

MUTUAL EVALUATION OF KAZAKHSTAN

- I. Procedure of Discussion of the Mutual Evaluation Report of Kazakhstan at the EAG Plenary Meeting
- II. Issues for Discussion at the EAG Plenary Meeting

I. Procedure of Discussion of the Mutual Evaluation Report of Kazakhstan at the EAG Plenary Meeting:

(Set forth in the EAG Mutual Evaluation Procedures, EAG/PLEN(2007)4)

The Plenary Meeting will discuss 5-8 issues which have been identified by the WGEL. The discussion of the Mutual Evaluation Report at the Plenary Meeting is chaired by the EAG Chairman and the Executive Secretary. The Plenary meeting has the right to make any changes and modifications to the text of the Mutual Evaluation Report. The Plenary Meeting shall make the relevant decisions on the 5-8 issues identified by the WGEL. The Plenary Meeting shall decide on the ratings of compliance with the relevant Recommendations accordingly.

1. Introduction:

- The EAG Chairman opens the discussion of the Mutual Evaluation Report.
- Introduction by the Head of the Evaluation Team and assessors.
- Introduction by the Head of the Delegation of Kazakhstan.

2. Procedure for Discussion at the Plenary Meeting:

- The EAG Secretariat briefly presents the issue.
- The representatives of Kazakhstan present their view.
- The evaluation team presents its view.
- Interventions by the representatives of the EAG-member states and observers, inter alia, on upgrading/downgrading the rating or keeping the current rating unchanged.
- If necessary, further interventions by Kazakhstan and the assessors for clarifications.
- The Chairman makes the final decision, inter alia, on compliance rating.
- *After the discussion by the Plenary Meeting of all issues identified by the WGEL is completed, the delegations of the member-states and observers may raise any other issues.*

3. Conclusion

- After the discussion of all issues and ratings is completed, the EAG Chairman asks Kazakhstan whether it agrees to adopt the Mutual Evaluation Report and the Executive Summary.
- Response of Kazakhstan.
- The EAG Chairman determines the timeline for Kazakhstan to report back to the Plenary on the progress in implementing the recommendations set forth in the Mutual Evaluation Report (1 year).

II. Issues for Discussion at the Plenary Meeting

1. Listed below are the issues for discussion at the Plenary Meeting. This list includes the issues remained unresolved after the face-to-face meeting.
2. First, the Core Recommendations (R.1, 5, 10, 13, SR.II, SR.IV) are discussed. If there are no major issues related to the Core Recommendations, the Key Recommendations (R. 3, 23, 26, 35, 36, 40, SR.I, SR.III) are discussed. If there are no major issues related to the Key Recommendations, other Recommendations are discussed.

No.	Key Issues	Comments
CORE RECOMMENDATIONS		
1	R.1 rating: ML Offence	<p><i>Current rating is PC. Kazakhstan considers that the rating should be LC.</i></p> <p><u>Kazakhstan's view:</u></p> <p>The legislation of Kazakhstan provides for criminal liability for carrying out <u>financial and other deals with funds or other property knowingly obtained in illegal way</u>, as well as the use of such funds or other property for carrying out entrepreneurial (business) or other economic activities.</p> <p>Conversion or transfer of property are actually transactions with funds or other property, while carrying out such transactions with property that is the proceeds of crime for concealment or disguise of the criminal origin of such property will be qualified as the crime covered by Article 190 of the RK Criminal Code (Illegal Entrepreneurship). Therefore, under the legislation of Kazakhstan, conversion and transfer of property and funds that are the proceeds of crime, if such actions are undertaken in order to conceal the origin of such property, contain the element of the crime covered by Article 193 of the Criminal Code (Legalization (Laundering)).</p> <p>Pursuant to Article 28 of the RK Criminal Code (Types of Accomplices of Crime), such actions, if undertaken for helping a person who has committed an underlying offence to evade liability for the offence, are qualified as adding and abetting the underlying crime.</p> <p>Concealment or disguise of the source, location, disposition, movement, ownership of or rights with respect to property, knowing that such property is the proceeds of crime, if committed by the owner – are covered by Article 193 of the RK Criminal Code, and if committed by a third party are additionally covered by Article 28 of the RK Criminal Code.</p> <p>The ML offence extends to all property that is the proceeds of crime irrespective whether they are direct or indirect proceeds. The sanction provided for in Article 193 of the RK Criminal Code entitles a court to confiscate property, while Part 3 of the said Article obliges court to do so.</p> <p>The current legislation of the Republic of Kazakhstan provides for not just criminal but also for administrative liability for insider trading. Such actions are covered by Article 200 of the RK Criminal Code (Illegal Receipt and Disclosure of Information that Constitutes Commercial or Banking Secret), by Article 205 of the RK Criminal Code</p>

		<p>(Infringement of Rules of Conducting Transactions with Securities) and by Article 190 of the RK Code on Administrative Offences (Illicit Use of Insider Information).</p> <p>There is the judicial practice in Kazakhstan of holding guilty persons liable for illegal receipt and disclosure of information that constitutes commercial or banking secret as well as for infringement of the rules of conducting transactions with securities).</p> <p><u>Evaluation team's view</u></p> <p>The ML offence criminalization contains the following deficiencies:</p> <p>the acts of conversion and transfer of property representing proceeds of crime are not explicitly criminalized; 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 are not criminalized; additionally, neither covered nor criminalized are the possession and use of property obtained by criminal means for personal purposes.</p> <p>The above indicates non-compliance with the Vienna and Palermo Conventions;</p> <p>ML offences do not apply to property constituting indirect proceeds of crime;</p> <p>Neither insider trading nor market manipulation is criminalized.</p> <p><u>Delegations' issues:</u></p> <p>Under the Palermo and Vienna Conventions this element is optional and subject to the basic concepts of country's legal system. The draft MER does not mention whether Kazakhstan has raised this argument as a reason for non-criminalization of possession, use and acquisition of proceeds.</p>
2	SR.II Rating: Criminalize Terrorist Financing	<p><i>Current rating is PC. Kazakhstan considers that the rating should be LC.</i></p> <p><u>Kazakhstan's view:</u></p> <p>Article 233-3 of the Criminal Code provides for criminal liability for financing of extremism and terrorist activity. The provisions of this Article cover both financing of terrorist activity and financing of a terrorist organization/terrorist even if the received funds are not used for carrying out terrorist activity. In this situation it is important that a person understands that he/she provides funds to a terrorist organization/terrorist.</p> <p>Legal entities are not subject to criminal liability since under the fundamental principles of the RK national legislation only natural persons are subject to criminal liability. However, based on a court sentence a public prosecutor is authorized to request a court to liquidate a legal entity for money laundering in a manner established in Article 49 of the Civil Code (Grounds for Liquidation of Legal Entity).</p> <p>Intention to commit illegal actions that does not result in actual unlawful acts cannot be considered the offence since</p>

		<p>there is no guilt. In this context it is necessary to take into account Article 26 of the RK Criminal Code which stipulates that a person is not subject to criminal liability if he/she voluntarily and decisively refused to consummate a crime. A person who has voluntarily refused to consummate a crime is subject to criminal liability only if his/her actual action constitutes other legally defined crime. Section 3 of Article 24 of the RK Criminal Code, similar to an attempted crime, criminalizes actions (inactions) committed with the direct intent and aimed directly at committing a crime if the crime is not consummated due to the circumstances beyond control of a given person.</p> <p>Carrying out financial transactions and other deals with funds or other property knowingly obtained in illegal way as a result of FT offence will be covered by Article 193 of the Criminal Code.</p> <p>The national legislation will qualify unlawful acts against fixed platforms as unlawful acts against a vessel. An action involving the provision of deliberately false information that threatens safe navigation is covered by the provisions of Article 242 of the RK Criminal Code (Deliberately False Information on Terrorist Act).</p> <p><u>Evaluation team's view</u></p> <p>The disposition of art. 233-3 of CC of RK does not cover acts connected with provision of funds to terrorists and terrorist organizations without the intention of carrying out terrorist activities, or not related to a specific terrorist act. The Kazakh law contains no provisions establishing criminal or administrative liability for legal entities for FT. The law does allow the segregation of the element of intent from objective factual circumstances, including in respect of FT offence.</p> <p>The FT offence is not predicate to ML.</p> <p>Certain unlawful acts against the safety of fixed platforms located on the continental shelf, as well as connected with intentional provision of false information that threatens the safe sailing of a vessel are not criminalized.</p> <p>Judging by the statistical data provided, the effectiveness of FT instances detection is low</p>
3	R.5 Rating: Customer Due Diligence	<p>R.5 – Current rating is NC. Kazakhstan considers that the rating should be PC.</p> <p><u>Kazakhstan's view:</u></p> <p>Under the RK legislation, no anonymous accounts and accounts is fictitious names may be opened. The AML/CFT Law provides for the obligation to perform due diligence on all transactions following establishment of business relationship with a customer.</p> <p>The customer and beneficial owner identification procedures are specified in the current regulations that establish requirements for disclosing information on a customer, for example, when drawing up payment documents by a bank, when establishing business relationship between an insurer and insuree in the insurance contract and insurance policy, when signing a nominal shareholding agreement. Besides that, the Rules for providing information on transactions subject to financial monitoring (RK MoF Order No.59 dated 16.02.2010) establish that, if there are founders of an entity, the reports submitted by the entities subject to financial monitoring to the Financial Monitoring Committee shall contain information on all founders of party to a transaction that hold at least 10% share/interest.</p>

		<p>Therefore, beneficial owners are fully identified for the AML/CFT purposes in Kazakhstan. According to paragraph 5 of clause 3 of Article 5 of the AML/CFT Law the CDD measures undertaken by the entities subject to financial monitoring include ongoing due diligence on business relationships and scrutiny of transactions carried out by customers through a given entity subject to financial monitoring. Furthermore, 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. Payments and money transfers, including occasional transactions, are carried out only upon presentation by a customer of his/her ID documents and in personal presence of such customer or upon presentation of a notarized power of attorney.</p> <p>Therefore, in the course of customer identification, <u>information</u> on a customer previously obtained through the CDD process <u>is verified</u>.</p> <p>The CDD measures are applied to all customers and in all situations irrespective of a category of a customer. Pursuant to paragraph 5 of clause 3 of Article 5 of the AML/CFT Law, the CDD measures undertaken by the entities subject to financial monitoring in respect to their customers include ongoing due diligence on business relationships and scrutiny of transactions carried out by customers through a given entity subject to financial monitoring. Data on the existing customers are updated in the course of CDD provided for by the AML/CFT Law, which includes reconciliation and updating of information on a customer.</p> <p>The AML/CFT Law provides for CDD to be performed by the entities subject to financial monitoring in respect to their customers. The situations when CDD shall be performed are listed in clause 2 of Article 5 of the AML/CFT Law. The Law does not specify in respect to which customers – the existing or new ones – the CDD measures shall be undertaken and, therefore, all customers are subject to CDD.</p> <p><u>Evaluation team's view</u></p> <p>The requirements of the Kazakh law on AML / CFT do not apply to consumer credit cooperatives, pawnshops, micro-credit organizations, leasing companies, insurance agents, institutions accepting cash from customers as payment for the services rendered if such acceptance is carried out by proxy acting for and on behalf of the principal (service provider) under agency contract, including through electronic terminals.</p> <p>There is no express prohibition on the opening of anonymous accounts and accounts in fictitious names.</p> <p>The requirement to implement CDD measures upon execution of occasional transactions in the amount exceeding US\$15,000 or in the case of suspected ML is missing.</p>
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4	R.10 Rating: Record Keeping	<p>R.10 – Current rating is PC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>Pursuant to clause 4 of Article 11 of the AML/CFT Law, the documents confirming the information specified in Article 5 of the AML/CFT Law, as well as copies of the identification documents shall be retained by the entities</p>

		<p>subject to financial monitoring for at least five years.</p> <p>The industry regulations contain requirements for disclosure of bank and other secrets protected by the law at the request of the state authority to which such secrets may be disclosed (paragraph 6 of Article 8 of the RK Law on Operational and Detective Activities; clause 2 of Article 125 of the RK Criminal Procedure Code; regulations of the law enforcement agencies). Besides that, Article 50 of the Law on Banks and Banking Activity in the Republic of Kazakhstan lists the government authorities to which bank secrets may be disclosed. At the same time, paragraph 1 of clause 1 of Article 17 of the AML/CFT Law authorizes the FMC to request necessary information on a transaction subject to financial monitoring from the entities subject to financial monitoring and also from the government agencies of the Republic of Kazakhstan. The procedure of requesting information from the entities subject to financial monitoring is set out in MoF Order No.59 dated 16.02.2010.</p> <p><u>Evaluation team's view</u></p> <p>Requirements of the Kazakh law on AML / CFT do not apply to a number of organizations acting as financial institutions: leasing companies, credit consumer cooperatives, pawnshops, insurance agents, institutions accepting cash from customers as payment for the services rendered if such acceptance is carried out by proxy acting for and on behalf of the principal (service provider) under agency contract, including through electronic terminals (several companies are already carrying out such activities in Kazakhstan), micro-credit organizations.</p> <p>There are no legal requirements concerning the storage of data on transactions with monetary and (or) other assets for a minimum of 5 years.</p> <p>There is no clear legal requirement to store all the identification data obtained as the result of CDD measures.</p> <p>There is no clear legal requirement for the timely provision at the request of the competent authorities of all customer and transaction data</p> <p><u>Delegations' issues:</u></p> <p>According to article 17, para 1, point 1 of the AML/CFT Law the CFM is authorised to request necessary information on transactions that are subject to financial monitoring from the reporting entities. Therefore, there is an explicit statutory requirement to provide the requested information to the FIU. Consider amending this bullet point accordingly.</p>
5	R.13 Rating: Suspicious Transaction Reporting	<p>R.13 – Current rating is NC. Kazakhstan considers that the rating should be LC. One of the delegations considers that the rating should be PC.</p> <p><u>Kazakhstan's view:</u></p> <p>Pursuant to clause 2 of Article 13 of the AML/CFT Law, in order to prevent and deter legalization (laundering) of criminal proceeds and financing of terrorism the entities subject to financial monitoring are obliged to promptly report a suspicious transaction to the designated agency before such transaction is carried out.</p> <p>The entities subject to financial monitoring file STR with the FMC based on the criteria specified in clause 4 of</p>

		<p>Article 4 of the AML/CFT Law. The suspicious transaction indicators, based on which the entities subject to financial monitoring file STR with the FMC, are approved by Order No.59 of the Minister of Finance dated February 16, 2010.</p> <p>Pursuant to clause 2 of Article 13 of the AML/CFT Law, in order to prevent and deter legalization (laundering) of criminal proceeds and financing of terrorism the entities subject to financial monitoring shall promptly report a suspicious transaction to the FMC before such transaction is carried out. If a suspicious transaction cannot be suspended, the entities subject to financial monitoring shall report such transaction to the designated agency not later than three hours after its completion or within twenty four hours following detection of such transaction.</p> <p><u>Evaluation team's view</u></p> <p>There is no direct requirement for submission of STR in case of suspected ML.</p> <p>The deficiencies related to criminalization of ML may affect the STR submission regime.</p> <p><u>Delegations' issues:</u></p> <p>This statement is wrong. The AML/CFT clearly provides for obligation to report STRs and the law doesn't limit this obligation to any list of indicators. If the current list of indicators doesn't contain the transactions related to ML, this doesn't mean that the reporting entities are not obliged to report the STRs. This can certainly negatively affect the reporting obligations, but this should be raised as an efficiency issues and not as a lack of legal obligations to report STRs.</p>
6	SR.IV Rating: Suspicious Transaction Reporting	<p>SR.IV – Current rating is PC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>The entities subject to financial monitoring file STR with the FMC based on the criteria set forth in clause 4 of Article 4 of the AML/CFT Law. The suspicious transaction indicators, based on which the entities subject to financial monitoring file STR with the FMC, are approved by Order No.59 of the Minister of Finance dated February 16, 2010.</p> <p>Pursuant to clause 2 of Article 13 of the AML/CFT Law, in order to prevent and deter legalization (laundering) of criminal proceeds and financing of terrorism the entities subject to financial monitoring are obliged to promptly report a suspicious transaction to the designated agency before such transaction is carried out. If a suspicious transaction cannot be suspended, the entities subject to financial monitoring shall report such transaction to the designated agency not later than three hours after its completion or within twenty four hours following detection of such transaction.</p> <p><u>Evaluation team's view</u></p> <p>The deficiencies related to criminalization of FT may affect the STR submission regime.</p>

		<p>The requirements of the Kazakh law on AML / CFT do not apply to all financial institutions.</p> <p>There is no requirement for submission of STR when attempts are being made to execute transactions connected with FT.</p> <p>Effectiveness of application of the requirements for implementation of SR.IV is low.</p>
KEY RECOMMENDATIONS		
7	R.3 Rating: Confiscation and Provisional Measures	<p>R.3 – Current rating is PC. One of the delegations considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>The ML / FT offence applies to all property constituting proceeds of crime, regardless of whether these proceeds are direct or indirect. The sanction of Article 193 of CC of RK refers to the right of courts to confiscate property, while part 3 – to obligation.</p> <p>This issue is addressed in Art. 158 of the Civil Code, namely, if one of the parties to the transaction has executed it with the intention to evade the performance of an obligation or liability to a third party or government, and the other party to the transaction knew or should have been aware of this intention, the person concerned (the State) may demand invalidation of such transaction.</p> <p>Pursuant to art. 61 of the Correctional Code:</p> <p>Organizations and citizens who find themselves in possession of property subject to forfeiture pursuant to a court ruling are required to notify the court or authorized government agency.</p> <p>Any concealment, defacement or theft of such property is punishable in accordance with the law.</p> <p><u>Evaluation team's view</u></p> <p>No confiscation of indirect revenue (revenue, profit) from the proceeds of crime is provided for.</p> <p>There is no 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>The legislation contains no specific legal requirements intended to protect the rights of innocent third parties in accordance with the Vienna and Palermo Conventions.</p> <p>No comprehensive statistics on confiscated, frozen and seized property were provided.</p> <p><u>Delegations' issues:</u></p> <p>The rating seems a bit high since 3 or the 6 criteria are not met, and also there is an effectiveness concern. PC might be more appropriate.</p>

		<p><u>Delegations' issues:</u></p> <p>Taking into account all the legal deficiencies and lack of statistics (effectiveness) the evaluators should consider lowering the rating.</p> <p>An additional bullet point should be inserted mentioning that Kazakh legislation does not provide for provisional and confiscation measures for property of corresponding value as required under the essential criteria 3.1. This is indicated in para 274, yet it is not reflected in the rating box.</p>
8	SR.III Rating: Freeze and Confiscate Terrorist Assets	<p>SR.III – Current rating is PC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>Institution of criminal proceedings against a person accused of being associated with terrorist activity does not necessarily result in criminal prosecution of such person. Before a court issues the verdict, the guilt of an accused person is not proven, i.e. presumption of innocence, which is the fundamental principle of the national criminal legislation, is applied. Freezing of funds of a person suspected in association with terrorism may be considered as limitation of his/her rights and freedoms, e.g. denying the opportunity to pay a fee to a lawyer for defending his/her interests. Besides that, if the guilt of an accused person is not proven, the question arises of how to compensate losses incurred by such person due to freezing of his/her funds.</p> <p>Article 13 of the AML/CFT Law authorizes the FMC to suspend suspicious transactions and communicate them to the entities subject to financial monitoring and the law enforcement agencies.</p> <p>Pursuant to clause 4 of the Suspicious Transaction Suspension Rules (adopted by Order No.58 of the Ministry of Finance of the Republic of Kazakhstan dated February 16, 2010), 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, 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. Such suspicious transactions shall be reported by the entities subject to financial monitoring to the FMC immediately following their detection.</p> <p>Pursuant to clause 7 of Article 77 of the Criminal Code (Conviction), exculpation or removal of conviction cancels all legal consequences associated with such conviction.</p> <p><u>Evaluation team's view</u></p> <p>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.</p> <p>There are no effective laws or procedures to enable the study and implementation, if applicable, of the measures initiated as part of freezing mechanisms in other jurisdiction.</p>

		<p>The FIU is not authorized to pass on the information on the measures initiated as part of freezing mechanisms.</p> <p>There are no clear guidelines for financial institutions on the measures to be applied upon detection of a transaction connected with individuals listed as terrorists.</p> <p>There are no procedures for de-listing citizens from the list of individuals associated with terrorism and extremism.</p> <p>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.</p> <p><u>Delegations' issues:</u></p> <p>И Based on report's description, it appears that Kazakhstan lacks most of the key elements required under UNSCRs 1267, 1373 and FATF SRIII for an effective sanctions regime. In particular, the criteria for designation is not broad enough, they are not able to freeze assets without delay, they do not notify the financial institutions and other sectors properly, they cannot implement foreign requests to freeze assets, there is no delisting process or authorities, and there is no licensing/exemptions process or authorities. The lack of these key elements of a sanctions regime would seem to make it is questionable whether even a PC is warranted.</p> <p><u>Delegations' issues:</u></p> <p>There are also no procedures in place for unfreezing the funds, as required under Essential Criteria III.8.</p>
9	R.23 Rating: Regulation, Supervision and Monitoring	<p>R.23 – Current rating is NC. Kazakhstan considers that the rating should be PC.</p> <p><u>Kazakhstan's view:</u></p> <p>The government authorities perform AML/CFT supervision and monitoring of the entities subject to financial monitoring in compliance with Article 14 of the AML/CFT Law and Annex to RK Law No.124-III on Private Entrepreneurship dated January 31, 2006.</p> <p>The entities subject to financial monitoring are held liable for actions covered by clause 2 of Article 168-3 of the RK Code on Administrative Offences, i.e. for failure to comply with the internal control rules and its implementation program.</p> <p>The Agency monitors and supervises the broker, dealer and transfer agent operations carried out by the postal service operator. Pursuant to paragraph 1 of clause 3 of Article 4 of the RK Law on Postal Service (hereinafter the Law on Postal Service), financial activities carried out and financial services provided by the postal service operator include, inter alia, the broker, dealer and transfer agent operations performed in a manner established by the designated securities market regulator. According to paragraphs 1, 1-1 and 6 of the Law on Securities Market, the broker, dealer and transfer agent operations are subject to licensing. Pursuant to paragraph 6 of clause 1 of Article 6 of the Law on Postal Service, the operations involving acceptance of deposits and opening and maintaining bank accounts of natural persons are carried out based on the license issued by the Financial Supervision Agency.</p> <p>KazPost has the license to carry out broker and dealer operations in the securities market with the right to maintain customers' accounts as the nominee holder as well as to perform transfer agent operations.</p> <p>The <u>following should be pointed out</u> with regard to the E-Government Payment Gateway System Operator. Pursuant</p>

		<p>to paragraph 5 of Article 9-3 of the RK Law on Information Technologies, the National Bank <u>monitors compliance by the E-Government Payment Gateway System Operator with the payment and remittance legislation of the Republic of Kazakhstan.</u></p> <p>Pursuant to clause 11 of Article 20 of the RK Law on Banks and Banking Activity, a top manager of an institution engaged in certain types of banking operations shall meet the requirements set forth in this Article for the managers of banks' management boards and is appointed (selected) without consent of the designated agency. An institution engaged in certain types of banking operations dismisses, at the request of the designated agency, its top manager from the office, if he/she does not meet the requirements set forth in this Article.</p> <p>KazPost is subject to the requirements of the foreign currency control legislation, inter alia, those related to performance of the foreign currency control agent functions.</p> <p>In particular, its own and customers' payments and money transfers under foreign currency transactions (including export-import transactions) and foreign currency cash exchange transactions shall be carried out by KazPost in strict compliance with the foreign currency control legislation. The National Bank arranges for inspections/audits and monitors consistency of transactions carried out by the postal service operator with the foreign currency control legislation, and where necessary applies enforcement measures and sanctions for violations of this legislation.</p> <p>Credit cooperatives are the entities engaged in certain types of banking operations. Pursuant to paragraph "h" of the RK Law on National Bank, the National Bank determines the procedure, system and forms of effecting payments and remittances in the Republic of Kazakhstan. Besides that, pursuant to Articles 61 – 62-2 of the said Law, the National Bank supervises and monitors issues and aspects, which regulation falls within the scope of its terms of reference. Given that there are no exemptions from applying the RK Law on Payments and Remittances and the respective regulations to the credit cooperatives, therefore, the National Bank performs supervision and monitoring of compliance by the credit cooperatives with the requirements set forth in the payment and remittance legislation of the Republic of Kazakhstan.</p> <p>As for the activities carried out by mutual insurance associations without license, it should be noted that the scope of operations performed by such entities is very narrow and specific, while the amounts of insurance premium collected by them are small and, in general, they pose no systemic risks to the financial system and, therefore, it is deemed inexpedient to make them subject to the AML/CFT requirements.</p> <p><u>Evaluation team's view</u></p> <p>Persons 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; and persons accepting payments from the public are not subject to licensing, monitoring or supervision in respect of AML / CFT.</p> <p>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 refusal or transaction suspension.</p>
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		<p>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.</p> <p>There is no competent authority responsible for overseeing the activities of the Kazpost JSC in the area of financial services provision.</p> <p>No steps were taken by the competent authorities to review the situation with AML / CFT existing within the supervised organizations.</p> <p>A regulatory system in the area of AML / CFT-related supervision and monitoring has not been created for all types of financial institutions yet.</p> <p>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.</p> <p>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</p>
10	R.26 Rating: FIU Independence	<p>R.26 – Current rating is PC.</p> <p><u>Kazakhstan's view:</u></p> <p>The Kazakh law provides for the assignment by the Government of the status of an authorized body in the area of AML / CFT to the Ministry of Finance, and for the delegation, in turn, by the Ministry of Finance of the responsibilities in this area to the Committee of Financial Monitoring (KFM), which is consistent with Recommendation 26 and upholds the status of the Committee as a FIU. It should be noted that all data on transactions possibly related to ML and FT comes to the KFM directly from SFMs, which upholds the central role of the KFM and is in line with Recommendation 26.</p> <p>Pursuant to the Rules and Regulations of the KFM of MF of RK approved by decree of the President of the KFM of MF of RK No. P-24 of February 20, 2009, any decision concerning the transfer by the Committee of any information and (or) materials on money laundering and terrorist (extremist) financing to the law enforcement authorities of RK shall be made collectively by the officials determined by the Chairman. If necessary, a collective decision must be executed in the form of an appropriate protocol.</p> <p>All issues concerning suspension or avoidance of suspension of suspicious transactions in the event of insufficient evidence are addressed in the decree of the Minister of Finance No. 58 of February 16, 2010 "On Approval of the Rules for Suspension of Suspicious Transactions", which stipulates that the said decisions shall be made by the KFM Chairman.</p> <p>All issues relating to the provision by SFMs of data and information on transactions subject to financial monitoring that are governed by the Rules for Provision by SFMs of Data and Information on Transactions Subject to Financial Monitoring approved by decree of the Ministry of Finance No. 59 of February 16, 2010 № 59 also fall within the KFM's scope of competence.</p>

		<p>Also, we would like to point out that Regulations on the KFM, approved by decree of the Minister of Finance of RK, stipulate the objectives and functions of the KFM that uphold the principles of centralized gathering of information from SFMs and operational independence of the KFM as a FIU.</p> <p><u>Evaluation team's view</u></p> <p>The scope of the authority vested in the KFM Chairman raises question about operational independence of the FIU. The published reports on the performance of the KFM do not contain basic statistical indicators or information on the identified, typologies and trends.</p> <p><u>Delegations' issues:</u></p> <p>Suspension of transactions is not regulated under the FATF Recommendations and the fact that this power is given to Vice Minister should not negatively affect the rating under the R 26.</p> <p>The underlying text above only raises the operational independence of FIUs in the context of Ministry of Finance powers (budget, staffing). According to para 305 (last sentence) the CFM is authorized to perform all the FIU core functions, therefore it is difficult to understand where the CFM doesn't meet the requirements under the essential criteria 26.6. See also my comment above.</p> <p>According to Article 13, para 5) of the AML/CFT Law the CFM should submit its report to the law enforcement authorities not later than five hours after receiving information on suspicious transaction. This very short period, which is unique in the FIU world, practically limits the CFM ability to conduct a proper and meaningful analysis. This may negatively affect the FIU effectiveness and could be the reason for a low number of investigations based on CFM data. The MER should explain what is the real effect of this provision on the CFM ability to carry out its analysis and amend the rating box, as necessary.</p>
11	R.35 Rating: Conventions	<p>R.35 – Current rating is PC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>Issues pertaining to implementation of the requirements of the Vienna and Palermo Conventions to criminalize ML are addressed in the comments on Recommendation 1.</p> <p>As for identification of beneficial owners: Pursuant to MoF Order No.59 dated 16.02.2010, when submitting reports on transaction subject to financial monitoring the entities subject to financial monitoring shall indicate information on all founders of a party to a transaction that have at least 10 percent share/interest. Additionally, MoF Order No.56 dated 15.02.2010 establishes the list of documents, including instruments of incorporation, required by the entities subject to financial monitoring for performing CDD in respect to RK resident and non-resident legal entities and their stand-alone units (branches and representative offices). Besides that, pursuant to clause 6 of MoJ Order No.112 dated 12.04.2007 on Approval of Instruction on State Registration of Legal Entities and Record Registration of Branches and Representative Offices, in order to register a legal entity, copies of ID documents of <u>the top manager and the</u></p>

		<p><u>founders of a legal entity</u> as well as copies of their taxpayer certificates shall also be submitted to the registration agency (MoJ). The MoJ database is integrated with the FMC Unified Information and Analytical System. The issues pertaining to record keeping and suspicious transaction reporting are addressed in comments on R.10, R.13 and SR.IV.</p> <p>Article 233-3 of the Criminal Code provides for criminal penalty for financing of extremism and terrorist activity. The provisions of this Article cover both financing of terrorist activity and financing of a terrorist organization/terrorist even if the received funds are not used for carrying out terrorist activity. In this context the subjective element is important, i.e. a person understands that he/she provides funds to a terrorist organization/ terrorist.</p> <p><u>Evaluation team's view</u></p> <p>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.</p> <p>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.</p> <p>There are deficiencies in regard to compliance</p> <p><u>Delegations' issues:</u></p> <p>The Vienna Convention doesn't have any requirements regarding the identification of beneficial owners, storage of data and reporting of suspicious transactions. This is only required under article 7 of the Palermo Convention. The UN Convention for the suppression of FT doesn't require criminalization of providing funds to terrorists/terrorist organizations that are not related to a specific terrorist act (see article 2). This is only required under the FATF SR II.</p>
12	R.36 Rating: Mutual Legal Assistance	<p>R.36 – Current rating is PC. One of the delegations considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>As of December 31, 2010 the KFM of MF of RK:</p> <p>Sent enquiries – 146 Received replies – 89 Receives enquiries – 9 Sent replied – 8 (1 enquiry is being processed).</p> <p>Kazakhstan has already concluded the Agreement for Cooperation and Information Exchange with the FIU of Ukraine, with Agreements and Memoranda of Understanding with Moldova, Russia, UAE and China in the final stages of approval. The work on approval of draft Agreements with Kyrgyzstan, Turkmenistan and Turkey has begun.</p>

		<p>It should be noted that there are a number of countries that share information with the KFM of MF of RK on the basis of reciprocity, i.e., Bulgaria, Czech Republic, British Virgin Islands, Cyprus, Lithuania, United Kingdom, Belize, etc.</p> <p>Also, there are countries that turn down Kazakhstan's requests, citing the absence of Kazakhstan among the members of the Egmont Group as the reason for denial, which explains the reason for a relatively low rate of replies to inquiries made by the country. However, Kazakhstan's AML / CFT system has undergone all the necessary legal and operational verification, and the country expects to be offered an Egmont Group membership at the Plenary meeting to be held in July 2011.</p> <p><u>Evaluation team's view</u></p> <p>Deficiencies in the criminalization of ML may affect the provision of MLA in the area of freezing, seizure and confiscation of proceeds derived from ML.</p> <p>Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused.</p> <p><u>Delegations' issues:</u></p> <p>The analysis above shows that out of 7 essential criteria under the Recommendation 36 only two are not fully met. The main requirements contained in essential criteria 36.1 to 36.6 are fully met. Therefore the rating PC is not accurate and should be upgraded in LC.</p>
13	R.40 Rating: Other Forms of Co-operation	<p>R.40 – Current rating is PC. One of the delegations considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>As of December 31, 2010 the KFM of MF of RK:</p> <p>Sent enquiries – 146</p> <p>Received replies – 89</p> <p>Receives enquiries – 9</p> <p>Sent replied – 8 (1 enquiry is being processed).</p> <p>Kazakhstan has already concluded the Agreement for Cooperation and Information Exchange with the FIU of Ukraine, with Agreements and Memoranda of Understanding with Moldova, Russia, UAE and China in the final stages of approval. The work on approval of draft Agreements with Kyrgyzstan, Turkmenistan and Turkey has begun.</p> <p>It should be noted that there are a number of countries that share information with the KFM of MF of RK on the basis of reciprocity, i.e., Bulgaria, Czech Republic, British Virgin Islands, Cyprus, Lithuania, United Kingdom, Belize, etc.</p> <p>Also, there are countries that turn down Kazakhstan's requests, citing the absence of Kazakhstan among the members</p>

		<p>of the Egmont Group as the reason for denial, which explains the reason for a relatively low rate of replies to inquiries made by the country. However, Kazakhstan's AML / CFT system has undergone all the necessary legal and operational verification, and the country expects to be offered an Egmont Group membership at the Plenary meeting to be held in July 2011.</p> <p><u>Evaluation team's view</u></p> <p>Low level of international co-operation in the oversight area.</p> <p>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 the requests of foreign partners may depend on unduly restrictive conditions.</p> <p><u>Delegations' issues:</u></p> <p>The analysis above does not provide for any information indicating that there is a "low level of cooperation in the oversight area". On the contrary, the MER indicates that there are several agreements signed with the foreign supervisory counterparts. This sentence should be therefore amended and explain as to whether the evaluators received any data on exchange information between the competent supervisory authorities.(effectiveness issue). Besides the potential legal deficiencies identified with regard to the FIU powers to exchange information (which so far did not negatively impact the FIU exchange of information), the MER doesn't provide any information regarding the implementation of essential criteria 40.5, 40.6, 40.7, 40.8, and 40.9. If there were no deficiencies identified with respect to these criteria, the evaluators may wish to consider upgrading the rating to LC.</p>
14	SR.I: Implement UN Instruments	<p>SR.I – Current rating is PC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>Institution of criminal proceedings against a person accused of being associated with terrorist activity does not necessarily result in criminal prosecution of such person. Before a court issues the verdict, the guilt of an accused person is not proven, i.e. presumption of innocence, which is the fundamental principle of the national criminal legislation, is applied. Freezing of funds of a person suspected in association with terrorism may be considered as limitation of his/her rights and freedoms, e.g. denying the opportunity to pay a fee to a lawyer for defending his/her interests. Besides that, if the guilt of an accused person is not proven, the question arises of how to compensate losses incurred by such person due to freezing of his/her funds.</p> <p>Pursuant to clause 7 of Article 77 of the Criminal Code (Conviction), exculpation or removal of conviction cancels all legal consequences associated with a conviction.</p> <p>Pursuant to Article 161 of the Criminal Procedure Code (Seizure of Property), 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,</p>

		<p>with the prosecutor's approval, or 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 in 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 (Search and Seizure Procedure) property may be seized without prosecutor's approval, but the prosecutor shall be informed thereof within twenty four hours following such seizure. It should also be noted that <u>property of vital need listed in the RK Penal Execution Code is not subject to seizure.</u></p> <p><u>Evaluation team's view</u></p> <p>There are deficiencies in compliance with the requirements of art. 18 of the Convention on FT.</p> <p>A series of legal mechanisms required by UN SC Resolutions No. 1267 and 1373 are missing.</p> <p>There are no procedures for de-listing citizens from the list of individuals associated with terrorism and extremism.</p> <p>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.</p>
ИНЫЕ РЕКОМЕНДАЦИИ		
15	R.8 Rating: New Technologies and Non Face-to-Face Business	<p>R.8 – Current rating is NC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>Resolution No.18 of the Board of the National Bank of the Republic of Kazakhstan dated March 28, 2008 approved the Rules of provision of electronic banking services by the second-tier banks and institutions engaged in certain types of banking operations. Resolution No.146 of the Board of the National Bank of the Republic of Kazakhstan dated April 21, 2000 approved the Rules for exchanging electronic documents in course of payments and remittances in the Republic of Kazakhstan, which 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. The said Rules also establish requirements for banks to comply with certain <u>security procedures when carrying out non face-to-face transactions.</u> These Rules establish general requirements <u>for the application security procedures when carrying out all transactions, inter alia, for preventing misuse of technological developments for ML/FT purpose.</u></p>

		<p><u>Evaluation team's view</u></p> <p>The responsibility of financial institutions to develop and apply special procedures intended to prevent the use of technological breakthroughs for the purposes of AML / CFT is absent.</p> <p>There is no requirement for financial institutions to develop procedures intended to mitigate risks connected with the establishment of relations and execution of transactions via remote access</p>
16	R.11 Rating: Unusual Transactions	<p>R.11 – Current rating is NC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u></p> <p>The AML/CFT Law obliges the entities subject to financial monitoring to provide information on transactions subject to financial monitoring that: 1) are equal to or exceed the designated amount (threshold amount); 2) have suspicion indicators. One of the criteria of suspicious transactions is “transactions that have no visible economic or lawful purpose”. Pursuant to Order No.59 of the Minister of Finance dated February 16, 2010, one of the suspicion indicators is “abnormal or unusual complex payment instructions inconsistent with the prevailing business practice”. The AML/CFT Law obliges the entities subject to financial monitoring to provide information on suspicious transactions. One of the criteria of suspicious transactions is “transactions that have no visible economic or lawful purpose”. Pursuant to Order No.59 of the Minister of Finance dated February 16, 2010, one of the suspicion indicators is “abnormal or unusual complex payment instructions inconsistent with the prevailing business practice”. Therefore, the entities subject to financial monitoring pay attention to all complex and unusual large transaction and, where there are suspicions, report them to the FMC.</p> <p>Pursuant to clause 4 of Article 11 of the AML/CFT Law, the documents confirming the information specified in Article 5 of the AML/CFT Law, as well as copies of the identification documents, <u>including those related to unusual large transactions</u>, shall be retained by the entities subject to financial monitoring for at least five years.</p> <p><u>Evaluation team's view</u></p> <p>There is no explicit requirement for financial institutions to pay special attention to all complex and unusually large transactions.</p> <p>There is no requirement to study all complex and unusually large transactions and record the results of the study in writing.</p> <p>There is no requirement to store the results of the study and analysis of complex and unusually large transactions conducted by financial institutions for a period of 5 years.</p>
17	R.22 Rating: Foreign	<p>R.22 – Current rating is NC. Kazakhstan considers that the rating should be PC.</p>

	Branches and Subsidiaries	<p><u>Kazakhstan's view:</u> Pursuant to Instruction 359, the internal audit unit is part of ongoing monitoring of the internal control system and ensures independent assessment of adequacy of the established rules and procedures and compliance with them. The internal audit 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. The internal audit unit audits bank's departments including operations carried out by branches and subsidiaries as well as the activities performed with the assistance of external contractors. Pursuant to the legislation, permission to open subsidiaries is granted under the consolidated supervision regime (i.e. the AML/CFT compliance requirements extend not just to banks but to their subsidiaries as well) and subject to availability of signed agreement with the supervisory authority of the parent company's home country. It is prohibited for non-resident financial institutions to open branches at the territory of the Republic of Kazakhstan.</p> <p>Pursuant to Instruction No.359, the Regulation on Compliance Unit, among other things, provides for: Accountability of compliance controller to the Board of Directors of a bank; Accountability of compliance personnel to compliance controller in so far as it relates to compliance risk management; Duties and powers of compliance controller and compliance personnel; Independence of compliance controller and compliance personnel in so far as it relates to performance of the compliance risk management functions assigned to them; Coordination and interaction of compliance unit with other departments of a bank and with internal audit unit; Authority to conduct inspections/ audits and detect possible violations of the compliance risk management policies as well as to enlist internal and external experts for performing this function; Authority to freely present and disclose inspection/audit results to the management board and, where necessary, to the board of directors of a bank.</p> <p><u>Evaluation team's view</u> The AML / CFT requirements in respect of branches and subsidiaries are not defined in the Kazakh law. There is no obligation to inform the AFS / NB of the impossibility to comply with the relevant AML / CFT requirements in the host country</p>
18	R.25 Rating: Guidelines and Feedback	<p>R.25 – Current rating is NC. Kazakhstan considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u> The requirements in the area of AML / CFT for the subjects of financial monitoring are addressed by the authorized body in the following regulatory legal acts of RK:</p>

		<p>Decree of the Minister of Finance No. 57 of February 15, 2010 "On the Approval of the Requirements for the Development, Adoption and Execution by the Subjects of Financial Monitoring of the Internal Control Rules."</p> <p>Decree of the Minister of Finance No. 59 of February 16, 2010 "On the Approval of the Rules for the Provision by the Subjects of Financial Monitoring of Data and Information on Transactions Subject to Financial Monitoring."</p> <p>Decree of the Minister of Finance No. 58 of February 16, 2010 "On Approval of the Rules for the Suspension of Suspicious Transactions."</p> <p>Decree of the Minister of Finance No. 52 of February 10, 2010 "On the Approval of the List of Offshore Zones for Purposes of the Law of the Republic of Kazakhstan 'On Combating Money Laundering and Terrorist Financing.'"</p> <p><u>Evaluation team's view</u></p> <p>No guidelines for the private sector were developed by the supervisory agencies. No guidelines or recommendations describing ML / FT methods and techniques have been issued.</p> <p><u>Delegations' issues:</u></p> <p>According to the Essential Criteria 25.1 the guidelines should be established by "competent authorities" and not necessary by the supervisory authorities.</p>
19	R.29 Rating: Supervisors	<p>R.29 – Current rating is NC. Kazakhstan considers that the rating should be PC.</p> <p><u>Kazakhstan's view:</u></p> <p>Pursuant to paragraph 3 of clause 1 of Article 636 of the Code on Administrative Offences, the designated officers of the National Bank of the Republic of Kazakhstan are empowered to compile administrative offence reports on administrative offence cases handled by courts (Articles <u>158</u>, <u>168-3 (Parts 1-4)</u> (with regard to offences committed by holders of licenses issued by the National Bank of the Republic of Kazakhstan), <u>179</u>, <u>179-1</u>, <u>183</u>, <u>188</u> (Part 2), <u>357-1</u>, <u>357-5</u>).</p> <p>The designated officers of the National Bank are obliged to draw up administrative offence reports with regard to the detected violations of the AML/CFT legislation.</p> <p>Imposition of sanctions by a court for infringement of the AML/CFT legislation does not pose a risk of evading administrative liability by an offender.</p> <p>Powers vested in the National Bank to review and handle administrative offences are listed in Article 572 of the Code on Administrative Offences.</p> <p>Pursuant to paragraph 9 of clause 1 of Article 9 of the RK Law on State Regulation and Supervision of Financial Market and Financial Institutions", the FSA 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.</p> <p>The procedure of applying restricted enforcement measures is provided for in:</p>

		<p>The Rules for applying restricted enforcement measures against the second-tier banks, institutions engaged in certain types of banking operations, large members of a bank, bank holding companies and their affiliates, legal entities incorporated in a banking conglomerate, and for applying enforcement measures against persons qualified as large members or bank holding companies, large members of a bank, bank holding companies and legal entities incorporated in a banking conglomerate approved by Resolution No.42 of the Board of the RK Agency for Regulation and Supervision of Financial Market and Financial Institutions dated February 25, 2006;</p> <p>The Rules for applying restricted enforcement measures against pension savings funds and large members of pension savings funds approved by Resolution No.67 of the Board of the RK Agency for Regulation and Supervision of Financial Market and Financial Institutions dated March 30, 2007;</p> <p>The Rules for applying restricted enforcement measures against securities market participants approved by Resolution No.68 of the Board of the RK Agency for Regulation and Supervision of Financial Market and Financial Institutions dated March 30, 2007.</p> <p>The Agency monitors and supervises the broker, dealer and transfer agent operations carried out by the postal service operator. Pursuant to paragraph 1 of clause 3 of Article 4 of the RK Law on Postal Service (hereinafter the Law on Postal Service), financial activities carried out and financial services provided by the postal service operator include, inter alia, the broker, dealer and transfer agent operations performed in a manner established by the designated securities market regulator. According to paragraphs 1, 1-1 and 6 of the Law on Securities Market, the broker, dealer and transfer agent operations are subject to licensing. KazPost has the license to carry out broker and dealer operations in the securities market with the right to maintain customers' accounts as the nominee holder as well as to perform transfer agent operations.</p> <p><u>Evaluation team's view</u></p> <p>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.</p> <p>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.</p> <p>The supervisory agencies cannot independently review and apply compulsory measures or sanctions under art. 168-3 of the Code "On Administrative Offences".</p> <p>The Ministry of Communications has no authority to monitor compliance by the postal service operator with the law on AML / CFT.</p> <p>The competent authorities (AFS, NB) did not request data on implementation of national legislation in the area of AML / CFT from the supervised agencies. The competent authorities did not take any steps to review the measures undertaken by financial institutions for enforcement of the national law in the area of AML / CFT.</p> <p>There is no practice of auditing financial institutions in the area of AML / CFT.</p>
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		The supervisory bodies are not able to directly impose penalties against accountable financial
20	SR.V Rating: AML/CFT Requirements for Money/ Value Transfer Services	<p>SR.V – Current rating is PC. One of the delegations considers that the rating should be LC.</p> <p><u>Kazakhstan's view:</u> A mechanism for determining the best location (jurisdiction) for the prosecution of the accused is specified in bilateral agreements concluded by the Republic of Kazakhstan, which, pursuant to Part 3 of Article 4 of the Constitution of the Republic of Kazakhstan, have priority over its laws. Kazakhstan is a party to 23 international agreements concerning provision of legal assistance in criminal matters and extradition of convicted prisoners concluded on a bilateral basis and within the framework of the CIS. The procedure for the submission of criminal case materials for the continuation of the prosecution and the procedure for the fulfillment by Kazakhstan of requests from competent agencies of foreign countries for continuation of the prosecution or for initiation of criminal proceedings are governed by Art. 527, 528 of the Code of Criminal Procedure of the Republic of Kazakhstan.</p> <p><u>Evaluation team's view</u> Regulations do not contain mechanisms for determining the best location (jurisdiction) where to prosecute the accused. A clear mechanism for coordinating actions taken jointly with a foreign state in the area of seizure and confiscation of property is missing. No extradition is possible without dual criminality. In this respect, the deficiencies in the criminalization may adversely affect the execution of requests. The possibility of establishing a confiscated property fund 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> <p><u>Delegations' issues:</u> This is only an additional criteria under SR V and should not affect the rating. Consider deleting this bullet point and upgrade the rating.</p>
21	SR VI Rating: AML/CFT Requirements for Money/ Value Transfer Services	<p>SR.VI – Current rating is NC. Kazakhstan considers that the rating should be PC.</p> <p><u>Kazakhstan's view:</u> All payments and money transfers carried out by the Kazpost JSC and made as part of its own or clients' foreign currency transactions (including export-import), as well as exchange operations involving foreign currency in cash</p>

		<p>must be executed in strict compliance 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.</p> <p>Credit Unions</p> <p>Credit unions are organizations that provide certain types of banking operations. Pursuant to paragraph h) of Article 8 of the Law of the Republic of Kazakhstan "On National Bank", the National Bank has the right to determine the procedure, system and form of execution of payments and money transfers in the Republic of Kazakhstan. Also, pursuant to Articles 61 - 62-2 of the above Law, the National Bank fulfills the supervisory and control functions over matters which fall within its competence.</p> <p>Concerning organizations accepting payments from the public.</p> <p>Pursuant to sub. par. 5) of Article 9.3 of the Law of the Republic of Kazakhstan "On Informatization", the National Bank shall monitor compliance by the e-government payment gateway operator with the law of the Republic of Kazakhstan on payments and remittances.</p> <p>Also, the activity of the of the e-government payment gateway operator is associated with the provision of technical support for execution of payments. Thus, when a resident of Kazakhstan wishes to pay for a certain type of public service, he uses a network (PO) of the payment gateway operator, who processes the money transfer. However, all money transfers (write-off and bank account deposits) are executed through banks, which are the subjects of financial monitoring and, therefore, subject to licensing.</p> <p>Western Union, MoneyGram, etc. Banks and Kazpost JSC offer money remittance services on the basis of agreements concluded with international money transfer systems.</p> <p>Pursuant to Article 30 of the Law of the Republic of Kazakhstan "On Banks and Banking", international money remittances (Western Union, MoneyGram, etc.) are classified as a banking activity (remittance transactions) and, consequently, the execution of all international money remittance transactions by financial institutions in the Republic of Kazakhstan must be performed under a license authorizing execution of remittance transactions or in accordance with the laws of the Republic of Kazakhstan</p> <p>Pursuant to Par. 2 of Article 1 of the Law of the Republic of Kazakhstan "On Payments and Remittances", the requirements of this Law on Payments and the relevant regulations adopted in the framework of this law, including the requirements of Regulations No. 179 and 395, apply to cross-border payments with regard to activities occurring on the territory of the Republic of Kazakhstan</p> <p><u>Evaluation team's view</u></p> <p>Some MAT service operators are not licensed.</p> <p>The requirements do not apply to some MAT service operators.</p>
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22	SR.VIII Rating: Non-Profit Organizations	<p>SR.VIII – – Current rating is NC. Kazakhstan considers that the rating should be PC.</p> <p><u>Kazakhstan's view:</u> Pursuant to Article 3 of the RK Law on Non-Profit Organizations, a non-profit organization is a legal entity whose main goal is not deriving a profit and which does not distribute the net income among its members. Under the AML/CFT Law all transactions with funds and (or) other property carried out by legal entities, including those conducted by non-profit organizations, are subject to financial monitoring. Besides that, according to clause 4 of Article 35 of the RK Law on Non-Profit Organizations contributions of founders to the property of a non-profit organization made in kind and other forms, except for cash contributions, are evaluated in money terms as agreed by all founders. If the value of such contribution exceeds the equivalent of twenty thousand monthly calculated indices, its evaluation shall be confirmed by an audit institution. Article 41 of the RK Law on Non-Profit Organizations provides for monitoring of activities of non-profit organizations by the respective designated authorities.</p> <p><u>Evaluation team's view</u> No reviews of the NPO legislation for the AML / CFT purposes were carried out. No regular review of the NPO sector to identify FT risks were conducted; nor were any information-sharing sessions dedicated to the issue of AML / CFT organized. 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</p>
23	SR.IX Rating: Cross Border	<p>SR.IX – Current rating is PC.</p>

	Declaration and Disclosure	<p><u>Kazakhstan's view:</u> In July 1, 2010, Kazakhstan enacted a new Code of the Republic of Kazakhstan "On Customs Affairs in the Republic of Kazakhstan", which governs the relations between the customs authorities and the KFM in the area of combating ML and FT. The Agreement on the Procedure for Movement by Individuals of Cash and (or) Monetary Instruments across the Customs Border of the Customs Union dated July 5, 2010 was ratified by the Law of RK No. 389-IV of January 17, 2011. Pursuant to Par. 2 of Article 16 of the Code of the Republic of Kazakhstan "On Customs Affairs", the customs authorities shall transfer the submitted to them information in the manner and in compliance with the requirements established by the laws of the Republic of Kazakhstan on protection of the public, trade, banking, tax or other legally protected secrets and other confidential information, as well as international treaties concluded by the Republic of Kazakhstan, to the relevant government agencies if the said agencies require such information to perform the tasks assigned to them by law.</p> <p><u>Evaluation team's view</u> The Customs system as a whole is not used for AML/CFT-related purposes. Customs authorities do not have powers to freeze and seize the funds suspected of being connected with ML / FT. The absence of information on the structure of customs authorities makes it impossible to assess their performance effectiveness.</p> <p><u>Delegations' issues:</u> In the draft MER there is no mentioning of the obligations related to domestic coordination, as required under the essential criteria IX6. Furthermore, the analysis above shows that there is no cooperation /assistance among customs, immigration and other authorities at the international level (Essential criteria IX7), yet this is not reflected in the rating box as a deficiency. There is no reference in the draft MER nor in the rating box to the Essential Criteria IX.10, IX.11, IX 12 and IX 13.</p>
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