

MUTUAL EVALUATION OF KYRGYZSTAN

- I. Order of the discussion of the Mutual Evaluation Report of Kyrgyzstan at the EAG Plenary meeting
- II. Issues for discussion at the WGEL

I. Order of the discussion of the Mutual Evaluation Report of Kyrgyzstan at the EAG Plenary meeting:

(the order is set by the EAG Mutual Evaluation Procedures, p. 30-34, EAG-II/PLEN/34, new ref. number EAG/PLEN(2007)4)

The Plenary meeting will discuss 5-8 issues, which have been forwarded from the WGEL. The discussion of the MER at the Plenary meeting is chaired by the EAG Chairman and the Executive Secretary. The Plenary meeting has the right to make any changes to the text of the MER. The Plenary meeting must make the relevant decisions on the 5-8 issues referred by the WGEL. The Plenary meeting must decide on the ratings for the Recommendations accordingly.

1. Introduction:

- The EAG Chairman opens the discussion on the Mutual Evaluation Report.
- Introduction by the Head of the assessment team and the assessors.
- Introduction by the Head of delegation of Kyrgyzstan.

2. Procedure for discussion at the Plenary meeting:

- The EAG Secretariat briefly presents the issue.
- The representatives of Kyrgyzstan present their view.
- The assessment team presents its view.
- Interventions by the representatives of EAG member-states and observers, including on the issue of upgrading/downgrading the rating or leaving the current rating.
- If necessary, further interventions by Kyrgyzstan and the assessment team for clarifications;
- The Chairman makes the final decision, including on the issue of ratings.
- *After all of the issues that were referred by the WGEL have been discussed the delegations of member-states and observers may raise any other issues*

3. Conclusion

- After the discussion on all issues and ratings has been concluded the EAG Chairman asks Kyrgyzstan if it agrees to adopt the Mutual Evaluation Report and its Executive Summary.
- Response of Kyrgyzstan.
- The EAG Chairman sets the timeframe for Kyrgyzstan to report back to the Plenary on the progress of implementing the recommendations of the assessment (1 year).

II. Issues for discussion at the WGEL

The main issues for discussion at the EAG Plenary meeting are highlighted below. These are the issues of disagreement between the evaluation team and Kyrgyzstan, remaining after the WGEL meeting which was held on June 13, 2006 in Moscow.

No.	Key issues	Comments
1	Ratings of R. 5, 10, 13, 15, as well as 12 and 16: binding nature of FIS regulations	<p><i>Issue relates to the ratings of several Recommendations</i></p> <p><u>Kyrgyzstan view:</u></p> <ul style="list-style-type: none"> • The FIS has the right to issue normative statutory acts, which would be binding for all reporting entities. According to p. 11 of the Regulation No. 655 “On the Financial Intelligence Service of the Kyrgyz Republic” (see Annex 3 to the Report): “The Chairman ... - issues Resolutions on matters relating to the authority of the Service... - approves the provisions for the Sections of the Service and other normative acts, relating to the authority of the Service... - Issues Orders and Resolutions, which are mandatory for all of the staff of the Service”. • The Acts of the FIS are not registered in the Ministry of Justice (MOJ) because the FIS belongs to the category of “other agencies of the Executive”. The MOJ has sent an explanatory letter to the FIS on this issue. The FMSRS, which also belongs to “other agencies of the Executive” also does not have to register its acts in the MOJ, and at the same time they are mandatory for all supervised entities. • The representative of the Ministry of Justice, who was present at the face-to-face meeting of the assessors with Kyrgyzstan confirmed the mandatory nature of the Acts of the FIS for all financial institutions. • The Resolution No. 15/P “On the system of internal control...” should be regarded as mandatory for all financial institutions. The ratings for the Recommendations, which are connected to this Resolution (R.5, 10, 13, 15, and 12, 16) should be upgraded accordingly. <p><u>Evaluation team view:</u></p> <ul style="list-style-type: none"> • The FIS does not have the authority to issue normative statutory acts, which would be mandatory for financial institutions (see p. 11 and 12 of the Report). According to p.11 of the Regulation No. 655 the acts of the FIS are mandatory only for the staff of the FIS (see Annex 3 to the Report). In addition: “The Chairman... introduces proposals to draft normative-statutory acts to the President and the Executive Government on issues related to the authority of the Service”. According to p.8 of the Regulation No. 655 “The Service... participates in the drafting of normative statutory acts”. • For comparison purposes: the Regulation “On the Financial Police Service”, states that the FPS “Issues Orders and Instructions within its authority, which are mandatory for the Financial Police authorities of Kyrgyzstan”. The representatives of the Financial Police confirmed that the FPS has the right to issue Acts, which are binding only for

		<p>the authorities of the Financial Police, and they are not binding for other authorities, organizations and persons. The wording of the FIS and FPS Regulations is practically identical on this matter.</p> <ul style="list-style-type: none"> • Many government bodies of Kyrgyzstan have the power to issue normative statutory acts, which are binding for other authorities, as well as all natural and legal persons of Kyrgyzstan. This has to be explicitly mentioned in the regulation of this agency, for example the Regulation on the Ministry of Interior (p.10) notes that “The Minister of Interior – according to the established procedures and within the authority, which he has been granted, issues normative statutory acts, standards and norms and rules, which are binding for the government bodies of Kyrgyzstan, local authorities, businesses, establishments, organizations regardless of their form, associations, officials and citizens, these acts are issued according to the legislation of Kyrgyzstan within the defined authority for the Ministry. A similar norm is contained in the Regulation on the Ministry of Foreign Affairs. • A representative of the Ministry of Justice confirmed during the on-site mission, that the acts of the FIS are not mandatory for financial institutions. In addition, the assessment team is of the view that the Ministry of Justice does not have the right to interpret existing legislation. • The FMSRS, which does not register its normative statutory acts in the MOJ, has a specific right to issue such acts according to its Regulation. • The explanatory letter, which was sent by the MOJ to the FIS points to the fact that the FIS “has the right to issue normative acts falling within the authority of the Service”. The authority of the FIS in issuing normative acts is currently not defined, therefore – until it is defined the Acts of the FIS do not have a mandatory nature. The AML/CFT Law notes, that the FIS sets the Reporting Form, the list of suspicious transaction criteria, and together with supervisory bodies issues 2 lists of non-cooperative states and territories. If these acts are to be considered the sphere of authority of the FIS to issue normative statutory acts, then this authority in any event does not include issuing internal control requirements for financial institutions. Moreover according to the AML/CFT Law (p.8, Article 3) this function belongs to the authority of supervisory bodies. Because of this legal collisions have already arisen between the Internal control regulations of the National Bank and the FIS Resolution No. 15/P. Therefore, even if it is recognized, that the FIS can issue binding documents, the Resolution No. 15/P will not be such a document.
	<p>Rating of R.5: verification, beneficiaries and priority of banking sector</p>	<p><i>R.5 – current rating- NC. Kyrgyzstan considers that the rating should be PC.</i></p> <p><u>Kyrgyzstan view:</u></p> <ul style="list-style-type: none"> • The requirement for verification is in p.1 Article 3 of the AML/CFT Law, which requires the financial institution to “establish the identity of the natural person” and “to establish the legal status of the legal person”. • The requirement to identify beneficiaries is contained in p.1 Article 3 of the AML/CFT Law, which requires financial institutions to receive among other things “... the information on the organizational and legal structure of the client, its management ... and other data related to the statutory documents”. • The legislation provides for the transparency of affiliate persons of joint stock companies. • The size of the banking sector significantly outweighs the size of other financial sectors (insurance, securities,

2		<p>currency exchange). In relation to the banking sector practically all of the requirements are met.</p> <ul style="list-style-type: none"> • FIS Resolution No. 15/P, which contains the requirements of Recommendation 5 is mandatory for financial institutions (<i>this issue will be discussed separately – see issue No.3 – discussion on the binding nature of this Resolution</i>). • <i>Consistency with other reports</i>: the Iceland rating (FATF MER) – is PC. In Iceland the only requirement, which has been totally implemented in customer identification (criterion 5.2) <p><u>Evaluation team view</u>: rating of NC is justified</p> <ul style="list-style-type: none"> • The verification requirements must specifically contain the procedure for checking the submitted documentation using “reliable independent source documents, data and information” (criterion 5.3). • The requirements for identifying the beneficiary are only partially used for the operations, which are subject to mandatory reporting (para. 251). Recommendation 5 requires FIs not only to examine the statutory documents and the structure of the client, but to determine the natural person, who ultimately owns or controls the legal person. • Even when the client of an FI is a joint stock company there is no requirement to establish its affiliate persons. • Large number of other deficiencies in relation to R.5. Low efficiency of measures. • Resolution No. 15/P is not mandatory for financial institutions (<i>this issue will be discussed separately – see issue No.3 – discussion on the binding nature of this Resolution</i>).
3	Rating for R.10: record keeping by financial institutions (except for banks)	<p><i>R.10 – current rating- PC. Kyrgyzstan considers that the rating should be LC.</i></p> <p><u>Kyrgyzstan view</u>:</p> <ul style="list-style-type: none"> • P.313: detailed record-keeping requirements in Kyrgyzstan are set <u>not only</u> for the banking sector. Joint stock companies must implement the requirements of the Resolution of the State Securities Commission (SSC) dated March 25, 2004 No. 29 on the record-keeping procedure and period for joint stock companies. According to the Standards of internal registration of securities operations approved by the SSC on October 15, 2002 No. 74 the primary documentation and internal registers must be maintained throughout the period specified by the State Archive Rules, but no less than 5 years. • Article 23 of the Tax Code also requires the maintenance of all accounting records. • The State Archive Rules also set the record-keeping requirements for various forms of documentation. • FIS Resolution No. 15/P, which contains record-keeping requirements is mandatory for financial institutions <p><u>Evaluation team view</u>: rating of PC is justified</p> <ul style="list-style-type: none"> • P. 313: detailed record-keeping requirements in Kyrgyzstan are set <u>only</u> for the banking sector. For other sectors

		<p>there are no requirements on the types of transactions and identification data, which is to be maintained (see examples in criterion 10.1.1)</p> <ul style="list-style-type: none"> • The requirements of the Tax Code relate solely to taxation records, and do not include information relevant for AML/CFT purposes. • The record-keeping requirements for joint stock companies do not cover all of the forms that financial institutions may take. • The State Archive Rules do not contain the minimal requirements to the information on the transactions, which is to be maintained. They place only general requirements on maintaining transaction data. They do not contain the criteria for identification data, which is to be maintained. • FIS Resolution No. 15/P, which contains record-keeping requirements is not mandatory for financial institutions.
4	R.15: internal control	<p><i>R.15 – Current rating is PC. Kyrgyzstan considers that the rating should be LC</i></p> <p><u>Kyrgyzstan view:</u></p> <ul style="list-style-type: none"> • See item 3 of the given table about the authority of the FIS to issue Resolution № 15/P «On system of internal control»; • Internal control requirements for are implemented almost entirely in relation to banks • <i>Consistency with other reports:</i> the rating of the USA (FATF MER) is LC: the internal control requirements are lacking for certain non-federally regulated banks, investment and commodity trading advisers; it is impossible to assess the efficiency of measures concerning the insurance sector; there is no requirement to carry out screening procedures when hiring employees. • <i>Consistency with other reports:</i> the rating of Iceland (FATF MER) is PC: Iceland also has only a general requirement for the organization of internal control (however there are some specific requirements - including appointing a compliance officer and AML/CFT training). • <i>Consistency with other reports:</i> the rating of Sweden (FATF MER) is LC: some requirements for internal control (access of compliance officer to the information and independent audit function) do not exist for the MVT sector, currency exchange, depositary companies, there are also no requirements on screening procedures for employees) <p><u>Evaluation team view:</u> the rating is justified</p> <ul style="list-style-type: none"> • See item 3 of the given table about the authority of the FIS to issue Resolution № 15/P «On system of internal control»; • There are too many sectors not covered by the requirements of internal control. • <i>Consistency with other reports:</i> the rating of Switzerland (FATF MER) is LC: no internal control requirements for the insurance sector only (there are also no requirements on screening procedures for employees);

5	P.17: sanctions for financial institutions	<p><i>R.17 – Current rating is NC. Kyrgyzstan considers that the rating should be PC</i></p> <p><u>Kyrgyzstan view:</u></p> <ul style="list-style-type: none"> • A system of sanctions exists in relation to the banking sector, which is dominant in Kyrgyzstan. • Sanctions can be applied by the FMSRS for the breach of the AML/CFT law on the basis of a general authority to apply sanctions for the breach of legislation of Kyrgyzstan. • <i>Consistency with other reports:</i> the rating of Ireland (FATF MER) is PC. The basis for the rating: there are administrative sanctions, but it is not specified if they can be applied for the breach of AML/CFT legislation (other factors underlying the rating are inefficiency of sanctions, absence of proportionate sanctions). • <i>Consistency with other reports:</i> the rating of the USA (FATF MER) is LC: some categories of financial institutions are not covered by the federal sanctions regime (other factors underlying the rating: it is impossible to assess the efficiency of sanctions in the sector of insurance and MVT). <p><u>Evaluation team view:</u> the rating of NC is justified</p> <ul style="list-style-type: none"> • The regime of applying of sanctions in all sectors should be precisely set for AML/CFT purposes (this system exists only for banks). At the first stages of establishing the system these measures are especially important to ensure its effectiveness.
6	R.23: supervision, monitoring, licensing/registration and supervision for MVT	<p><i>R.23 – Current rating is NC. Kyrgyzstan considers that the rating should be PC</i></p> <p><u>Kyrgyzstan view:</u></p> <ul style="list-style-type: none"> • Upgrade in the rating due to the implementation of requirements by the banking sector. • FMSRS carries out supervision and monitoring of supervised financial institutions through its general powers to do so. The AML/CFT law also gives it this authority. • Kyrgyzstan is of the view that MVT service operators do not exist outside the formal financial system, there therefore no need to license or register MVT operators. • <i>Consistency with other reports:</i> the rating of Belgium (FATF MER) is PC: some types of financial activity are not covered by AML/CFT supervision. The FIU which has supervisory function has not yet begun using it. • <i>Consistency with other reports:</i> the rating of Iceland (FATF MER) is PC: supervision does not cover insurance intermediaries and intermediaries in the securities market, there is no system of licensing/registration and supervision for MVT. Low level of effectiveness. <p><u>Evaluation team view:</u> the rating of NC is justified</p> <ul style="list-style-type: none"> • General powers of the FMSRS have not yet been applied for AML/CFT purposes. The factor of effectiveness plays a key role;

		<ul style="list-style-type: none"> • According to R.23 there should be a system of licensing/registration for alternative remittance systems. • There other factors underlying the negative rating (see Table of ratings).
7	R.35 и SR.I: implementation of international conventions	<p><i>R.35 – Current rating is LC. One of the delegations considers the LC rating too high. It also impacts the rating for SR.I</i></p> <p><u>Delegation view:</u></p> <ul style="list-style-type: none"> • Para 516: The evaluators noted the deficiencies of Kyrgyzstan in criminalization of ML and TF. In this regard it may be incorrect to say that the Vienna, Palermo, and the TF Convention are generally complied with. In this regard the rating for R.35, may be overestimated.
8	R.26: the issue of efficiency of the FIU, the threshold for suspicion in referring the materials to law enforcement	<p><i>R.26 – Current rating is LC, a delegation considers the rating too high</i></p> <p><u>Delegation view:</u></p> <ul style="list-style-type: none"> • The standard for referring materials to law enforcement bodies is too high. Art. 5, item 2, item 6 of the AML/CFT Law requires «sufficient grounds demonstrating that an operation is connected with ML/TF» for referral of materials to law enforcement. It may require evidence gathering techniques that the FIU has no possibility to undertake. Thus the requirement of “sufficient grounds” is more strict than the requirement of criterion 26.5 requiring «grounds to suspect ML/TF». The fact that the FIU has not yet referred any materials to law enforcement can testify to the high standard before disseminating, contained in the given requirements of the AML/CFT Law. • Please specify the measures on the physical protection of the incoming information to the FIS. • As efficiency has not yet been demonstrated yet, and no STRs have been referred to law enforcement, the report may not support an LC rating which indicates «only minor shortcomings» according to the Methodology.