General Prosecutor's Office of RK, it has not received any requests from the competent authorities of foreign states for confiscation of property yet.

1049. Kazakhstan has not considered the issue of sharing the forfeited property with the competent authorities of foreign states whose actions resulted in the confiscation of property. The evaluators were told that the confiscated proceeds were, in accordance with Kazakh law, forfeited to the state and sent to the budget.
1050. Apparently, there are no effective procedures for provision of legal assistance in the area of freezing, seizure and confiscation of property legalized from committed crimes, except for corruption crimes and property registered under the ownership of third parties. Also, pursuant to Art. 193 of CC of RF, the ML offence applies to cash and other property knowingly acquired by criminal means. Thus, based on the disposition of this regulation, it does not apply to the proceeds from money laundering. In this regard, difficulties may arise in the provision of MLA with respect to freezing, seizure and confiscation of proceeds derived from ML. The disposition of Art. 233-3 of CC of RF does not cover acts pertaining to the provision of funds to terrorists or terrorist organizations without the intention of carrying out terrorist activity or not related to a specific terrorist act. For this reason, the specified deficiencies in the criminalization may adversely affect the provision of MLA.

Effectiveness

1051. According to the Committee for Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan, a total of 59 requests for legal assistance in criminal cases related to economic crimes were received *in 2010* (executed – 52, denied - 0, the rest – pending). Of them in cases related to crimes of laundering of monetary and other assets acquired by illegal means (under art. 193 of CC of RK) – 1.
1052. 139 requests for legal assistance in criminal cases related to economic crimes were sent to law enforcement agencies of other countries. So far, 22 requests have been answered.
1053. In cases related to crimes of laundering money or other property acquired by illegal means (under art. 193 of CC of RK), the financial police and the prosecutors have sent 5 requests to the competent authorities of the Russian Federation, the Republic of Uzbekistan and the Kyrgyz Republic, all of which have been executed.
1054. The law enforcement agencies provided statistics on international requests for MLA concerning crimes and extraditions, as well as the nature, results of and execution time for the requests.
1055. According to the Ministry of Internal Affairs of RK, as part of bilateral and multilateral agreements for MLA, the country's law enforcement agencies received in 2010: 211 international requests from Russia, 62 from Uzbekistan, 27 from Kyrgyz Republic, 11 from Ukraine, 9 from Belarus, 3 from each Tajikistan and Moldova, 2 from Azerbaijan. As part of the multilateral cooperation with non-CIS countries, legal assistance in criminal cases was rendered to Turkey - 14, Lithuania - 5, Germany - 4, Poland - 2, Mongolia, Austria, USA, Belgium, China, Czech Republic, Estonia, and Latvia - 1.
1056. A total of 159 international requests, of which 93 to Russia, 45 to Uzbekistan, 9 to Kyrgyzstan, 4 to Ukraine, 2 to Turkmenistan and 1 to Georgia, Armenia, Tajikistan, Lithuania, Belarus and Azerbaijan, were sent as part of MLA in criminal cases.

6.3.2. Recommendations and Comments

1057. Despite the fact that Kazakhstan has a statutory procedure for provision of mutual legal assistance, it contains some deficiencies that need to be addressed. In particular, it is necessary for the regulations to contain a mechanism for determining the best location (jurisdiction) where to prosecute the accused, as well as to determine a clear mechanism for coordinating the actions taken jointly with a foreign state involving cases of property seizure and confiscation. Additionally, Kazakhstan should correct the deficiencies in its criminalization of ML which will enhance its ability to provide MLA in such cases.

1058. The possibility of establishing a fund of confiscated property should be considered.

1059. It is necessary to develop and implement a mechanism for coordinating the actions taken jointly with foreign countries involving cases of property seizure and confiscation, and the subsequent sharing of property if it was confiscated with the assistance of the competent authorities of a foreign state.

6.3.3. Compliance with Recommendations 36-38 and Special Recommendation V

	Rating	Summary of Facts Underlying Overall Rating
R.36	LC	<ul style="list-style-type: none"> • Deficiencies in the criminalization of ML may affect the provision of MLA in cases involving freezing, seizure and confiscation of proceeds derived from ML, and MLA related to the investigation and prosecution of ML cases. • Deficiencies in the criminalization of FT may affect the provision of MLA in such cases where dual criminality is required. • Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused.
R.37	LC	<ul style="list-style-type: none"> • The boundaries of MLA in the absence of dual criminality are not defined.
R.38	PC	<ul style="list-style-type: none"> • There is no legal provision that allows the seizure and confiscation of property of a specific value, or the application of appropriate measures in respect of proceeds. • A clear mechanism for coordinating actions taken jointly with a foreign state involving cases of seizure and confiscation of property is missing. • The possibility of establishing a fund of confiscated property has not been considered. • The option of sharing the forfeited property with the competent authorities of foreign states whose actions resulted in the confiscation of property has not been

		<p>considered.</p> <ul style="list-style-type: none"> Deficiencies in the criminalization of ML may affect the provision of MLA in cases involving freezing, seizure and confiscation of proceeds derived from ML.
SR. V	LC	<ul style="list-style-type: none"> No provision is made for the seizure / confiscation of property of a specific value and proceeds from FT. Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused. Deficiencies in the criminalization of FT may affect the provision of MLA in such cases where dual criminality is required. A clear mechanism for coordinating actions taken jointly with a foreign state involving cases of seizure and confiscation of property is missing. The possibility of establishing a fund of confiscated property has not been considered. The option of sharing the forfeited property with the competent authorities of foreign states whose actions resulted in the confiscation of property has not been considered.

6.4. Extradition (R.37, 39 и SR.V)

6.4.1. Description and Analysis

Recommendation 39

1060. Under the CC and CPC of the Republic of Kazakhstan, money laundering is a crime that, in certain case, may serve as the basis for extradition. The extradition procedure is governed by several articles of the CPC of RK.

1061. Extradition is not allowed if:

- 1) the person has been granted political asylum in the Republic of Kazakhstan;
- 2) the act which served as the basis of the extradition request does not constitute a crime in the Republic of Kazakhstan;
- 3) the person has already been prosecuted for the same crime, or the proceeding related to that crime have been terminated;
- 4) under the laws of the Republic of Kazakhstan, criminal proceedings cannot be initiated or a sentence cannot be enforced if the statute of limitations has expired or for other legitimate reasons.

1062. Extradition may be refused if the offense for which the request for extradition was submitted was committed on the territory of the Republic of Kazakhstan or abroad but was directed against the interests of the Republic of Kazakhstan.
1063. Extradition of wanted persons within the states members of the CIS, including for terrorism and money laundering, is carried in accordance with the conventions on mutual legal assistance and legal relations in civil, domestic and criminal matters dated January 22, 1993 and October 7, 2002, and in accordance with bilateral agreements on provision of legal assistance in criminal cases.
1064. The extradition procedures established by the Republic of Kazakhstan are governed by the CPC of RK to ensure timely and effective assistance in enforcing extraditions.
1065. A country cannot extradite its own citizens, which reflects the constitutional provision of the CIS countries. The convention ratified by Kazakhstan requires each country to prosecute its own citizens under its own laws on behalf of the party on whose territory the crime was committed. In the course of the mission, the evaluating experts were not informed of any instances of extradition linked to either ML or FT offences. Also, given the existence of dual criminality, the shortcomings of ML and FT criminalization may adversely affect the execution of requests.

Effectiveness and Statistics

1066. The Prosecutor General's Office provided the following statistics on extraditions, transit of turned over persons and extraditions of the sentenced to imprisonment persons to continue to serve prison term: In cases related to economic crimes, a total of 22 extradition requests from foreign countries were received. Of these, 3 were reviewed within a period of up to 1 month and 19 within a period of up to 2 months. Satisfied requests – 17, denied – 0, the rest – pending.
1067. In 2010, a total of 61 wanted criminals were apprehended in the CIS and non-CIS countries, 29 of them were extradited to Kazakhstan. In respect of these, 29 criminal proceedings were completed, with the cases being referred to court.

6.4.2. Recommendations and Comments

1068. Under CPC of RK, the extradition is only possible on condition of dual criminality. In this respect, the deficiencies in the criminalization of ML and FT may negatively affect the execution of certain requests. Kazakhstan should correct the deficiencies in its criminalization of ML and FT, which will enhance its ability to facilitate extradition in such cases. It should also enact regulations containing mechanisms for determining the best location (jurisdiction) in which to prosecute the accused.
1069. It is necessary to maintain centralized annual statistics on extradition requests, including in the context of ML and FT cases, on predicate offenses, as well as on the nature of requests.

6.4.3. Compliance with Recommendations 39-37 and Special Recommendation V

	Rating	Summary of Facts Underlying Overall Rating
R.37	LC	<ul style="list-style-type: none"> The boundaries of MLA in the absence of dual criminality are not defined.
R.39	PC	<ul style="list-style-type: none"> No extradition is possible without dual criminality. In this respect, the deficiencies in the criminalization of ML and FT may adversely affect the execution of requests. Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused.
SR. V	LC	<ul style="list-style-type: none"> Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused. No extradition is possible without dual criminality. In this respect, the deficiencies in the criminalization of FT may adversely affect the execution of requests.

6.5. Other Forms of International Cooperation (R.40 and SR.V)

6.5.1. Description and Analysis

1070. Pursuant to the provisions of the Law on AML / CFT (art. 19), co-operation between the authorized agency, other government bodies of RK and the competent authorities of foreign countries in the area of prevention, detection, suppression and investigation of offenses related to legalization (laundering) or criminal proceeds and terrorist financing, as well as the confiscation of these proceeds is carried out in accordance with the laws of the Republic of Kazakhstan and international agreements of the Republic of Kazakhstan.

1071. However, the KFM Chairman has no powers, either secured in legislation or delegated by the Minister of Finance, to sign memoranda of understanding or interagency agreements concerning information exchange with competent authorities of other countries. Pursuant to the Law of RK "On International Agreements", every initiative of the Finance Ministry to sign an interagency agreement must undergo intrastate approval procedures with the concerned government agencies, receive a conclusion of the Ministry of Justice as to its conformity to the laws of the Republic of Kazakhstan and a conclusion of the Ministry of Foreign Affairs as to its expediency in foreign policy. After this, the Government of Kazakhstan submits a proposal to sign such agreement to the President of Kazakhstan in a form of a resolution. The decision concerning the conclusion of an interagency agreement and the granting of powers to sign it on behalf of the Ministry of Finance is executed in the form of the Minister's or his deputy's resolution. The signing authority is approved by the Ministry of Internal Affairs of RK through the issuance of certificates of authorization. Such powers may also be delegated to the KFM Chairman.

At the time of the evolution, only one memorandum of cooperation, with the Gosfinmonitoring of Ukraine, was concluded on behalf of the Ministry of Finance of RK, while the draft inter-agency agreements with several other FIUs were undergoing intrastate approval.

1072. Pursuant to par. 4 of art. 17 of the Law No. 191-IV, the authorized body may exchange information with other FIUs either on its own initiative or at their request. However, there is no clarity as to what this information might be. The documents and explanations obtained by the evaluation team do not conclusively establish whether the KFM has the right to exchange with foreign FIUs information constituting bank or other protected by law secrets if the provision of such information is permitted under the relevant sectorial law only on the basis of international treaties concluded by the Republic of Kazakhstan. On the other hand, the evaluators were presented statistics confirming rather active exchange of information with the FIUs of several countries with which the KFM has no bilateral agreements. As of July 1, 2010, 3 requests were received from foreign FIUs, while the KFM requested information from its foreign partners on 62 occasions. In practice, KFM's requests and replies are signed by the KFM Chairman; however, the KFM operating procedure and other documents provided to the evaluators offer no insight into this issue.
1073. The appraisers believe that the provided in par. 4 of art. 19 of the Law 191-IV right of the KFM to deny a request of a foreign competent authority on the basis of its own judgment as to the insufficiency of the detailed in the request facts and circumstances for suspicion of ML / FT can be construed as an unduly restrictive condition.
1074. The prosecutors, investigative and judicial authorities co-operate with their foreign partners on the basis of the ratified Conventions and concluded multilateral and bilateral international agreements, treaties and memorandums, with the terms and conditions for such cooperation stipulated in the agreements themselves and domestic laws of Kazakhstan.
1075. According to the information provided to the evaluation team, the General Prosecutor's Office of RK is preparing to conclude interagency agreements with competent authorities of foreign countries, including in the area of information exchange, experience sharing, staff secondment and holding of conferences, meetings and other events.
1076. Up till now, bilateral interagency agreement have been concluded with the General Prosecutor Offices of the countries members of the CIS, Latvia, Lithuania, the Republic of Korea, Slovak Republic, and memorandums of cooperation with the Italian National Anti-Mafia Prosecutor's Offices, the Ministry of Justice of the Republic of Austria, the Supreme Public Prosecutor's Office of the Czech Republic and the Federal Bureau of Investigations of the Ministry of Justice of the United States of America.
1077. Law enforcement authorities have the right to conduct investigations on behalf of foreign states. The said regulations are contained in the international agreements and CPC of RK.
1078. According to the information made available to the mission of evaluators, the requests pertaining to tax crimes are also accepted for execution

1079. The AFS has the authority to co-operate with the government agencies of other states responsible for regulation of and supervision over the financial market and financial institutions, as well as the right to exchange information necessary to enable the performance by them of their oversight responsibilities (par. 3 of art. 15 of the *Law "On State Regulation and Supervision of Financial Market and Financial Institutions"*).
- on issues of banking supervision with Tajikistan, Belarus, Turkey, Kyrgyzstan, China, Moldova, Russian Federation, Luxembourg and Georgia.
 - on issues of oversight over the securities market with Lithuania, Belarus and Azerbaijan.
 - on issues of insurance supervision with Tajikistan.
 - on issues of financial oversight with Mongolia.
1080. In 2009, the AFS was included in the Annex to the Memorandum of Understanding concerning consultation, cooperation and information exchange with the International Organization of Securities Commissions (IOSCO).
1081. Pursuant to the *Law "On National Bank of Kazakhstan"*, the NB of RK represents, within its scope of competence, the interests of the Republic of Kazakhstan in its relations with central banks and banks of other countries in international banks and other financial institutions. The *Law "On National Bank of Kazakhstan"* does not specify the powers of NB in the area of information exchange, etc. with international organizations.
1082. The NB of RK is responsible for interaction with international financial institutions, such as IMF, World Bank, EBRD, ADB, IDB. In view of the lack of information on the mechanism of information exchange between the NB and its foreign partners, it is not possible to analyze and evaluate the implementation of this criterion.
1083. Currently, the following international agreements in the area of combating money laundering and terrorist financing, which contribute to international cooperation, have been ratified:
1084. The United Nations Convention against Corruption (New York, October 31, 2003). Ratified by the Law of the Republic of Kazakhstan dated May 4, 2008. On July 17, 2008, the Convention entered into force.
1085. In 1998, the Government of the Russian Federation and the Republic of Kazakhstan signed the Agreement on Cooperation and Mutual Assistance in Combating Illegal Financial Transactions and Financial Transactions Related to Money Laundering (Alma-Ata, October 12, 1998). 2007 saw the signing of the Treaty on Combating Money Laundering and Terrorist Financing between the states members of the Commonwealth of Independent States (Dushanbe, October 5, 2007).
1086. However, no data on international relations and the mechanism for the exchange of information between the Ministry of Internal Affairs, ABEKP and Communications Ministry and their foreign partners was provided to the evaluation team.
1087. Due to the lack of information about the mechanism of information exchange between the oversight bodies (AFS, NB, etc.) and their foreign partners, especially with

regard to AML / CFT, it is not possible to comprehensively evaluate the powers of competent authorities to request / search for information on behalf of their foreign partners.

Effectiveness and Statistics

1088. The statistics on international cooperation was provided to the experts only by the FIU. In this regard it is not possible to assess the level of the international cooperation of other competent authorities.

6.5.2. Recommendations and Comments

1089. Kazakhstan should enhance international cooperation conducted by oversight bodies in the area of AML / CFT, more accurately specify the procedure for information exchange between FIUs, as well as draw up an exhaustive list of grounds for denial of requests submitted by foreign FIUs in the light of generally accepted international standards

6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of Facts Underlying Overall Rating
R.40	LC	<ul style="list-style-type: none"> • Low level of international cooperation in the oversight area. • The authority of the FIU in regard to information exchange carried out in the absence of relevant international treaties is not clearly defined; the provision of information in response to requests made by foreign partners may depend on unduly restrictive conditions. • No information concerning international relations and the mechanism for exchange of information between law enforcement authorities and their foreign partners. was provided. •
SR. V	LC	See other grounds for the rating in par. 6.3 and 6.4

7. OTHER ISSUES

7.1. Resources and Statistics (R.30 and 32)

1090. The part of text relating to description, analysis of and recommendations for correcting the deficiencies in accordance with Recommendations 30 and 32 is contained in all relevant sections of the report, i.e. in section 2, some parts of sections 3, 4, and in section 6. There is a unified rating for each of these recommendations despite the fact that they are reviewed in different sections of the report. Section 7.1 primarily contains a table with a rating and the underlying factors

	Rating	Summary of Facts Underlying Overall Rating
R.30	PC	<ul style="list-style-type: none">• There are not specialized AML / CFT units within the structures of oversight agencies.• There are not special departments (offices) responsible for investigating ML / FT-related crimes within the structures of the Prosecutor's Office, the Agency or the National Security Committee.• The level of training of interrogating officers, investigators, prosecutors and judges in the area of ML / FT-related case investigations and review is low.• There is no information that the staff of oversight agencies received training on the subject of oversight in the area of AML / CFT.
R.32	NC	<ul style="list-style-type: none">• Due to the lack of statistical information, it is impossible to assess the effectiveness of the work carried out by some law enforcement agencies;• No steps were taken by the oversight authorities to review the situation with AML / CFT existing in the supervised institutions, including when it comes to compiling statistical data.• There is no statistics on the property frozen pursuant to UN Security Council Resolutions;• The effectiveness of the Kazakh anti-money laundering and terrorism financing system is not subject to a regular review.

7.2. Other Relevant AML/CFT Measures or Issues

1091. There are no other issues relevant to this section.

7.3. General Framework of the AML / CFT System (see also Section 1.1)

1092. There are no other issues relating to the general framework of the AML / CFT system.

TABLES

Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC), or could, in exceptional cases, be marked as not applicable (N/A). These ratings are based only on the essential criteria, and defined as follows.

Compliant	The Recommendation is fully observed with respect to all essential criteria
Largely Compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met
-Partially compliant	The country has taken substantive actions and complies with some of the essential criteria
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country

Forty Recommendations	Rating	Summary of factors underlying the rating ²⁰
Legal systems		
1. ML offence	PC	<ul style="list-style-type: none"> ML criminalization shortcomings: <ul style="list-style-type: none"> - conversion and transfer of property, knowing that it represents the proceeds of crime, are not directly (explicitly) criminalized; - concealment or disguise of the true nature, source, location, disposition, movement, ownership of or rights with respect to property,

²⁰ These factors are only required to be set out when the rating is less than "Compliant".

		<p>knowing that such property is the proceeds of crime, are not criminalized;</p> <p>- ownership or use of property obtained by criminal means for personal benefit/advantages is not covered and criminalized.</p> <p>All this indicates non-compliance with the requirements of the Vienna and Palermo Conventions.</p> <ul style="list-style-type: none"> • ML offence does not extend to property that indirectly represents the proceeds of crime. • The crime of terrorist financing is not the predicate offence for money laundering. • Insider trading and market manipulation are not criminalized.
2. ML offence – mental element and corporate liability	PC	<ul style="list-style-type: none"> • The legislation of Kazakhstan does not contain provisions imposing criminal or administrative liability on legal entities for money laundering. • The legislation does not permit the intention element to be inferred from objective factual circumstances. • Effectiveness of civil liability raises certain doubts due to too general wording of the relevant provisions of the civil legislation.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • Confiscation of revenues (income, profits) that are derived indirectly from proceeds of crime is not provided for. • There is no mechanism to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of such actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • There are no specific provisions in the legislation that protect the rights of bona fide third parties in compliance with the requirements of the Vienna and Palermo Conventions. • Comprehensive statistics on confiscated, frozen and seized property is not presented.
Preventive measures		
4. Consistency of the Laws on Secrecy with Recommendations	LC	<ul style="list-style-type: none"> • Inconsistent legislation and different terminology defining the same subject or object may be a legal impediment and seriously affect

		the effectiveness of obtaining information from the entities subject to financial monitoring and cooperation with foreign partners.
5. Customer due diligence	NC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to consumer credit unions; pawnshops; micro credit organizations; leasing companies; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals. • There is no direct prohibition to open anonymous accounts and accounts in fictitious names. • There is no obligation to undertake the CDD measures when carrying out transactions in amount exceeding 15,000 US dollars and also when there is a suspicion of money laundering. • “Beneficiary owner” is not defined for the AML/CFT system purposes. • There is no obligation to understand the ownership and control structure of the customer, or to verify the authority of someone acting as a representative of a customer. • There is no obligation to verify information obtained as a result of undertaken CDD measures. • There is no requirement to undertake enhanced CDD measures for high-risk customers. • There is no requirement to perform ongoing monitoring (i.e. ongoing due diligence) of transactions carried out by customers. • The legislation does not specify frequency of updating information on the existing customers and applying the full range of CDD measures to such customers. • The CDD measures do not provide for identification and recording of information on customers that have been already served by a financial at the time of adoption of the AML/CFT Law. • Since the respective requirements were put in force just recently, the effectiveness of the system is low.
6. Politically exposed persons	PC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to

		<p>consumer credit unions; pawnshops; micro credit organizations; leasing companies; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals.</p> <ul style="list-style-type: none"> • No identification of existing customers is performed for recording information on them as well as for determining whether they are politically exposed persons. • Measures for enhanced ongoing monitoring of the relationships with PEPs are not developed. • No timeline is established for regular verification of information of customers to identify PEPs among them.
7. Correspondent banking	PC	<ul style="list-style-type: none"> • The legislation of Kazakhstan does not provide for gathering sufficient information on a respondent institution to fully understand the nature of its business, and information on whether it has been subject to AML/CFT sanctions. • There are no requirements to assess the respondent institution's AML/CFT controls and their effectiveness and ascertain that they are adequate and effective. • The legislation of Kazakhstan does not require financial institutions to document the AML/CFT responsibilities of each institution.
8. New technologies and non face-to-face business	NC	<ul style="list-style-type: none"> • Financial institutions are not obliged to develop and apply special procedures for preventing the misuse of technological developments for money laundering and terrorist financing purposes. • Financial institutions are not obliged to develop procedures for managing the risks associated with non-face to face business relationships and transactions.
9. Third parties and intermediaries	N/A	Not applicable
10. Record keeping	LC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to a number of institutions that fall within the financial institution category: leasing companies; consumer credit unions; pawnshops; micro credit organizations; insurance agents; organizations

		<p>accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals (several such institutions operate in Kazakhstan).</p> <ul style="list-style-type: none"> • There are no clear and explicit statutory requirements to retain information on transactions with funds and (or) other property for at least five years. • There are no clear and explicit statutory requirements to retain all identification data obtained through the CDD process. • There are no clear and explicit statutory requirements to provide all customer and transaction information upon request of the competent authorities.
11. Unusual transactions	NC	<ul style="list-style-type: none"> • There is no direct and explicit requirement for financial institutions to pay special attention to all complex and unusual large transactions. • There is no requirement to examine all complex and unusual large transactions and to set forth findings in writing. • There is no requirement to keep findings, obtained in the course of examination and analysis by financial institution of complex and unusual large transactions, for five years.
12. DNFBP – R.5, 6, 8-11	NC	<p>Recommendation 5:</p> <ul style="list-style-type: none"> • Requirements of the Kazakh law on AML / CFT do not apply to dealers in precious metals and precious stones, trusts (trust management of property), organizations establishing and servicing legal entities, and real estate agents. • The requirement to carry out CDD measures upon execution of occasional transactions in the amount exceeding US\$15,000 or in the case of suspected ML is missing. • The term "beneficial owner" is not defined for the purposes of the AML / CFT system. • The requirement to verify information obtained as the result of CDD measures is absent. • The requirement to carry out CDD measures if the client is classified as high risk is absent. • The requirement to conduct on-going monitoring

		<p>of clients' transactions is absent;</p> <ul style="list-style-type: none"> • The legislation does not specify how frequently the data on the existing clients should be updated, and contains no provision for application against such clients of the entire set of CDD measures. • The CDD measures do not include responsibility to identify and record information on clients who were already clients of the financial institution at the time of the enactment of the AML / CFT law. • Low effectiveness of the system caused by the recent entry into force of the relevant requirements. <p>Recommendation 6:</p> <ul style="list-style-type: none"> • No identification of the already existing clients for the purpose of recording their data and determining their relation to PEPs is carried out. • No intensive measures for on-going monitoring of PEP relations have been developed. • No timescale for conducting regular review of clients to identify among them the PEPs is set. <p>Recommendation 8:</p> <ul style="list-style-type: none"> • The responsibility of DNFBPs to develop and apply special procedures intended to prevent the use of technological breakthroughs for the purposes of AML / CFT is not defined. • Legal requirements for storing identification data are limited. <p>Recommendation 10:</p> <ul style="list-style-type: none"> • there are no legal requirements for DNFBPs concerning storage of data on transactions involving monetary and (or) other assets for a minimum of 5 years. • there is no clear legal requirement to store all the identification data obtained as the result of CDD measures. • there is no clear legal requirement for the timely provision at the request of the competent authorities of all customer and transaction data. <p>Recommendation 11:</p> <ul style="list-style-type: none"> • There is no direct requirement for financial institutions to pay special attention to all complex and unusually large transactions • There is no requirement to study all complex and unusually large transactions and record the results
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		<p>of the study in writing.</p> <ul style="list-style-type: none"> • There is no requirement to store the results of the study and analysis of complex and unusually large transactions conducted by non-financial institutions for a period of 5 years.
13. Suspicious transaction reporting	NC	<ul style="list-style-type: none"> • There is no direct requirement to file STR if there is suspicion of money laundering. • Shortcoming in criminalization of money laundering may affect the STR filing regime. • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to a number of institutions that fall within the financial institution category: leasing companies; consumer credit unions; pawnshops; micro credit organizations; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals. • There is no requirement to file STR on attempted ML-related transactions. • Low effectiveness of application of Recommendation.13.
14. Protecting and non-notification	LC	<ul style="list-style-type: none"> • There is no requirement for directors, executive officers and employees of financial institutions not to notify their customers and other persons about the fact that information on them is being reported to the designated agency.
15. Internal controls, compliance and audit	PC	<ul style="list-style-type: none"> • The requirements set forth in the AML/CFT legislation of Kazakhstan do not apply to a number of institutions that fall within the financial institution category: leasing companies; consumer credit unions; pawnshops; micro credit organizations; insurance agents; organizations accepting from public cash as payment for the provided services received by a trustee who acts on behalf and at instructions of a trustor (service provider) under an agency contract, inter alia, via electronic terminals. • There is no requirement to appoint a special executive officer in charge of implementing AML/CFT policies and procedures in financial institutions (except for banks).

		<ul style="list-style-type: none"> • There are no requirements for financial institutions to educate and train AML/CFT personnel. • There are no screening procedures when hiring employees. • No requirement to communicate the internal control rules to financial institution employees is established. • It is impossible to assess effectiveness of application of requirements for establishing internal control in financial institutions since these requirements have been put in effect just recently.
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> • Requirements of the Kazakh law on AML / CFT do not apply to dealers in precious metals and precious stones, trusts (trust management of property), organizations establishing and servicing legal entities, and real estate agents. <p>Recommendation 13:</p> <ul style="list-style-type: none"> • There is no direct requirement for submission of STR in case of suspected ML. • The deficiencies related to criminalization of ML may affect the STR submission regime. • There is no requirement for submission of STR when attempts are being made to execute transactions connected with ML. • Effectiveness of application of the requirements for implementation of R.13 is low. <p>Recommendation 14:</p> <ul style="list-style-type: none"> • There is no requirement for directors of financial institutions, officials and employees to avoid notifying their clients or other persons in case of submission of the related to them data to the authorized agency. • The STR-related statistics from DNFBPs (except notaries) is missing. <p>Recommendation 15:</p> <ul style="list-style-type: none"> • There is no requirement for appointment of a special official responsible for implementation of policies and regulations in the area of AML / CFT within DNFBPs. • The requirements for DNFBPs concerning qualifications and training of personnel involved in AML / CFT are not established.

		<ul style="list-style-type: none"> • There is not procedure for screening all DNFBP staff at the time of their hire. • There is no requirement for bringing the ICR to the attention of the DNFBP staff. • The concept of "uncooperative countries" is not defined, and there is no requirement to pay special attention to transactions with persons from such countries. •
17. Sanctions	NC	<ul style="list-style-type: none"> • Entities not included in the SFM list are not subject to sanctions (entities executing capital leasing transactions; consumer cooperatives that provide loans to its members; micro-credit institutions; pawnshops; insurance agents; persons carrying out transactions involving electronic money; persons accepting payments from the public). • The internal control rules are not a regulatory act, and, therefore, the application of any measures by supervisory authorities against supervised entities for non-conformity with these rules may be controversial. • Article 168-3 of the Code "On Administrative Offences" does not provide for liability for non-compliance with the requirements of the law on AML / CFT as it pertains to meeting the requirements of supervisory agencies and the FIU. • The law "On Banks and Banking Activities in the Republic of Kazakhstan" does not provide for application of restricted measures (preceding suspension and (or) revocation of the license) for violation of the law in the area of AML / CFT. • The subordinate acts (Guidelines 67 and 68) that establish the procedure for application of restricted measures against pension savings funds, major participants of the open pension savings fund and securities market entities do not provide for application by the AFS of restricted measures in case of violations of the law in the area of AML / CFT. • Given that no procedure for application of sanctions determined on by the AFS was presented (sub. par. 9 of par. 1 of art. 9 of the Law "On State Regulation and Supervision of Financial Market and Financial Institutions"), it is impossible to assess the mechanism for application of sanctions.

		<ul style="list-style-type: none"> • The AFS is not provided with authority to apply restricted measures against securities market and pension savings funds entities for non-compliance with the AML / CFT law. This means that sanctions in respect of these sectors are not proportionate to the seriousness of the situation. • The AFS will not be able to apply appropriate measures against certain executives (top executives and chief accountants of separate divisions) of financial institutions (banks, insurance / reinsurance companies, securities market and pension savings fund entities). • The Ministry of Communication has no authority to impose any sanctions against the post service operators. • Due to lack of practice of sanction application, it is not possible to assess the level of effectiveness. •
18. Shell banks	PC	<ul style="list-style-type: none"> • No prohibition of: <ul style="list-style-type: none"> - correspondent relationships with shell banks; - relationships with respondent institutions that have accounts in shell banks.
19. Other forms of reporting	C	<ul style="list-style-type: none"> • Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	LC	<ul style="list-style-type: none"> • The current system measures aimed reducing the cash volume are not sufficient.
21. Special attention to higher risk countries	NC	<ul style="list-style-type: none"> • The “non-cooperating countries” concept is not defined and set forth in the legislation and there is no obligation to pay special attention to transactions with persons from such countries. • There is no requirement to examine transactions with persons from “non-cooperative” countries and to keep the findings in such way as to make them available to the designated agency or an auditor. • Kazakhstan has not established counter-measures to be applied to countries that do not or insufficiency apply the FATF Recommendations.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> • The AML/CFT requirements in respect of subsidiaries and branches are not regulated by the RK legislation.

		<ul style="list-style-type: none"> • There is no obligation to inform the FSA/NB when it is impossible to observe the appropriate AML/CFT measures in a host country.
<p>23. Regulation, supervision and monitoring</p>	<p>PC</p>	<ul style="list-style-type: none"> • Persons executing capital leasing transactions; consumer cooperatives that provide loans to its members; micro-credit institutions; <u>pawnshops</u>; insurance agents; persons carrying out transactions involving electronic money and persons accepting payments from the public are not subject to licensing, monitoring or supervision in respect of AML / CFT. • The Law on AML / CFT and other relevant laws ("On the AFS") do not contain provisions concerning the monitoring by competent authorities of compliance with the law in the area of transaction execution denial or transaction suspension. • Furthermore, the powers of the AFS and other competent authorities to oversee not only the organization, but also the practical implementation of internal rules for control, storage and protection of the relevant documents, as well as compliance with the requirements of the supervisory bodies and the FIU need further clarification. • There is no competent authority responsible for overseeing the activities of the Kazpost JSC in the area of financial services provision. • No steps were taken by the competent authorities to review the situation with AML / CFT existing in the supervised organizations. • A regulatory system in the area of AML / CFT-related supervision and monitoring has not been created for all types of financial institutions yet. • No information is available as to the application of the Basic Principles for the purpose of AML / CFT in the banking, insurance and securities sectors. • There are no restrictive measures in place to prevent criminals and their accomplices from entering the market of postal service operators that provide money transfer services. • Certain entities are entitled to offer remittance services without a license (the national postal service operator; credit unions; e-government payment gateway operator).

		<ul style="list-style-type: none"> • Under the existing law, certain organizations are able to carry out transfer operations without obtaining a relevant license. There is no appropriate control or supervision over such organizations. • The existing law contains no requirements for the appointment of persons to senior positions in organizations executing certain types of banking transactions. Also, there is no requirement concerning possession of a significant share in the statutory capital of these organizations. • The national postal service operator, credit unions and mutual insurance companies may carry out certain types of financial transactions without a license. • At the time of evaluation, there was no practice of or statistics on the oversight measures implemented in the area of AML / CFT. •
<p>24. DNFBP - regulation, supervision and monitoring</p>	<p>NC</p>	<ul style="list-style-type: none"> • Dealers in precious metals and precious stones, real estate agents and accountants are not included in the SFM list. • There is no effective monitoring of compliance by DNFBPs with measures in the area of AML / CFT. • All regulatory authorities lack the necessary regulatory and internal acts governing the procedure for carrying out monitoring and applying sanctions for violations in the area of AML / CFT. • The competent authorities (MTS RK, MJ RK, TC, MF RK, etc.) lack the authority to review cases and implement measures under art. 168-3 of the Code "On Administrative Offences." • Public notaries are not subject to supervision in the area of AML / CFT. • The law of RK "On Gambling Business" does not contain provisions intended to prevent criminals or their accomplices from having significant or dominant equity participation, occupying leadership positions in, or acting as operators of a casino business. • The Law of RK "On Notaries" does not provide the Ministry of Justice with powers to request information from the notaries. • The Law "On Lawyers" does not provide MJ of

		<p>RK with powers to monitor the activities of lawyers and apply compulsive measures and sanctions against lawyers for non-compliance with the legislation, including in the area of AML / CFT. De facto, there is no competent authority to monitor compliance by lawyers with legal requirements of the law on AML / CFT.</p> <ul style="list-style-type: none"> • There is no supervisory authority responsible for overseeing the activities of independent legal professionals. In view of the non-provision of information on the competent authority responsible for supervision of independent legal professionals, as well as the legislation governing the activities of these individuals, it was not possible to assess the system of oversight in this sphere. • Representatives of the Republic of Kazakhstan failed to provide detailed information on the requirements for implementation of measures intended to prevent criminals or their accomplices from having significant or dominant equity participation or occupying senior positions in organizations (DNFBPs) • The practice of carrying out inspections and initiating analytical studies to monitor compliance by DNFBPs with the requirements in the area of AML / CFT, as well as the practice of applying compulsive measures or sanctions is missing in all sectors.
25. Guidelines & feedback	NC	<ul style="list-style-type: none"> • No guidelines for the private sector were developed by the supervisory agencies. • Nor did the supervisory agencies issue any guidelines in the area of ML and FT techniques and methods. • The special guidelines for the private sector, which would facilitate more effective performance by financial institutions of their duties, including description of new ML/FT trends and typologies have not been issued.
Institutional and other measures		
26. FIU	LC	<ul style="list-style-type: none"> • Scope and procedure of execution of the terms of reference (the rights and duties) assigned to the FMC under the terms of reference of the RK

		<p>Ministry of Finance should be clarified and more clearly specified.</p> <ul style="list-style-type: none"> • The powers vested in the FMC Chairman raise questions as to operational independence of the FIU. • The published reports on the results of the FMC activity do not contain basic statistics and identified typologies and trends. • Vague language of the legislative acts concerning a subject of information exchange with foreign FIU and misuse of the recommendations of the Constitutional Council may, from the FAFT and Egmont Group viewpoint, result in unreasonable rejection of other FIU requests. <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • The number of materials submitted by the FMC to the law enforcement agencies which formed the basis for instituting criminal proceedings is disproportionally small compared to the number of reports received from the entities subject to financial monitoring.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • Lack of statistics makes it impossible to assess the results of the AML/CFT efforts of all law enforcement agencies.
28. Powers of competent authorities	LC	<ul style="list-style-type: none"> • There are certain limitations with regard to obtaining information in the course of investigation conducted prior to the institution of criminal proceedings.
29. Supervisory agencies	NC	<ul style="list-style-type: none"> • The list of inspection objectives contained in the Law "On State Regulation and Supervision of Financial Market and Financial Institutions" (par. 2 of art. 9) features no detection or prevention of violations in the area of AML / CFT. • The evaluation team was not presented with any legal documents confirming the AFS's powers to conduct inspections in organizations executing certain types of banking transactions. • The supervisory authorities cannot independently consider and apply compulsive measures or sanctions under article 168-3 of the Code "On Administrative Offences." • The Ministry of Communications has no authority to monitor compliance by the postal service operators with the law on AML / CFT.

		<ul style="list-style-type: none"> • The competent authorities (AFS, NB) did not request data on compliance with the national law on AML / CFT from the supervised agencies. The competent authorities did not take any steps to review the measures undertaken by financial institutions to enforce the national law in the area of AML / CFT. • There is no practice of auditing financial institutions in the area of AML / CFT. • The supervisory bodies are not able to self-impose penalties against accountable financial institutions. • The Law of the Republic of Kazakhstan "On Postal Service" does not provide the Ministry of Communications with powers in the area of AML / CFT, or to conduct inspections and impose sanctions in the area of AML / CFT, or to perform other functions in accordance with the FATF Recommendations. • The law "On Postal Service" does not provide the Ministry of Communications with powers to obtain the necessary data, documents or information relating to compliance monitoring or obtainment of access to such data, documents or information. • The practice of conducting oversight inspections of postal service operators in the area of AML / CFT is absent. • Due to non-provision by the representatives of Kazakhstan of the necessary regulatory framework to conduct on-site inspections, request the provision of necessary documents and perform other functions in accordance with the FATF Recommendations, it is not possible to assess effectiveness of the supervision conducted by the Ministry of Communications over the activities of postal service operators as it pertains to provision by them of money remittance services.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • There are not specialized AML / CFT units within the structures of oversight agencies. • There are not special departments (offices) responsible for investigating ML / FT-related crimes within the structures of the Prosecutor's Office, the Agency or the National Security Committee.

		<ul style="list-style-type: none"> • The level of training of interrogating officers, investigators, prosecutors and judges in the area of ML / FT-related case investigations and review is low. • There is no information that the staff of oversight agencies received training on the subject of oversight in the area of AML / CFT.
31. National co-operation	PC	<ul style="list-style-type: none"> • The process of coordination of interagency regulations governing the interaction in the area of AML / CFT falls behind the needs of the national AML / CFT system. • It is not possible to evaluate the effectiveness of the Interagency Commission on AML / CFT since, in the time before the mission, only one session had been held, with no information on the session, its agenda and the main results of the future sessions provided to the evaluation team.
32. Statistics	NC	<ul style="list-style-type: none"> • Due to the lack of statistical information, it is impossible to assess the effectiveness of the work carried out by some law enforcement agencies; • No steps were taken by the oversight authorities to review the situation with AML / CFT existing in the supervised institutions, including when it comes to compiling statistical data. • There is no statistics on the property frozen pursuant to UN Security Council Resolutions; • The effectiveness of the Kazakh anti-money laundering and terrorism financing system is not subject to a regular review.
33. Legal entities-beneficial owners	NC	<ul style="list-style-type: none"> • The term "beneficial owner" is absent. • There are no legislative requirements for requesting and registering timely and credible information on beneficial ownership. • Public authorities have no information on beneficial owners of legal persons.
34. Legal formations-beneficial owners	N/A	Not applicable
International Cooperation		

35. Conventions	PC	<ul style="list-style-type: none"> • The provisions of the Vienna and Palermo conventions with regard to criminalization of the crime of ML, identification of beneficial owners, storage of data and reporting of suspicious transactions are not fully implemented. • The acts related to provision of funds to terrorists or terrorist organizations without the intention of carrying out terrorist activities, or not related to a specific terrorist act are not criminalized as required by the Convention for the Suppression of the FT • There are deficiencies in compliance with the requirements of art. 18 of the Convention on FT. •
36. Mutual legal assistance	LC	<ul style="list-style-type: none"> • Deficiencies in the criminalization of ML may affect the provision of MLA in cases involving freezing, seizure and confiscation of proceeds derived from ML, and MLA related to the investigation and prosecution of ML cases. • Deficiencies in the criminalization of FT may affect the provision of MLA in such cases where dual criminality is required. • Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused. •
37. Dual criminality	LC	<ul style="list-style-type: none"> • The boundaries of MLA in the absence of dual criminality are not defined.
38. MLA in confiscation and freezing	PC	<ul style="list-style-type: none"> • There is no legal provision that allows the seizure and confiscation of property of a specific value, or the application of appropriate measures in respect of proceeds. • A clear mechanism for coordinating actions taken jointly with a foreign state involving cases of seizure and confiscation of property is missing. • The possibility of establishing a fund of confiscated property has not been considered. • The option of sharing the forfeited property with the competent authorities of foreign states whose actions resulted in the confiscation of property has not been considered. • Deficiencies in the criminalization of ML may

		affect the provision of MLA in cases involving freezing, seizure and confiscation of proceeds derived from ML.
39. Extradition	PC	<ul style="list-style-type: none"> • No extradition is possible without dual criminality. In this respect, the deficiencies in the criminalization of ML and FT may adversely affect the execution of requests. • Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused.
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> • Low level of international cooperation in the oversight area. • The authority of the FIU in regard to information exchange carried out in the absence of relevant international treaties is not clearly defined; the provision of information in response to requests made by foreign partners may depend on unduly restrictive conditions. • No information concerning international relations and the mechanism for exchange of information between law enforcement authorities and their foreign partners. was provided.
Nine Special Recommendations	Rating	Summary of Facts Underlying Overall Rating
SR I UN instruments application	PC	<ul style="list-style-type: none"> • There are deficiencies in compliance with the requirements of art. 18 of the Convention on FT. • A series of legal mechanisms required by UN SC Resolutions No. 1267 and 1373 are missing. • There are no procedures for de-listing citizens from the list of individuals associated with terrorism and extremism. • There are no mechanisms in Kazakhstan allowing access to the part of the funds needed to satisfy basic living needs as required by the terms of UNSCR No.1452.
SR.II Terrorism Financing Criminalization	PC	<ul style="list-style-type: none"> • The provisions of Article 233-3 of the Criminal Code of the Republic of Kazakhstan do not cover actions related to provision of funds to terrorists or terrorist organizations without intention to carry out terrorist activity or not linked to a

		<p>specific terrorist act.</p> <ul style="list-style-type: none"> • The legislation of the Republic of Kazakhstan does not contain provisions establishing criminal or administrative liability of legal entities for financing of terrorism. • The legislation of the Republic of Kazakhstan does not permit the intention element to be inferred from objective factual circumstances, inter alia, as applied to the crime of terrorist financing. • Certain unlawful acts against fixed platforms located on the continental shelf and also related to provision of knowingly false information which threatens the safety of maritime navigation are not criminalized. • The presented statistics indicated low efficiency of detecting FT crimes.
<p>SR.III Freezing and confiscation of terrorist assets</p>	<p>PC</p>	<ul style="list-style-type: none"> • The current regime for suspension of transactions and application of criminal-procedural mechanisms in respect to individuals listed as terrorists raises questions as to the effectiveness of the implementation of Resolutions 1267 and 1373. • There are no effective laws and procedures to examine and give effect to, if applicable, the actions initiated under the freezing mechanisms of other jurisdictions. • The FIU is not authorized to communicate actions taken under the freezing mechanisms. • There is no clear guidance for financial institutions on actions to be taken in the event of detection of a transaction related to persons listed as terrorists. • There are no procedures for removal of individuals from the list of persons associated with terrorism and extremism. • Kazakhstan has no mechanisms for authorizing access to the portion of funds necessary for basic expenses, as required by the UN Security Council resolution 1452.
<p>SR.IV Suspicious transaction reporting</p>	<p>PC</p>	<ul style="list-style-type: none"> • Shortcoming in criminalization of terrorist financing may affect the STR filing regime. • The requirements of the RK AML/CFT Law apply to not all financial institutions. • There is no requirement to file STR on attempted

		<p>FT-related transactions.</p> <ul style="list-style-type: none"> • Low effectiveness of application of Special Recommendation IV.
<p>SR. V International cooperation</p>	<p>LC</p>	<ul style="list-style-type: none"> • No provision is made for the seizure / confiscation of property of a specific value and proceeds from FT. • Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused. • Deficiencies in the criminalization of FT may affect the provision of MLA in such cases where dual criminality is required. • No extradition is possible without dual criminality. In this respect, the deficiencies in the criminalization of FT may adversely affect the execution of requests. • The possibility of establishing a fund of confiscated property has not been considered. • The option of sharing the forfeited property with the competent authorities of foreign states whose actions resulted in the confiscation of property has not been considered.
<p>SR.VI AML requirements for money / asset transfer services</p>	<p>NC</p>	<ul style="list-style-type: none"> • A portion of MAT service operators are not licensed. • The requirements do not apply to some MAT service operators. • The system of compliance monitoring lacks effectiveness. • All AML / CFT measures-related deficiencies identified in the banking system are applicable to banks in the context of money remittances.
<p>SR.VII Wire transfer rules</p>	<p>PC</p>	<ul style="list-style-type: none"> • The requirement for accompanying each transfer with the data on the sender is only implemented within RK and does not apply to international transfers. • There are no specific measures in place for monitoring compliance by banks with the remittance transaction guidelines. • There is no legislative clarity in respect of transactions carried out by the KazPost. • The requirement for the presence of full sender information along the entire payment chain is

		absent.
SR.VIII Non-profit organizations	NC	<ul style="list-style-type: none"> • No regular analysis of the NPO sector to identify FT risks or any awareness-raising activities on issues of AML / CFT were conducted. • A system for monitoring the activities of larger NPOs does not exist. • No special mechanisms for the timely exchange of information on NPOs, both at a national and international level, in case of suspicion of ML / FT are available. • The range of sanctions for violations of the law is too narrow, and is not used for AML / CFT. •
SR.IX Cross border declaration & disclosure	PC	<ul style="list-style-type: none"> • The customs system as a whole is not used for AML/CFT-related purposes. • The customs authorities are not empowered to seize or restrain funds where there is a suspicion of money laundering and terrorist financing. • No information about the structure of the customs authorities or the detailed statistics concerning the results of their work are available, making the evaluation of their effectiveness impossible. • No information about international agreements concluded with other foreign customs authorities was provided. Also due to the lack of information, it was not possible to assess the degree of coordination between customs, immigration and other government agencies in regard to the fulfillment of the requirements of the reviewed recommendation.

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

AML / CFT System	Recommended Action
1. General	
2. Legal System and Related Institutional Measures	
2.1. Criminalization of money laundering (R.1 & R.2)	<p>Kazakhstan should make the necessary changes to the wording of art. 193 to make it more specific and bring it in line with the provisions of the Vienna and Palermo Conventions, i.e. the following should be criminalized: conversion or transfer of property representing proceeds of crime for the purpose of concealment or disguise of the criminal origin of such property, or for the purpose of assisting any other person involved in the perpetration of the principal offence in avoiding responsibility for its actions; concealment or disguise of the true nature, origin, location, disposition and movement of, as well as the rights to the property or its ownership if such property is known to constitute proceeds of crime.</p> <p>Kazakhstan is recommended to introduce appropriate amendments to ensure that the ML offence is applicable to the property constituting indirect revenue from crime.</p> <p>For the purpose of avoiding possible legal collisions, it is necessary to align the definition of money laundering contained in the Criminal Code with the definition in the Law on AML / CFT.</p> <p>Kazakhstan is recommended to criminalize insider trading and market manipulation to ensure that ML offences cover the entire category of predicate offences established in the FATF Recommendations.</p> <p>It is also necessary to review the relevant provisions of the Regulatory Resolution of the Supreme Court of RK No. 2 of June 18, 2004 in order to remove the predicate offence type restrictions.</p> <p>It is also necessary to compile accurate statistics on ML cases and take steps to improve effectiveness of application of art. 193, including through provision of training for the employees of the prosecutor's office and judiciary.</p>
2.2. Criminalization of terrorist financing (SR.II)	Kazakhstan is recommended to criminalize FT to bring it in line with the Convention for the Suppression of the Financing of Terrorism and to ensure that all acts connected with

	<p>provision of funds to terrorists and terrorist organizations without the intention to carry out terrorist activities, or not related to a specific terrorist act are covered.</p> <p>Kazakhstan is recommended to criminalize some acts covered by the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation signed in Rome on March 10, 1988 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on March 10, 1988. The legislation should be amended to criminalize such actions.</p> <p>In this regard, the Republic of Kazakhstan is encouraged to consider introducing appropriate amendments to art. 233-3 of the Criminal Code and, additionally, define the term "financing" contained therein. In particular, the provisions of Article 233-3 of the Criminal Code of RK should be amended to ensure that it applies to the acts connected with provision of funds to terrorists or terrorist organizations without the intention of carrying out terrorist activities; and that it provides for criminal or administrative liability of legal persons for funding terrorism; so that it will allow to determine the intent based on objective facts, inter alia, in relation to the crime of financing of terrorism, and permit the assignment of the status of a predicate offence to ML to the crime of financing of terrorism. Additionally, Kazakhstan should take measures aimed at improving the effectiveness of FT crimes detection.</p> <p>The FT offence must be predicate to ML.</p>
<p>2.3. Confiscation, freezing and seizing of proceeds of crime (R.3)</p>	<p>It is necessary for Kazakhstan to amend its criminal procedure legislation so that it contains a clause that provides for the confiscation of property equivalent, as well as confiscation of property constituting indirectly derived proceeds of crime.</p> <p>Kazakhstan is recommended to introduce clauses that provide for the confiscation of property possessed or owned by third parties, as well as for protection of the rights of innocent third parties, as outlined in the Palermo Convention.</p> <p>Kazakhstan should develop a mechanism to prevent or undo actions carried out under contract or otherwise if the parties knew or should have known that as a result of these actions the efforts of the government authorities directed at identifying the property subject to confiscation would be hampered.</p>
<p>2.4. Freezing of funds used for FT (SR.III)</p>	<p>The existing transaction suspension regime applicable against persons listed as terrorists does not comply with requirements of Resolutions 1267 and 1373, and Special Recommendation</p>

	<p>III as a whole. It is necessary to develop a full range of administrative measures for indefinite and immediate freezing of assets of these persons, as well as pass the detailed instructions to financial institutions and the DNFBP sector. It is appropriate to introduce specific mechanisms for reviewing and using data on subjects of freezing received from foreign countries. It is necessary to establish procedures for dealing with requests for de-listing. It is also necessary to develop and implement mechanisms that allow access to the part of the funds needed to satisfy basic living needs, as required by the terms of UNSCR No.1452.</p> <p>Additionally, Kazakhstan needs to develop clear guidelines for financial institutions on actions to be taken upon detection of a transaction connected with individuals listed as terrorists, and empower the FIU to pass on the information on the measures taken as part of freezing mechanisms.</p> <p>Kazakhstan is recommended to impose sanctions against SFM officials for disclosure of information on suspended suspicious transactions to third parties.</p> <p>The list of reasons for inclusion in the list of organizations and individuals linked to terrorism and extremism financing should be expanded to include persons who are suspects in criminal cases of a terrorist nature. In addition, Kazakhstan should draw up a list of reasons for de-listing of persons from the above list.</p>
<p>2.5. The Financial Intelligence Unit and its functions (R.26)</p>	<p>In view of the recommendation of the Constitutional Council of RK on granting the basic law on AML / CFT the status of a directly applicable regulatory legal act, the authority of the KFM as the authorized body in the field of not only financial monitoring but also AML / CFT should be enshrined in its entirety and more rigorously. For example, there could be a direct reference to the law on AML / CFT when determining the authority of the Ministry of Finance of RK in this field.</p> <p>To eliminate the potential legal constraints on the operational independence the KFM, which are strictly regulated by constitutional law "On the Government of the Republic of Kazakhstan", one should consider the possibility of transforming the KFM into an agency that is not part of the Government structure and that reports directly to the President of RK.</p> <p>To enhance the practical value of the materials submitted to the criminal prosecution, the KFM should pay special attention to the training of analytical units in the following areas:</p> <ul style="list-style-type: none"> - evaluation of effectiveness and improvement of the criteria used to identify suspicious transactions;

	<ul style="list-style-type: none"> - selection of STRs with account for new typologies and trends; - effective use of special analytical tools, enrichment and in-depth data analysis techniques. <p>It is necessary to intensify cooperation with the AFS and other oversight authorities, including in the area of information exchange and targeted inspections of SFMs initiated by the KFM.</p> <p>The KFM should regularly (at least once a year) publish reports on its activities, including statistics on interaction with SFMs, national and foreign competent authorities, as well as description of typologies and trends in the area of AML / CFT.</p> <p>Pursuant to par. 3.4. of Regulatory Decision of the Constitutional Council of Kazakhstan No. 5 of August 20, 2009, the basic law on AML / CFT should contain a comprehensive list of reasons for refusal to provide information requested by foreign competent authorities if the information requested affects the constitutional rights and freedoms of a person and citizen, including the secrecy of personal deposits and savings. Prior to introducing appropriate legislative amendments, the Kazakh side should carefully study and, if possible, take into account the standards for information exchange between FIUs adopted by the FATF and Egmont Group, especially as regards to exchange of information on suspicious financial transactions and persons involved therein.</p>
<p>2.6. Law enforcement, prosecution and other competent authorities (R.27 & 28)</p>	<p>The responsible to develop and implement measures for combating ML or FT should be assigned to the law enforcement authorities that are authorized under the CPC to investigate ML and FT crimes.</p> <p>It is necessary, through appropriate decisions of the senior officials within the law enforcement authorities (decisions of coordination meetings), to establish the investigation of crimes of ML / FT as one of the priorities.</p> <p>To create within the structures of the Prosecutor General's Office and AFECC special departments tasked with investigating ML / FT-related crimes.</p> <p>Provide law enforcement authorities with the opportunity to request information on financial and economic activities of financial institutions and other companies at the stage of pre-investigative checks</p> <p>It is necessary to organize training for interrogating officers, investigators, prosecutors and judges in the area of investigation and review of ML / FT-related cases.</p>

<p>2.7. Cross-border declaration & disclosure (SR.IX)</p>	<p>It is necessary to give the customs authorities the power to freeze and seize any funds upon receipt of information as to their involvement in ML and FT. In addition, the government should take measures to ensure that the customs system can be used for the purposes of AML / CFT and ensure that such measures are effective..</p> <p>is necessary to ensure that the sanctions of freezing and confiscation of assets are applied effectively in respect of individuals involved in the movement of cash or bearer negotiable instruments linked to money laundering or terrorist financing.</p> <p>.Due to the fact that the customs system, in general, is not used for the purposes of AML /CFT, the review of the individual essential criteria of the said recommendation is not possible</p>
<p>3. Preventive Measures – Financial Institutions</p>	
<p>3.1. Risks of money laundering and terrorist financing</p>	
<p>3.2. Customer due diligence, including enhanced or reduced measures (R.5 to 8)</p>	<p>Recommendation 5</p> <p>Kazakhstan should introduce an express prohibition on the opening of anonymous accounts or accounts in fictitious names since the absence of an express prohibition makes it possible to open such accounts even if the subject of financial monitoring has implemented all required by law CDD measures.</p> <p>Kazakhstan is recommended to make it mandatory for SFMs to implement CDD measures upon execution of occasional transactions in the amount exceeding US\$15,000 or in the case of suspected ML and FT.</p> <p>The requirement for verification of clients by all financial institutions should be contained either in law or regulation.</p> <p>It should also be made mandatory for all financial institutions to identify the beneficial owner, including of those individuals who exercise real control over the legal persons that own the legal entity client of a financial institution.</p> <p>It is also necessary to introduce the term "beneficial owner" and the requirement to implement CDD measures in respect of such person and the representative of the client to the law on AML / CFT.</p> <p>Subjects of financial monitoring, both financial and non-financial institutions, should be required to implement CDD measures in respect of clients or their representatives if there</p>

is reason to believe that the operation is being executed for the purposes of ML / FT.

Kazakhstan is encouraged to establish requirements for the SFMs in the area of ICR development with account for the requirements of the AML / CFT law, especially as regards to CCD measures; while the oversight authorities should, in consultation with the KFM, issue minimum requirements for such ICR, reflecting the specifics of financial and non-financial activities.

It is necessary to ensure that all financial institutions apply special CDD measures against the clients from the high-risk category in the same form as it is provided in the FATF Recommendations.

Financial institutions should take responsibility for carrying out verification of clients prior to or during the establishment of business relations.

Recommendation 6

For the purpose of raising the effectiveness of the AML / CFT system, Kazakhstan is recommended to establish requirements for identification of individuals, including clients business relations are already established with, in order to determine the degree to which such individuals may belong to the category of politically exposed persons (PEPs).

Kazakhstan is also required to make it mandatory for financial institutions to implement enhanced measures against and conduct ongoing monitoring of relations with PEPs.

The timetable for updating by financial institutions of information and identification data to identify PEPs should be made part of regulatory legal acts of the Republic of Kazakhstan.

Kazakhstan is recommended to establish a timetable for regular updating by financial institutions of information and identification data to identify PEPs.

Recommendation 7

Given that article 9 of the Law AML / CFT does not distinguish between the relations of Kazakh financial institutions with national correspondent banks and their relations with cross-border correspondent banks, Kazakhstan is recommended to consider the possibility of introducing such distinction while reflecting the specifics of the national law on interaction between financial institutions.

Kazakhstan should adopt a regulatory legal document that will govern relations with foreign correspondent banks, or amend the "*Guidelines for Establishment of Correspondent Relations between Banks, as well as between Banks and*

	<p><i>Institutions Executing Certain Types of Banking Operations</i>"(approved by decision of the Board of National Bank of Kazakhstan No. 428 of November 25, 2001; Registered in the Justice Ministry under No. 1351 of January 5, 2001).</p> <p>At the same time, it should be the responsibility of financial institutions to evaluate the effectiveness of oversight measures applied by correspondent institutions in the area of AML / CFT.</p> <p>It is necessary to establish the responsibility of financial institutions to evaluate the measures applied by correspondent institutions to monitor compliance with the requirements of the AML / CFT system.</p> <p>Kazakhstan should establish the requirement for the need to gather sufficient information on a correspondent institution in order to fully understand the nature of its activities, as well as data on any sanctions for violations of the AML / CFT law such institution might be subject to.</p> <p>Recommendation 8</p> <p>Kazakhstan should amend appropriate regulations to include provisions requiring financial institutions to develop and implement specific procedures to prevent the use of technological developments in money laundering and terrorist financing schemes.</p> <p>Introduce special requirements for the CDD measures in respect of the clients executing transactions through remote access. Kazakhstan is recommended to introduce a requirement to document the responsibilities of each agency.</p>
3.3. Third parties and intermediaries (R.9)	Not applicable
3.4. Financial institution secrecy or confidentiality (R.4)	<p>The law On Banks and Banking Activities should contain a provision clearly stating that submission of data on transactions subject to financial monitoring and reports on suspicious transactions to the FIU does not constitute a violation of bank secrecy.</p> <p>Kazakhstan should analyze and achieve uniformity of the terms contained in the Law on AML / CFT (i.e. "competent authority of a foreign state", "transaction subject to financial monitoring") in order to eliminate potential legal complications with regard to obtaining information from SFMs and interaction with foreign states.</p>
3.5. Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Recommendation 10</p> <p>The requirement for financial institutions to store for a period of at least five years after the date of termination of relations</p>

	<p>with the client all identity data obtained in the course of customer due diligence, as well as records of accounts and business correspondence should be clearly specified in the Law on AML / CFT and branch-specific regulatory legal acts of RK.</p> <p>The law should contain a clear requirement for financial institutions to store all necessary data on transactions with monetary and (or) other assets, including suspicious transactions, for a period of at least five years after completion of such transaction.</p> <p>The law should contain a clear requirement for financial institutions to submit all identity data and information on clients and transactions involving monetary and (or) other assets at the request of the KFM and other competent authorities of RK.</p> <p>It should be made mandatory for financial institutions to store information in volumes sufficient to be presented as evidence in the prosecution of criminal activity.</p> <p>Special Recommendation VII</p> <p>Kazakhstan is recommended to:</p> <ol style="list-style-type: none"> 1) clarify the law on remittance transactions as it pertains to KazPost, and cross-border transfers; 2) introduce specific measures to monitor compliance with the requirements of SR.VII; 3) as well as to establish a direct requirement for full information on the sender to be passed along the entire payment chain.
<p>3.6. Monitoring of transactions and relationships (R.11 & 21)</p>	<p>Recommendation 11</p> <p>Kazakhstan should establish a requirement for financial institutions to pay special attention to all complex and unusually large transactions, or a group of transactions that have no apparent economic sense or do not pursue a legitimate aim. Additionally, financial institutions should independently study and analyze such transactions, and to store information on them for a period of 5 years. Such a requirement is not identical to the general requirement for the storage of information concerning CDD measures and accounting documents.</p> <p>Additionally, financial institutions should be obliged to provide, if required, access to the stored information for the authorized bodies during the entire period of storage.</p> <p>Recommendation 21</p> <p>Kazakhstan is recommended to establish express obligations in respect of:</p>

	<ol style="list-style-type: none"> 1) paying special attention to transactions involving persons from countries with a weak AML / CFT system; 2) provision by the KFM of the list of such countries to financial institutions; 3) application of appropriate countermeasures against persons from such countries; 4) the timetable and rules for storing the results of such actions in writing to assist other agencies in the area of AML / CFT.
<p>3.7. Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)</p>	<p>Recommendation 13</p> <p>Since the Kazakh law contains no requirement for submission of STRs to the authorized body if there is a suspicion or reasonable grounds to believe that the funds in question are the proceeds of criminal activity, while the operation involving such funds is intended to legalize such proceeds, it is recommended that Kazakhstan amends the law on AML / CFT to include a clause requiring SFMs to submit STRs to the authorized body in case of suspected ML.</p> <p>Kazakhstan is recommended to introduce an obligation to submit a STR when attempts are being made to execute a transaction suspected of being linked to ML, irrespective of the amount of transaction.</p> <p>Kazakhstan is recommended to enshrine in law the requirement to report suspicious transactions regardless of whether they are believed, among other things, to be related to tax matters. This requirement also applies to Special Recommendation IV.</p> <p>Special Recommendation IV</p> <p>Kazakhstan is recommended to introduce an obligation to submit a STR when attempts are being made to execute a transaction suspected of being linked to FT, irrespective of the amount of transaction.</p> <p>Recommendation 14</p> <p>Given that the requirement prohibiting notifying clients and other persons of the fact that information on them is being submitted to the authorized body applies only to SFMs themselves, Kazakhstan is recommended to extend this requirement to cover directors, officials and employees of financial institutions.</p> <p>However, it is recommended that an express prohibition is introduced on disclosure of the fact that an STR or related thereto information is being or has been submitted to the FIU.</p> <p>Recommendation 25</p> <p>The FIU and oversight authorities should develop for SFMs a</p>

	<p>comprehensive set of guidelines on the subject of AML / CFT.</p> <p>The FIU should consider providing information to SFMs on the results of investigations their materials were used in, as well as expanding the scope of feedback while using the examples listed in "FATF Best Practice Guidelines for Provision of Feedback to Reporting Financial Institutions and other Persons".</p>
<p>3.8. Internal controls, compliance, audit and foreign branches (R.15 & 22)</p>	<p>Recommendation 15</p> <p>Kazakhstan should introduce explicit requirements for the following:</p> <ul style="list-style-type: none"> a) appointment within financial institutions of a special officer at a management level (or establishment of a special unit) responsible for implementation of internal controls policies and rules for the purposes of AML / CFT, and providing such person with sufficient resources and powers to allow for timely access to customer identification and transaction data, information on CDD measures and other relevant information; b) existence within financial institutions of a program for training financial institution employees in the area of AML / CFT; c) existence within financial institutions of procedures for new recruit screening and ensuring high standards of hiring; d) informing all financial institution employees of ICR; e) application by financial institutions of internal control measures for the purposes of AML / CFT, depending on the level of risk of money laundering and terrorist financing or the size of financial institutions. <p>The requirements for the content of ICR should be more clearly defined at a level of regulatory bodies.</p> <p>Regulatory bodies should establish specific qualification and financial institution employees training requirements in the area of AML / CFT.</p> <p>Recommendation 22</p> <p>Kazakhstan is recommended to establish direct requirements to ensure that subsidiaries and branches of Kazakh financial institutions comply with the AML / CFT requirements of the country of origin and country of residence.</p> <p>It is necessary to develop a mechanism for informing the AFS / NB in case a foreign country-based subsidiary or branch is not able to comply with the relevant requirements of the AML / CFT law for reasons of them being in conflict with the</p>

	<p>local legislation. Compliance with these requirements can be monitored through on-site inspections, reports on application of AML / CFT measures submitted by branches and subsidiaries, requests for auditor's opinion, etc.</p>
<p>3.9. Shell banks (R.18)</p>	<p>Kazakhstan is recommended to establish an express prohibition in respect of the following:</p> <ol style="list-style-type: none"> 1) establishing and operating shell banks in Kazakhstan; 2) establishing and / or maintaining correspondent relations with shell banks and 3) correspondents permitting the use of their accounts by shell banks.
<p>3.10. The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.17, 23, 29 & 25)</p>	<p>Recommendation 17</p> <p>It is necessary to provide a clear opportunity to apply the entire range of sanctions (from fines through license revocation) against all types of financial institutions for violations in the area of AML/CFT, including through adoption of individual regulations by the competent authorities.</p> <p>The officials at the Ministry of Communications and Information should be given the right to draw up reports of administrative violations falling under article 168-3.</p> <p>It is necessary to broaden the scope of application of art. 168-3 (as it pertains to non-compliance with the requirement for refusal to execute transactions in the cases stipulated in par. 1 of art. 13 of the AML / CFT law, to suspend transactions), and, also, consider increasing the penalties for its violation.</p> <p>It is necessary to include the scope of application of administrative sanctions in the area of AML / CFT against FIU officials, law enforcement and supervisory authorities.</p> <p>Recommendation 23</p> <p>It is necessary to extend the regime of supervision and monitoring of compliance with the requirements of the AML/CFT law to cover all entities that provide financial services (entities providing capital leasing services; consumer cooperatives that provide loans to its members; micro-credit institutions; pawnshops; insurance agents; persons executing transactions involving electronic money; entities that accept payments from the public).</p> <p>The standards for ensuring control over compliance with the AML / CFT requirements in the following areas should be enshrined in law:</p> <ul style="list-style-type: none"> - refusal to execute operations provided for under the law; - requirements for suspension of operations;

	<ul style="list-style-type: none"> - further implementation of internal controls; - document protection; - compliance with the requirements of the FIU and supervisory bodies. <p>All regulatory bodies should develop regulatory legal acts governing fulfillment of oversight functions in the area of AML / CFT requirements.</p> <p>The competent authority responsible for supervision over financial operations conducted by the national postal service operator (Kazpost JSC) should be legislatively identified.</p> <p>The Ministry of Communications and Information should be given the authority to exercise controls, including when it comes to verifying and requesting information and documents and applying sanctions in the area of AML / CFT.</p> <p>It is necessary to ensure proper application by financial institutions of the Basic Principles for the purposes of AML / CFT.</p> <p>Recommendation 25</p> <p>The supervisory authorities should issue special guidelines for the private sector, which would facilitate more effective performance by financial institutions of their duties, including description of new ML / FT trends and typologies. Such guidelines should take into account the specifics of the supervised entities' activities.</p> <p>Recommendation 29</p> <p>The powers of the AFS to oversee compliance with the AML / CFT law should be enshrined in law.</p> <p>The powers of the AFS to directly apply penalties against the supervised organizations for non-compliance with the requirements of the AML / CFT law should be enshrined in law.</p> <p>The Ministry of Communications and Information should be given the powers of oversight in the area of AML / CFT standards.</p> <p>The competent authority responsible for supervision over the activities of KazPost JSC in the area of financial services provision and compliance with the AML / CFT law at the time of provision of such services should be identified.</p>
3.11. Money or asset transfer services (SR. VI)	<p>The existing legal framework in the area of oversight over remittance operations carried out by the Kazpost should be examined as part of fulfillment of the requirements of the AML / CFT law for possibility of further clarification. The activities of international money transfer systems should be</p>

	<p>recorded.</p> <p>Regarding the alternative / unofficial MAT service, the following are recommended:</p> <ol style="list-style-type: none"> 1) take steps (the FATF Best SR. VI Practice Document can be used as auxiliary material) to assess the volume of this unofficial sector; 2) consider the option of registering alternative / unofficial MAT services or the possibility of more intensive criminal probes into "hawala" cases. <p>All AML / CFT measures-related deficiencies identified in the banking system and that are also applicable in the context of bank money remittances should be corrected by Kazakhstan.</p>
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
4.1. Customer due diligence and record-keeping (R.12)	Kazakhstan needs to take urgent action to implement all the requirements of Recommendations 5, 6, 8-11 in respect of DNFBPs to correct identified deficiencies.
4.2. Suspicious transaction reporting (R.16)	Kazakhstan needs to take urgent action to implement all the requirements of Recommendations 13-15 & 21 in respect of DNFBPs to correct identified deficiencies.
4.3. Regulation, supervision and monitoring (R.17, 24-25)	<p>Recommendation 24</p> <p>The law on gambling business must include a requirement for implementation of measures to prevent criminals or their accomplices from having significant or dominant equity participation or occupying senior positions in casinos.</p> <p>The powers of the authorized agency (MTS) to request information and apply against supervised entities sanctions, specifically in the area of AML / CFT, should be established at a legislative level (in the Law "On Gambling Business").</p> <p>Dealers in precious metals and precious stones, real estate agents, accountants and notaries public should be included in the list of subjects of financial monitoring.</p> <p>The competent authorities responsible for monitoring compliance by dealers in precious metals and precious stones, real estate agent and accountants with the law on AML / CFT should be defined at a legislative level. They should also be given appropriate powers to request information, verify data and apply sanctions.</p> <p>It is necessary to adopt measures capable of ensuring effective monitoring of compliance by DNFBP, included measures intended to prevent criminals or their accomplices</p>

	<p>from having significant or dominant equity participation or occupying senior positions in organizations.</p> <p>It is necessary to effectively monitor the activities of all DNFBPs for compliance with measures in the area of AML / CFT.</p> <p>The competent authority responsible for monitoring compliance by lawyers' organizations with the law on AML / CFT should be identified at a legislative level. They should also be given appropriate powers to request information, verify data and apply sanctions.</p> <p>Recommendation 25</p> <p>The supervisory authorities should issue special guidelines for DNFBPs to facilitate more effective performance by them of their obligations, including description of new ML / FT trends and typologies. Such guidelines should take into account the specifics of the supervised entities' activities.</p>
4.4. Other non-financial businesses and professions (R.20)	Kazakhstan is recommended to strive to further reduce reliance on cash and introduce more efficient payment systems.
5. Legal Entities and Formations, Non-Profit Organizations	
5.1. Legal entities - access to information on beneficial ownership and control (R.33)	<p>Kazakhstan is recommended to:</p> <ol style="list-style-type: none"> 1) amend the law on AML / CFT to include the definition of "beneficial owner"; 2) establish the procedure for providing such information upon registration of legal entities and at the start of business relations with financial institutions; 3) consider providing unhindered access to the information on legal entities, their founders and beneficial owners for all users of such information.
5.2. Legal formations - access to information on beneficial owners and control (R.34)	Not applicable
5.3. Non-profit organizations (SR.VIII)	<p>Kazakhstan is recommended to:</p> <ol style="list-style-type: none"> 1) assess the effectiveness of the established system of registration and monitoring of the NPO sector for the purpose of AML / CFT; 2) establish mechanisms for reporting and monitoring the activities of larger NPOs; 3) include topics on the risks posed by ML / FT to the sector into the regular schedules of awareness-raising

	<p>programs attended by NPOs;</p> <p>4) establish specific mechanisms for the timely exchange of information on NPOs at the international level in the case of suspicion of ML / FT.</p>
6. National and International Cooperation	
6.1. National cooperation and coordination (R.31)	<p>It is necessary to accelerate the process related to negotiating and signing interagency agreements.</p> <p>Given the fact that a large part of the financial sector, the National Bank and the AFS, are located in Almaty, we recommend to explore the possibility of establishing permanent working arrangements for operational cooperation between the FIU and authorized oversight bodies at the regional level.</p>
6.2. Conventions and UN Special Resolutions (R.35 and SR.I)	<p>Recommendation 35</p> <p>Kazakhstan should take steps to criminalize ML in accordance with the Vienna and Palermo Conventions.</p> <p>Special Recommendation I</p> <p>Kazakhstan should take measures to:</p> <ul style="list-style-type: none"> - criminalize terrorist crimes and FT in accordance with the requirements of the Convention for the Suppression of the Financing of Terrorism; - implement the requirements of SR III with regard to the establishment of a legal mechanism for informing the subjects of financial monitoring of the individuals included in the list of terrorists, as well as the procedure for de-listing; the competent authorities should issue guidance on freezing / de-freezing of funds, introduce penalties against the subjects of financial monitoring for failure to comply with freezing requirements.
6.3. Mutual legal assistance (R.36-38, SR.V)	<p>Despite the fact that Kazakhstan has a statutory procedure for provision of mutual legal assistance, it contains some deficiencies that need to be addressed. In particular, it is necessary for the regulations to contain a mechanism for determining the best location (jurisdiction) where to prosecute the accused, as well as to determine a clear mechanism for coordinating activities with a foreign state on the issue of property seizure and confiscation.</p> <p>Kazakhstan should consider the option of establishing a confiscated property fund.</p> <p>It is necessary to develop and implement a mechanism for coordinating the actions taken jointly with foreign countries</p>

	<p>involving property seizure and confiscation, and the subsequent sharing of property if it was confiscated with the assistance of the competent authorities of a foreign state.</p>
<p>6.4. Extradition (R.37 and 39 and SR.V)</p>	<p>Kazakhstan needs to address these shortcomings of the ML and FT criminalization, which will broaden the country's extradition options. Additionally, Kazakhstan should adopt the necessary laws containing the mechanisms for determining the best location (jurisdiction) for bringing charges against the accused.</p> <p>It is necessary to maintain centralized annual statistics on extradition requests, including in the context of ML and FT cases, on predicate offenses, as well as on the nature of requests.</p>
<p>6.5. Other forms of international cooperation (R.40 and SR.V)</p>	<p>Kazakhstan should enhance international cooperation conducted by oversight bodies in the area of AML / CFT, more accurately outline the procedure for information exchange between FIUs, as well as draw up an exhaustive list of grounds for denial of requests submitted by foreign FIUs in the light of generally accepted international standards</p>
<p>7. Other Issues</p>	
<p>7.1. Resources and statistics (R.30 and 32)</p>	<p>The staffing structure of the oversight bodies should be transformed to be suitable for supervision in the area of AML / CFT.</p> <p>Specialized AML / CFT-dedicated units should be created within the structures of the MIA, NSC and customs authorities.</p> <p>Kazakhstan should organize workshops dedicated to ML / FT typologies and attended by the FIU, oversight bodies and representatives of the private sector. Given that DNFBPs are less prepared for AML / CFT measures than the banking sector, more attention should be devoted to conducting explanatory work with DNFBPs.</p> <p>It is necessary to organize training for interrogating officers, investigators, prosecutors and judges in the area of investigation and review of ML / FT-related cases.</p> <p>It is impossible compile statistics on the property frozen pursuant to UN Security Council Resolutions.</p> <p>It is necessary to maintain separate statistics on the disposition of Art. 233-3 "Financing of Extremism or Terrorist Activity".</p> <p>When compiling legal statistics on criminal cases, including cases reviewed by courts (with convictions), the crimes related to ML and FT should be segregated into a separate</p>

	<p>category. Also, it is necessary to reflect the amount of funds or the value of property arrested in the course of investigations along with the amount of collected or seized funds.</p> <p>It is necessary to maintain statistics on international requests for MLA with regard to ML, FT and the predicate offences, and, also, on the nature of the requests, their results and response time.</p> <p>It is necessary to maintain statistics on inspections conducted and sanctions applied by the supervisory authorities.</p>
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Table 3. Authorities' Response to the Evaluation (if necessary)

Sections & Paragraphs	Country's Comments
Overall Report	

ANNEXES

Annex 1. List of Abbreviations

AFECC	Agency on Fighting with Economic and Corruption Crimes of the Republic of Kazakhstan
AFS	Agency for Regulation of and Supervision over Financial Market and Financial Institutions of the Republic of Kazakhstan
GDP	Growth Domestic Product
MLA	Mutual Legal Assistance
SC	Supreme Court
CC	Civil Code
GPO	General Prosecutor's Office
EAG	The Eurasian Group on Combating Money Laundering and Financing of Terrorism
EurAsEC	EuroAsian Economic Community
TIN	Taxpayer Identification Number
NSC	National Security Committee
AC	Administrative Code
Conventions	Vienna and Palermo Convention
CCC	Customs Control Committee of the Ministry of Finance
FCC	Financial Control Committee of the Ministry of Finance
KFM	Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan
MIA	Ministry of Internal Affairs of the Republic of Kazakhstan
IC	Interagency Committee
IMF	International Monetary Fund
MIA	Ministry of Internal Affairs
MTS	Ministry of Tourism and Sport

MF	Ministry of Finance (MinFin)
MEDT	Ministry of Economic Development and Trade
MJ	Ministry of Justice (Minjust)
NB	National Bank
TC	Tax Committee of the Ministry of Finance
NPO	Non-profit organizations
RLA	Regulatory legal act
CDD	Customer due diligence
OSCE	Organization for Security and Cooperation in Europe
MER	Mutual evaluation report
ML	Money laundering
CSTO	Collective Security Treaty Organization
DNFBP	Designated non-financial businesses and professions
UN	United Nations
ICR	Internal control rules
PEP	Politically exposed person
AML	Anti-money laundering
FIU	Financial Intelligence Unit
RK	Republic of Kazakhstan
UNSCR	United Nations Security Council Resolution
CIS	Commonwealth of Independent States
STR	Suspicious transaction report
SFM	Subjects of financial monitoring
Criminal Code	Criminal Code
CPC	Criminal Procedural Code
FATF	Financial Action Task Force
FT	Financing of terrorism

FI	Financial institution
CAU	Central Asian Union
SCO	Shanghai Cooperation Organization

Annex 2. Organizations Met during the On-Site Mission

Ministries and other Government Authorities

Ministry of Finance of the Republic of Kazakhstan

Ministry of Justice of the Republic of Kazakhstan

Ministry of Tourism and Sports of the Republic of Kazakhstan

Supreme Court of the Republic of Kazakhstan

Financial Monitoring Committee of the Ministry of Finance of the Republic of Kazakhstan

Investigation and Law Enforcement Bodies and Public Prosecutor's Office

General Prosecutor's Office of the Republic of Kazakhstan

Ministry of Internal Affairs of the Republic of Kazakhstan

National Security Service of the Republic of Kazakhstan

Agency for Combating Economic and Corruption Crimes of the Republic of Kazakhstan

Committee for Legal Statistics and Special Accounts of the General Prosecutor's Office of the Republic of Kazakhstan

Committee for Customs Supervision of the Ministry of Finance of the Republic of Kazakhstan

Financial Sector Bodies

National Bank of the Republic of Kazakhstan

Agency for Regulation of and Supervision over Financial Market and Financial Institutions of the Republic of Kazakhstan

Other Government Bodies

Ministry of Tourism and Sports of the Republic of Kazakhstan

Private Sector Representatives and Associations

Shanghai Cooperation Organization

Union of Lawyers of the Republic of Kazakhstan

The Chamber of Auditors of the Republic of Kazakhstan

Association of Financiers of the Republic of Kazakhstan

Commercial banks

Securities Market Participants

Stock Exchange of the Republic of Kazakhstan

Kazpost JSC

Pension Savings Funds

The Chamber of Auditors of the Republic of Kazakhstan

Annex 3. Key Laws, Regulations and other Documents

LAW OF THE REPUBLIC OF KAZAKHSTAN

On Combating Legalization (Laundering) of Illegally Gained Income and Financing of Terrorism

This Law shall define the legal basis for combating legalization (laundering) of illegally gained income and financing of terrorism, legal relations of financial monitoring entities, authorized body and other governmental bodies of the Republic of Kazakhstan in the sphere of combating of legalization (laundering) of illegally gained income and financing of terrorism.

Chapter 1. GENERAL PROVISIONS

Article 1. Basic terms used in this Law

The following basic terms are used for the purposes of this Law:

- 1) Suspicious operations with money and (or) other assets (hereinafter - the suspicious operation) an operation meeting the criteria established by this Law, according to which there is a reason to believe that as a result of conducting thereof the illegally gained income is involved in a legitimate money turnover or the performance thereof is aimed at financing of terrorism and (or) extremism;
- 2) Operations with money and (or) other assets – individuals and legal entities operations with money and (or) other assets aimed to establish, change or terminate the civil rights and obligations connected therewith, regardless the form and way of performance thereof;
- 3) Illegally gained income - money and (or) other assets obtained as a result of commitment of a crime and (or) an administrative offence;
- 4) Legalization (laundering) of illegally gained income - involvement of illegally gained money and (or) other assets in a legitimate money turnover by means of effecting operations, as well as use of this money and (or) other assets;
- 5) Correspondent bank - a bank that carries out banking operations stipulated by the correspondent account contract;
- 6) Financial monitoring - a set of measures to collect and analyze information received from financial monitoring entities concerning operations with money and (or) other assets;
- 7) Financing of terrorism (terrorist activity) - providing or collecting money and (or) other assets or rendering financial services to terrorists and (or) terrorist organizations for carrying out terrorist activity;
- 8) Authorized body a state body realizing financial monitoring and taking other measures on combating legalization (laundering) of illegally gained income and financing of terrorism in accordance with this Law;
- 9) Foreign public official - a person appointed or elected to any position in legislative, executive, administrative or judicial body of a foreign country, as well as any person fulfilling public function for the foreign country.

Article 2. Legislation of the Republic of Kazakhstan on Combating Legalization (laundering) of Illegally Gained Income and Financing of Terrorism

1. Legislation of the Republic of Kazakhstan on Combating Legalization (laundering) of illegally gained income and Financing of Terrorism shall be based on the Constitution of the Republic of Kazakhstan and shall include this Law and other regulatory legal acts of the Republic of Kazakhstan.

2. If any international treaty ratified by the Republic of Kazakhstan establishes other rules than those provided for in this Law, then the rules of the international treaty shall be used.

CHAPTER 2. PREVENTION OF LEGALIZATION (LAUNDERING) OF ILLEGALLY GAINED INCOME AND FINANCING OF TERRORISM

Article 3. Financial monitoring entities

1. For the purposes of this Law the following shall be referred to the financial monitoring entities:

- 1) banks, organizations carrying out certain kind of banking operations;
- 2) exchange markets;
- 3) insurance (reinsurance) organizations, insurance brokers;
- 4) pension savings funds;
- 5) professional participants of securities market, central depository;
- 6) notaries carrying out notary operations with money and (or) other assets;
- 7) attorneys and other independent specialists on legal issues in such cases when they are involved in operations with money and (or) assets on behalf of and for the client regarding the following activities:
 - real estate purchase and sale;
 - money, securities and other client's assets management;
 - bank accounts or securities accounts management;
 - accumulating funds for the establishment, maintenance, operation and management of a company;
 - establishment, operation and management of legal entities or establishment and purchase and sale of enterprises;
- 8) audit organizations;
- 9) gambling and lotteries organizers;
- 10) post office operators providing money transfer services.

2. The state bodies of the Republic of Kazakhstan shall not be the financial monitoring entities.

Article 4. Operations with money and (or) other assets that are subject to financial monitoring

1. Operation with money and (or) other assets shall be subject to the financial monitoring, if due to its nature, it is related to one of the types of operations described in paragraph 2 of this Article, and are accomplished in cash, except for operations described in subparagraphs 6), 7), 9), 11) and 18) of paragraph 2 of this Article, in the amount which equals to or exceeds:

1,000,000 KZT or the sum equivalent to or exceeding 1,000,000 KZT in foreign currency with regard to the operations specified in subparagraph 1) of paragraph 2 of this Article;

2,000,000 KZT or the sum equivalent or exceeding 2,000,000 KZT in foreign currency with regard to the operations specified in subparagraphs 6), 7) and 9) of paragraph 2 of this Article;

7,000,000 KZT or the sum equivalent or exceeding 7,000,000 KZT in foreign currency for the operations specified in subparagraphs 2) - 5), 8), 10) - 17) of paragraph 2 of this Article;

45,000,000 KZT or the sum equivalent or exceeding 45,000,000 KZT in foreign currency for the operations specified in subparagraphs 18) and 19) of paragraph 2 of this Article.

2. Operations with money or other assets that are subject to financial monitoring shall include:
 - 1) winnings, including winnings in electronic form, as a result of a bet, gamble in gambling establishments, as well as a lottery;
 - 2) purchase, sale and exchange of foreign currency in cash through exchange offices;
 - 3) receipt of money by check or bill as one-off transaction, as well as a transaction made during seven consecutive calendar days;
 - 4) exchange of banknotes of one denomination for banknotes of other denominations as one-off transaction as well as transaction made during seven consecutive calendar days;
 - 5) withdrawal or allocation of money to a bank account of a client, both as one-off transaction, and a transaction made during seven consecutive calendar days;
 - 6) allocation or transfer of money to a bank account of a client by individual or legal entity which have an appropriate registration, place of residence or location in the offshore zone, as well as having a bank account registered in the offshore zone, or transfer of money by a client in favor of the aforespecified category of persons both as one-off transaction and a transaction made during seven consecutive calendar days;
 - 7) money transfers abroad onto accounts (deposits) opened for an anonymous person; receipt of money from abroad account (deposit) opened for an anonymous person made as one-off transaction and a transaction made during seven consecutive calendar days;
 - 8) opening a savings account (deposit) in favor of a third party and (or) placement of money in such account both as one-off transaction or a transaction made during seven consecutive calendar days;
 - 9) payments and money transfers made by a client on a grant basis in favor of another person;
 - 10) acquisition (sale), import to or export from the Republic of Kazakhstan of cultural valuables;
 - 11) operations conducted by legal entities that were officially registered less than three months before;
 - 12) import to or export from the Republic of Kazakhstan of foreign currency in cash, except for import or export carried out by the National Bank of Kazakhstan, Banks and the National Post Office;
 - 13) insurance payment or receipt of insurance premium;
 - 14) payment, transfer of voluntary pension contributions to pension savings funds, as well as making pension payments from savings pension funds at the expense of voluntary pension contributions;
 - 15) receipt or provision of assets under a financial leasing contract;
 - 16) operations for rendering services, including contract, transportation, transport expedition, storage, commission services and assets trust management;

- 17) purchase and sale and other operations with precious metals, precious stones and articles made thereof;
 - 18) operations with real estate and other property that is subject to compulsory state registration;
 - 19) securities transactions.
3. Suspicious operations are subject to financial monitoring regardless the amount by which they are committed or may be committed.
 4. Criteria of suspicious operations shall be:
 - 1) making an operation having no obvious economic sense;
 - 2) conducting operation aimed to avoid the financial monitoring procedures stipulated by this Law;
 - 3) conducting operation when there is a reason to believe that this transaction is aimed to a financing of terrorism and (or) extremism.

Article 5. Customers Due Diligence Conducted by Financial Monitoring Entities

1. The financial monitoring entities shall take measures for customers due diligence in accordance with the Law of the Republic of Kazakhstan on Combating Legalization (laundering) of illegally gained income and Financing of Terrorism
2. The financial monitoring entities shall undertake customers due diligence in the following cases:
 - 1) establishing business relationship with a client;
 - 2) conducting operations with money and (or) other assets that are subject to financial monitoring;
 - 3) if there are grounds to doubt the authenticity of previously obtained information about individuals and legal entities.
3. Customers due diligence made by the financial monitoring entities shall include the following measures:
 - 1) recording information necessary for identification of an individual, which conducted operations with money and (or) other assets, such as identity card data, taxpayer's identification number, personal identification number (except for the cases when a client is not assigned a taxpayer's identification number, a personal identification number in accordance with the legislation of the Republic of Kazakhstan);
 - 2) recording information necessary for identification of a legal entity, which conducted operations with money and (or) other assets, such as constituent documents data, taxpayer's identification number, business-identification number (except for the cases when a client is not assigned a taxpayer's identification number, business-identification number in accordance with the legislation of the Republic of Kazakhstan) and address of location;
 - 3) recording information necessary for identification of a recipient under operation with money and (or) other assets and its representative, including a taxpayer's identification number, personal identification number (if available) of the recipient and its representative, as well as a stamp of signature verification of a recipient or its representative (if available);
 - 4) establishment of presumptive purpose and nature of business relations;

5) conduct continuous examination of business relations and scrutinize the transactions conducted by a client through this financial monitoring entity.

4. Customer due diligence shall be performed by the financial monitoring entities in accordance with the internal control regulations.

Article 6. Customer due diligence conducting by the financial monitoring entities in the event of establishment of business relations with a client

The financial monitoring entities shall take measures specified in subparagraph 1) - 4) of paragraph 3 of Article 5 of this Law, prior to the establishment of business relations with customers.

Article 7. Customer due diligence conducting by the financial monitoring entities when they carry out operations with money and (or) other assets that are subject to financial monitoring

1. The financial monitoring entities shall take measures pursuant to subparagraph 1) - 4) of paragraph 3 of Article 5 of this Law, prior to the operations with money and (or) other assets that are subject to financial monitoring pursuant to Article 4 of this Law.

2. In the event of failure to take measures under subparagraph 1) - 4) of paragraph 3 of Article 5 of this Law, the financial monitoring entities shall not establish business relations with customers and operations shall not be carried out.

Article 8. Foreign public officials due diligence conducting by the financial monitoring entities.

The financial monitoring entities, besides the measures specified in paragraph 3 of Article 5 of this Law, in addition with respect to foreign public officials shall be obliged to:

- 1) check a client's affiliation with a foreign public official;
- 2) assess reputation of this foreign public official regarding its involvement for the cases of legalization (laundering) of illegally gained income and (or) financing of terrorism;
- 3) obtain a permission from organization's top management to establish or continue business relations with such customers;
- 4) take available measures in order to determine the source of funds.

Article 9. Correspondent banks due diligence conducting by the financial monitoring entities

The financial monitoring entities besides the measures stipulated by paragraph 3 of Article 5 of this Law, in addition with respect to correspondent banks, shall be obliged to:

- 1) collect information about reputation of a correspondent bank;
- 2) assess implication of the correspondent bank to the cases of legalization (laundering) of illegally gained income or financing of terrorism ;
- 3) obtain a permission from organization's top management to establish new correspondent relationship.

Article 10. Collection of data and documentary evidence while conducting due diligence

1. The financial monitoring entities while conducting customer due diligence shall be obliged to keep documentary data records of a client.

With respect to the types of the financial monitoring entities, the list of documents for customer due diligence shall be determined by the authorized body in coordination with respective state bodies.

2. Data and information on operations, which are subject to financial monitoring, shall be submitted to an authorized body by the financial monitoring entities following the procedure determined by the authorized body in coordination with the respective state bodies.

3. Data and information on operations, which are subject to financial monitoring, shall not be submitted by attorneys in cases when the data and information is obtained in connection with rendering legal assistance in the issues of representation and protection of individuals and legal entities in the bodies of inquiry and preliminary investigation, and in a court.

4. Financial monitoring entities shall incur costs related to submission to the authorized body of information received during customer due diligence on operation that is subject to financial monitoring.

Article 11. Internal control conducting by the financial monitoring Entities

1. The financial monitoring entities shall take measures to ensure that services rendered by them will not be used by others for the purpose of committing or assisting in the legalization (laundering) of illegally gained income and financing of terrorism.

2. The financial monitoring entities in order to prevent legalization (laundering) of illegally gained income and financing of terrorism shall develop regulations of internal control and a program to implement thereof, and shall be responsible for the compliance with regulations and implementation of programs .

3. Internal control regulations shall be developed, adopted and executed by the financial monitoring entities, with respect to the requirements approved by the authorized body in coordination with respective state bodies.

4. Documents confirming the information specified in Article 5 of this Law, as well as copies of identification documents, shall be stored by the financial monitoring entities for not less than five years from the date of termination of the relations with a client.

5. Financial monitoring entities providing information to the authorized body, have no right to notify a client and other persons of this fact.

6. Providing the information and documents to the authorized body by the financial monitoring entities for the purpose and in the manner prescribed by this Law, shall not be deemed as disclosure of official, commercial, banking or other legally protected secrecy.

7. In case of providing the information to the authorized body in accordance with this Law, regardless the result, the financial monitoring entities and their officers shall not be liable under the laws of the Republic of Kazakhstan and a civil law contract as well.

Article 12. List of organizations and persons related to financing of terrorism and extremism

1. The authorized body shall compile a list of organizations and persons related to financing of terrorism and extremism and shall forward it to the respective state bodies that shall pass thereof to the financial monitoring entities.
2. A state body that, within its competence, carries out statistical work in the field of legal statistics and special records, as well as other competent state bodies shall forward a list of organizations and (or) individuals specified in paragraph 4 of this Article to the authorized body.
3. The list of organizations and individuals related to financing of terrorism and extremism shall be updated in accordance with information provided by state body, which, within its competence, carries out statistical work in the field of legal statistics and special records, as well as other competent state bodies.
4. Reasons for inclusion of organization or individual into the list of organizations and persons related to the financing of terrorism and extremism shall be:
 - 1) the Republic of Kazakhstan's court effective decision on liquidation of an organization because of its terrorist activities and (or) extremism;
 - 2) the Republic of Kazakhstan's court effective decision on recognition of a foreign or an international organization carrying out terrorist activity or extremism within the territory of the Republic of Kazakhstan and (or) another state as a terrorist or extremist organization;
 - 3) the Republic of Kazakhstan's court effective verdict on adjudging of an individual guilty of a crime having characteristics of extremism or a crime under Articles 233 - 233-3 of the Criminal Code of the Republic of Kazakhstan;
 - 4) verdicts (decisions) of courts and decisions of other competent authorities of foreign states in respect of organizations or individuals engaged in terrorist activities recognized in the Republic of Kazakhstan in accordance with international treaties and laws of the Republic of Kazakhstan;
 - 5) list of organizations and individuals related to terrorist organizations or terrorists compiled by international organizations combating the terrorism or bodies authorized by them, and recognized by the Republic of Kazakhstan.

Article 13. Refusal to carry out operations with money and (or) other assets and suspension of suspicious operations

1. The financial monitoring entities shall be obliged to refuse to conduct operations with money and (or) other assets that are subject to financial monitoring in the event of inability to take measures specified by subparagraphs 1) - 4) of paragraph 3 of Article 5 herein.
2. The financial monitoring entities in order to prevent and suppress the facts of legalization (laundering) of illegally gained income and financing of terrorism shall be obliged to inform immediately the authorized body about a suspicious transaction prior to its execution.

Information on suspicious transactions, which cannot be suspended, shall be provided by financial monitoring entities to authorized body not later than three hours after their occurrence, or within twenty-four hours after revealing such transactions.

Procedure for suspension of suspicious transactions shall be determined by the authorized body in coordination with the respective state bodies.
3. The authorized body having received information on suspicious transaction, within twenty-four hours after getting the information on suspicious transaction shall have a right to take decision on suspension of the suspicious transaction for a period of up to three calendar days.

4. If the financial monitoring entity within twenty-four hours from giving information does not receive the authorized body's decision on suspension of the operation with money and (or) other assets or on lack of need for suspension of the operation, the operation should be carried out, unless there are other legislative acts of the Republic of Kazakhstan that prevent to conduct this operation.

5. If there is a reason to believe that operation with money and (or) other assets is made for legalization (laundering) of illegally gained income and (or) financing of terrorism, the authorized body shall not later than five hours after receiving the information on suspicious transaction forward the information to law enforcement agencies for decision-making in accordance with their competence.

Respective law enforcement bodies after receiving the information shall be obliged to take expedient decision within forty-eight hours and inform about it the authorized body.

6. Refusal to carry out an operation with money and (or) other assets, as well as suspension of a suspicious transaction in accordance with this Law, shall not be a basis for civil liability of financial monitoring entities for violation of terms of relevant agreements (liabilities).

Article 14. Supervision of observance of the Law on Combating Legalization (laundering) of Illegally Gained Income and Financing of Terrorism

Supervision of execution of the legislation of the Republic of Kazakhstan on combating legalization (laundering) of illegally gained income and financing of terrorism by the financial monitoring entities in the part of record keeping, storage and providing information on operations with money and (or) other assets that are subject to financial monitoring, as well as arrangement of internal control supervision, shall be carried out by the respective state bodies in accordance with their competence and the procedure established by the legislation of the Republic of Kazakhstan.

CHAPTER 3. COMPETENCE OF THE AUTHORIZED BODY

Article 15. Objectives of the authorized body

The authorized body's objectives are:

- 1) Realization of the unified state policy in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 2) Combating the legalization (laundering) of illegally gained income and financing of terrorism, and coordination of the state bodies' activity in this sphere;
- 3) Creation of a unified information system and maintenance of national database in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 4) Cooperation and exchange of information with competent authorities of foreign countries in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 5) Representation of the Republic of Kazakhstan interests in international organizations on issues of combating the legalization (laundering) of illegally gained income and financing of terrorism.

Article 16. Functions of the Authorized body

To combat legalization (laundering) of illegally gained income and financing of terrorism the authorized body shall:

- 1) collect and process information about operations with money and (or) other assets that are subject to financial monitoring pursuant to this Law;
- 2) carry out the analysis of received information within the legal terms;
- 3) coordinate the state bodies' activities in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 4) in order to solve cases being in proceedings, provide necessary information about operations with money and (or) assets that are subject to financial monitoring upon the request of the criminal court;
- 5) if there is a reason to believe that operation with money and (or) other assets is related to legalization (laundering) of illegally gained income and (or) financing of terrorism, send information to law enforcement bodies for taking a procedural decision in accordance with their competence;
- 6) participate in the development and implementation of international cooperation programs for combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 7) organize and maintain the national database, as well as ensure methodological unity and coordinated functioning of information systems in a sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 8) develop and conduct activities to prevent violations of the legislation of the Republic of Kazakhstan on combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 9) generalize practice of application of the legislation of the Republic of Kazakhstan on combating the legalization (laundering) of illegally gained income and financing of terrorism based on the information received from state bodies and other organizations, as well as develop and make proposals for the improvement thereof;
- 10) study international experience and practice on combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 11) conduct activities on re-training and qualification improvement of personnel in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 12) participate in accordance with the established procedure in the international organizations activity in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 13) with coordination of the state agency responsible for regulation and supervision of financial market and financial organizations, shall define the list of offshore zones for the purposes of this Law and forward thereof to the respective state bodies that inform the financial monitoring entities.

Article 17. Rights and Obligations of the Authorized Body

1. The authorized body shall be entitled to;

- 1) request necessary information on transaction that is subject to financial monitoring from the financial monitoring entities, as well as from the state agencies of the Republic of Kazakhstan;
- 2) make a decision on suspension of operations with money and (or) other assets for the period up to three calendar days in the event of detection of signs of legalization (laundering) of illegally gained income and terrorist financing;
- 3) participate in the development of drafts of normative legal acts and international treaties of the Republic of Kazakhstan for combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 4) on request or independently exchange information with the authorities of other country in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 5) employ, including on a contractual basis, research and other institutions, as well as independent specialists to carry out expert examination, develop education programs, training materials, software and technology infrastructure, create information systems in the field of financial monitoring with respect to the requirements of state protection , as well as official, commercial, banking and other legally protected secrecy;
- 6) send notice of violation of the legislation of the Republic of Kazakhstan on combating the legalization (laundering) of illegally gained income and financing of terrorism to the respective state bodies.

2. The authorized body shall be obliged to;

- 1) take measures on combating the legalization (laundering) of illegally gained income and financing of terrorism;
- 2) ensure appropriate conditions for storage, protection and safety of official, commercial and banking information or other legally protected secrecy obtained during its activity ;
- 3) ensure observance of rights and legitimate interests of an individual and a citizen, legal entities and the state in the process of conducting financial monitoring.

Article 18. Interaction of the authorized body with state bodies of the Republic of Kazakhstan

1. The state bodies of the Republic of Kazakhstan, fulfilling within their competence control over observance of the legislation on combating the legalization (laundering) of illegally gained income and financing of terrorism by the financial monitoring entities, shall be obliged to:

- 1) provide information essential to the authorized body for carrying out financial monitoring and combating the legalization (laundering) of illegally gained income and financing of terrorism in the procedure determined by the Government of the Republic of Kazakhstan;
- 2) consider the authorized body's notification of violation of the legislation of the Republic of Kazakhstan on combating the legalization (laundering) of illegally gained income and financing of terrorism and inform the authorized body on the measures taken within the term established by the legislation of the Republic of Kazakhstan;
- 3) ensure appropriate conditions for storage, protection and safety of the official, commercial and banking information or other legally protected secrecy obtained during its activity;
- 4) ensure observance of rights and legitimate interests of an individual and a citizen, legal entities and the state in the process of carrying out control functions;

2. The state bodies of the Republic of Kazakhstan shall be obliged to:

- 1) inform the authorized body of suspicious transactions disclosed independently, including export (import) of goods (works, services) operations at prices obviously differing from market prices;
- 2) inform the authorized body about violations of this Law's provisions made by the financial monitoring entities that were revealed independently;
- 3) provide upon the request of the authorized body, information available in its own information system to the extent and procedure determined by the Government of the Republic of Kazakhstan.

Provision of information on a suspicious transaction to the authorized body shall not be deemed as disclosure of official, commercial, banking or other legally protected secrecy.

Article 19. International cooperation in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism

1. Cooperation of the authorized body and other state agencies of the Republic of Kazakhstan with competent bodies of foreign states in the field of prevention, detection, suppression and investigation of actions related to the legalization (laundering) of illegally gained income and financing of terrorism, as well as confiscation of the aforementioned income in accordance with the laws of the Republic of Kazakhstan and international treaties of the Republic of Kazakhstan.

2. International cooperation in the sphere of combating the legalization (laundering) of illegally gained income and financing of terrorism between the authorized body and the competent body of a foreign state can be realized by means of request and exchange of information.

3. The authorized body in order to combat the legalization (laundering) of illegally gained income and financing of terrorism shall have the right to request information and documents from the foreign state's competent bodies responsible for combating the legalization (laundering) of illegally gained income and financing of terrorism.

The authorized body shall have the right to use information and documents received upon the request solely for the purposes of combating the legalization (laundering) of illegally gained income and financing of terrorism.

The authorized body has no right to give information and documents to a third party or use thereof in violation of conditions and restrictions established by the requested competent bodies of a foreign state, without prior consent of the foreign state's competent bodies responsible for combating the legalization (laundering) of illegally gained income and financing of terrorism.

4. The authorized body shall have the right to refuse to satisfy the request of the competent bodies of the foreign state in the following cases:

- 1) if the authorized body shall consider that facts and circumstances given in the request to be insufficient for suspicion in legalization (laundering) of illegally gained income and financing of terrorism;
- 2) if submission of information will affect the course of criminal proceedings in the Republic of Kazakhstan.

The authorized body shall notify a requesting competent body of a foreign state about refusal indicating reasons for refusal.

The authorized body shall have the right to impose additional conditions and restrictions on the use of information provided to the foreign state's competent body responsible for combating the legalization (laundering) of illegally gained income and financing of terrorism.

5. Provisions of this Article shall apply to international cooperation, unless otherwise is stipulated by the international treaties of the Republic of Kazakhstan.

CHAPTER 4. FINAL PROVISIONS

Article 20. Liability for violation of the legislation of the Republic of Kazakhstan on combating the legalization (laundering) of illegally gained income and financing of terrorism

1. Violation of the legislation of the Republic of Kazakhstan on Combating the legalization (laundering) of illegally gained income and financing of terrorism shall incur liability established by the laws of the Republic of Kazakhstan;
2. The authorized body's employees and other state bodies, as well as another persons having competence to access the information having official, commercial, banking or other legally protected secrecy, shall, for the disclosure of the information, incur liability according the law of Republic of Kazakhstan;
3. Damage incurred by the individuals and legal entities as a result of illegal actions of authorized body or its employees while executing their functions subject to compensation in the procedure prescribed by the legislation of the Republic of Kazakhstan.

Article 21. The procedure for entry into force of this Law

This Law shall enter into force upon expiry of six months after its first official publication.

President of the Republic of Kazakhstan

N. Nazarbayev

Law of the Republic of Kazakhstan from August 28, year 2009, #191 – IV. Published on September 8, year 2009, #214, in “Kazakhstanskay pravda” newspaper.

Statute
of the Committee on Financial Monitoring
of the Ministry of Finance of the Republic of Kazakhstan

1. General Provisions

1. The Committee on Financial Monitoring of the Ministry of Finance of the Republic of Kazakhstan (hereinafter referred to as “the Committee”) is the Ministry of Finance of the Republic of Kazakhstan instrumentality that within its competence as a central executive body shall perform implementation and control functions in the sphere of combating legalization (laundering) of income received in the illegal way and financing of terrorism.

2. The Committee shall carry out its activities in accordance with the Constitution and law of the Republic of Kazakhstan On Combating Money Laundering and Financing of Terrorism (“the Law”), acts of the President and the Government of the Republic of Kazakhstan, other normative legal acts and international treaties and this Statute.

3. The Committee is a legal entity in a legal organizational form of a government institution. It shall have seals and stamps with its own name in the State language and standard forms, as well as accounts with the Treasury bodies of the Ministry of Finance of the Republic of Kazakhstan in accordance with the legislation.

4. The Committee has a territorial subdivision – Financial Monitoring Department in the city of Almaty (the territorial subdivision) being a legal entity in the form of a public institution controlled by and accountable to the Committee. It is established and abolished by the Government of the Republic of Kazakhstan.

With a view of efficient organization of work, the Committee coordinates the territorial subdivision activities regarding the issues of carrying out functions in the sphere of combating legalization (laundering) of income received in the illegal way and financing of terrorism, as well as carries out control of due fulfillment by the territorial subdivision of functions assigned to it.

5. The Committee shall enter into civil law relations in its own name.

6. The Committee within its competence shall issue legal acts of individual application in the form of an order of a chairperson or his alternate in the procedure prescribed by law.

7. The Committee’s structure and authorised staff size is approved by the Executive Secretary of the Ministry of Finance of the Republic of Kazakhstan after receiving approval from the Minister of Finance of the Republic of Kazakhstan

8. Legal address of the Committee: 11 Pobeda ave., 010000 Astana.

9. Full name of the Committee – the government institution “Committee on Financial Monitoring of the Ministry of Finance of the Republic of Kazakhstan”.

10. This Statute is a constituent document of the Committee.
11. The Committee's activities shall be financed from the Republican budget.
12. It is forbidden to the Committee to enter into contractual relations with the subjects of business for execution liabilities being the Committee's functions.

2. Key Objectives of the Committee

13. Key objectives of the Committee - to carry out financial monitoring in order to combat legalization (laundering) of income received in the illegal way and financing of terrorism.

3. The Committee's Property

14. The Committee shall have the right of day-to-day management of a separate property.

The property assigned to the Committee belongs to the republican property and consists of capital assets and current assets, as well as other property the cost of which is reflected in the Committee's account.

15. The Committee has no right at its own discretion to alienate or otherwise dispose of the property assigned to it;
16. The Committee may be entitled to dispose of the property in the cases and to the extent provided for by law.

4. Organization of the Committee's Activities

17. The Committee shall carry out management of the territorial subdivision.
18. The Committee shall be headed by a chairman who is appointed to a position and dismissed by the Minister of Finance of the Republic of Kazakhstan.

The Committee's chairperson shall have two deputies appointed to a position and dismissed by the Minister of Finance in the procedure prescribed by law.

19. The head of territorial subdivision of the Committee is appointed to a position and dismissed by the Minister of Finance on presentation of the Committee's chairman.
20. Chairman shall organize and supervise over the Committee's activities and shall personally be responsible for fulfilment of tasks assigned to the Committee and performance of his/her functions.

21. Chairman shall:

- 1) determine the duties and terms of reference of his/her deputies and head of the territorial subdivision and the Committee's structural subdivisions;
- 2) appoint to a position or dismiss the employees of the Committee and deputy head of the territorial subdivision in accordance with the law;
- 3) impose disciplinary sanctions on the employees of the Committee in the procedure prescribed by law.
- 4) submit the Committee's structure and staff number and the structure of the territorial subdivision to the Executive Secretary of the Ministry of Finance of the Republic of Kazakhstan for approval;

- 5) approve statute on structural subdivisions of the Committee and its territorial subdivision;
- 6) approve the Committee's staffing list within the staff number limit of the Committee;
- 7) solve issues of sending on an official/business trip, granting leave, rendering material aid, training (retraining), improvement of professional skill, encouragement, giving bonus to the Committee's employees and the head of territorial subdivision of the Committee in the procedure prescribed by law of the Republic of Kazakhstan;
- 8) sign the Committee's orders;
- 9) represent the Committee in all public bodies and other organizations in accordance with the legislation;
- 9-1) personally liable for fighting corruption;
- 10) exercise other authorities in accordance with the legislation.

22. Chairmen duties in his/her absence shall be performed by one of the deputies determined by the Minister of Finance.

23. The Committee can have a Collegium that will be an advisory consulting body. Chairman shall approve the number and personal structure of the Collegium.

5. Reorganization and Liquidation of the Committee

24. The Committee is reorganized and liquidated in accordance with the legislation of the Republic of Kazakhstan.

Annex 4. List of Key Laws, Regulations and other Materials Provided to Evaluation Team

Constitution and Codes

1. Fiscal Code
2. Civil Code
3. Civil Procedural Code
4. Administrative Liability Code
5. Tax Code
6. Customs Code
7. Customs Code of the Customs Union
8. Labor Code
9. Criminal Procedural Code
10. Correctional Code
11. Criminal Code

Laws

1. Constitutional Law "On the Government of the Republic of Kazakhstan" No. 2688 of December 18, 1995
2. Law of the Republic of Kazakhstan "On Banks and Banking Activities in the Republic of Kazakhstan" No. 2444 of August 31, 1995;
3. Law of the Republic of Kazakhstan "On the Development Bank of Kazakhstan" No. 178-II of April 25, 2001;
4. Law of the Republic of Kazakhstan "On Combating Corruption" No. 267 of July 2, 1998;
5. Law of the Republic of Kazakhstan "On Accounting and Financial Reporting" No. 234 of February 28, 2007;
6. Law of the Republic of Kazakhstan "On Currency Regulation and Control" No. 57 of June 13, 2005;
7. Law of the Republic of Kazakhstan "On Amendments and Supplements to Certain Legislative Acts of the Republic of Kazakhstan in the Area of Combating Money Laundering and Terrorist Financing" No. 192-IV of August 28, 2009;
8. Law of the Republic of Kazakhstan "On State Legal Statistics and Special Accounts" No. 510 of December 22, 2003;
9. Law of the Republic of Kazakhstan "On State Registration of Legal Entities and Record Registration of Branches and Subsidiaries" No. 2198 of April 17, 1995;
10. Law of the Republic of Kazakhstan "On Public Service" No. 453 of July 23, 1999;
11. Law of the Republic of Kazakhstan "On State Registration of Immovable Property Rights and Transactions" No. 310 of 2007;
12. Law of the Republic of Kazakhstan "On State Regulation and Supervision of Financial Market and Financial Institutions" No. 474 of 2003;

13. Law of the Republic of Kazakhstan "On State Secrets" No. 349 of March 15, 1999;
14. Law of the Republic of Kazakhstan "On Informatization" No. 412-II of May 8, 2003;
15. Law of the Republic of Kazakhstan "On Licensing" No. 214-III of January 11, 2007;
16. Law of the Republic of Kazakhstan "On National Archive Fund and Archives" No. 326-1 of December 22, 1998;
17. Law of the Republic of Kazakhstan "On the National Bank of the Republic of Kazakhstan" No. 2155 of March 30, 1995;
18. Law of the Republic of Kazakhstan "On National Registers of Identification Numbers" No. 223-3 of January 12, 2007;
19. Law of the Republic of Kazakhstan "On Regulatory Legal Acts" No. 213 of March 24, 1998;
20. Law of the Republic of Kazakhstan "On Notaries" No. 155 of July 14, 1997;
21. Law of the Republic of Kazakhstan "On Pension Provision in the Republic of Kazakhstan" No. 136 of June 20, 1997;
22. Law of the Republic of Kazakhstan "On Payments and Money Transfers" No. 237 of June 29, 1998;
23. Law of the Republic of Kazakhstan "On Postal Service" No. 386 of February 8, 2003;
24. Law of the Republic of Kazakhstan "On Combating Money Laundering and Terrorist Financing" No. 191-IV of August 28, 2009;
25. Law of the Republic of Kazakhstan "On Combating Terrorism" No. 416 of July 13, 1999;
26. Law of the Republic of Kazakhstan "On Securities Market" No. 461 of July 2, 2003;
27. Law of the Republic of Kazakhstan "On Insurance Activities" No. 126 of December 18, 2000;
28. Law of the Republic of Kazakhstan "On Stock Exchanges" No. 155-IV of May 4, 2009;
29. Law of the Republic of Kazakhstan "On Private Enterprise" No. 124 of January 31, 2006;
30. Law of the Republic of Kazakhstan "On Joining the International Convention for Suppression of Terrorism Financing" No. 347 of October 2, 2002;
31. Law of the Republic of Kazakhstan "On Capital Leasing" No. 78-II of July 5, 2000;
32. Law of the Republic of Kazakhstan "On Credit Cooperatives" No. 400-II of April 28, of 2003;
33. Law of the Republic of Kazakhstan "On Non-Profit Organizations" No. 142 of January 16, 2001;
34. Law of the Republic of Kazakhstan "On National Security of the Republic of Kazakhstan" No. 233 of June 26, 1998;
35. Law of the Republic of Kazakhstan "On Frontier Service of the National Security Committee of the Republic of Kazakhstan" of January 13, 1993;
36. Law of the Republic of Kazakhstan "On Prosecutor's Office" No. 2709 of December 21, 1995;
37. Law of the Republic of Kazakhstan "On Registration of Pledge of Movable" No. 254 of June 30, 1998;

38. Law of the Republic of Kazakhstan "On Regulation of Commercial Activities" No. 544 of April 12, 2004;
39. Law of the Republic of Kazakhstan "On Limited and Additional Liability Companies" No. 220-I of April 22, 1998;
40. Law of the Republic of Kazakhstan "On Advocacy" No. 195 of December 5, 1997;
41. Law of the Republic of Kazakhstan "On Administrative Procedures" No. 107-II of November 27, of 2000;
42. Law of the Republic of Kazakhstan "On Auditing Activities" No. 304 of November 20, 1998;
43. Law of the Republic of Kazakhstan "On Gambling Business" No. 219 of January 12, 2007;
44. Law of the Republic of Kazakhstan "Operational Investigation Activity" of September 15, 1994;
45. Law of the Republic of Kazakhstan "On Financial Police Authorities of the Republic of Kazakhstan" No. 336 of July 4, 2002;
46. Law of the Republic of Kazakhstan "On Mortgages" of December 23, 1995;
47. Law of the Republic of Kazakhstan "On Law Enforcement Authorities of the Republic of Kazakhstan" No. 2707 of December 21, 1995;
48. Law of the Republic of Kazakhstan "On National Security Authorities of the Republic of Kazakhstan" No. 2710 of December 21, 1995;
49. Law of the Republic of Kazakhstan "On Judiciary" No. 304 of March 18, 2002;

Other Regulations

50. Agreement Concerning the Procedure for the Movement of Cash and (or) Monetary Instruments across the Customs Border of the Customs Union by Individuals.
51. Instruction on the Requirement for Insurance (reinsurance) Companies to Have a Risk Management and Internal Control Systems (approved by Decision of the Board of the AFS No. 4 of February 1, 2010);
52. Instruction on the Requirement for the Central Depository to Have a Risk Management System (approved by Decision of the Board of the AFS No. 5 of February 1, 2010);
53. Instruction on the Requirement for Organizations Engaged in Broker, Dealer and Investment Portfolio Management Activities to have a Risk Management System (approved by Decision of the Board of the AFS No. 209 of September 26, 2009);
54. Instruction on the Requirement for Pension Savings Funds and Institutions Engaged in Investment management of Pension Assets to Have a Risk Management System (approved by Decision of the Board of the AFS No. 135 of July 7, 2009);
55. Instruction on the Requirement for the Stock Exchange to Have a Risk Management System (approved by Decision of the Board of AFS No. 244 of November 30, 2009);

56. Regulatory Ruling of the Supreme Court of the Republic of Kazakhstan "On Certain Issues Concerning Qualification of Crimes in the Sphere of Economic Activity" No. 2 of 2004;
57. Regulatory Ruling of the Constitutional Council of the Republic of Kazakhstan No. 5 of August 20, 2009;
58. Documents Required for Customer Due Diligence (approved by Decision of the Ministry of Finance of RK No. 56 of February 15, 2010);
59. Organizations and Individuals Associated with Financing of Terrorism and Extremism;
60. Regulations "On the Ministry of Communications and Information of the Republic of Kazakhstan" approved by decision of the Government of the Republic of Kazakhstan No. 427 of May 18, 2010;
61. Regulations on the AFEC approved by Presidential decree No. 1551 of April 21, 2005;
62. Regulations of the Government of the Republic of Kazakhstan "On Certain Issues of the Ministry of Finance of the Republic of Kazakhstan" No. 387 of April 24, 2008;
63. Regulations of the Board of the AFS, "On Establishing a List of Documents to be Stored and on Periods for their Storage in Second-Tier Banks" No. 320 of August 27, 2005;
64. Regulations of the Board of the AFS "On Approval of the Rules for Engaging in Broker and Dealer Activities in the Securities Market of RK" No. 317 of August 27, 2005;
65. Regulations of the Board of the FSA "On Establishing a List of Essential Documents to be Stored and on Periods of their Storage in Pension Savings Funds" No. 377 of December 27, 2004;
66. Regulations of the Board of the AFS No. 359 of September 30, 2005;
67. Regulations of the Board of the National Bank of the Republic of Kazakhstan No. 179 of April 25, 2000;
68. Regulations of the Board of the National Bank of the Republic of Kazakhstan "On Approval of the Instruction on Documentation, Records Management and Storage of Documents by Professional Participants of the Insurance Market and Insurance Agents Engaged in Entrepreneurial Activities No. 224 of July 14, 2001;
69. Guidelines on Non-Cash Payments and Money Transfers (approved by Resolution of the Board of NB of RK No. 179);
70. Guidelines on Credit Documents Management;
71. Guidelines on Maintaining Securities Holders Registers (approved by Resolution of the Board of the AFS No. 62 of February 25, 2006);
72. Internal Control Rules (approved by Order of the Minister of Finance of the Republic of Kazakhstan No. 57 of February 15, 2010);

73. Internal Code of Conduct of the National Bank of the Republic of Kazakhstan (approved by Resolution of the Board of Directors of the National Bank of Kazakhstan No. 8 of January 28, 2008);
74. Guidelines on Granting of Consent to the Appointment (election) of Financial Institution Executives (approved by Resolution of the Board of the AFS No. 157 of June 12 June, 2004);
75. Guidelines on Issuance and Use of Payment Cards in the Republic of Kazakhstan (approved by Resolution of the Board of the National Bank of Kazakhstan No. 331 of August 24, 2000);
76. Guidelines on the Use of Payment Instruments and Execution of Cashless Payments and Money Transfers in the Republic of Kazakhstan;
77. Guidelines on Protection of Classified Information Obtained by the KFM of MF of RK in the Course of its Activities through the Means of Computer Technology (approved by Order of the Minister of Finance of the Republic of Kazakhstan No. 19 of January 25, 2010);
78. Guidelines on Protection of Classified Information Obtained by the KFM in the Course of its Activities (approved by Order of the Minister of Finance of the Republic of Kazakhstan No. 19 of January 25, 2010);
79. Guidelines on Exchange of Electronic Documents at the Time of Payment and Money Transfer Execution in the Republic of Kazakhstan (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 146 of April 21, 2000);
80. Guidelines on Organization of Exchange Operations Involving Cash Foreign Currency in Kazakhstan (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 106 of October 27, 2006);
81. Guidelines on Execution of Non-Cash Payments and Money Transfers in the Republic of Kazakhstan without Bank Accounts (approved by Resolution of the Board of the National Bank No. 395 of October 13, 2000);
82. Guidelines on Opening, Maintaining and Closing Clients' Bank Accounts Held in Banks of the Republic of Kazakhstan (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 266 of June 2, 2000);
83. Guidelines on Provision by Second-Tier Banks and Organizations Executing Certain Types of Banking Operations Services of Electronic Banking (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 18 of March 28, 2008)
84. Guidelines on Provision by the Subjects of Financial Monitoring of Data on Transactions Subject to Financial Monitoring (approved by Order of the Minister of Finance of the Republic of Kazakhstan No. 59 of February 16, 2010);
85. Guidelines on Provision by the Subjects of Financial Monitoring of Data and Information on Transactions Subject to Financial Monitoring (approved by Order of the Minister of Finance of the Republic of Kazakhstan No. 59);

86. Guidelines on Provision of Transaction-Banking Services;
87. Guidelines on Application by the National Bank of the Republic of Kazakhstan of Enforcement Measures and Sanctions against Financial Institutions (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 95 of September 14, 2006);
88. Guidelines on Application of Restricted Enforcement Measures against Second-Tier Banks, Institutions Executing Certain Types of Banking Operations, as well as Major Members of the Bank, Bank Holding Company and their Affiliates, Member Organizations of the Banking Conglomerate; and Compulsory Measures against Major Bank Members, Bank Holding Companies and Organizations Members of the Bank Conglomerate (approved by Resolution of the Board of the AFS No. 42 of February 25, 2006);
89. Guidelines on Suspension of Suspicious Transactions (approved by Order of the Ministry of Finance of the Republic of Kazakhstan No. 58 of February 16, 2010);
90. Guidelines on Suspension of Suspicious Transactions (approved by Order of the Minister of Finance of the Republic of Kazakhstan No. 58 of February 16, 2010);
91. Guidelines on Holding a Contest for a Vacant Administrative Public Position (approved by the Order of the Chairman of the Agency of the Republic of Kazakhstan for Public Service);
92. Guidelines on Registration by Professional Securities Market Participants Providing the Services of a Nominee of Securities Transactions, Execution and Issuance of a Nominee Account Statement, and Disclosure of Information by Nominee (approved by Resolution of the Board of the AFS No. 61 of February 25, 2006);
93. Guidelines on Establishment of Correspondent Relations between Banks, as well as between Banks and Institutions Executing Certain Types of Banking Operations (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 428);
94. Guidelines on Establishment of Correspondent Relations between the National Bank of the Republic of Kazakhstan and Banks, as well as Institutions Executing Certain Types of Banking Operations (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 37 of March 28, 1999);
95. Guidelines on Establishment of Correspondent Relations between Banks, as well as between Banks and Institutions Executing Certain Types of Banking Operations (approved by Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 428 of November 25, 2011);
96. Decree of the Minister of Finance of the Republic of Kazakhstan No. 56 of February 15, 2010;
97. Decree of the Minister of Finance of the Republic of Kazakhstan No. 57 of February 15, 2010;

98. Decree of the Minister of Finance of the Republic of Kazakhstan No. 58 of February 16, 2010;
99. Decree of the Minister of Finance of the Republic of Kazakhstan No. 59 of February 16, 2010;
100. Decree of the Minister of Finance of the Republic of Kazakhstan No. 96 of March 2, 2010;
101. Decree of the Minister of Finance of the Republic of Kazakhstan No. 19 of January 25, 2010;
102. Decree of the Minister of Finance of the Republic of Kazakhstan No. 258 of May 26, 2008;
103. Decree on Approval of Guidelines for Informational Cooperation for the Purpose of AML / CFT No. P-95 of July 23, 2010;
104. Decree of the Chairman of the Agency of the Republic of Kazakhstan for Public Service "On the Approval of the Guidelines Governing the Holding of a Contest for a Vacant Administrative Public Position" No. A-202 of November 24, 1999;
105. Judicial Education Strategy for 2009-2011 (approved August 18, 2008);

Annex 5

Kazakhstan has concluded:

fifteen bilateral agreements on legal assistance in criminal matters:

- Agreement between the Republic of Kazakhstan and Georgia on Mutual Legal Assistance in Civil and Criminal Matters and the Protocol thereto (Tbilisi, September 17, 1996);
- Agreement between the Republic of Kazakhstan and the Republic of India on Mutual Legal Assistance in Criminal Matters (New Delhi, August 17, 1999);
- Agreement between the Republic of Kazakhstan and the People's Republic of China on Legal Assistance in Civil and Criminal Matters (Beijing, January 14, 1993);
- Agreement between the Republic of Kazakhstan and the Republic of China on Extradition (Almaty, July 5, 1996);
- Agreement between the Republic of Kazakhstan and the Democratic People's Republic of Korea on Mutual Legal Assistance in Civil and Criminal Matters (Pyongyang, April 7, 1997);
- Agreement between the Republic of Kazakhstan and the Kyrgyz Republic on Mutual Legal Assistance in Civil and Criminal Matters (Almaty, August 26, 1996);
- Agreement between the Republic of Kazakhstan and the Kyrgyz Republic on Extradition of Offenders and on Criminal Prosecution (Almaty, April 8, 1997);
- Agreement between the Republic of Kazakhstan and Uzbekistan on Legal Assistance and Legal Relations in Civil, Criminal and Domestic matters (Almaty, June 2, 1997);
- Agreement between the Republic of Kazakhstan and the Islamic Republic of Pakistan on Mutual Legal Assistance in Civil, Domestic and Criminal Matters (Almaty, August 23, 1995);
- Agreement between the Republic of Kazakhstan and the Republic of Lithuania on Legal Assistance and Legal Relations in Civil, Domestic and Criminal Matters (Vilnius, August 9, 1994);
- Agreement between the Republic of Kazakhstan and Mongolia on Mutual Legal Assistance in Civil and Criminal Matters (Ulaanbaatar, October 22, 1993);
- Agreement between the Republic of Kazakhstan and Mongolia on Extradition of Offenders for Criminal Prosecution or Sentence Enforcement (Ulaanbaatar, October 22, 1993);
- Agreement between the Republic of Kazakhstan and the Turkish Republic on Legal Assistance in Criminal Matters and Extradition (Almaty, August 15, 1995);
- Agreement between the Republic of Kazakhstan and the Islamic Republic of Iran on Legal Assistance and Legal Relations in Civil and Criminal Matters (Teheran, October 6, 1999);
- Negotiation Protocol between the Kazakh and German Delegations on Legal Assistance in Criminal and Civil Matters (Bonn, January 30, 1996).

Three bilateral agreements on transfer of convicts to serve sentences: Azerbaijan, Georgia and Ukraine.

- Agreement between the Republic of Kazakhstan and Turkmenistan on the Transfer of Persons Sentenced to Imprisonment to Continue to Serve Prison Term (Astana, July 5, 2001);
- Agreement between the Republic of Kazakhstan and Ukraine on the Transfer of Persons Sentenced to Imprisonment to Continue to Serve Prison Term (Kiev, September 17, 1999);
- Agreement between the Republic of Kazakhstan and Republic of Azerbaijan on the Transfer of Persons Sentenced to Imprisonment to Continue to Serve Prison Term (Almaty, July 10, 1997);

six agreements on cooperation in combating organized and economic crimes;

- Agreement on Cooperation in Combating Economic Crimes (Moscow, April 12, 1996)
- Agreement on Cooperation between the States Members of the Commonwealth of Independent States in Combating Tax Crimes (Tbilisi, June 3, 2005) (Approved by Resolution of the Government of the Republic of Kazakhstan No. 1340 of December 31, 2008)
- Agreement between the Government of RK and the Government of the Republic of Tajikistan on Cooperation and Information Exchange in the Fight against Economic Crimes and Law Violations (RK. Gov. Res. No. 264 of April 4, 2007)
- Agreement on Cooperation between the States Members of the Commonwealth of Independent States in the Fight against Theft of Cultural Property and Ensuring its Return, signed in Dushanbe on October 5, 2007 (Law of the Republic of Kazakhstan dated April 3, 2009)
- Agreement between the Government of the Republic of Kazakhstan and the Government of the French Republic on Cooperation in Combating Crime of October 6, 2009, Astana, (not yet in force)
- Agreement on Cooperation between the States Members of the Commonwealth of Independent States in Combating Crime in Transport (Astana, September 15, 2004) (Resolution of the Government of the Republic of Kazakhstan No. 362 dated May 4, 2007)

Annex 6

Law enforcement agencies of Kazakhstan have concluded 25 inter-agency agreements:

- Agreement on Cooperation between the General Prosecutor's Offices of the States Members of the CIS in Combating Corruption (Astana, April 25, 2007);
- Agreement on Cooperation between General Prosecutor's Offices of the CIS Countries in Research (1995);
- Agreement on Cooperation between General Prosecutor's Offices of the States Members of the CIS in Protecting the Rights and Legitimate Interests of Minors (Minsk, May 25, 2006)
- Agreement on Cooperation between General Prosecutor's Offices of the States Members of the CIS in Combating Terrorism and other Manifestations of Extremism (Minsk, May 25, 2006);
- Agreement on Legal Assistance and Cooperation between Prosecution Agencies dated October 8, 1992, Almaty (Belarus, Kazakhstan, Kyrgyzstan, Russia)
- Negotiation Protocol between the Kazakh and German Delegations on Legal Assistance in Criminal and Civil Matters (Bonn, January 30, 1996); with the Federal Republic of Germany (FRG)
- Memorandum on Cooperation between the General Prosecutor's Office of RK and the Italian National Anti-Mafia Prosecutor's Office in the Fight against Organized Crime and Money Laundering (Rome, May 28, 2003) (By request)
- Agreement on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Investigative Committee under the Prosecutor's Office of the Russian Federation (Astana, October 16, 2008);
- Agreement on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Russian Federation (Moscow, June 23, 2009);
- Agreement on Cooperation between the Prosecutor's Offices of the Zhambyl and Almaty regions of Kazakhstan and the Chui, Talas, Issyk-Kul regions of the Kyrgyz Republic (Taraz, August 9, 2001);
- Agreement on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Armenia (Astana, November 7, 2006);
- Agreement between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Tajikistan on Legal Assistance and Cooperation (Astana, April 26, 2007);
- Agreement between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Uzbekistan on Legal Assistance and Cooperation (Almaty, April 22, 2004);
- Memorandum on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Ministry of Justice of the Republic of Austria (Vienna, June 12, 2008);

- Agreement between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Azerbaijan on Cooperation in Provision of Legal Assistance (Astana, February 28, 2005);
- Agreement on Legal Assistance and Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Georgia (Astana, September 20-25, 1993);
- Agreement on Legal Assistance and Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Latvia (Almaty, October 9, 1992);
- Agreement on Legal Assistance and Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Lithuania (Almaty, October 9, 1992);
- Agreement on Legal Assistance and Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Prosecutor's Office of the Republic of Moldova (Almaty, October 9, 1992);
- Agreement on Mutual Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Supreme Public Prosecutor's Office of the Republic of Korea of January 10, 2004.
- Agreement on Cooperation between the People's Procuratorate of the People's Republic of China and the Prosecutor's Office of the Republic of Kazakhstan of April 10, 1994, Beijing
- Agreement on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the General Prosecutor's Office of the Republic of Slovakia of October 27, 2009, Bratislava
- Memorandum on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Supreme Public Prosecutor's Office of the Czech Republic of October 26, 2009, Brno
- Memorandum on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Federal Bureau of Investigations of the Ministry of Justice of the United States of America of November 17, 2009, Astana
- Agreement on Cooperation between the General Prosecutor's Office of the Republic of Kazakhstan and the Prosecutor's Office of the Republic of Bulgaria of May 12, 2010