



ЕВРАЗИЙСКАЯ ГРУППА  
по противодействию легализации преступных доходов  
и финансированию терроризма

EURASIAN GROUP  
on combating money laundering  
and financing of terrorism

English – Or. Russian



## THE ELEVENTH FOLLOW-UP REPORT OF THE KYRGYZ REPUBLIC

## FIRST MUTUAL EVALUATION OF THE KYRGYZ REPUBLIC

### The Eleventh Follow-up Report on the Implementation of the EAG Mutual Evaluation Recommendations

#### I. INTRODUCTION

1. During the 20<sup>th</sup> EAG Plenary meeting, following the discussion of its 10<sup>th</sup> follow-up report, Kyrgyzstan informed on its intent to exit the EAG follow-up procedures in November 2014.
2. The purpose of this document is to present to the EAG Plenary Meeting the eleventh (detailed) follow-up report of the Kyrgyz Republic within the framework of its removal from the EAG FUP, i.e. remove from the enhanced to general monitoring (information updates once in three years).
3. Analysis was conducted by the group of experts, which included representatives of the EAG member and observer states, EAG Secretariat: **Gaievskiy Igor** (legal expert), **Uskova Elena** (financial expert). Experts analyzed all information (laws, resolutions, rules and other documents), provided by the Kyrgyz Republic.
4. The Mutual Evaluation Report (MER) and the follow-up reports of the Kyrgyz Republic were adopted on the following dates:
  - The Mutual Evaluation Report (MER) of Kyrgyzstan was adopted on June 14, 2007;
  - The follow-up reports<sup>1</sup> were presented in the following years: the first follow-up report of Kyrgyzstan was presented in December 2007. The second, third, fourth and fifth follow-up reports of the Kyrgyz Republic were adopted by the EAG Plenary in 2008, 2009 and 2010, respectively. In May 2012, the unscheduled sixth follow-up report was considered by the EAG Plenary. In November 2012, after consideration of the seventh follow-up report, Kyrgyzstan was placed in the EAG enhanced follow-up process. The eighth and ninth follow-up reports of the Kyrgyz Republic were adopted in 2013. The tenth follow-up report of Kyrgyzstan was discussed by the EAG Plenary in June 2014.
5. The eleventh follow-up report of Kyrgyzstan is the progress report that describes actions undertaken by Kyrgyzstan since the adoption of the MER in June 2007 through August 2014 to eliminate deficiencies related to all Core and Key Recommendations on which Kyrgyzstan was rated Partially Compliant (PC) and Non-Compliant (NC). According to the EAG Mutual Evaluation procedures, *when deciding to remove the country from the monitoring process the Plenary should decide whether sufficient actions has been taken to achieve the level of Compliant (C) and Largely Compliant (LC) on all core and key recommendations.*
6. The materials provided by Kyrgyzstan are presented in Annexes 1 and 2; the laws, resolutions, regulations and other relevant legislative acts may be provided by the EAG Secretary at request of interested delegations.
7. Statistics for the reporting period (2011, 2012 and 2013) presented in Annex 3.

#### MER Conclusions:

8. Following the EAG mutual evaluation Kyrgyzstan was rated PC and NC on 33 FATF recommendations.
9. In relation to the FATF Core and Key Recommendations the Kyrgyz Republic received partially compliant and non-compliant ratings for 10 Recommendation as shown below.

<b>Partially Compliant (PC)</b>	<b>Non-Compliant (NC)</b>
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<sup>1</sup> EAG/FR(2007)2, EAG/FR(2008)2, EAG/FR(2008)4, EAG/FR(2009)4 rev.2, EAG/FR(2010)5, FR(2012)3, FR(2012)6 rev.1, FR(2013)2, FR(2013)6, FR(2014)1

<b><i>Core Recommendations</i></b>	
R.1 (ML Offence) R.5 (Customer Due Diligence) R.13 (Suspicious Transaction Reporting)	SR.II (Criminalization of Terrorist Financing)
<b><i>Key Recommendations</i></b>	
R.23 (Regulation, Supervision and Monitoring) R.35 (Conventions) SR.V (International Cooperation)	R.3 (Confiscation and Provisional Measures) SR.I (Implementation of UN Instruments) SR.III (Freezing and Confiscation of Terrorist Assets)
<b><i>Other Recommendations</i></b>	
R.2 (ML Offence – Mental Element and Corporate Liability) R.11 (Unusual Transactions) R.15 (Internal Control, Compliance and Audit)  R.17 (Sanctions) R.21 (Special Attention for Higher Risk Countries) R.25 (Guidelines and Feedback) R.27 (Law Enforcement Authorities) R.29 (Supervisory Authorities) R.33 (Legal Entities – Beneficial Owners (Beneficiaries)) R.38 (MLA on Confiscation and Freezing) R.39 (Extradition) SR.IX (Cross-Border Declaration and Disclosure)	R.6 (Politically Exposed Persons) R.8 (New Technologies and Non Face-to-Face Business) R.12 (DNFBP – R.5, 6, 8-11) R.16 (DNFBP – R.13-15 and 21) R.22 (Foreign Branches and Subsidiaries) R.24 (DNFBP – Regulation, Supervision and Monitoring) R.30 (Resources, Integrity and Training) R.32 (Statistics) SR.VI (AML/CFT Requirements for Money/Value Transfer Services) SR.VII (Wire Transfer Rules) SR.VIII (Non-Profit Organizations)

10. According the EAG Mutual evaluation procedures Kyrgyzstan provided the Secretariat detailed information in August 2014, four months before the discussion of the FUR at the Plenary.

11. The FUR represents less detailed report than the MER. Analysis focuses on recommendations rated PC and NC, which indicates that only a part of the AML/CFT system is reviewed. Analysis consists of looking at the main laws, regulations and other material to assess the technical compliance of legislation with the FATF standards. Effectiveness assessed through a consideration of statistical data provided by the country.

12. A draft analysis was provided to Kyrgyzstan for its review and comments. The final report was drafted taking into account certain of the comments from Kyrgyzstan.

## **II. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE AND KEY RECOMMENDATIONS**

**Core Recommendations (R.1, R.5, R.13, SR.II)****Recommendation 1 (ML Offence) – Partially Compliant rating****Deficiency 1: Criminalization of money laundering does not fully correspond to the Vienna and Palermo Conventions.**

13. Article 183 of the Criminal Code of the Republic of Kyrgyzstan criminalizes the money laundering offence. Law No.83 of May 29, 2013 amended Article 183 of the Criminal Code bringing it in line with the provisions of Article 3 (1) (b) and (c) of the Vienna Convention and Article 6 (1) of the Palermo Convention.

14. According to Article 183 (1) of the Kyrgyz Criminal Code ML offence includes concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is the proceeds of crime (*Thus, the deficiency indicated in paragraph 113 of the EAG MER dated 14.06.2007 (hereinafter the MER) is eliminated, and the recommendation in paragraph 132 of the MER is implemented*).

15. As stated in Par.2 of the Note to Article 183 of the KR Criminal Code, money laundering offence applies to any economic benefits or to any property obtained or derived, directly or indirectly, from the committed crime.

16. Par.3 of the Note to Article 183 of the Kyrgyz Criminal Code defines property mentioned in this Article as assets of any type, including tangible and/or intangible assets and movable and/or immovable property, as well as legal documents and/or deeds in any form (in hard copies and/or electronic ones) certifying the title to or interest in such property or part thereof, including bank loans, travellers cheques, bank cheques, postal remittances and securities (*Thus, the comment in paragraph 114 of the MER is eliminated*).

17. The predicate offences for money laundering include all crimes covered by the Criminal Code of the Kyrgyz Republic. A prior conviction of a person for a predicate offence is not necessary for proving that the property is the proceeds of crime.

**Deficiency 2: The list of predicate offences does not include 3 of 20 categories of predicate offences designated by the FATF Recommendations.**

18. The Criminal Code includes all categories of predicate offences designated by the FATF 40 Recommendations which were not covered at the time of the EAG mutual evaluation. (*Thus, the deficiency indicated in paragraph 116 of the MER is eliminated, and the recommendation in paragraph 133 of the MER is implemented*). In particular:

- 1) Financing of terrorism - Article 226-1 (Financing of Terrorist Activity);
- 2) Sexual exploitation of children - Article 131 (Sexual Harassment) and Article 124 (Human Trafficking)<sup>2</sup>;
- 3) Insider trading and market manipulation - Article 194-1 (Insider Trading in Securities Market) and Article 194-2 (Price Manipulation in Securities Market)

**Effectiveness: Available statistics raise doubts as to the effective application in Kyrgyzstan of the provisions related to ML offences.**

19. According to the statistics provided by the Kyrgyz Republic the law enforcement agencies conducted 41 ML investigations based their own materials in 2011-2013 (16 investigations in

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<sup>2</sup> See elements of the crimes related to minor children.

2011, 3 investigations in 2012 and 22 investigations in 2013). During the same period, only 4 law enforcement investigations into ML cases were triggered by the materials disseminated by the FIU.

20. The aforementioned 4 investigation were conducted in 2011. In 2012-2013, the law enforcement agencies conducted no ML investigations based on the materials provided by the FIU, which indicates ineffectiveness of this element of the AML/CFT system (given that the FIU disseminated 46 summarized ML related files to the law enforcement authorities in 2012-2013).

21. As it has been mentioned by the Kyrgyz Republic authorities, when starting investigations on ML, law enforcement authorities refer to the FIU to conduct the suspects' analysis of transactions (deals) – and as a result, FIU in such cases sends summarized files, which are not included in the stats. This information has been taken into account; however, it does not influence the situation, when a small number of ML was initiated by law enforcement agencies based on the FIU files.

22. In 2011-2013, the courts considered 16 ML related cases (9 cases in 2011, 4 cases in 2012 and 3 cases in 2013). The defendants in all these cases were convicted.

23. Thus, the provided statistics show that hearing by the courts of the ML-related cases resulted in 100% conviction of the defendants. At the same time, there are still questions concerning ineffectiveness of utilization by the law enforcement agencies of summarized ML-related materials disseminated by the financial intelligence unit in 2012 - 2013.

#### **Conclusion on Recommendation 1**

The analysis shows that the Kyrgyz Republic has taken substantial steps towards improving its legislation as it pertains to criminalization of money laundering and the relevant predicate offences. With consideration for insufficient effectiveness, the current rating can be considered as “LC”.

#### ***Recommendation 5 (Customer Due Diligence) – Partially Compliant rating***

##### **Deficiency 1: Verification requirements exist only for the banking sector.**

24. Pursuant to amended Article 3 (1), Par.3 of the KR Law on Combating Terrorist Financing and Legalization (Laundering) of Proceeds of Crime (hereinafter the AML/CFT Law) the reporting entities are obliged, inter alia, to verify identities of (corporate and individual customers) in a manner established by the laws and regulations of the Kyrgyz Republic.

25. Verification, according to the mentioned Law, means activities to refine or due diligence results of identification, conducted by the reporting entities, according to their internal control rules.

26. According to amended Article 2 of the AML/CFT Law the reporting entities are legal and/or natural persons engaged in transactions (deals) with funds or assets, including:

- Banks (including branches and representative offices);
- Financial organizations and institutions (including branches and representative offices);
- Credit organizations (institutions) and their braches:

Credit unions;

Insurance/ reinsurance institutions;

Professional securities market players;

Mortgage companies;

Pension assets management companies;

(Financial) leasing companies;

Professional providers of money or value transfer services, including through special money transfer systems without opening bank account;

Professional entities engaged in buying or selling or exchanging foreign currencies (foreign exchange offices);

- Other entities engaged in transactions (deals) with funds or assets:

Postal and telegraph communications service providers that provide remittance services.

27. According to Clause 23 of the Regulation on Identification and Verification of Identity of Customer and Beneficial Owner (Beneficiary) for Combating Financing of Terrorism (Extremism) and Legalization (Laundering) of Proceeds of Crime adopted by KR Government Resolution No.135 dated March 5, 2010 (hereinafter the Regulation on Identification and Verification) the reporting entities, where necessary, are obliged to verify the submitted documents, inter alia, through their validation, i.e. to ascertain authenticity and validity of title documents, contracts, powers of attorney and other official documents provided by a customer.

28. According to the Criteria 5.3. of the Methodology, financial institutions should be required to identify the customer and verify that customer's identity using reliable, independent source documents, data or information.

29. Provisions of the AML/CFT law, contains direct requirement to verify customer's identity, in a way, stated in the legal acts, which complies with the criteria mentioned above.

30. However, it remains unclear why the Regulation on Identification and Verification –legal act which establishes a procedure for the verification of the client, requires the conduct of verification of documents provided by the client, not his personality.

**Deficiency 2: No beneficial owner identification requirements. The existing obligations for the banking sector do not meet all of the requirements of Recommendation 5.**

31. Pursuant to amended Article 3 (1), Par.3 of the AML/CFT Law the reporting entities are obliged, inter alia, to take available and reasonable measures for identifying and verifying identities of beneficial owners (beneficiaries).

32. Clause 4 of the Regulation on Identification and Verification states that, when carrying out transactions (deals), a reporting entity shall identify and verify identities of beneficial owners (beneficiaries), in particular, based on agency, commission and trust contracts and other documents.

33. Given the above, the Kyrgyz Republic has taken substantial steps for eliminating this deficiency. However, there is some inconsistency in the wording (language) used in certain laws and regulations. For example, the AML/CFT Law and the Regulation on Identification and Verification contain the requirements for identification of beneficial owners (beneficiaries), while the Rules of Carrying out Securities Transactions in the Kyrgyz Republic adopted by KR Government Resolution No.647 of October 17, 2011 require to identify beneficial holders. Besides that, the latter regulation does not define a beneficial holder.

Therefore, it is recommended to ensure consistency of the terminology used in the legislation.

**Deficiency 3: The requirement to obtain information on the purpose and intended nature of business relationships exist only for the banking sector.**

34. According to Clause 10 of the Regulation on Identification and Verification the reporting entities shall use questionnaires for identifying customers as well as for identifying and verifying identities of beneficial owners (beneficiaries).
35. Information on a customer and beneficial owner (beneficiary) obtained in course of identification are recorded in the customer file compiled depending on the status of a customer and beneficial owner (beneficiary).
36. The standard form of a client's questionnaire, approved by the Order of the State Financial Intelligence Service of the Kyrgyz Republic dated November 6, 2014 № 83 / p "On approval of the lists, manuals, templates and instructions" (hereinafter - the standard form of a client's questionnaire) contains a graph in which the client must specify the purpose and intended nature of the business relationship.
37. In accordance with paragraph 1 of the Important note of the standard form of the client's questionnaire, the reporting entity may independently develop form of the client's profile, subject to the minimum requirements established in this standard form.
38. Based on the mentioned above the deficiency is eliminated.

**Deficiency 4: The requirement for on-going CDD exists only for the banking sector.**

39. Pursuant to amended Article 3 (1), Par.3 of the AML/CFT Law the reporting entities are obliged to regularly update information on customers and beneficial owners (beneficiaries).
40. In accordance with Clause 16 of the Regulation on Identification and Verification the reporting entities are obliged to update the customer and beneficial owner (beneficiary) identification information at least once a year in case of high level (degree) of risk and at least once in three years in other situations.
41. According to the clause 6 of the Important note of the standard form of the client's questionnaire, the reporting entity should on a regular basis update information, required by the client's questionnaire, learn copies of documents and other information, obtained during the identification and verification of a client and beneficial owner (beneficiary), particularly with regards to high risk clients or a business relations of a high risks.
42. Based on the above, the Kyrgyz Republic has made substantial steps towards eliminating this deficiency. However, Kyrgyzstan is recommended to undertake further efforts to improve its current legislation, concerning the establishment of requirement to conduct an ongoing analysis of transactions (deals) of a client, as required by criterion 5.7.1 of the Methodology.

**Deficiency 5: No requirement concerning application of enhanced CDD regarding high-risk customers.**

43. According to the Standard Risk Level (Degree) Assessment Criteria attached as Annex to the Regulation on General Requirements for Internal Control Rules for Combating Financing of Terrorism (Extremism) and Legalization (Laundering) of Proceeds of Crime adopted by KR Government Resolution No.135 dated March 5, 2010 the FT and ML risks are subdivided into high, medium and low. The aforementioned Regulation defines the indicators for assigning high level of risk to a transaction (deal).
44. According to Clause 8 of the Regulation on General Requirements for AML/CFT Internal Control Rules adopted by KR Government Resolution No.135 dated March 5, 2010 the internal control rules of the reporting entities shall include, inter alia, the procedure of assessment of the risk of potential involvement of customers in FT or ML related transactions (deals). The reporting entities shall pay special (enhanced) attention to transactions (deals) carried out by customers whose/ which transactions (deals) pose high level (degree) of risk, inter alia, by conducting ongoing monitoring of transactions (deals) of such customers.

Thus, this deficiency is eliminated.

**Deficiency 6: No requirement to complete data verification prior to or in course of establishing business relationship (except for the banking sector).**

45. Pursuant to amended Article 3 (1), Par.3 of the AML/CFT Law the reporting entities are obliged to verify identities of (corporate and individual) customers in a manner prescribed by the laws and regulations of the Kyrgyz Republic.

46. According to Clause 23 of the Regulation on Identification and Verification the reporting entities are obliged to verify the submitted documents, inter alia, through their validation, i.e. to ascertain authenticity and validity of title documents, contracts, powers of attorney and other official documents provided by a customer.

47. According to the clause 3 of the Important note of the standard form of the client's questionnaire, the reporting entity verifies (checks) the clients identity and beneficial owner (beneficiary) before the establishment of a business relationship with the client or before it conducts transactions (deals) for the one-time customer.

48. Taking into account mentioned above, the deficiency is eliminated.

**Deficiency 7: Relationships with customers that unsatisfactory passes the CDD procedure are forbidden only for the banking sector. Only banks are required to consider filing STRs regarding such customers.**

49. According to subparagraph 8 of Clause 8 of the Regulation on General Requirements for Internal Control Rules reporting entities on AML/CFT purposes have rights to refuse providing services to the clients legal or natural persons in following cases:

- Failure by natural or legal persons to present documents, confirming the data as stated in the article 2 of the AML/CFT law, or submission of false documents;
- Existence with respect to the natural person or legal entity of information on their participation in a terrorist or extremist activity.

50. According to the clause 4 of the Important note of the standard form of the client's questionnaire, if the reporting entity can not perform clients identification and beneficial owner (beneficiary), then this entity should not open a bank account, establish business relationship or conduct transactions (deals), and also consider the issue of sending an STR to the FIU.

51. According to the clause 4 of the document mentioned, if the reporting entity have already established business relationships with the client and if in the course of business relations can not perform repeated identification and verification of a client and beneficial owner (beneficiary) then the reporting entity is required to consider the issue of termination of business relationship and file the STR to the FIU.

52. Therefore, Kyrgyz Republic took significant steps to address the deficiency. However, further work needs to be done to improve the current legislation, in particular on forbidding establishing a relationships with the clients who failed to satisfactorily pass the CDD, according to all the requirements of the Methodology.

**Deficiency 8: The requirement to conduct CDD on existing customers exists only for the banking sector.**

53. The Kyrgyz Republic has taken steps to remedy this deficiency, inter alia, by introducing the provision in the Regulation on Identification and Verification pursuant to which the reporting entities are obliged to identify and verify identities of beneficial owners (beneficiaries) of existing customers since March 5, 2010 until September 5, 2010.



54. However, based on the information provided, it is recommended to continue work on improvement of current legislation in terms of establishing requirements to apply CDD measures to the existing clients concerning ongoing monitoring of transactions (deals) of a clients (pp.39-42)

**Deficiency 9: The effectiveness of some existing measures may not always be assessed as they have been introduced recently.**

55. The statistics provided by the Kyrgyz Republic demonstrate progress in improvement of operation of the AML/CFT system since adoption of the MER. Kyrgyzstan also provided additional information on number of conducted audits/ inspections, breaches of the AML/CFT legislation and imposed sanctions.

#### **Conclusion on Recommendation 5**

The analysis shows that the Kyrgyz Republic has made significant progress in bringing its national legislation in line with the requirements of Recommendation 5.

However, further improvement of the legislative framework is recommended, in particular:

- The explicit (direct) requirement for the entities that are subject to financial monitoring (except for the banking sector) to conduct ongoing CDD as it pertains to scrutiny of customers' transactions should be set forth in the laws and/or regulations;

- It should be prohibited for the reporting entities to establish business relationships with customers in case of failure to successfully complete CDD according to all requirements of the Methodology ;

- The requirement should be established for the reporting entities (except for the banking sector) to apply the CDD measures to existing customers in terms of ongoing analysis of the clients transactions (deals);

- It is necessary to ensure consistency of the AML/CFT legislation terminology.

Considering the progress made by the Kyrgyz Republic in implementation of Recommendation 5, the current rating can be considered as "LC".

#### ***Recommendation 13 (Suspicious Transaction Reporting) – Partially Compliant rating***

**Deficiency 1: As legislative measures are recent, the efficiency of the AML STR regime cannot be assessed.**

**Deficiency 2: There is no clear responsibility to file SRTs on attempted transactions (except for FT-related transactions).**

**Deficiency 3: Financial institutions pay too little attention to the SRT obligation as opposed to the reporting of large value transactions (except for FT-related transactions).**

56. According to amended Article 4 (2) of the AML/CFT Law in a situation where reporting officers suspect that any transactions (deals) are carried out for financing of terrorism (extremism) or for legalization (laundering) of criminal proceeds, such officers shall report these transactions (deals) to the designated government agency (FIU), irrespective of whether or not such transactions fall into the category of transactions (deals) that are subject to mandatory control.

57. Therefore, the Kyrgyz legislation requires to report suspicious transactions to the designated government agency irrespective of transaction amount.

58. According to amended Article 4 (1) of the AML/CFT Law the reporting entities are obliged, inter alia, to identify suspicious transactions (deals) against the suspicious transaction (deal) criteria and report them to the designated government agency (FUI) not later than the next business day following the day when a transaction (deal) was recognized as suspicious one.
59. According to clause 8 of the Regulation on General Requirements for Internal Control Rules in cases of suspicion that transaction (deal) of the client is a suspicious transaction (deal), internal control services makes a decision to consider the clients' transaction (deal) as suspicious and to further file an STR to the FIU.
60. Pursuant to the subparagraph 2 of Clause 8 of the Regulation on General Requirements for Internal Control Rules in case of a suspicion that client conducts (intends to conduct) transactions (deals), related to the TF (extremism) and money laundering, employee of the reporting entities should report to the internal control services. Further, internal control services may decide to monitor the client and his/her transactions (deals), and to refuse to conduct/conclude transactions (deals) with such clients.
61. Taking into account above stated, it may be concluded that reporting entities take measures to detect an attempt to conduct suspicious transactions. However, Kyrgyz legislation does not have the direct obligation to file an STR in cases of an attempted suspicious transaction.
62. The 2011-2013 statistics provided by the Kyrgyz Republic may indicate that the formal requirement to file STRs gradually becomes the every-day practice.
63. The increase in the volumes of STRs may be observed.

### **Conclusion on Recommendation 13**

The analysis shows that the Kyrgyz Republic has made certain progress in bringing its national legislation in line with the requirements of Recommendation 13.

However, further improvement of the legislative framework is required, to set a clear requirement to report attempted suspicious transactions.

With consideration for the progress made by the Kyrgyz Republic in implementation of Recommendation 13, the current rating can be considered as "LC".

### ***Special Recommendation II (Criminalization of Terrorist Financing – Non-Compliant rating***

#### **Deficiency 1: Terrorism financing is not criminalized, consequently other requirements of SR.II are not met.**

64. Law No.223 of October 17, 2008 introduced new Article 226-1 (Financing of Terrorism) in the Criminal Code. Later on, Article 226-1 (Financing of Terrorist Activity) was amended by Law No.83 of May 29, 2013 (Thus, the deficiency indicated in paragraph 139 of the MER is eliminated, and the recommendation in paragraph 145 of the MER is implemented).
65. According to the provisions of Article 226-1 of the KR Criminal Code financing of terrorist activity means illegal provision of funds, provision of financial services or collection of funds by any means and methods, directly or indirectly, with the intention or in the knowledge that they are intended or would be used, in full or in part, for:
- Financing of a terrorist and (or) a terrorist organization; or;
  - Financing of organization, preparation and carrying out terrorist activity inside and outside the Kyrgyz Republic.

66. Thus, if the provided or collected funds have not been actually used by a terrorist and (or) a terrorist organization to carry out a terrorist attack, such actions are still determined by the law as financing of terrorist activity (*Thus, the deficiency indicated in paragraph 137 of the MER is eliminated, and the recommendation in paragraph 146 of the MER is implemented*).
67. According to Par.2 of the Note to Article 183 of the Criminal Code (which defines proceeds of crime) financing of terrorism as well as all other types of crimes covered by the KR Criminal Code are the predicate offences for money laundering.
68. Financing of terrorism is the grave crime punishable by imprisonment for 4 up to 15 years with confiscation of assets/ property.
69. Given the above, the sanctions imposed for financing of terrorism are effective proportionate and dissuasive (*Thus, the recommendation in paragraph 146 of the MER is implemented*).
70. According to Articles 5, 6 and 226-1 of the Criminal Code of the Kyrgyz Republic charges of financing terrorist activity are brought against individuals irrespective of location of a terrorist or terrorist organization, or a place where a terrorist act has been committed (*the recommendation in paragraph 149 of the MER is implemented*).

#### **Deficiency 2: No liability for legal persons for TF.**

71. At the time of the mutual evaluation, legal entities were held liable for financing of terrorism under the Civil and Criminal Procedure Codes of Kyrgyzstan.
72. Liability imposed under the Civil Code (Article 96) involves possible liquidation of a legal entity by a court ruling if it conducts activities prohibited by the law, or commits any other repeated or gross breaches of the legislation.
73. Liquidation of legal entities involved in financing of terrorist activities by court ruling is explicitly provided for by Article 26 (2) of the KR Law on Combating Terrorism. Besides that, the assets/ property owned by such legal entities is appropriated by the Kyrgyz Republic for the purposes of further combating terrorism and liquidating the consequences of terrorist acts.
74. Under the Criminal Procedure Code (Chapter 16, Article 55) a legal entity is held financially liable for damages caused by a crime or by illegal actions committed by an insane person that are punishable under the Criminal Code. Such crimes and illegal actions include financing of terrorism.
75. As stated in paragraph 124 of the MER “criminal liability does not extend to legal persons, because due to fundamental principles of the domestic law only natural persons may be held criminally liable”.
76. No other types of liability for financing of terrorism are provided for by the Kyrgyz legislation. The draft law on administrative liability of legal persons for participating in ML and TF and fundamental principles of the domestic law gives a basis to assume that the deficiency was partially addressed (*Thus, the recommendation in paragraph 148 of the MER is implemented, but not fully*). At the same time, it should be noted, that accession of the Kyrgyz Republic to the Group of states against corruption (GRECO) requires consideration of criminal liability of legal persons, as these norms are contained in all the international documents on combating corruption.

#### **Conclusions on Special Recommendation II**

A new article that imposes liability for financing of terrorism has been introduced into the Criminal Code. The provisions and the terminology of this article give the grounds to consider

that TF is criminalized in line with the International Convention for the Suppression of the Financing of Terrorism.

Kyrgyz Republic has Civil and Criminal Procedure liability of legal persons for TF. However, no criminal liability for legal persons. Therefore, the current rating of implementation of Special Recommendation II can be considered as “LC”.

**Key Recommendations (R.3, R.23, R.35, SR.I, SR.III, SR.V)**

**Recommendation 3 (Confiscation and Provisional Measures) – Non-Compliant rating**

**Deficiency 1: The Criminal Code of Kyrgyzstan does not provided for confiscation of assets related to financing of terrorism and a range of predicate offences (sexual exploitation of children, insider trading and market manipulation).**

77. According to Article 52 (4) of the KR Criminal Code assets/ property may be confiscated by a court ruling only as the additional punishment and only in the situations where confiscation is provided for by the relevant articles. In accordance with Article 52 (1), Par.3 of the Criminal Code confiscation of assets/ property means forced and uncompensated appropriation by the state of proceeds of crime or any income (benefit) derived from them as a result of legalization (laundering) of criminal proceeds.

78. Pursuant to Article 183 (Legalization (Laundering) of Criminal Proceeds) of the Criminal Code assets/ property confiscation is applied as punishment for committing the crimes covered by paragraphs 2 and 3 of this Article. Sanctions of the paragraph 1 of the article 183 of the KR Criminal Code assumes confiscation of legalized property. However, clarifications provided by Kyrgyz authorities (based on the resolutions of the plenum of the Supreme court dated 07.02.2014 #1 “On the judicial board on criminal cases and cases on administrative violations of the Supreme Court of the Kyrgyz Republic” and paragraph 3 of part 1 of the article 52 KR Criminal Code) give grounds to suggest that no practical problems exist to apply confiscation for ML crimes.

79. Moreover, the Parliament of the Kyrgyz Republic adopted a draft law “On amendments and additions to certain legislative acts of the Kyrgyz Republic” in the first reading of the Parliament, which include amendments to the article 183 part 1 of the Kyrgyz Criminal Code concerning confiscation. The draft law is prepared for the second reading of the Parliament.

80. Articles 226-1 (Financing of Terrorist Activities), 124 (Human Trafficking)<sup>3</sup>, 194-1 (Insider Trading in Securities Market) and 194-2 (Price Manipulation in Securities Market) of the KR Criminal Code provides for assets/ property confiscation as the mandatory sanction. *(Thus, the deficiency indicated in paragraph 155 of the MER is partially eliminated and the recommendation in paragraph 169 of the MER is implemented, while the recommendation in paragraph 168 of the MER is partially implemented).*

81. It should also be noted that Article 131 (Sexual Harassment) of the KR Criminal Code does not provide for confiscation of assets/ property for sexual exploitation of children.

**Deficiency 2: The laws of Kyrgyzstan do not provide for the possibility of confiscation of the property gained directly or indirectly with the use of proceeds of crime, including income, profit or any other benefits from proceeds of crime.**

82. According to Article 52 (1), Par.3 of the Criminal Code (as amended by Law No.164 of August 10, 2012) confiscation of assets/ property means forced and uncompensated appropriation by the state of proceeds of crime or any income (benefit) derived from them as a result of

<sup>3</sup> As pertains to sexual exploitation of children.

legalization (laundering) of criminal proceeds (*Thus, the deficiency indicated in paragraph 163 of the MER is eliminated and the recommendation in paragraph 170 of the MER is implemented*).

**Deficiency 3: The laws of Kyrgyzstan lack provisions on possible confiscation of property possessed or owned by a third party.**

83. According to Article 52 (1), Par.2 of the Criminal Code (as amended by Law No.164 of August 10, 2012) property of a convict transferred by him/her to a third party is liable to confiscation (forced and uncompensated appropriation by the state) if the party that accepted it knew or should have known that it had been obtained in a criminal manner.

84. According to Article 52 (3) of the Criminal Code (as amended by Law No.164 of August 10, 2012) if, at the time when a court rules confiscation of a certain item that is part of property, confiscation of such item is impossible due to its utilization, sale or other reasons, the court orders confiscation of funds in amount corresponding to the value of such item (*Thus, the recommendation in paragraph 171 of the MER is implemented*).

**Deficiency 4: The legislation lacks clear provisions that secure the rights of bona fide third parties.**

85. The issues pertaining to compensation of inflicted damage/ losses are regulated by Article 52-1 of the KR Criminal Code (as amended by Law No.164 of August 10, 2012).

86. Pursuant to the provisions of the aforementioned Article when making decision to confiscate property, the priority shall be given to compensation of losses incurred by the legitimate owner. If a convict has not property that can be confiscated, except for the property listed in Article 52 of the Criminal Code, a portion of the value of such property is used for compensating losses incurred by the legitimate owner and the rest is appropriated by the state (*Thus, the deficiency indicated in paragraph 164 of the MER is eliminated and the recommendation in paragraph 171 of the MER is implemented*).

**Deficiency 5: Laws or measures do not allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice.**

87. Pursuant to Article 142 (2) of the KR Criminal Procedure Code in case of crimes punishable, inter alia, by confiscation of property under the criminal legislation, an investigator or an investigating authority has to take necessary measures to ensure execution of the punishment as it pertains to confiscation of property, by drawing up the relevant order.

88. According to Article 142 (3) of the Criminal Procedure Code possible confiscation of property is secured by seizure of distrained deposits, valuables and other property of an accused person, defendant or persons who are financially liable under the law for actions committed by the accused person or defendant, and also by confiscation of seized assets/ property.

89. According to Article 119 (6) of the Criminal Procedure Code the seized property may be expropriated (confiscated) or transferred, at the discretion of a person who has seized such property, for storage to the owner or holder of such property or to other person who shall be notified of the responsibility for safekeeping of the property and shall sign the recognizance of that.

90. *Therefore, taking into account provisions of the Criminal Procedure Code, deficiency stated in the paragraph 164 of the MER should be considered eliminated, and recommendations, indicated in the paragraph 172 of the MER addressed.*

**Deficiency 6: There is no authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.**

91. According to Article 119 (7) of the Criminal Procedure Code when funds and other valuables owned by a suspect or accused person and held on account, deposit or placed for safekeeping with banks and other credit institutions are seized, transactions through such account shall be terminated in full or in part up to the amount of the seized funds and other valuables. Senior management of banks and other credit institutions are obliged to provide information on such funds and other valuables at the request of a court, a prosecutor or an investigator with prosecutor's consent (*Thus, the deficiency indicated in paragraph 164 of the MER is eliminated and the recommendation in paragraph 172 of the MER is implemented*).

**Deficiency 7: The law enforcement and other competent authorities, including the Financial Intelligence Service (FIS) of Kyrgyzstan, are not adequately empowered to identify and trace the property subject to confiscation, or when there are suspicions that it constitutes the proceeds of crime.**

92. The legal grounds that adequately empower the law enforcement and other competent authorities to identify and trace assets/ property liable to confiscation are established by Articles 142 and 248 of the Criminal Procedure Code, according to which an investigative agency, investigator, prosecutor and court are responsible for ensuring confiscation of assets/ property as required by the law.

93. According to Clause 9 of the Statute of State Financial Intelligence Service under the Government of the Kyrgyz Republic adopted by KR Government Resolution No.130 of February 20, 2012 the financial intelligence unit is empowered to:

- Request, in a prescribed manner, and receive, free of charge, any information and documents (briefing notes, copies of documents, etc.), including those constituting banking, commercial or other secrets, from reporting entities, government authorities, local authorities, KR National Bank and other institutions and organizations irrespective of their form of incorporation and ownership structure;
- Request, on the basis of reciprocity and in compliance with the international treaties and agreement signed by Kyrgyzstan, information required for discharging its AML/CFT functions from foreign competent authorities.

94. Law No.129 of July 11, 2013 amended the Criminal Procedure Code and the Law on Detective Operations that define and regulate the powers of the KR law enforcement agencies related to tapping and recording communications over telephone and other communication devices of suspects, accused and other persons in course of criminal investigations.

95. Therefore, the laws and regulations vest adequate powers in the law enforcement agencies and other competent authorities enabling them to identify and trace property (assets) that is or may be liable to confiscation or is suspected of being criminal proceeds (*Thus, the recommendation in paragraph 173 of the MER is implemented*).

**Effectiveness: The assessment team was not provided with sufficient data to prove that existing measures for freezing, seizure and confiscation are effective.**

96. According to the statistics provided by the Kyrgyz Republic the confiscation measures were applied in three of 16 ML-related criminal cases that resulted in convictions in 2011-2013. In particular: assets worth USD 1,999,000 were confiscated in 2011, assets worth USD 2 million were confiscated in 2012 and assets worth USD 1,038,000,850 were confiscated in 2013. Total value of assets confiscated under ML-related criminal cases amounted to USD 5,037,000,850, which demonstrates sufficient effectiveness of this element of the AML/CFT system.

97. As for the financing, of terrorism, only one conviction was delivered in the Kyrgyz Republic over the past three years (in 2013). Although Article 226-1 of the KR Criminal Code provides for confiscation of property, no assets (property) were confiscated under the said case.

### **Conclusions on Recommendation 3**

The analysis shows that the legislation of the Kyrgyz Republic now provides for:

- Confiscation of assets for committing FT and other predicate offences;
- Confiscation of criminal proceeds and assets possessed or owned by a third party;
- Protection of the rights of bona fide third parties and some other issues indicated as the deficiencies in the MER;
- establishing sufficient measures concerning initial freezing and seizure of property subject to confiscation, ex-parte without prior notice.

At the same time, improvement of the Kyrgyz legislation is needed concerning adoption of a clear regulation in application of asset confiscation under ML-related cases (paragraph 1 Article 183 Kyrgyz Criminal Code) and in cases of sexual exploitation of children (article 131 of the Kyrgyz Criminal Code).

With consideration for the progress made by the Kyrgyz Republic in implementation of Recommendation 3, the current rating can be considered as “LC”.

### ***Recommendation 23 (Regulation, Supervision and Monitoring) – Partially Compliant rating***

#### **Deficiency 1: A comprehensive AML/CFT supervision, monitoring and sanction system is available for the banking sector only.**

98. According to amended Article 3 (8) of the AML/CFT Law monitoring of compliance by legal entities and individuals with the AML/CFT legislation as it pertains to recording, storing and reporting information on transactions (deals) that are subject to mandatory control and to implementation of internal controls is conducted by the relevant supervisory authorities within the scope of powers vested in them and in a manner established by the KR legislation.

99. The Regulation on the List of Supervisory Authorities and their Powers adopted by KR Government Resolution No.135 of March 5, 2010 (hereinafter the Regulation on the List of Supervisors) contains the list of supervisors, defines the powers vested in them and indicates the supervised entities.

100. Pursuant to the Regulation on the List of Supervisory Authorities the following government authorities oversee, within the scope of powers vested in them, the operations of entities engaged in financial transactions:

1. The State Service for Regulation and Supervision of Financial Market under the KR Government oversees the operations of:

- Professional securities market players;
- (Financial) leasing companies;
- Pawnshops and buying-in centers;
- Insurance/ reinsurance institutions;
- Trade (commodity and stock exchanges) and auction operators;
- Betting shops, bookmaker offices, lotteries and operators of other games where the prize money are distributed, *inter alia*, electronically among the players;
- Non-government pension funds;

- Trust or company services providers;
- Investment fund or non-government pension fund management companies;
- Audit firms and individual auditors and accountants.

2. The State Communications Agency under the KR Government oversees the operations of:

- Postal and telegraph communications service providers.

3. The Precious Metals Department under the KR Ministry of Finance oversees the operations of:

- Dealers in precious metals, stones, scrap and items made thereof.

4. The National Bank of the Kyrgyz Republic oversees the operations of:

- Commercial banks;
- Non-bank financial and credit institutions and organizations (microfinance and microcredit organizations, credit unions, special financial and credit organizations, foreign exchange offices);
- Entities that accept and transfer payments to third parties and e-money service providers.

101. In a situation where the entities engaged in transactions (deals) with funds or assets have no supervisors, the State Financial Intelligence Service under the KR Government oversees the operations of such entities.

102. The State Financial Intelligence Service coordinates the efforts of the supervisory authorities under the KR Government.

103. According to Clause 7 of the Regulation on the List of Supervisory Authorities the supervisors are empowered to impose sanctions in compliance with KR legislation against the supervised entities for failure to comply with the AML/CFT legislation of the Kyrgyz Republic.

104. Pursuant to the Statute of the State Financial Intelligence Service under the Government of the Kyrgyz Republic adopted by KR Government Resolution No.130 of February 20, 2012 the State Financial Intelligence Service considers AML/CFT-related administrative offences and imposes administrative sanctions in compliance with the KR Code of Administrative Liability.

105. According Clause 7 of the Regulation on the List of Supervisory Authorities the supervised entities inspection/ auditing procedure is established by the legislation of the Kyrgyz Republic.

106. Pursuant to Article 1 of the Law on Procedure of Inspection/ Auditing of Commercial Entities the designated authorities, including the State Service for Regulation and Supervision of Financial Market, the State Communications Agency and the Precious Metals Department, are obliged to develop and adopt the regulations governing their inspection (auditing) activities.

107. Kyrgyz Republic confirmed existence of “departmental instructions, regulating activities on conducting inspections”.

108. According to the stated above, Kyrgyz Republic has taken substantial steps to address the deficiency.

109. However, it should be noted that, despite the existence of organizations, conducting transactions (deals) with funds or assets, and which has no supervisory body, effectiveness of oversight by the State Financial Intelligence raises doubts.



110. For example, despite the fact that real estate agents and intermediaries filed a large number of reports on suspicious and above threshold transactions compared to other reporting entities, the State Financial Intelligence Service conducted no audits of these entities in 2011-2013.

**Deficiency 2: The insurance and securities sectors are not required to apply the Core Principles for AML/CFT purposes (currently applied only in the banking sector).**

111. According to information provided by the Kyrgyz Republic the insurance/ reinsurance institutions and professional securities market players are the entities that are subject to financial monitoring and are subject to AML/CFT supervision by the State Service for Regulation and Supervision of Financial Market under the KR Government.

112. However, it is unclear from the information provided by Kyrgyzstan whether or not the insurance/ reinsurance institutions and professional securities market players are required to apply the Core Principles.

**Deficiency 3: AML/CFT monitoring of currency exchange operations is not yet conducted at the necessary level.**

113. According to the provided information the foreign exchange offices (entities engaged in purchase or sales or exchange of foreign currency on a professional basis) are the entities that are subject to financial monitoring and are subject to AML/CFT supervision by the KR National Bank.

114. Pursuant to the Regulation on Procedure of Carrying out Foreign Cash Exchange Transactions in the Kyrgyz Republic adopted by KR National Bank Board Resolution No.42/1 of November 30, 2000 the National Bank is authorized to audit the foreign exchange offices operated by the authorized banks, the microfinance and microcredit organizations, credit unions and foreign exchange offices without prior notice upon presentation of the relevant document. The National Bank is empowered to apply preventive measures and impose sanctions on the aforementioned entities.

115. Upon detection of non-compliance with the foreign cash exchange transactions procedure and breaches of the regulations that govern the operations of the authorized banks, microfinance and microcredit organizations, credit unions and foreign exchange offices, the National Bank is empowered to:

- Issue a warning or an order to eliminate the revealed breaches and establish the timeline for their elimination depending on a type of a breach;
- Impose sanctions in compliance with the applicable legislation;
- Suspend a license for up to seven business days;
- Revoke a license.

116. Pursuant to the Regulation on Minimum Requirements for Arrangement of AML/CFT Internal Controls by Foreign Exchange Offices adopted by KR National Bank Board Resolution No.52/5 of June 30, 2010 the National Bank conducts audits of AML/CFT internal controls implemented by foreign exchange offices and reports the results of such audits to the State Financial Intelligence Service in the established manner.

117. Pursuant to the Regulation on Licensing of Foreign Currency Cash Exchange Transactions adopted by KR National Bank Board Resolution No.40/4 dated July 27, 2011 a foreign exchange office may carry out foreign cash exchange transactions only upon obtaining the license from the National Bank to perform foreign cash exchange transactions and the letter of registration of the foreign exchange office with the National Bank.

118. The National Bank refuses to issue a license if an applicant or members/ shareholders of a corporate applicant are registered or reside in countries that do not or insufficiently apply the FATF Recommendations and do not engage in the international AML/CFT cooperation.

119. It should be noted that the number of audits of foreign exchange offices increased in 2011-2013.

120. Based on the above stated, the Kyrgyz Republic has taken substantial steps towards eliminating this deficiency.

**Deficiency 4: No system of monitoring non-bank MTV service operators.**

121. According to the provided information money transfers in national and foreign currencies are carried out by individuals and legal entities through banks licensed and regulated by the Bank of Kyrgyzstan and also through post offices.

122. Postal and telegraph communications service providers that provide remittance services are the entities that are subject to financial monitoring and are subject to AML/CFT supervision by the State Communications Agency under the KR Government.

123. Based on the above, the Kyrgyz Republic has taken substantial steps towards eliminating this deficiency.

124. It is noteworthy that the total number of audits of the postal and telegraph communications service providers that provide remittance services decreased in 2011-2013.

**Deficiency 5: Non-bank MTV service operators are not subject to licensing and registration.**

125. According to Article 15 of Law No.195 on Licensing System in the Kyrgyz Republic provision of services involving acceptance and transfer of payments for third party's goods and services to third parties through the IT-based payment systems with the application of electronic payment means and methods and provision of postal services is subject to licensing.

Therefore, this deficiency is eliminated.

**Conclusion on Recommendation 23**

The analysis shows that the Kyrgyz Republic has made substantial progress in bringing its national legislation in line with the requirements of Recommendation 23.

However, further improvement of the legislative framework is required, i.e. the insurance and securities sectors should be required to apply the Core Principles for AML/CFT purpose.

With consideration of the progress made by the Kyrgyz Republic in implementation of Recommendation 23, the current rating can be considered as "LC".

***Recommendation 35 (Conventions) – Partially Compliant rating***

**Deficiency 1: The Vienna and Palermo Conventions are not fully complied with in terms of criminalization of money laundering.**

126. According to amended Article 183 of the Criminal Code of the Kyrgyz Republic legalization (laundering) of criminal proceeds means making ownership, use or disposal of criminal proceeds look legitimate by conducting any actions (transactions or deals) to convert or transfer assets, knowing that such assets are the proceeds of crime, for concealing or disguising the criminal source of origin of the assets or for assisting a perpetrator to avoid liability for the committed actions; or concealment or disguise of the true nature, source, location, movement, ownership of or rights with respect to assets, knowing that such assets are the proceeds of crime;

or concealment or permanent retention of assets by a person not involved in crime, knowing that the assets are the proceeds of crime; or acquisition, ownership or use of assets, knowing at the time of their receipt that the assets are the proceeds of crime.

This definition is in line with the Vienna and Palermo Conventions.

Therefore, this deficiency is eliminated.

**Deficiency 2: Not all elements of the International Convention for the Suppression of the Financing of Terrorism (1999) are covered.**

127. According to amended Article 226-1 of the Criminal Code of the Kyrgyz Republic financing of terrorist activity means illegal provision of funds, provision of financial services or collection of funds by any means and methods, directly or indirectly, with the intention or in the knowledge that they are intended or would be used, in full or in part, for financing of a terrorist and (or) a terrorist organization, or for financing of organization, preparation and carrying out terrorist activity inside and outside the Kyrgyz Republic.

This definition is in line with the International Convention for the Suppression of the Financing of Terrorism (1999).

Therefore, this deficiency is eliminated.

**Conclusion on Recommendation 35**

The analysis shows that the Kyrgyz Republic has made substantial progress in bringing its national legislation in line with the requirements of Recommendation 35.

With consideration for the progress made by the Kyrgyz Republic in implementation of Recommendation 35, the current rating can be considered as “LC”.

***Special Recommendation I (Implementation of UN Instruments – Non-Compliant rating***

**Deficiency 1: The International Convention for the Suppression of the Financing of Terrorism (1999) is not fully complied with.**

128. The Kyrgyz Republic has taken a number of step to comply with the International Convention for the Suppression of the Financing of Terrorism (1999), in particular, financing of terrorism (Article 226-1 of the Criminal Code) was criminalized by Law No.223 of 17.10.2008.

129. Later on, the Kyrgyz Republic adopted Law No.83 of 29.05.2013 which amended Article 226-1 (Financing of Terrorist Activity) of the Criminal Code and also amended Article 1 of the Law on Combating Terrorism which now defines “terrorist”, “terrorist activity” and “terrorist organization” in line with the requirements of the UN Conventions and the FATF Recommendations (*Thus, the deficiency indicated in paragraph 537 of the MER is eliminated and the recommendation in paragraph 544 of the MER is implemented*).

**Deficiency 2: The UN Security Council Resolutions are not fully complied with.**

130. In order to improve the mechanism of implementation of the UNSC Resolutions the Kyrgyz Republic has amended its legislation and adopted new Regulations since 2007 Mutual Evaluation.

131. In particular, the general aspects of suspension of transactions (deals) and freezing of assets of individuals or legal entities linked to terrorist activity are regulated by Article 25 of the Law on Combating Terrorism (as amended by Law No.83 dated 29.05.2013 № 83). In furtherance of the aforementioned Law the KR Government adopted the following Regulations on 05.03.2010:

- The Regulation on Procedure of Suspension of Transactions (Deals) and Freezing and Unfreezing of Funds (as amended by Resolution No.716 dated October 12, 2012);
- The Regulation on the List of Persons Linked to Terrorist and Extremist Activities or Proliferation (as amended by Resolution No.716 dated October 12, 2012).

132. Therefore, the Kyrgyz Republic ensures compliance with UNSC Resolutions 1267 and 1373 (*Thus, the deficiency indicated in paragraph 538 of the MER is eliminated and the recommendations in paragraphs 542 and 543 of the MER are implemented*).

### **Conclusion on Special Recommendation I**

In order to fulfill its international obligations the Kyrgyz Republic has adopted the relevant regulations pertaining to implementation of the UN instruments that eliminated the core deficiencies revealed by the previous Evaluation.

However, due to the cascade effect of other Special Recommendations, in particular, Special Recommendation III, the current rating of compliance with Special Recommendation I can be considered as “LC”.

### ***Special Recommendation III (Freezing and Confiscation of Terrorist Assets – Non-Compliant rating***

#### **Deficiency 1: There is no mechanism to unfreeze the funds of persons who have been inadvertently affected by a freezing order.**

133. The mechanism of unfreezing the assets of persons who have been inadvertently affected by transaction suspension decisions/orders is defined in paragraphs 20-23 of the Regulation on Procedure of Suspension of Transactions (Deals) and Freezing and Unfreezing of Funds adopted by the KR Government Resolution dated March 5, 2010 (as amended by Resolution No.716 dated October 12, 2012).

134. Besides that, paragraph 2 of the aforementioned Regulation stipulates that any individual or legal entity whose assets have been frozen is entitled to appeal against the freezing decision through the FIU, prosecutorial authorities and (or) through court in compliance with the legislation of the Kyrgyz Republic (*Thus, the comments in paragraphs 191 and 192 of the MER are eliminated and the recommendation in paragraph 199 of the MER is implemented*).

135. The procedures of accessing funds/ assets for covering basic expenses, for payment of certain types of taxes, duties and services or for covering extraordinary expenses are defined in paragraphs 18 and 19 of the Regulation on Procedure of Suspension of Transactions (Deals) and Freezing and Unfreezing of Funds (*Thus, the deficiency indicated in paragraph 193 of the MER is eliminated and the recommendation in paragraph 203 of the MER is implemented*).

136. The measures to protect bona fide third parties are set forth in paragraphs 16, 17 and 21 of the Regulation on Procedure of Suspension of Transactions (Deals) and Freezing and Unfreezing of Funds (*Thus, the recommendation in paragraph 205 of the MER is implemented*).

137. As prescribed in paragraph 15 of the Regulation on Procedure of Suspension of Transactions (Deals) and Freezing and Unfreezing of Funds the FIU shall, within 10 business days following the freezing order, compile the information and materials on the frozen funds/ assets and disseminate them to the relevant law enforcement agencies of the Kyrgyz Republic.

138. The Kyrgyz law enforcement agencies may decide to seize the frozen funds/ assets according to the Criminal Procedure Code.

139. According to Clause 15 (3) the Regulation on Procedure of Suspension of Transactions (Deals) and Freezing and Unfreezing of Funds one of the grounds for unfreezing funds/ assets is a court ruling on confiscation of such funds/ assets or on their appropriation by the state.

140. Based on the above, the Kyrgyz legislation contains the relevant provisions that allow for seizing or confiscating funds or other assets related to terrorist activities (*Thus, the recommendation in paragraph 206 of the MER is implemented*).

**Deficiency 2: There is no uniform mechanism for compiling, disseminating and using the list of persons suspected of terrorist activities (terrorism financing).**

141. The uniform mechanism for compiling, disseminating and using the list of persons suspected of terrorist activities (terrorism financing) is established by the Regulation on the List of Persons Linked to Terrorist and Extremist Activities or Proliferation adopted by the KR Government Resolution dated March 5, 2010 (as amended by Resolution No.716 dated October 12, 2012).

142. The aforementioned Regulation provides for the mechanism of compiling, disseminating and using the list of persons linked to terrorist and extremist activities and the delisting grounds and procedure (*Thus, the comment in paragraph 185 of the MER is eliminated and the recommendations in paragraphs 200 and 202 of the MER are implemented*).

**Deficiency 3: Now specific guidance (instructions, recommendations, etc.) exists for financial institutions and other persons or organizations regarding their duties in implementing the mechanism of freezing terrorist assets or other property.**

143. The instruction for financial institutions and other entities or organizations on practical implementation of the terrorist funds or other assets freezing mechanisms is posted on the KR FIU website (*Thus, the deficiency indicated in paragraph 190 of the MER is eliminated and the recommendation in paragraph 201 of the MER is implemented*).

**Deficiency 4: No liability (sanctions) is available for violating the AML/CFT legislation, including the mechanism of freezing terrorist assets.**

144. As mentioned above, the terrorist assets freezing mechanisms are established by the relevant regulations of the Kyrgyz Republic that according to KR Law No.241 on Laws and Regulations of the Kyrgyz Republic dated 20.06.2009 are the integral part of the Kyrgyz AML/CFT legislation.

145. Failure to comply with the aforementioned regulations entails criminal, administrative and civil liability.

146. Individuals may be held liable under Article 226-1 of the Criminal Code of the Kyrgyz Republic for providing financial services for the purpose of financing of a terrorist and (or) a terrorist organization, or for organizing, preparing or committing terrorist activity inside or outside the Kyrgyz Republic.

147. According to Par.1 of the Note to Article 226-1 of the Kyrgyz Criminal Code financial service means receipt and retention of funds owned by persons who have prepared or committed a terrorist offence or funds controlled by a terrorist organization, or carrying out transactions (deals) with such funds, or management of such funds.

148. Therefore, individuals (natural persons) may be held criminally liable for providing financial services to persons who have prepared or committed a terrorist offence or to a terrorist organization, i.e. to the designated (listed) persons, which partially implies liability for breaching the mechanisms required by Special Recommendation III.

149. Article 505-17 of the Code of Administrative Liability of the Kyrgyz Republic imposes liability for breaching the AML/CFT legislation.

150. The aforementioned Article defines the general grounds for imposition of administrative liability irrespective of particular breaches of (administrative offences related to) the terrorist assets freezing mechanisms.

151. It is noteworthy that the draft Law on Amendments and Modifications in Certain Legislative Acts of the Kyrgyz Republic (ref. No.6-3203/14 dated 06.02.2014) is currently considered by the Kyrgyz Parliament. This draft Law imposes administrative liability on individuals and legal entities for breaching the transaction (deal) suspension and funds freezing procedures.

152. The Kyrgyz legislation also includes a number of sector-specific regulations that govern the activities of the FIU and the supervisors and provide for a broad range of sanctions against individuals, executive officers and legal entities for non-compliance with the Kyrgyz legislation, inter alia, for breaching the terrorist assets freezing mechanisms which are the integral part of the AML/CFT legislation.

153. However, the liability-related provisions are of the general nature and do not establish direct liability for breaching the terrorist assets freezing mechanisms (*Thus, the deficiency indicated in paragraph 197 of the MER is not fully eliminated and the recommendation in paragraph 204 of the MER is not fully implemented*).

154. At the same time, Kyrgyzstan is drafting laws that establish administrative liability for breaching the transaction (deal) suspension and assets freezing procedures.

**Deficiency 5: The evaluation team did not receive sufficient data demonstrating the effectiveness of measures relating to freezing, seizure and confiscation.**

155. No funds/ assets were frozen under UNSC Resolution 1267 in 2011-2013.

156. In 2012, one financial transaction was suspended under UNSC Resolution 1373 and the frozen assets amounted to USD 6,000.

157. It is impossible to assess the effectiveness of the assets freezing, seizure and confiscation system based on the statistics provided by the Kyrgyz authorities.

### **Conclusion on Special Recommendation III**

The analysis shows that the Kyrgyz Republic has made significant steps for bringing its national legislation in line with the required terrorist assets freezing and confiscation system.

However, the liability for breaching the requirements related to implementation of terrorist assets freezing mechanisms is not fully established and the effectiveness of freezing measures is unclear.

With consideration for the substantial progress made by the Kyrgyz Republic in implementation of Special Recommendation III and taking into account the legislative initiative related to establishment of administrative liability for breaching the transaction (deal) suspension and assets freezing procedure, the current rating can be considered as "LC".

### ***Special Recommendation V (International Cooperation) – Partially Compliant rating***

**Deficiency 1: Lack of criminalization of TF hampers MLA requests from being provided.**

158. Financing of terrorist activity is criminalized by Article 226-1 of the KR Criminal Code.

159. The procedures ensuring execution of MLA requests, including those related to extradition, are set forth in Articles 428 and 433 of the KR Criminal Procedure Code.

160. Based on the above and with consideration for the received statistics, this deficiency is eliminated.

**Deficiency 2: No specific procedures ensuring timely consideration of MLA requests.**

161. Kyrgyzstan is able to provide various forms of mutual legal assistance on the basis of the provisions of the Criminal Procedure Code (section XIV of the Criminal Procedure Code) and of the AML / CFT Law (Article 7). MLA is provided on the basis of international treaties and agreements, or on the principle of reciprocity.

162. There is no disproportionate, unreasonable or unduly restrictive conditions to provide MLA. CPC serves as a procedural basis for the execution of MLA requests. The only condition relating to MLA requests is that it should not harm the national security interests of the Kyrgyz Republic.

164. The Prosecutor General and other executive authorities take into account any deadlines specified in the request. Criminal Procedure Code does not provide for a strict deadline to fulfill the request, however, the designation issued by the General Prosecutor's Office, set a time frame for the execution of the request.

165. Kyrgyzstan presented statistics relating to 1) the number of international requests for mutual legal assistance (ML and FT), 2) the number of requests for extradition (ML and TF), the number of requests for assistance between law enforcement agencies (ML and TF) for the period 2011-2013.

166. As the table shows (Table 4 of Annex 3) Kyrgyzstan has provided examples of the country's execution of MLA requests. This involves a certain level of efficiency. According to statistics provided there were no cases of refusal for the requests received.

**Deficiency 3: MLA requests may be refused on the basis of secrecy laws, requiring financial institutions and DNFBPs to maintain confidentiality of information.**

167. According to the amended Bank Secrecy Law provision by a bank of information constituting the bank secrecy to the designated AML/CFT authority is not considered as the unauthorized disclosure of banking secrets. This information is provided by banks for the AML/CFT purposes only under the special law that regulates these issues.

168. At the same time, information constituting the bank secrecy may still be provided by banks to the investigative agencies, courts and other government authorities only upon presentation of a court order issued in compliance with the KR criminal procedure legislation.

This restriction may prevent adequate execution of MLA requests.

Based on the above, the Kyrgyz Republic has made substantial steps towards eliminating this deficiency, however, certain gaps still remain.

**Deficiency 4: No provisions which provide for the execution of a MLA request related to identification, freezing, seizure and confiscation of property of corresponding value.**

169. MLA related to the identification, freezing, seizure and confiscation of a property is executed on the basis of the ratified by Kyrgyzstan conventions - UN Convention against Transnational Organized Crime (Palermo Convention), the UN Convention against Corruption, the International Convention for the Suppression of the Financing of Terrorism, as well as Minsk and Chisinau Convention.

170. Relevant provisions on identification, freezing, seizure and confiscation are stated in the Criminal Code, Criminal Procedure Code, Law on AML/CFT and Regulation on suspending the transactions (deals), freezing and unfreezing funds.

171. According to the Article 7 of the AML/CFT Law Transfer to the competent authorities of a foreign state of the information associated with the identification, seizure and confiscation of the proceeds of crime and / or in connection with the financing of terrorism (extremism), is carried out in cases when that does not prejudice the national security interests of the Kyrgyz Republic.

172. Information related to the identification, seizure and confiscation of the proceeds of crime and / or in connection with the financing of terrorism (extremism) is provided upon request of a foreign competent authority under the condition that it will not be used, without the prior consent of the relevant government authorities Kyrgyz Republic that provided information, in a manner not specified in the request.

173. According to the same Article, state authorities of the Kyrgyz Republic, conducting activities, related to the AML/CFT, according to the international treaties and agreements of the Kyrgyz Republic and laws of the Kyrgyz Republic execute, within their competence, requests of competent authorities of the foreign states on confiscation of the proceeds from crime, and on conduct of a specific procedural actions in cases involving identification of the proceeds from crime, seizure of the assets, also conduct expertise, interrogations of suspects, defendants, witnesses, victims and other individuals, searches, seizures, transmit the evidence, carry out the shipment and delivery of documents.

174. Article 52 of the Criminal Code provides confiscation of property of corresponding value. If the confiscation of certain items included in the property at the time of the court decision on the confiscation of the subject is not possible, the court shall decide on the confiscation of a sum of money that corresponds to the value of the item.

175. Seizure and Confiscation of the property under the MLA requests are performed by the general rules of the Criminal Procedure Code of the Kyrgyz Republic. However, according to Article 428-2 of the CCP procedural rules applicable legislation of a foreign state can be applied, if it is stipulated by an international treaty (agreement) with the State or a written commitment on collaboration based on reciprocity, unless it does not contradict to the law and the international obligations of the Kyrgyz Republic.

**Deficiency 5: No clear procedures providing for the timely handling of TF-related requests for extradition.**

176. According to Article 433 of the Criminal Procedure Code the Kyrgyz Republic may extradite, in compliance with the international agreements/ treaties or based on the principle of reciprocity, an individual staying in the Kyrgyz Republic to a foreign country for criminal prosecution or serving the sentence for the committed actions that are punishable under the criminal legislation of the Kyrgyz Republic or of a requesting foreign country.

177. Therefore, all crimes covered by the KR Criminal Code constitute the grounds for extradition.

178. Financing of terrorist activity is criminalized by Article 226-1 of the KR Criminal Code.

179. Based on the above and taking into consideration the provisions of the KR Criminal Procedure Code and a number of international agreements/ treating entered into by the Kyrgyz Republic which contain the extradition request execution procedures, this deficiency is eliminated.

**Deficiency 6: The existing mechanisms of CFT-related international cooperation are not yet actively used.**



180. According to the statistics provided by Kyrgyzstan 26 ML-related MLA requests were sent, 9 ML/FT-related requests were received (of which 4 requests related to FT) and 6 ML/FT-related requests were executed (of which 3 requests related to FT) in 2011-2013. During the same period no ML/FT-related extradition requests were received or sent.

**Conclusion on Special Recommendation V**

The analysis shows that the Kyrgyz Republic has made certain progress in bringing its national legislation in line with the requirements of Special Recommendation V.

However, further improvement of the legislative framework is required, in particular:

- Certain restrictions related to provision by banks of information constituting bank secrecy to investigative agencies, courts and other government authorities should be eliminated;

With consideration for the progress made by the Kyrgyz Republic in implementing Special Recommendation V, the current rating can be considered as “LC”.

**III. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY**

181. Kyrgyzstan has addressed the deficiencies related to all the core and key Recommendations, and has brought the level of technical compliance with these Recommendations equivalent to LC.

182. Kyrgyzstan has therefore taken sufficient steps to be removed from the follow-up process.

**EAG Secretariat**