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ЕВРАЗИЙСКАЯ ГРУППА

по противодействию легализации преступных доходов и финансированию терроризма

EURASIAN GROUP

on combating money laundering and financing of terrorism



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**FIRST MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT  
ON ANTI-MONEY LAUNDERING  
AND COMBATING THE FINANCING OF TERRORISM**

**KYRGYZ REPUBLIC**

**14 June 2007**



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## PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF KYRGYZSTAN

1. The evaluation of the anti-money laundering (AML)<sup>1</sup> and combating the financing of terrorism (CFT) regime of the Kyrgyz Republic (Kyrgyzstan) was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004<sup>2</sup>, which has been endorsed by the EAG. The evaluation was based on the laws, regulations and other materials supplied by Kyrgyzstan, and information obtained by the evaluation team during its on-site visit to Kyrgyzstan from January 28 to February 5, 2007 inclusive, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Kyrgyz government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the EAG Secretariat and EAG experts in criminal law, law enforcement and regulatory issues: Mr. Vladimir Nechaev, Federal Financial Monitoring Service, Russia (law enforcement expert), Mr. Oleg Kargin, National Bank, Belarus (financial expert), Mr. Erlan Balmahaev, Agency on Supervision of Financial Organizations, Kazakhstan (financial expert), Ms. Evgeniya Gulyaeva, Federal Financial Monitoring Service, Russia (legal expert), Mr. Kazbek Babaev, Ministry of State Income and Revenue, Tajikistan (legal expert) and Mr. Igor Nebyvaev and Ms. Olga Sorokina from the EAG Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Kyrgyzstan as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Kyrgyzstan's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

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<sup>1</sup> See Annex 1 for a full list of abbreviations.

<sup>2</sup> As updated in June 2006.

## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Kyrgyzstan as of February-March 2007 (the date of the on-site visit and immediately thereafter). The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Kyrgyzstan's levels of compliance with the FATF 40 + 9 Recommendations. (See attached table on the Ratings of Compliance with the FATF Recommendations).

2. The AML/CFT system of Kyrgyzstan is at the initial stages of development as the main set of measures according to the FATF Recommendations has been introduced by Kyrgyzstan in the end of 2005-2006. The base of these measures is the Law No.135 "On Combating Terrorist Financing and the Legalization (Laundering) of Proceeds of Crime" (entered into force on November 8, 2006) (hereafter-AML/CFT Law), as well as a range of Presidential Decrees and departmental regulations. At this stage the institutional structure of the system is being created with the core being the Financial Intelligence Service – the financial intelligence unit of Kyrgyzstan. The law enforcement and supervisory authorities are completing the necessary resource and structural modifications and are actively pursuing AML/CFT priorities, which includes the further refining the statutory-legal base, as well as conducting inspections and law enforcement measures. Due to the fact that the system is only beginning to function there are no significant results of financial investigations, criminal cases and convictions, as well as measures on the freezing, arrest and confiscation of ML/TF proceeds. There are concerns about the gaps in the system of preventive measures (on customer due diligence, record-keeping, internal control, etc.) applied to non-bank financial institutions and designated non-financial businesses and professions (DNFBPs).

3. The main sources of criminal proceeds in Kyrgyzstan are crimes connected with drug trafficking, as Kyrgyzstan is a drug trafficking transit route from Afghanistan, as well as economic crimes and smuggling. As the authorities noted, another money laundering-related threat comes from the extensive use of one-day front companies, which do not conduct any economic activity and serve as the means for concealing financial transactions. The illegal VAT-reimbursement schemes are also widely used in Kyrgyzstan. The terrorism threat comes to Kyrgyzstan from the Islamic Party of Turkistan and related organizations.

4. Kyrgyzstan is a sovereign, unitary, secular democratic republic with a presidential-parliamentarian system of government. The GDP of Kyrgyzstan totals to approx. USD 25 billion. The banking system includes 21 banks and is the most developed part of the financial sector, which also includes 167 professional participants of the securities market, 12 insurance companies, 251 exchange bureaus, as well as money and value transfer services. The DNFBPs are represented by casinos, real estate agents, lawyers, notaries, dealers in precious metals and stones.

## 2. THE LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

5. Kyrgyzstan criminalized money laundering as "legalization of money or other property acquired by illegal means" in Article 183 of the Criminal Code of Kyrgyzstan<sup>3</sup>, whereby a criminal act involves performing financial transactions and other operations involving funds or other property, with knowledge of their illegal origin, as well as the use of such assets for the purpose of engaging in entrepreneurial or any other economic activities. At the same time the definition of the money laundering offence does not include, among other things, concealment of the nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is

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<sup>3</sup> Article 183 was introduced in 1999.

the proceeds of crime, as provided for by the Vienna and Palermo Conventions. The predicate offences to money laundering are not only all of the crimes, provided for by the Criminal Code, but other actions violating the legislation of Kyrgyzstan. At the same time the Criminal Code of Kyrgyzstan does not cover all the categories of predicate offences as listed in the 40 Recommendations of the FATF. In particular, it does not include such crimes as financing of terrorism; sexual exploitation of children; insider trading and market manipulation. The crime of money laundering can be applied to persons who have committed the predicate offence (i.e. self-laundering). The money-laundering offence applies only to natural persons, and at the same time the legislation of Kyrgyzstan lacks clear provisions for the liability for legal persons for ML. The sanctions for natural persons are generally proportionate, however they have never been used, as there have been no convictions among the 3 available cases for ML.

6. Terrorism financing is not criminalized. The Law “On Combating Terrorism”, adopted in 2006, contains a general provision on the liability of persons guilty of terrorism financing, however considering Kyrgyzstan’s system of legal acts, the mechanism of administering criminal liability and qualifying characteristics for the TF offence and corresponding sanctions must be contained in a codifying act, such as the Criminal Code of Kyrgyzstan.

7. Confiscation of property for the crime of ML is provided for by Article 183 of the Criminal Code but can only be administered with relevant qualifying characteristics of the offence and only on the basis of a court conviction or ruling, which has come into force. Due to the fact that terrorism financing has not been criminalized, as well as two more of the required predicate offences, confiscation in relation to these offences would not be possible. At the same time, the criminal legislation of Kyrgyzstan lacks provisions that make it possible to confiscate property obtained directly or indirectly from the use of proceeds of crime; including incomes, profits or any other benefits resulting from the crime, as well as property possessed or owned by a third party. The legislation lacks clear provisions that secure the rights of bona fide third parties as required by the Vienna and Palermo Conventions. According to the Criminal Procedural Code the arrest of property can only be made in order to guarantee possible confiscation. The law enforcement and other competent bodies including the Financial Intelligence Service (FIS) of Kyrgyzstan, are not adequately empowered to identify and find the property subject to confiscation or when there are suspicions that it constitutes the proceeds from a crime.

8. The provisions of Articles 3 and 5 of the AML/CFT Law provide for the suspension of the transactions of natural and legal persons suspected of terrorist activities (financing of terrorism) for a period of up to 8 working days. The Antiterrorism Law also contains some freezing mechanisms, as well as procedures to compile lists of terrorists and terrorist organizations. At the same time the provisions existing in legislation do not provide for effective procedures of freezing terrorist funds as well as mechanisms for implementing such procedures according to the requirements of UN SC Resolutions 1267 and 1373. The mechanisms for disseminating the relevant lists are practically non-functioning, there are no cases of freezing, seizing and confiscation of terrorist funds. No liability (sanctions) is available for violating the AML/CFT legislation, including the mechanisms of freezing terrorist assets.

9. The FIU of Kyrgyzstan – the Financial Intelligence Service (FIS) was created in 2005. It receives, analyses and disseminates ML/TF-related information to competent authorities. The FIS also carries a supervisory function in relation to those reporting entities, which do not have supervisors in their field of activity. The FIS receives information in large quantities from reporting entities on operations above the designated threshold. The FIS directly obtains information from financial institutions through additional requests, however this mechanism is not clearly defined in legislation. There is a mechanism for obtaining such information from supervisory bodies and it has already been used in practice. The successful examples of FIS cooperation with the private sector and law enforcement are related solely to combating terrorism financing, there are no such cases yet in relation to ML. The effectiveness of financial analysis cannot yet be assessed due to lack of materials passed for

investigation to law enforcement bodies. The FIS also requires additional resources for technical IT equipment.

10. Money laundering is mainly investigated by the Financial Police, however it may also be investigated by other law enforcement authorities, as well as the General Prosecutor's Office. The 3 criminal cases, which were investigated in 2003-2007 were initiated by the Prosecutor's Office. As terrorism financing is not yet criminalized the body authorized to investigate such cases (NSC) does not yet have the possibility to do so. It seems that the law enforcement authorities are well aware of their responsibilities in investigating ML/TF. Their structure is generally adequate to AML/CFT purposes. There are significant needs for the training in ML/TF investigative techniques. The general powers of law enforcement related to questioning, seizure of documents, search of premises, arrest and other similar actions are in line with Recommendation 28.

11. Kyrgyzstan has a system of declaration of goods, where any movement of goods/funds in excess of \$3000 is to be declared in writing. The existing system is not fully compliant with SR.IX, because the customs bodies have limited powers with respect to the movement of cash and they do not fully use the powers given to them by law (Criminal Code and Code on Administrative Liability) to apply the relevant sanctions.

### **3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS**

12. The AML/CFT Law No. 135 covers the full range of financial institutions of Kyrgyzstan in line with the FATF Recommendations. At the same time it is difficult to assess the implementation of all of the requirements of this Law as it was adopted not long before the on-site mission. In this regard the system of preventive measures is at the first stages of creation and is most developed in relation to the banking sector, which is due to the fact that the National Bank introduced a number of instructions while the AML/CFT law was still being drafted. A range of documents has been adopted by the FIS, however they do not have a binding nature for financial institutions.

13. The financial institutions are not allowed to open and maintain anonymous accounts. According to the AML/CFT Law CDD must be carried out for all transactions with all clients without exception, irregardless of the sum of the operation. The statutory-legal acts of the National Bank contain most of the requirements of Recommendation 5, with the exception of identification of beneficiaries (this is only a requirement for suspicious and unusual transactions) and enhanced measures against high-risk categories of clients. At the same time these measures exist only for the banking sector, while there are practically no requirements for other sectors.

14. Kyrgyzstan has not adopted the necessary requirements of the FATF Recommendations in relation to politically exposed persons. The regulation of correspondent banking relationships is carried out by the National Bank at a high level, however certain requirements are lacking, including the documenting the respective AML/CFT responsibilities of with correspondent banks, and determining if there have been AML/CFT enforcement actions against the correspondent bank. There is no practice in Kyrgyzstan of maintaining payable-through accounts and correspondent relationships in the non-banking sector. Kyrgyzstan has not taken the necessary measures to prevent the use of new technologies and non-face to face business for ML/TF.

15. Financial institutions are not allowed to rely on third parties in performing CDD, which is why Recommendation 9 is not applicable.

16. There are potential legislative contradictions in the legislation in the sphere of banking and other secrecy, which may inhibit the implementation of the FATF Recommendations. At the time of the



on-site mission this issue was an obstacle, however soon after the mission as the assessors were informed, the issue was resolved in practice. At the same time there still exist legislative contradictions which may impede the FIS from obtaining additional information from financial institutions at its request.

17. There is a general requirement for financial institutions to keep for at least five years from the account closing date, the data and records relating to client identification, as well as data on transactions and operations with funds and other property. The detailed requirements for the types of data which is to be maintained are set for banking institutions only. There is no requirement for financial institutions to ensure that the relevant information is available on a timely basis to competent authorities upon appropriate authority. Kyrgyzstan has not taken the necessary steps to comply with SR.VII except for customer identification.

18. The AML/CFT Law requires financial institutions (except for currency exchange and MVT service operators) to record and maintain data on all unusual operations for 5 years. The AML/CFT Law also contains requirements for financial institutions to pay special attention to transactions and operations with countries which insufficiently apply the FATF Recommendations. The mechanisms existing in legislation have not yet been applied in practice.

19. The system of mandatory reporting which has been created in Kyrgyzstan contains requirements for financial institutions to provide the FIS with reports on transactions above the designated threshold, as well as STRs according to the suspicious criteria set by the FIS. If a financial institution suspects that any operation is performed for the purpose of money laundering or terrorism financing, then that financial institution must inform the FIS, regardless of the size of the transaction or any set of suspicious criteria. At the same time there is no requirement to report attempted ML transactions (in relation to TF this requirement has been implemented). Financial institutions have sent 4 STRs in relation to TF. It seems that there have been STRs sent in relation to ML as well, however their exact number could not be determined. Recommendations 14 and 19 are fully met. The FIS send a confirmation to the financial institutions when it receives a report. There is feedback to every financial institution in relation to every STR. Financial institutions are also informed on the outcomes of financial investigations.

20. The AML/CFT Law contains a general requirement to financial institutions on the organization of internal control systems. The only sector where detailed and complex requirements have been set according to Recommendation 15 is the banking sector. There are no internal control requirements for financial institutions (except for banks) relating to CDD, record-keeping, revealing suspicious transactions, training of employees and appointing a compliance officer, maintaining an independent audit function for AML/CFT issues. Financial institutions (except for some positions) are not required to maintain screening procedures when hiring employees. The financial institutions of Kyrgyzstan have no branches or subsidiaries abroad, however the law allows their creation. In this regard no legislative measures required to meet Recommendation 22 have been introduced by Kyrgyzstan in order to regulate foreign branches and subsidiaries.

21. Shell banks cannot be created in Kyrgyzstan. The banks of Kyrgyzstan are restricted from establishing or maintaining correspondent relationships with shell banks, financial institutions are also required to take preventive measures against transactions and operations with foreign correspondent banks, which allow their accounts to be used by shell banks.

22. Kyrgyzstan's AML/CFT system for monitoring and supervision of financial institutions is still at the initial stages of development. At the moment only the National Banks has created the appropriate

mechanisms, which cover the banking sector only. The supervision of this sector for AML/CFT purposes has already begun and there is a system of effective, proportionate and dissuasive sanctions. These sanctions have already been applied in practice. A system of supervision and sanctions has not yet been created for the other sectors, which are regulated by the FMSRS. Such a system is also not yet fully formed in relation to currency exchange bureaus. Financial institutions (with the exception of banks) are not required to apply the Core Principles for AML/CFT purposes. The staff numbers and structure are not yet fully reformed for AML/CFT purposes, the supervisory bodies have not yet received training on supervisory AML/CFT practices. The guidance, which has been issued to the private sector to date mostly is mostly bank-oriented.

**23.** The transfer of funds through the formal financial system may only be carried out through banks. All of the banks are subject to AML/CFT requirements and the deficiencies noted in relation to the AML/CFT measures in the banking sector are also applicable in the context of money remittance carried out by banks. At the same time Kyrgyzstan has not taken any legislative or other measures required to meet the provisions of SR.VI in relation to MVT service operators acting outside the formal financial system (*e.g. hawala, fei chen*).

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

**24.** The legislation of Kyrgyzstan covers casinos, real estate agents and dealers in precious metals and stones, and it does not cover lawyers, notaries, as well as trust and company service providers. At the same time it is not clear if the measures will be applicable to jewelers, due to discrepancies in the AML/CFT legislation. Since there are no specialized accounting firms and independent accountants in Kyrgyzstan, AML/CFT measures do not have to be used in relation to this category of DNFBPs.

**25.** The existing system of measures established by the AML/CFT Law for financial institutions is equally applicable to DNFBPs (the statutory acts of the NBKR do not apply to DNFBPs). The deficiencies for DNFBPs in the implementation of Recommendations 5,6 and 8-11, as well as 13-15 and 21 are similar to the deficiencies noted in relation to financial institutions. In addition the low level of awareness among DNFBPs in relation to their AML/CFT obligations raises the money laundering and terrorism financing risks for this sector, especially through casinos.

**26.** The FMSRS, which is responsible for licensing and supervising casinos, had not yet created the necessary AML/CFT supervision and sanction mechanisms at the time of the evaluation. The mechanisms to prevent the participation of criminals in the ownership and management of a casino are not sufficient as doubts regarding the business reputation of the licensee or the existence of a previous cancelled conviction may not serve as grounds for refusing a license. The supervisory authority for dealers in precious metals and stones is the Precious Metals Division under the Ministry of Finance of Kyrgyzstan, however it has not yet taken any measures to monitor their activity for AML/CFT purposes. Real estate agents do not at present have any state body or SRO for general oversight or monitoring of their activities. The FIS, which is responsible for supervising the entities, which do not have a supervisory body in their sphere of activity, has not begun the monitoring of real estate agents. The competent authorities have not yet issued sector-specific guidance for DNFBPs. The same mechanisms of feedback are applied in the case of DNFBPs as with financial institutions.

**27.** In addition to financial institutions and DNFBPs AML/CFT measures are also applied to pawn shops, bookmakers' offices, sponsors and organizers of lotteries, totalizators, and electronic gaming. Kyrgyzstan is actively taking measures to reduce the number of cash transactions in the country. For this purpose the National program of measures for 2003-2008 has been adopted and some of its components have already been implemented.

## **5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS**

28. All legal persons are registered in the ministry of Justice, which requires the submission of the relevant information on the legal person including its statutory documents, which contain the information on the beneficial owners. The law enforcement authorities have access to this information, which is kept in the Ministry of Justice. The system of registration is a declaratory system, which does not provide for the verification by government authorities of the information obtained in the course of registration. Due to this fact there is a widespread practice in Kyrgyzstan of setting up one-day front companies, which do not carry out economic activities, but are rather created for a short period of time to conceal the traces of financial transactions. Kyrgyzstan has not taken the necessary measures to prevent the use of bearer shares for the purposes of money laundering and terrorism financing.

29. Legal arrangements, including trusts as the term is used in the FATF Recommendations cannot be created in Kyrgyzstan.

30. Kyrgyzstan has not carried out a review of existing legislation on NPOs or an analysis of the sector to reveal the risks of terrorism financing. There are no outreach programs to the NPO sector to protect it from terrorism financing abuse. There is no supervision or monitoring of the NPOs that account for a significant portion of the financial resources under control of the sector and a substantial share of the sectors international activities. Because of absence of supervision, a system of sanctions is also lacking. The existing supervision conducted by the General Prosecutor's Office is not NPO-oriented. All NPOs must register in the Ministry of Justice. In the course of registration the NPOs must present all of the information and documentation as required from all legal persons. As is the case with legal persons the information on the beneficial owner is not verified. NPOs must maintain the documents of their transactions for 5 years. The law enforcement bodies have the necessary authority to obtain this information from the NPOs in the course of an investigation. Apparently no measures have been taken to ensure effective urgent exchange of information between competent bodies regarding NPOs at the national and international level.

## **6. NATIONAL AND INTERNATIONAL COOPERATION**

31. Already at the present stage, the degree of national cooperation and coordination on AML/CFT issues is fairly high. An Interagency Commission has been created, which is formed from the heads (or their deputies) of the relevant bodies involved in AML/CFT, at the same time this Commission had not held a single meeting. The FIS at the time of mutual evaluation had signed 7 agreements on cooperation and information exchange. The National Bank and other supervisory bodies send information to the FIS at its request on the operations carried out by their supervised entities. The law enforcement agencies have sent 4 ML-related information requests to the FIS, however at the time of the on-site mission the replies to these requests were not yet given. The NSC sent 4 FT-related requests to the FIS. The financial institution provided data on all 4 requests, which was later sent to the NSC. A general review of the effectiveness of the AML/CFT system of Kyrgyzstan has not yet been carried out.

32. Kyrgyzstan acceded to the UN Vienna Convention in 1994, ratified the UN Palermo Convention in 2003 and acceded to the UN Convention on the Suppression of the Financing of Terrorism of 1999 in 2003. Article 183 of the Criminal Code of Kyrgyzstan does not clearly state all the crimes related to money laundering in accordance with the Vienna and Palermo Conventions, the Criminal Code also does not contain liability for TF. In relation to the implementation of UN SC Resolutions there is no uniform mechanism for identifying and disseminating to the relevant organizations the lists of persons involved in terrorist activities.

33. Kyrgyzstan can provide various types of MLA according to the requirements of Recommendation 36. At the same time MLA in relation to ML/TF has not yet been provided by Kyrgyzstan. If a crime is not recognized in both jurisdictions (dual criminality) MLA requests may be fulfilled to the highest degree possible and the technical differences between the legislation in the requesting and requested countries are not an impediment for provision of MLA in Kyrgyzstan. At the same time there are no specific procedures ensuring timely consideration of MLA requests. Also due to the fact that Kyrgyzstan has not criminalized some of the required predicate offences, including terrorism financing, and some of the elements of the ML offence are not covered as required by the Vienna and Palermo Conventions the execution of MLA requests on these matters may be difficult, especially in relation to confiscation. MLA requests may be refused on the basis of secrecy laws, requiring financial institutions and DNFBPs to maintain confidentiality of information. There are no specific provisions, which ensure the execution of a MLA request, connected to the revealing, freezing, seizing and confiscation of a property equivalent. The issue of creating an asset forfeiture fund has not been considered. At the same time the assessors could not verify the level of cooperation, as there are no centralized statistics on all MLA cases, including requests related to ML, predicate offences and FT, as well as on the results of these requests.

34. In accordance with article 6 of the Criminal Code of Kyrgyzstan, foreign citizens and persons without citizenship who committed an offence outside of Kyrgyzstan and are located on its territory can be extradited to a foreign State to undergo criminal proceedings or to serve a sentence in accordance with international agreements. The mentioned provisions are applicable to ML crimes and other predicate offences, with the exception of those, which are not criminalized in Kyrgyzstan: TF, sexual exploitation of children and insider trading and market manipulation. This is also the case with some of the elements of ML offence, which are not criminalized by Kyrgyzstan according to the Vienna and Palermo conventions. The assessment team did not have the opportunity to assess the level of effectiveness of existing measures, as there are no centralized statistics kept on the number of extradition requests, which have been received and sent in connection with cases on ML, FT and the predicate offences. There are no clear procedures providing for the timely handling of requests for extradition.

35. The AML/CFT Law creates a necessary base for international cooperation of competent authorities of Kyrgyzstan with foreign counterparts, at the same time these mechanisms are not yet actively used. Despite the existence of difficulties at the initial stages the FIS has begun information exchange with foreign FIUs. The supervisory authorities generally have the necessary authority to carry out international cooperation on AML/CFT matters, however at the time of the evaluation only the National bank carried out such cooperation in practice.

# MUTUAL EVALUATION REPORT

## 1. GENERAL

### 1.1. General Information on Kyrgyzstan

36. Kyrgyzstan is located in the north-eastern part of Central Asia; its area covers 199.9 thousand square kilometers. Almost 90% of the territory is located 1500 meters above sea level. The Tien Shan, Pamir mountains and their systems separate the economic and demographic centers of the country: Chuysk Valley in the north and Fergana Valley in the south. In administrative terms, the territory of Kyrgyzstan is subdivided into seven regions. The capital of Kyrgyzstan is Bishkek. The population of Kyrgyzstan totals 5.21 million. The Kyrgyz nationality comprises over half of the population (64.9%), Uzbeks total 13.8% and Russians – 12.5%. The Kyrgyz language is the national language, while Russian has the status of an official language. The majority of the population is Sunnite Muslim. There are also Christians in the country (mostly Orthodox).

#### *Economy*

37. According to the data of the National Statistical Committee of Kyrgyzstan, the national GDP in 2005 was equal to SOM 100.1 billion<sup>4</sup>, GDP growth was 1.4%. The state budget amounted to 20 billion SOM in 2006. In 2005 the number of registered business entities has increased by 7.5% and by the end of 2005 amounted to 319.6 thousand (including daughter companies and representation offices, as well as individual entrepreneurs). The majority of businesses were engaged in trade (their share was 27.5%), in the sphere of utilities and public services (19.2%) and industry (11.9%).

#### *International relations*

38. Kyrgyzstan has been a member of the United Nations (UN) since 1992. It is also a member of the following regional organizations: Euro-Asian Economic Community (EurAsEC), Collective Security Treaty Organization (CSTO), Commonwealth of Independent States (CIS) and the Shanghai Cooperation Organization (SCO). Kyrgyzstan is also a member of the WTO, OSCE and Organization of the Islamic Conference. In 2004, Kyrgyzstan became one of the founding members of the EAG.

#### *Government System*

39. Kyrgyzstan is an independent, unitary, democratic and secular state. The Declaration on the Sovereignty of Kyrgyzstan was adopted on December 15, 1990 and the Declaration of Independence – on August 31, 1991. The Kyrgyz constitution, initially adopted on May 5, 1993 has recently been redrafted and approved on January 15, 2007. It creates a presidential-parliamentarian system of government, i.e. an even division of power between the president and parliament.

40. The President is the head of state, elected for 5 years. The Zhogorku Kenesh is the Parliament, representing the legislative branch. It includes 90 members, who are elected for a period of 5 years. The executive branch is comprised of the Executive Government headed by the Prime-minister who is selected by the President from nominees proposed by Parliament. The members of the Executive Government (the Cabinet of Ministers) are nominated by the Prime-minister, agreed on by the President and then approved by Parliament. The heads of some government agencies, which are under the Executive Government, are nominated by the Prime-minister and approved by the President. The Financial Intelligence Service is an agency of this type.

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<sup>4</sup> The som exchange rate is approx. 0.025 USD per 1 som.

41. The judicial power is exercised through constitutional, civil, criminal, administrative and other types of judicial proceedings. There are three levels in the judicial system, including territorial and city courts of general jurisdiction; seven regional courts of appeal and the Bishkek city court; and the Supreme Court. The Constitutional Court is the ultimate judicial institution guarding the principles of the Constitution.

### ***Legal System and Hierarchy of Laws***

42. Kyrgyzstan has a civil law legal system (continental tradition). In Kyrgyzstan all legal acts are grouped into two categories: laws and secondary legislation. The first category includes the Constitution (the Basic Law), constitutional laws, Codes, laws, and those Decrees of the President, which have the force of a law. The category of secondary legislation includes decrees of the President, resolutions of Parliament, resolutions of the Executive Government, various legal acts issued by government bodies (decisions, orders, instructions) and legal acts of local administrative bodies.

43. New draft legislation, immediately affecting the interests of physical and legal persons, is subject to initial publication for a public discussion at the official web-site (or mass media) of the government body, which issued the draft. The proposals and comments received as feedback should be reviewed by the drafters in the course of further work on the legislation. Drafts of secondary legislation, submitted to the President or Executive Government, are subject to mandatory approval of the Ministry of Justice. In accordance with Article 45 of the Law No. 34 "On normative legal acts" "The legal acts of Ministries, Social Fund of Kyrgyzstan, Government Committees and Commissions, Administrative Authorities, National Bank of Kyrgyzstan, Local Administrations come into force upon registration in judicial government bodies of Kyrgyzstan and further official publication, if their provisions effect the interests, rights and obligations of individuals and legal persons". The registration procedure at the Ministry of Justice (MOJ) includes the evaluation of the new draft in order to determine its compliance with other relevant legal provisions. In case of any discrepancies, the MOJ returns the draft to the issuing government authority for corrections.

44. The MOJ has specified, that a number of government authorities, such as National Agencies (for instance, the National Agency for Anti-monopoly Policy) are not included in the above list. Therefore, they are not supposed to approve or register their legal acts at the MOJ. Nevertheless, their acts possess the force of legislation. At the same time not all government agencies have the right to issue binding legal acts. This right must be specified in the Statute of the given government authority.

45. In accordance with the legal norms of Kyrgyzstan, in case there is a contradiction between the provisions of two laws, priority will be given to the latest law.

### ***Transparency, good governance, ethics and measures against corruption***

46. In December 2003, Kyrgyzstan became a party to the UN Convention against Corruption. In 2004, the OSCE, UNDP and the OECD assessed Kyrgyzstan's legislative and institutional framework to combat corruption. A Consultative Committee on good governance was formed, which initiated the analysis and coordination of measures to combat corruption. The Acting President's Decree No. 251 dated June 21, 2005 approved the Governmental Strategy for Combating Corruption. The National Agency on Corruption Prevention was formed pursuant to the Presidential Decree No. 476 dated October 21, 2005.

47. The laws of Kyrgyzstan set high ethical and professional standards for civil servants, employees of government and judicial bodies, and judges. (e.g. Laws "On Government Service", Regulation "On Disciplinary Obligations of Judges in Kyrgyzstan", Regulation "On the Ethics of Civil Servants in Kyrgyzstan and other legal acts).

48. High ethical and professional requirements for specialists such as accountants, auditors, lawyers and notaries are included in such laws as the Law «On Accounting Practices», Law «On

Activities of Notaries»; and such regulations as the “Rules of professional ethics for notaries (adopted by MOJ Order No. 73).

### ***Technical Assistance***

49. International organizations provide substantial technical assistance to the government authorities of Kyrgyzstan. The assistance is given mainly to the government bodies of the executive branch, namely to law-enforcement bodies, MOJ and Prosecutors’ Office, security services, economic and financial sector supervisors, including the National Bank.

## **1.2 General Situation on Money Laundering and Financing of Terrorism**

### ***Money Laundering***

50. The AML system is currently at the stage of initial formation. Prior to adoption of the AML law, a system or comprehensive AML measures did not exist. Due to this fact, there is no data on criminal offences and trends in this sphere, which would be based on the experience from financial investigations and supported by statistics.

51. However, statistical data of the law-enforcement authorities shows that there are objective economic grounds for Kyrgyzstan to intensify efforts to combat the laundering of criminal proceeds, which are derived from the following categories of crime:

- 1) Smuggling of alcohol, tobacco, arms and drugs;
- 2) Proceeds from such categories of crime as racketeering, prostitution, thievery, fraud, auto theft etc.; and
- 3) Economic crimes: illegal business, corruption, embezzlement of government property and resources, currency and securities forgery, illegal VAT refunds from the budget, etc.

52. Kyrgyzstan has provided the following statistical data on some of the predicate offences for the period 2004-2006:

No.	Type of offence	Number of investigated cases with convictions
1.	Illegal entrepreneurship and illegal business	11
2.	Misuse of government loan	70
3.	Production, safekeeping and sale of currency or securities	24
4.	Production and sale of alcohol and alcoholic substances without license	273
5.	Smuggling (contraband)	39
6.	Abuse of office by employees of commercial and other organizations	42
7.	Receiving of illegal rewards (bribes)	95
8.	Theft	23337 (cases transferred to court)
9.	Fraud	3093 (cases transferred to court)
10.	Extortion	160 (cases transferred to court)

53. The situation is aggravated by the large cash economy of Kyrgyzstan. The volume of cash transactions considerably reduces the capabilities of effective financial reporting by financial and other institutions.

54. A great risk in terms of money laundering is created by a large number of registered business entities, some of which, in the opinion of law-enforcement bodies, are either front or one-day companies, which do not perform the business activities that are declared in their registration documents.

55. Kyrgyzstan is a transit point for drug trafficking and illegal migration. Drugs from Afghanistan (opium, heroin) are transported through Kyrgyzstan to Europe. According to the statistics, provided by the Kyrgyz authorities 1131 cases were transferred to court in 2005, which were related to drug-trafficking.

56. According to various estimates, the turnover in the shadow economy of Kyrgyzstan ranges from 41% of GDP in 2003 (according to the data of National Statistic Committee of Kyrgyzstan) to 53% (Ministry of Finance estimates).

57. There are high risks of money-laundering through the money-remittance sector. The officially traced inflows of money transfers of migrant employees amounted to USD 65.2 million in 2003 and USD 163.6 million in 2004. However, these estimates are solely based on information on transfers through bank accounts or international money transfer systems (Western Union, Money Gram, Anelik) and postal telegraph transfers.

### ***Financing of Terrorism***

58. There is a real threat of terrorism in Kyrgyzstan, in view of the terrorist acts which have been carried out in the country in recent years by members of the Islamic Movement of Uzbekistan (IMU) and its successor group, the Islamic Turkistan Party (ITP). In 1999 – 2000, IMU terrorists invaded the southern part of Kyrgyzstan. As a result, an anti-terrorist operation was launched and is still continuing. The Fourth Report of the Analytical Support and Sanctions Monitoring Team (which visited Kyrgyzstan in 2005) of the United Nations Security Council 1267 Committee, confirms that the threat coming from the ITP is real, especially with a possible resurgence of the IMU.

59. To date, no specific actions have been taken in relation to combating terrorist financing and extremist organizations. Law enforcement bodies have not yet developed specific methods for blocking the financing of such organizations.

60. The new Law No. 178 “On Combating Terrorism” (Antiterrorism Law) was adopted on November 8, 2006. Unlike the previous Law “On Fighting Terrorism” (from October 21, 1999 No. 116), it includes provisions for preventive measures as well as actions for combating terrorist financing.

## **1.3 Overview of the financial sector and DNFBP**

### **a. Financial Sector**

61. The Table below lists the types of financial institutions in Kyrgyzstan, which engage in the financial activities that are set out in the Glossary to FATF Forty Recommendations and to which the FATF Recommendations are applicable.

<b>Types of financial activities, to which the FATF Recommendations are applicable (see Glossary to the FATF Forty Recommendations)</b>	<b>Categories of financial institutions in Kyrgyzstan, performing the financial activities</b>
1. Acceptance of deposits and other repayable funds from the public.	Commercial banks and special financial and credit organizations, when they are licensed to do so (Law No. 60 “On Banks and Banking Activities”).



2. Lending.	Commercial banks (Law No. 60 “On Banks and Banking Activity”). Micro-finance companies, micro-credit agencies (Law No. 124 “On Micro-Finance Organizations in Kyrgyzstan”). Credit associations (Law No. 117 “On Credit Associations”). Credit and savings construction banks (Law No. 49 “On Mortgage”), financial and credit organizations with a license issued by the NBKR for specific banking operations.
3. Financial leasing.	Commercial banks, micro-financing companies, micro-credit companies, credit associations with a license issued by the NBKR (Law No. 60 “On Banks and Banking Activities”, Law No. 124 “On Micro-Finane Organizations in Kyrgyzstan”).
4. The transfer of money or value.	Commercial banks (according to Law No. 60 “On Banks and Banking Activities”).  The Kyrgyz Postal Service (KR Law No. 52 “On Postal Communication”), currency exchange offices and bureaus.
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller’s cheques, money orders and bankers’ drafts, electronic money).	Commercial banks, and settlement and savings companies (according to Law No. 60 “On Banks and Banking Activities”).
6. Financial guarantees and commitments.	Commercial banks (Law No. 60 “On Banks and Banking Activities”).
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	Commercial banks (Law No. 60 “On Banks and Banking Activities”).  Brokers, dealers, securities management companies, clearing organizations, depositories and investment funds (Law No. 95 “On Stock Markets”).
8. Participation in securities issues and the provision of financial services related to such issues.	Commercial banks, when they are licensed to do so (Law No. 60 “On Banks and Banking Activities”).  Investment funds, underwriters, brokers, dealers (Law No. 95 “On Stock Markets”).
9. Individual and collective portfolio management.	Commercial banks, brokers, dealers, securities management companies, clearing organizations, depositories and investment funds (Law No. 95 “On Stock Markets”).
10. Safekeeping and administration of cash or liquid securities on behalf of other persons.	Commercial banks, brokers, dealers, securities management companies, clearing organizations, depositories and investment funds (Law No. 95 “On Stock Markets”).

11. Otherwise investing, administering or managing funds or money on behalf of other persons.	Commercial banks (Law No. 60 “On Banks and Banking Activities”).
12. Underwriting and placement of life insurance and other investment related insurance.	Insurance companies, dealers, agents, brokers and reinsurance brokers (Law No. 96 “On the Insurance System in Kyrgyzstan”)
13. Money and currency exchange.	Exchange offices, arranged by banks, and independent exchange bureaus (Law No. 6-1 “On Operations with Foreign Currency”).

### ***Banking Sector<sup>5</sup>***

62. The banking system of Kyrgyzstan consists of two levels: the upper level consists of the National Bank of Kyrgyzstan; the second level is comprised of commercial banks and other credit organizations. In comparison with other types of financial activity the banking sector occupies the largest part of the financial market of Kyrgyzstan and totals 20% of GDP.

63. In 2005, the cumulative assets of the banks grew by 24.4% and totaled 22.0 billion SOM. As of September 1, 2006 there were 21 commercial banks, 2 specialized credit-and-finance organizations, 100 micro-credit organizations and 316 credit unions operating in Kyrgyzstan.

### ***Securities Sector***

64. As of January 1, 2006, there were three licensed exchanges in Kyrgyzstan: the Kyrgyz Stock Exchange, the Stock Exchange Trade System and the Central Asian Stock Exchange. The volume of sales is estimated in the amount of 10-15 deals per day in all three stock exchanges. Currently only the Kyrgyz Stock Exchange lists securities. Listing requirements are established by its internal regulations. During 2006 4985 deals were made totaling 4137 million SOM.

65. As of January 1, 2007, there were 167 issued licenses, which authorize the following types of activities in the securities market:

- Keeping a register of securities holders – 17;
- Depository activities – 4;
- Investment funds – 14;
- Stock exchanges – 3;
- Brokers’ activities – 35;
- Dealers’ activities – 30;
- Management of securities – 37;
- Investment consulting – 13; and
- Investment fund management – 14.

### ***Insurance Sector***

66. The insurance sector in Kyrgyzstan is not large. It includes insurance companies and dealers (agents, brokers, reinsurance brokers). As of January 2007, 12 companies had the right to perform insurance activities. Currently, two companies offer life insurance products.

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<sup>5</sup> The terms “banking sector” and “banking institutions” used in this Report refer to banks and other types of specialized credit institutions.

### ***Foreign currency exchange***

67. Foreign currency exchange in Kyrgyzstan is under the supervision of the National Bank of the Kyrgyz Republic (NBKR). Exchange services are provided by banks (through exchange offices) and by independent exchange bureaus. As of January 1, 2007 there were 251 exchange bureaus in Kyrgyzstan.

### ***Money or value transfer***

68. Money transfers can be performed through banks and the Kyrgyz Post. The upper limits of the amount to be transferred through the Postal Service are specified in the bilateral agreements of the Kyrgyz Post and other countries. Usually, that limit in Kyrgyzstan does not exceed USD 1,000.

69. The Kyrgyz authorities do not hold any information on other types of organizations and persons providing money or value transfer services.

### **b. DNFBP**

#### ***Lawyers, Notaries, other Independent Legal Professionals and Accountants***

70. The legal profession is represented by lawyers, barristers and notaries. The activities of a lawyer include the provision of qualified legal advice and services, which are not connected with any types of court proceedings. These activities are not licensed and may be conducted by any legal person or individual entrepreneur. In this regard there is no information on the number of lawyers and law firms operating in Kyrgyzstan.

71. The activities of a barrister usually involve the preparation of cases for court and participation in court proceedings. A barrister must be a citizen of Kyrgyzstan with the necessary qualifications. Barristers do not carry out any of the activities, specified in the FATF Recommendations, which relate to DNFBPs.

72. A notary conducts notary actions certifying indisputable facts, events of legal significance, and authenticating legal documents for their use for legal and other purposes. According to Law No. 70 "On notaries" notaries may accept monetary and securities deposits for safekeeping.

73. At present, there are no accounting firms or independent accountants, who are not employees of other types of business in Kyrgyzstan.

#### ***Real Estate Agents***

74. Currently, the activities of real estate agents are not subject to licensing or any sort of monitoring. Any legal entity has the right to conduct this type of activity. Therefore, exact data on the number of such agents is not available.

#### ***Dealers in Precious Metals and Stones***

75. There are 463 natural and legal persons dealing in precious metals and stones in Kyrgyzstan. Due to terminological differences in the various legal acts there are difficulties in applying AML/CFT measures to this category (see section 4).

#### ***Casinos (including internet casinos)***

76. As of January 1, 2007, there were 18 casinos and 111 operators of slot machines in Kyrgyzstan.

#### ***Trust and company service providers***

77. There is no separate professional category of trust and company service providers in Kyrgyzstan, as it is understood by the FATF Recommendations (see also section 5 of this Report). At the same time Kyrgyzstan's lawyers may participate in the creation of trusts abroad. There are no legislative obstacles for Kyrgyz citizens to act as trustees in a foreign trust.

#### ***Other NFBPs***

78. Other NFBPs in Kyrgyzstan include totalizators, bookmakers' offices, lotteries and pawnshops. As of January 1, 2007 there were 20 totalizators (bingo, Russian lotto); and 20 bookmakers' offices, 27 lottery businesses and 140 pawnshops.

### **1.4. Overview of commercial laws and mechanisms governing legal persons and arrangements**

79. Legal persons, which are commercial organizations may be registered in the form of commercial partnerships, cooperatives, national and public enterprises. Partnerships and companies may have the following organizational forms: limited-liability companies, extended-liability companies, limited partnerships, unlimited partnerships and joint-stock companies (open and closed type).

80. *An unlimited partnership* is a partnership, where participants (unlimited partners) in accordance with their agreement, are engaged in business activities on behalf of the partnership and have common responsibilities, guaranteed by the partnership property.

81. *A limited partnership* is an entity, where in addition to unlimited partners there are limited partners, who are responsible for the risk of losses, related to the activities of the partnership, within the limits of their investments, though they do not take part in the business activities.

82. Business companies and partnerships should have Articles of Incorporation and a Charter, specifying (apart from other information) the type of organization, its name, location, life term (in case this term is established at the time of registration), authority of the head of the company, management and control bodies and their competence, and company foundation procedures, as well as a list of founders. One or more physical or legal persons, including foreign ones, may be members of a company/partnership.

83. The authorized capital of a limited liability company should be no less than the minimum estimated indicator<sup>6</sup>, accepted in Kyrgyzstan at the moment of contribution of investments by the members of the company.

84. *Shareholding companies* should keep a register of shareholders, including the following information: specification, if the shareholder is an owner or a nominee holder of shares; for the holders of nominal shares - location and bank account (for legal persons), passport data and address for physical persons); requisites of entities, who have share mortgage rights. The authorized capital should not be less than one thousand minimum estimated indicators (approx. 250 USD). The company has to keep the original documents of the shareholders' register and minutes of the meetings for no less than five years, and then file the documents into an archive. An independent audit should be conducted at least once a year. Affiliated persons<sup>7</sup> of the company should inform, in writing, the authorized body of Kyrgyzstan which is responsible for securities market supervision, about the shares in their possession, specifying the number and type of shares at least within 10 days upon their acquisition.

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<sup>6</sup> An estimated indicator currently equals to SOM 100

<sup>7</sup> An affiliated person is any physical or legal entity (excluding government bodies, supervising the activities of those persons within the framework of their responsibilities), who has the right directly or indirectly to participate in the decision-making process or make an impact on the decisions of the company (including validity of contracts or transactions), as well as any physical or legal person, who is empowered by the company to the above rights. Executives of the shareholder company and the owners of five and more percent of voting shares are considered to be affiliated persons.

85. *Cooperative companies* are legal persons and can be founded in the form of commercial or non-commercial organizations. Legal persons, which are non-commercial organizations can be founded in the form of cooperative companies, social or religious organizations (associations), financed by their owners, charities or other social funds, as well as in other forms, provided for by the law. As of January 1, 2007 there are 32,000 non-commercial organizations operating in Kyrgyzstan.

### ***State Registration of Legal Persons***

86. A legal person is subject to state registration with the Ministry of Justice. The registration information is kept in a consolidated government Register of Legal Persons which is publicly accessible (see procedure of registration in section 5).

87. The consolidated register of legal persons includes the following information: the registration number, date of registration, identification number, and the national classifier code for companies and enterprises (OKPO); the legal form of incorporation and the name of the entity; and the location of the legal person and information on its head.

88. The Register includes the same types of data on non-commercial organizations.

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

### ***a. AML/CFT Strategies and Priorities***

89. Money laundering was criminalized in Kyrgyzstan with the adoption of the new Criminal Code in 1997, which included Article No. 183 “Legalization of monetary assets or other property, gained from illegal activities”. That Article of the Criminal Code was a reference article, which required the adoption of a special law in order to be used in legal practice. The Decree of the President № 352 dated September 8, 2005 “On the authorized body for combating the financing of terrorism and laundering of criminal proceeds” founded the Financial Intelligence Service of Kyrgyzstan. On June 16, 2006 the Parliament of Kyrgyzstan adopted the Law “On Combating Financing of Terrorism and Legalization (Laundering) of Criminal Proceeds”, which entered into force on November 8, 2006.

### ***Current Priorities***

90. During the initial stage of AML/CFT system formation, the primary focus is on work with the banking sector, which is dominant in the financial sphere. Work is also being carried out with other sectors and DNFBPs. Large amounts of technical assistance from international organizations are an essential part of this process (e.g. from the World Bank, EAG, IMF, OSCE, UNODC etc., as well as bilateral assistance from Russia, USA and others). This type of assistance is aimed at the training of representatives of government bodies and the private sector, as well as creating other components of the national AML/CFT system.

91. The necessary steps are currently being taken in Kyrgyzstan to draft a national strategy on combating money laundering and financing of terrorism. For the banking sector, the AML/CFT issues are outlined in the “Strategy for development of the banking sector for the period to 2008” (approved by NBKR Resolution No. 16/4 (2006) and by the Coordination Committee on Macroeconomic and Investment Policy under the Executive Government of Kyrgyzstan). The document urges commercial banks to implement relevant programs in the area of AML/CFT and to pay special attention to CDD. The strategy also gives notice to banks to refrain from using new technologies, which favor anonymity of clients and are thus susceptible to money laundering.

***(b). The Institutional Framework for Combating Money Laundering and Terrorist Financing<sup>8</sup>***

92. **Interagency Commission** on combating money laundering and terrorist financing is the main coordinating body for AML/CFT issues at the national level.

93. The main functions of the Commission include:

- to prepare proposals on developing and implementing an AML/CFT national strategy;
- to ensure interaction between government authorities on various AML/CFT issues;
- to develop a consistent policy in issues of international cooperation in the area of AML/CFT; and
- to prepare proposals on the strengthening of the AML/CFT system.

94. The Interagency Commission is comprised of the heads of participating agencies (or deputy heads). The Commission is chaired by the Chairman of the Financial Intelligence Service (for details on the work of the Commission see also section 6.1).

***Ministries***

95. **Ministry of Finance (MOF)** plans and implements national financial policies of Kyrgyzstan, including the preparation and execution of the budget. The Division on Precious Metals of the MOF carries out government supervision over the production, sale, accountability, storage and disposal of precious metals and stones in the domestic and external markets and their withdrawal from the national fund.

96. **Ministry of Justice (MOJ)** is responsible for managing legislative activities of the government agencies, and exercises control over penitentiary bodies. The MOJ keeps a unified record of legal persons, including non-commercial organizations. The MOJ also issues licenses to barristers and notaries and monitors their activities.

97. **Ministry of Foreign Affairs (MFA)** is a central body of government with executive functions in external affairs, it forms a unified system of diplomatic service. The Ministry is responsible for relations with international organizations, including the UN Security Council and its Committees.

98. **Financial Intelligence Service (FIS)** is the authorized government body responsible for implementing measures in relation to counter-terrorist financing and money laundering. It coordinates the activities of government policy in this area, and holds a supervisory function. The FIS is a part of the Executive Government and reports directly to the President.

***Criminal justice and investigative authorities***

99. **General Prosecutor's Office (GPO)** is the government body supervising over the precise and consistent implementation of legislation by local authorities, ministries, government committees, administrative bodies and other authorities, which are formed under the Executive Government, local administrations, public associations, officials, business entities (irrespective of the type of property) and individuals. The Prosecutor's Office executes criminal prosecution and engages in litigation in court. The Prosecutors' Office also supervises over the performance of government authorities, engaged in criminal investigation activities.

100. **Ministry of Internal Affairs** is a government law enforcement body with executive functions to ensure public order, individual and social safety, and combat crime.

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<sup>8</sup> At the time of the assessment the Executive Government was being restructured. This report reflects the new structure.

101. **National Security Committee (NSC)** is responsible for the national security of Kyrgyzstan. For this purpose, the NSC carries out preventive and investigative measures in relation to terrorism, extremism, corruption, smuggling, illegal arms trafficking of drugs and precursors, activities of illegal armed units, individual criminals and public associations, if their actions are aimed at overthrowing the constitutional order of Kyrgyzstan.

102. The **Financial Police** is the government law-enforcement agency, responsible for the detection, disclosure, investigation of economic and tax crimes, including money laundering. The Financial Police is a part of the Executive Government.

103. The **Drug Control Agency (DCA)** is a law-enforcement body outside the Executive Government, which forms and implements a consolidated policy of combating the trafficking of drugs, psychotropic substances and precursors. The Agency was formed in the framework of an international UNODC project

104. The **State Customs Committee (SCC)** is a law-enforcement body with the functions of protecting the economic security of Kyrgyzstan and observing the customs and tariff regulations of export-import operations and other external economic activities when goods and vehicles are transported through the border. The SCC is responsible for charging customs fees, observing the customs regime, providing proper documentation and customs control. Law-enforcement functions within the SCC in regard to detection and prevention of smuggling of goods, vehicles, arms, drugs, precursors and foreign currency are in the competence of the Department for Combating Smuggling and Illegal Trafficking, specifically the Section for Illegal Drug Trafficking and Investigation Section.

#### ***Financial Sector Authorities***

105. The **National (Central) Bank (NBKR)** is the main institution responsible for maintaining the purchasing capacity of the national currency, ensuring effectiveness, safety and reliability of the banking system and payment system of the country in general. The National Bank supervises over the activities of financial-credit organizations, exchange offices/bureaus and pawnshops. The National Bank plays a key role in ensuring the implementation of AML/CFT measures by these organizations.

106. The **Financial Market Supervisory and Regulatory Service (FMSRS)** forms and implements a consistent government policy on the financial markets. The FMSRS licenses and supervises over the following types of professions and financial activities: bookmakers' offices, registers of securities holders, depository activities, investment funds; dealers, brokers, securities management companies, lotteries; and gambling businesses.

#### ***Other bodies***

107. **Governmental Agency on Registration of Real Estate Property Rights (Government Register)** coordinates the functioning of the unified government system of registration of property rights for real estate objects, and pursues a consistent policy in terms of regulation of real estate and land property relations, and development of the real estate market. It registers property rights and ensures the protection of those rights on the part of the government.

#### ***Self-Regulatory Organizations of Financial Sector***

108. The SRO for the banking sector is the Association of Banks, which represents the banking society, actively cooperates with government authorities on behalf of the banking community and participates in the development of AML/CFT legislation.

109. In the securities market the functions of an SRO were played by the Kyrgyz Stock Exchange, though as of January 2007 it has abandoned that function. There are two self-regulatory organizations in the insurance sector: the National Insurance Association (unites six insurance companies) and the

Insurance Union (three insurance companies). The evaluation team was informed that these organizations have a low level of activity.

***Supervisor or other competent authority, or SRO for DNFBP***

110. There are four SROs for real estate agents in Kyrgyzstan, though none of them is actively functioning. There is also an association of jewelers, which actively opposes the implementation of AML/CFT requirements by their sector.

***c. Approach to AML/CFT concerning risk***

111. Kyrgyzstan has not implemented a risk-based approach in its AML/CFT system in the manner envisaged by the FATF Recommendations. In a limited fashion, banking institutions are allowed to take risk into account in correspondent banking relationships (see section 3.2).

***d. Progress since the last mutual evaluation***

112. This is the first mutual evaluation of Kyrgyzstan.



## 2. THE LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

### Laws and Regulations

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

##### 2.1.1. Description and Analysis

###### *Recommendation 1*

113. Kyrgyzstan criminalized money laundering as “legalization of money or other property acquired by illegal means” in Article 183 of the Criminal Code of Kyrgyzstan<sup>9</sup>, whereby a criminal act involves performing financial transactions and other operations involving funds or other property, with knowledge of their illegal origin, as well as the use of such assets for the purpose of engaging in entrepreneurial or any other economic activities. In the assessors’ opinion, the definition of the money laundering crime does not include, among other things, concealment of the nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime, as provided for by the Vienna and Palermo Conventions.

114. Money laundering crimes cover any types of property directly or indirectly representing the proceeds of crime. At the same time, the term “proceeds acquired by criminal means” is present only in the KR AML/CFT Law and defines such proceeds as money and other movable and immovable property acquired as a result of crimes under the Criminal Code of Kyrgyzstan. The concept of “other property” in accordance with the mentioned Law includes things and objects, as well as property rights constituting material value (movable and immovable property, including securities, precious metals and stones, antiques and other property in accordance with existing legislation).

115. According to Article 183 of the Criminal Code of Kyrgyzstan a conviction of a person under a predicate offence is not necessary in order to establish that the incomes have been obtained as a result of a predicate crime and charge any individual with the laundering of such proceeds. At the same time, according to the authorities, a person may not be convicted of laundering such proceeds if it is not proven, that such assets are the proceeds of a predicate crime or other actions, constituting an offence, for example of an administrative nature.

116. Kyrgyzstan uses a broad approach in defining the scope of predicate offences. As defined by Article 183 of the Criminal Code money or any other assets acquired by illegal means constitute the object of laundering. This means that predicate crimes for money laundering are not only all the crimes under the Criminal Code but any other actions contradicting the laws of Kyrgyzstan. But the Criminal Code of Kyrgyzstan does not cover all the categories of predicate offences as listed in the 40 Recommendations of the FATF. In particular, it does not include such crimes as financing of terrorism; sexual exploitation of children; insider trading and market manipulation. In relation to such a category of predicate offences as “piracy”, the norms providing for liability for committing this offence are contained in the Administrative liability code. At the same time there are no practical cases in Kyrgyzstan, when these administrative offences would have been predicate offences to money laundering.

117. In Kyrgyzstan the term of “predicate crimes to money laundering” can be extended to include any action in another country, which would have constituted a predicate offence if it had been committed domestically. This is done on the basis of conventions and bilateral treaties on mutual legal assistance and legal relations on criminal matters, as well as on extradition.

118. Under Article 183 of the Criminal Code of Kyrgyzstan the subject of a crime may be both an individual who has committed a predicate offence and an individual not involved in the perpetration of the crime, but who has carried out financial transactions and other operations with illegally acquired proceeds or

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<sup>9</sup> Article 183 was introduced in 1999.

other property and has used them in entrepreneurial or any other economic activities. Thus the crime of money laundering can be applied to persons who have committed the predicate offence (i.e. self-laundering) and in this regard domestic legislation of Kyrgyzstan does not contain any limitations.

119. Auxiliary crimes are provided for under Articles 27, 28, 30, and 31 of the Criminal Code of Kyrgyzstan. Thus, under Article 27 of the Criminal Code of Kyrgyzstan the preparation for a crime includes the search or adaptation of means or instruments for that criminal purpose, prior agreement to commit a crime or any other premeditated creation of conditions for the perpetration of a crime if the crime was not carried through due to circumstances beyond the control of the individual concerned. Under Article 28 of the Criminal Code of Kyrgyzstan an attempted crime is an action or inaction knowingly committed and directly aimed at the perpetration of a crime if the crime was not carried through due to circumstances beyond the perpetrator's control. Under Article 30 of the Criminal Code of Kyrgyzstan (complicity in a crime) the accomplices of a crime include, along with the executors<sup>10</sup>, also organizers<sup>11</sup>, instigators and accessories. An instigator is a person who has induced the perpetrators to commit a crime. An accessory is a person who has assisted in the perpetration of a crime with advice, directions, by making available means or eliminating obstacles, or a person who has promised in advance to give cover to the criminal or instruments or means of the perpetration of the crime, cover the tracks of the crime or any objects obtained by criminal means, as well as a person who has promised in advance to buy or sell such objects.

120. Article 31 of the Criminal Code of Kyrgyzstan lists the forms of complicity. The forms of complicity in a crime include: simple complicity (perpetrated by a group of persons without a prior agreement; by a group of persons in prior agreement), complex complicity, organized group, criminal association. In addition, under Article 35 of the Criminal Code of Kyrgyzstan concealment is also an ancillary crime<sup>12</sup>.

#### *Additional Elements*

121. Under Article 6 of the Criminal Code of Kyrgyzstan the citizens of the Republic of Kyrgyzstan as well as persons without nationality permanently residing in Kyrgyzstan who have committed a crime outside Kyrgyzstan are liable under the Criminal Code of Kyrgyzstan unless they have been punished by a sentence imposed by a court of a foreign state. And, as the assessment team had been told, the citizens of Kyrgyzstan and persons without nationality permanently residing on the territory of Kyrgyzstan are only prosecuted for crimes committed abroad if they have not been convicted in a foreign state and if the perpetrated action is recognized as a crime both in Kyrgyzstan and in the state on whose territory it had been committed.

#### **Recommendation 2**

122. The money-laundering offence applies to natural persons who knowingly engage in ML activity. Under Article 17 of the Criminal Code of Kyrgyzstan only a criminally sane person who has committed a crime and reached the age provided for under the Criminal Code of Kyrgyzstan can be criminally prosecuted.

123. The element of intent to commit a money laundering offence may be inferred from objective factual circumstances. Under Article 81 of the Criminal-Procedural Code of Kyrgyzstan evidence in a criminal case may be any factual data on the basis of which the investigator, prosecutor and the court establish, under the legal procedure, the existence or absence of an act stipulated for under the Criminal Code, determine the perpetration or otherwise of the act by the person being suspected, accused or tried and define the guilt or innocence of the accused as well as any other circumstances relevant to the orderly resolution of the case.

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<sup>10</sup> An executor is a person who has directly committed the crime or was directly involved in committing it together with other persons as well as a person who has committed a crime by using other persons who are not criminally liable under the law.

<sup>11</sup> An organizer is a person who has organized the perpetration of a crime or masterminded its perpetration as well as a person who has created an organized group or a criminal association or has been the leader thereof.

<sup>12</sup> Concealment of a criminal as well as instruments and means of the perpetration of the crime, the covering up of the tracks of the crime or any objects criminally acquired, which was not promised in advance carries punishment only in cases provided for by the Criminal Code of Kyrgyzstan.

124. Criminal liability does not extend to legal persons, because due to fundamental principles of domestic law only natural persons may be held criminally liable.

125. Specifically, this may be inferred from Section 2 of Kyrgyzstan's Constitution, which deals with the freedoms and rights of the **individual and the citizen**. According to Article 15 of the Constitution the **accused person** should not prove his innocence and should not testify against himself, his spouse, and those close relatives, which are designated by the law. In addition, according to the mentioned article any actions placing liability on the **individual** prior to a court conviction are inadmissible and serve as a basis for compensating moral and physical loss through a court procedure. In this regard the criminally accused (i.e. criminally liable) may only be a natural person.

126. In addition according to Article 17 of the Criminal Code only a sane natural person who has committed a crime and reached the age specified in the Criminal Code may be held criminally liable.

127. The Kyrgyz legislation does not contain any provisions to apply liability to legal persons for ML. At the same time the Law does not contain the mechanism for administering this liability. Taking into consideration the system of legal acts in Kyrgyzstan, such a mechanism for administering liability as well as the qualifying characteristics of the violation of ML in connection to sanctions should be regulated by another legal act, devoted to administrative liability issues in all types of violations. For Kyrgyzstan this act is the Administrative Liability Code. At the same time this Code does not contain special provisions providing for the liability of legal entities for ML/TF.

128. Article 183 of the Criminal Code of Kyrgyzstan provides for the following sanctions with regard to natural persons:

- Under Part 1 - conducting financial transactions and other operations with money or assets acquired with knowledge of their illegal origin and the use of such assets for entrepreneurial or other economic activities are punishable by a fine of between 500 and 1000 estimated indicators or by deprivation of freedom for a period of up to 4 years with a fine of up to 100 estimated indicators.
- Under Part 2 – the above mentioned crimes committed by a group of persons in prior agreement; repeatedly; by a person abusing his official position – between four and eight years with or without confiscation of property;
- Under Part 3 - the above mentioned crimes committed by an organized group or in a large scale – from 7 to 10 years with confiscation of property.

129. Under Article 287 of the Civil Code of Kyrgyzstan in cases provided for by the law, property may be confiscated from the owner without compensation, which may be done through a court ruling to sanction for perpetrating a crime or any other violation.

130. Confiscation may be carried out as an administrative measure.

### *Effectiveness*

131. According to the statistical data provided by Kyrgyzstan on investigations connected with money laundering, court prosecutions and charges in the period between 2002 and 2006, 3 criminal cases were initiated under Article 183 of the Criminal Code of Kyrgyzstan. The assessors were informed that in one of these cases an acquittal was made (in connection with the acquittal on the predicate offence), one criminal case was sent back for additional investigation and one has been suspended because the accused is currently at large. Considering the overall money laundering situation in Kyrgyzstan and the level of risks involved - the number of ML cases being prosecuted appears to be very small, which demonstrates that the AML/CFT system is still ineffective.

#### 2.1.2. Recommendations and Comments

132. Kyrgyzstan should make the necessary amendments to Article 183 of the Criminal Code to bring it in line with the provisions of the Vienna and Palermo Conventions. In particular it is necessary to criminalize the concealment, ownership and acquisition of illegally gained income.

133. It is necessary to introduce amendments to the Criminal Code of Kyrgyzstan providing for criminal liability for terrorism financing; sexual exploitation of children; insider trading and market manipulation to ensure that the money laundering offence covers the entire list of the categories of predicate offences established under the FATF 40 Recommendations.

134. Special provisions should be introduced into the legislation ensuring civil and administrative liability of legal entities for terrorist financing and money laundering.

### 2.1.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	PC	<ul style="list-style-type: none"> <li>• <b>Criminalization of money laundering does not fully correspond to the Vienna and Palermo Conventions;</b></li> <li>• <b>The list of predicate offences does not include 3 of the 20 categories of predicate crimes established under the FATF 40 Recommendations;</b></li> <li>• <b><i>Effectiveness:</i> Available statistics raise doubts as to the effective application in Kyrgyzstan of provisions regarding the crime of money laundering.</b></li> </ul>
R.2	PC	<b>The laws of Kyrgyzstan do not contain special norms providing for the liability of legal persons for money laundering.</b>

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

### 2.2.1. Description and Analysis

135. On November 8, 2006 Kyrgyzstan passed the Law “On Combating Terrorism” (hereafter – Antiterrorism Law). Under Article 1 of the mentioned law the financing of terrorism is a criminal act aimed at supporting terrorist activities carried out by a deliberate transfer of assets to the organizers and perpetrators of a terrorist act through any methods and means (directly or indirectly, openly, secretly or through mediators), or an attempt to make available or raise money for the use of or knowing that they will be used fully or partially to pursue terrorist activities. A similar definition is contained in the AML/CFT Law.

136. Under the law referred to above, any of the following acts are recognized as support of terrorist activities:

- 1) drawing persons into committing terrorist crimes;
- 2) recruitment for terrorist activities;
- 3) undergoing training or preparation for terrorist activities;
- 4) administering training and preparation of a person for terrorist activities;
- 5) financing or otherwise assisting terrorist activities;
- 6) conducting an operation (deal) with money or other financial assets of:
  - natural persons who commit or attempt to commit terrorist crimes or assist in the perpetration thereof;
  - legal entities whose property is directly or indirectly owned or controlled by terrorists or persons who support terrorist activities;
  - legal entities and natural persons acting on behalf or on directions of terrorists or persons who support terrorist activities, including with the use of means obtained or acquired from using property directly or indirectly owned or controlled by persons who support terrorist activities or legal entities and natural persons linked with them;
- 7) assisting the establishment of channels for arms supplies to terrorists and for the movement of terrorists across the state border;

- 8) providing refuge to persons who have financed, planned, supported or committed terrorist crimes; and
- 9) allowing the use of the territory of a state for committing terrorist acts or terrorist crimes against other states or foreigners.

137. In the opinion of the assessors the provision of funds to a terrorist or a terrorist organization for purposes not related to a specific terrorist act is not covered.

138. “Means” are defined as assets of any kind, both tangible and intangible, movable or immovable regardless of how they had been acquired as well as legal documents or statements in whatever form, including in electronic or digital form, certifying the right to such assets or participation in them, including bank credits, traveler’s checks, bank checks, postal remittances, securities, property benefits, etc.

139. Under Article 26 of the Law “On Combating Terrorism” natural persons guilty of financing terrorist activities are criminally liable under the laws of Kyrgyzstan. At the same time, taking into consideration the content of this Article, which contains a general provision on the liability of persons guilty of terrorism financing, and with regard to Kyrgyzstan’s system of legal acts, the mechanism of administering criminal liability and qualifying characteristics for the TF offence and corresponding sanctions must be contained in a codifying act, such as the Criminal Code of Kyrgyzstan. But at present the Criminal Code of Kyrgyzstan does not contain liability for the crime of financing terrorism. Therefore terrorism financing is not a predicate offence with regard to money laundering.

140. According to the authorities, criminal liability for terrorism financing or rendering any assistance to terrorist organizations, including raising funds, may be punished, under the Criminal Code of Kyrgyzstan, as complicity, or being an accessory in the commission of crimes connected with terrorist activities. Under Article 30 of the Criminal Code of Kyrgyzstan a person who assisted in the perpetration of a crime by advice, directions, provision of means or elimination of obstacles, or a person who has promised in advance to conceal the criminal, instruments or means of perpetration of the crime, the tracks of the crime or criminally obtained objects, as well as a person who has promised in advance to buy or sell such objects and who has provided the means for the perpetration of the crime or any other assistance is considered to be an accomplice. Since terrorism financing is not an autonomous stand-alone offence there can be no ancillary offences to terrorist financing (as it is required by the FATF Recommendations and Article 2(5) of the Terrorist Financing Convention).

141. Because terrorism financing is not a separate crime under the Criminal Code of Kyrgyzstan the sanctions imposed for complicity and being an accessory in the perpetration of crimes are the same as those imposed for terrorist crimes, to which the complicity was related. The Article 226 “Terrorism” of the Criminal Code provides for 5 to 10 years imprisonment; if the crime was committed by a group of people by prior agreement or repeatedly or with the use of firearms – from 8 to 15 years imprisonment; if the crime was committed by an organized criminal group or lead to human deaths or other grave consequences - from 15 to 20 years imprisonment.

142. Furthermore, Article 26 of the Antiterrorism Law envisages that the legal persons as well as organizations, registered and not registered as legal persons, if at least one organizational unit thereof financed terrorist activities, are subject to liquidation by a court order and their property confiscated by Kyrgyzstan for further use in terrorism prevention and elimination of the aftermath of terrorist acts. The CEOs and staff of the liquidated legal entities or organizations who were directly involved in the financing of terrorist activities are subject to criminal prosecution under Part 1 of the mentioned article.

143. As noted above, under Article 6 of the Criminal Code of Kyrgyzstan the citizens of Kyrgyzstan as well as persons without nationality permanently residing in Kyrgyzstan who have committed a crime outside Kyrgyzstan are liable under the Criminal Code of Kyrgyzstan unless they have been punished under a court sentence of a foreign state. Besides, under Article 428 of the Criminal Procedural Code of Kyrgyzstan the court, the prosecutor and the investigator fulfill the requests of courts and investigation bodies of foreign states properly conveyed to them to carry out investigative or legal procedures according to the general rules of the Criminal Procedural Code of Kyrgyzstan.

144. Because the Criminal Code of Kyrgyzstan does not provide for criminal liability for terrorism financing, statistical data on investigations connected with terrorism financing and court prosecutions and convictions are lacking.

### 2.2.2. Recommendations and Comments

145. Kyrgyzstan needs to introduce amendments to the Criminal Code of Kyrgyzstan to establish criminal liability for terrorism financing.

146. Kyrgyzstan’s legislation should be amended in order to include provisions which state that a person engaged in the financing of terrorism may be prosecuted even if the money raised for terrorist purposes has not actually been used or no link has been established between the assets and the specific terrorist act, if a terrorist act has not been committed or if no attempt was made to commit it, as well as provisions whereby participation in any type of activities listed in Section 5 of Article 2 of the International Convention on the Suppression of the Financing of Terrorism would also be recognized as a crime.

147. The crime of terrorism financing must be a predicate offence in relation to money laundering. There should be effective proportionate and dissuasive sanctions for terrorism financing.

148. There should be liability for legal persons for FT.

149. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

### 2.2.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	NC	<ul style="list-style-type: none"> <li>• <b>Terrorism financing is not criminalized, consequently other requirements of SR.II are not met;</b></li> <li>• <b>No liability for legal persons for TF.</b></li> </ul>

## 2.3. Confiscation, freezing or seizing of proceeds of crime (R.3)

### 2.3.1. Description and Analysis

150. Punishment through confiscation of property is a measure to combat lucrative, serious and very serious crimes. Confiscation of property may be ordered by a court only as additional punishment and only in cases when the article stipulates for such a measure. Confiscation is carried out through the arrest of the property subject to confiscation (or the entire property pending the sentence coming into force) under a procedure provided for by criminal procedural legislation.

151. Article 183 of the Criminal Code of Kyrgyzstan “Legalization of monetary assets or other property, gained from illegal activities” provides for possible confiscation of the property of individuals who have committed the mentioned crime. At the same time this article, in the opinion of the evaluation team, does not provide for mandatory confiscation of laundered incomes in all cases. The article maintains that confiscation may be ordered by the court at its discretion and in the three following cases: 1) in the event of a repeated crime; 2) if a crime is committed by a group of individuals acting on prior agreement; 3) if a crime has been committed with abuse of office; 4) if a crime has been committed by an organized group of individuals; and 5) if the scale of the crime is large.

152. The general provisions on property confiscation are contained in Article 52 of the Criminal Code of Kyrgyzstan. Under that Article, the property subject to confiscation is the property of the convicted individual, which served or was intended for the criminal act or was obtained as a result of the crime, with the exception of the property subject to be returned under the procedures of Kyrgyzstan. If only a part of the

property is subject to confiscation the court must indicate precisely which part of the property is to be confiscated or list the objects subject to confiscation.

153. The assessment team had been told that in considering the issue of confiscation of property there is so-called special confiscation, which is not a measure of punishment, and is stipulated for under the criminal procedural legislation. Such confiscation includes the seizure of objects, which were instruments and means of committing criminal offences, or valuables as well as objects acquired by criminal means. Such objects or valuables are either destroyed or become the property of the state by a court ruling.

154. At the same time, the criminal legislation of Kyrgyzstan lacks provisions that make it possible to confiscate property obtained directly or indirectly from the use of proceeds of crime; including incomes, profits or any other benefits resulting from the crime.

155. Furthermore, the Criminal Code of Kyrgyzstan lacks provisions that would make it possible to confiscate property possessed or owned by a third party. The confiscation of proceeds from crimes, which are not ML-predicate offences (i.e. sexual exploitation of children, insider trading and market manipulation).

156. Because the Criminal Code of Kyrgyzstan does not contain an article stipulating for the criminal liability for terrorism financing, the confiscation of property related to TF crimes is not provided for. At the same time corresponding provisions on the confiscation of such property are contained in the Law “On Combating Terrorism”.

157. Thus, under Article 27 of the mentioned Law the property of natural persons and legal entities used for terrorist or related activities or obtained as a result of terrorist activities is to be forcibly and irrevocably confiscated by a court decision.

158. The following property is subject to confiscation:

- Obtained as a result of terrorist activities as well as profits and other benefits obtained with the use of such property;
- Which was used to commit a terrorist crime or was obtained as payment for committing a terrorist crime;
- Used to aid directly or indirectly in committing a terrorist crime;
- Is directly or indirectly managed or controlled by terrorists or terrorist organizations (groups);
- Is located on the premises or any other location, which is used by terrorists, a terrorist group or terrorist organization to hold meetings, conduct propaganda, store the means for committing terrorist crimes or which is used by them for any other illegal purposes.

159. Nevertheless the assessors are of the view, that even though the Antiterrorism Law contains the relevant provisions regarding confiscation of property related to TF, Kyrgyzstan’s system of laws requires that the sanctions be provided for in a codifying act, such as the Criminal Code.

160. Article 119 of the Criminal Procedural Code of Kyrgyzstan regulates the issues of arresting property to secure possible confiscation. To ensure the execution of the sentence regarding the civil charges, other property seizures or possible confiscation of property the investigator and the court have the right to arrest the property of the suspect and the accused. The arrest of property consists in forbidding the possessor or owner from disposing of and, if necessary, using such property, it is also possible to arrest the property with further transfer for safekeeping. The types of property, which are listed in the Annex to the Criminal Procedural Code of Kyrgyzstan may not be arrested. The list includes the property that is vitally essential for the person who has committed the crime and the dependents of such a person. In arresting money deposits, bank accounts and securities, all transactions with them are to cease.

161. Article 56 of the Law “On Banks and Banking Activity” provides for the arrest and claim of money and other valuables located in banks and suspension of transactions on the clients’ accounts. In accordance with the mentioned article the money and other valuables of legal entities and natural persons kept in banks can only be arrested by a ruling or decision (sentence) of the court, a resolution of the investigating authority with the approval of the prosecutor with regard to the cases in progress, and penalties may be administered

only on the basis of a court sentence or ruling. At the same time cash and other valuables of citizens may only be confiscated on the basis of the sentence or ruling of the court, which has come into force and contains a provision on the confiscation of property. Similar measures may be carried out by the FMSRS in relation to stopping operations with securities (Article 9 of the Regulation on the FMSRS No. 551).

162. Section 2 of Article 142 of the Criminal Procedural Code of Kyrgyzstan states that in cases of crimes for which criminal legislation envisages the confiscation of property, the investigator or the investigating authority has to take the necessary measures to ensure the execution of the sentence as regards to possible confiscation of property, by drawing up a corresponding statement.

163. In the opinion of the assessment team, the law enforcement and other competent bodies including the Financial Intelligence Service (FIS) of Kyrgyzstan, are not adequately empowered to identify and find the property subject to confiscation or when there are suspicions that it constitutes the proceeds from a crime. The evaluation team had been told that under the law “On Operational and Detective Activities” the law enforcement bodies, within their competence engage in operational and detective activities to protect the life, health, rights and freedoms of man and citizen, property, to ensure the security of society and the state against crime. The assessment team was not presented with any other materials confirming the powers of law enforcement and other competent authorities to identify and search for property subject to confiscation or if the property in question is suspected to be proceeds from the crime.

164. The legislation of Kyrgyzstan does not secure the rights of bona fide third parties, as necessary under the Vienna and Palermo Conventions. 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. 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.

165. Article 187 of the Civil Code of Kyrgyzstan contains provisions on declaring null and void a deal carried out for a purpose known to be in conflict with public and state interests. The grounds for conflict are determined by the legislation. The assessment team had been told that if a court rules that the property included in the confiscation list had been acquired by the convict through criminal means or purchased using illegally obtained assets, and for the purpose of concealing it from confiscation had been fictitiously ascribed to the name of other persons, such deals are to be declared null and void and law suits for excluding such property from the confiscation list must be overruled.

#### *Additional Elements*

166. In accordance with Article 287 of the Civil Code of Kyrgyzstan in cases stipulated for by the legislation property may be seized without compensation by a court decision as punishment for the perpetrated crime or another offense. In cases provided for by the law confiscation may be carried out through an administrative procedure.

#### *Effectiveness*

167. The assessment team is not satisfied that the confiscation, freezing and seizing mechanisms are effective. There is no statistical data on the number of criminal cases, the sums of confiscated, seized or arrested property connected with money laundering and terrorism financing. No records have been kept on the sums frozen prior to the adoption of the AML/CFT and Antiterrorism laws. Likewise, the assessment team was not presented with statistical data on the number of cases and the sums of frozen, seized or confiscated property related to the predicate offences. Nor was any other information submitted that would demonstrate the effectiveness of these provisions.

#### 2.3.2. Recommendations and Comments

168. It is necessary to introduce amendments into the Criminal Code of Kyrgyzstan to make confiscation mandatory if a guilty sentence has been delivered regarding money laundering or financing of terrorism.



169. Confiscation must be possible in relation to all types of predicate offences. In this regard it is necessary for Kyrgyzstan to criminalize all the relevant predicate offences (insider trading etc.).

170. Legislative provisions should be introduced that make possible the confiscation of property derived directly or indirectly with the use of proceeds of crime; including the income, profit or any other benefits from the proceeds from a crime.

171. Kyrgyzstan is also recommended to introduce provisions stipulating for the possible confiscation of the property owned or possessed by a third party and at the same time to introduce provisions to protect the rights of bona fide third parties, as envisaged by the Vienna and Palermo conventions.

172. Laws or measures should allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. There should be 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.

173. Relevant amendments need to be introduced to the laws of Kyrgyzstan to empower the law enforcement and other competent authorities in identifying and tracing the property subject to confiscation or suspected of being the proceeds from a crime.

### 2.2.3. Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	NC	<ul style="list-style-type: none"> <li>• <b>The Criminal Code of Kyrgyzstan does not provide for the confiscation of assets related to financing of terrorism and a range of predicate offences (sexual exploitation of children, insider trading and market manipulation);</b></li> <li>• <b>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 the incomes, profit or any other benefits from proceeds of crime;</b></li> <li>• <b>The laws of Kyrgyzstan lack provisions on possible confiscation of property possessed or owned by a third party;</b></li> <li>• <b>The legislation lacks clear provisions that secure the rights of bona fide third parties;</b></li> <li>• <b>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;</b></li> <li>• <b>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;</b></li> <li>• <b>The law enforcement and other competent bodies 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 from a crime;</b></li> <li>• <b>The assessment team was not presented with sufficient data to prove that existing measures for freezing, seizing and confiscation are effective.</b></li> </ul>

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

### 2.4.1. Description and Analysis

174. The issues described below relate to the implementation of the United Nations Security Council Resolution 1267 and Resolution 1373.

175. The provisions of Articles 3 and 5 of the AML/CFT Law provide for the suspension of the transactions of natural and legal persons suspected of terrorist activities (financing of terrorism) for a period of up to 8 working days. Beyond this time period the money and other assets of natural and legal entities suspected of terrorist activities (financing of terrorism) may only be frozen or arrested in accordance with the designation, decision or sentence of a court, a decree of investigative bodies in cases where a legal process has been initiated by a court decision.<sup>13</sup>

176. Under the AML/CFT Law the grounds for considering a natural or legal person as being involved in terrorist activities (financing of terrorism) including religious extremist organizations, are to stem from information obtained under a procedure stipulated for by the laws or international treaties to which Kyrgyzstan is a signatory.

177. At present natural or legal persons are included into the category of terrorists on the basis of the lists compiled by the UN Security Council pursuant to the UN SC Resolution 1267 and the lists issued by individual countries, in particular, the US. These lists are sent to the National Bank of Kyrgyzstan through the Foreign Ministry to be communicated to banks. Other financial institutions receive these lists from the FIS secure website.

178. For the purpose of implementing p.2 of Resolution 1390 adopted by the UN Security Council the National Bank sent lists of the members of “Al Qaida” and Taliban and other persons, groups and organizations linked with them in accordance with the list, compiled pursuant to the Resolutions 1267 (1999) and 1333 (2000).

179. Under Article 20 of the Law “On Combating Terrorism” the list of legal entities participating in terrorist activities, their branches and representative offices (including foreign and international organizations) is to be compiled and published by the Government of Kyrgyzstan pursuant to the legislative procedures of Kyrgyzstan.

180. Article 25 of the Law “On Combating Terrorism” states that given the proof of a connection of natural or legal persons or legal entities, irrespective of their citizenship or forms of ownership, to the financing of terrorist activities, the court, acting on a petition of the FIS, makes a decision as to ban the use and disposal of the assets, finances or economic resources of such persons and organizations.

181. The assets of natural persons or legal entities are subject to be frozen or arrested if:

- there is evidence that such assets are intended for use for the purpose of terrorist or related activities or have been obtained as a result of a terrorist crime;
- the assets are directly or indirectly owned or controlled by persons who can be reasonably suspected of being involved in terrorist activities or supporting such activities, as well as other persons or any other entities acting on behalf of or on instructions of such persons, including assets received or acquired by using the property directly or indirectly owned or controlled by such persons and the natural or legal persons associated with them.

182. For the purpose of revealing on a timely basis and preventing terrorism financing the FIS of Kyrgyzstan must publish the list of natural and legal persons whose assets have previously been frozen. The

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<sup>13</sup> Thus in the absence of a criminal case or an international order to render legal assistance it is impossible under the current legislation of Kyrgyzstan to freeze the assets of persons listed in the resolutions of the UN Security Council for more than eight days.

assessment team could not determine how long it takes for the list to be published, because at the time of the assessment the list was not yet issued. The grounds for including a legal or natural person in the corresponding list are:

- a court conviction, which has entered into legal force, naming a person guilty of terrorist crimes;
- a court decision, which has entered into legal force, declaring an organization terrorist by nature and with the purpose of its elimination;
- lists recognized by Kyrgyzstan of natural and legal persons involved in terrorist activities, compiled by international organizations involved in counterterrorism or their authorized organs;
- sentences (decisions) of foreign courts and other competent bodies of foreign states recognized on the basis of an international treaty regarding the organizations and natural persons involved in terrorist activities.

183. The request for inclusion in the list of other legal entities and natural persons directly or indirectly involved in terrorist or related activities is sent to the court by the Prosecutor General of Kyrgyzstan or prosecutors subordinate to him. The grounds for the including foreign natural and legal persons on the list may include information made available under an international treaty or on the basis of reciprocity in response to a corresponding official request or confidential information from a foreign government as well as the competent authorized bodies of a foreign state or international organizations confirming the participation of this or that person in terrorist or related activities.

184. At present in order to implement the provisions of Articles 20 and 25 of the Law “On Combating Terrorism” as regards to the compilation of lists of (i) legal entities, and their branches and representatives offices (including foreign and international organizations), which are involved in terrorist activities and (ii) natural and legal persons whose assets have been frozen - the FIS and the National Security Service have issued a joint executive order “On Approving the List of Natural Persons and Legal Entities Suspected of Involvement in Terrorist Activities (Financing of Terrorism) Including Religious Extremist Organizations.” The Defense and Security Committee of the Parliament of Kyrgyzstan has explained that pending the adoption by the Government of Kyrgyzstan of a Regulation “On the Procedure of Identification and Publication of the List of Persons Involved in Terrorist Activities”, the above mentioned Executive Order shall be the governing piece of legislation.

185. At the same time the analysis of the documents submitted to the assessment team reveals a lack of provisions determining the grounds for including persons in the list of legal persons, and their branches and representative offices (including foreign and international organizations). In addition, this list does not cover natural persons who may be involved in terrorist activities. In the opinion of the assessors, in drafting the Regulation “On the Procedure of Determining and Publishing the List of Persons Involved in Terrorist Activities” it is necessary to put in place a uniform mechanism for the drafting of corresponding lists, extending it to ensure the inclusion of natural persons as well.

186. The AML/CFT Law contains binding provisions for banks and other credit institutions authorized to open and maintain bank accounts, to suspend the transactions of natural and legal persons suspected of being involved in terrorist activities (terrorism financing) for three days since the date when the client’s order for a transaction was to be fulfilled, and not later than the day of the suspension of the transaction to provide the necessary information on the transaction to the authorized state agency (FIS).

187. If, as a result of a preliminary check, the submitted information is recognized to be well-grounded, the FIS under the mentioned Law may suspend the transactions and operations with cash and other property if at least one of the parties to the transactions and operations is a natural or legal person with regard to whom there is information about involvement in terrorist activities (financing of terrorism). The operations may be suspended for a term of up to five working days.

188. Transactions with money and other assets of natural persons and legal entities suspected of being involved in terrorist activities (financing of terrorism) may only be suspended for longer than the period stated in the ruling of the authorized body on the basis of a designation, decision or sentence of the court, a ruling of investigation bodies on cases that are in legal process following a court decision.

189. If banks and other credit institutions do not receive within the time period specified in the FIS ruling, a designation, decision or sentence of the court or a ruling of investigative bodies with the prosecutor's approval on the suspension of a corresponding operation for another additional period or on arrest, these banks and other credit institutions which have the right to open and maintain bank accounts must carry out the transaction with the money and other assets upon the order of the client. The suspension of such transactions may not be grounds for civil or other liability of the persons providing the information.

190. At the same time there is no guidance at present in Kyrgyzstan for financial institutions or other persons or organizations regarding their duties in implementing the mechanisms of freezing the money and other assets of terrorists.

191. As mentioned above, the list of legal persons, and their branches and representative offices (including foreign and international organizations) involved in terrorist activities is compiled and published by the Government of Kyrgyzstan, while the FIS of Kyrgyzstan publishes the list of natural persons and legal entities whose assets have been frozen. The assessment team was informed that the decision on excluding persons from the lists and the timely unfreezing of the assets and other property of the natural and legal persons excluded from the list is to be carried out by the FIS in line with international obligations and the rulings of courts and law enforcement bodies of Kyrgyzstan.

192. The assessment team has also been told that the law of Kyrgyzstan provides for mechanisms of revising court decisions which contain errors or in cases, where new circumstances have been revealed. Procedures of unfreezing the assets or other property of natural persons or legal entities inadvertently affected by the mechanism of freezing are carried out by the decision of the Prosecutor's Office and law enforcement bodies in accordance with the laws of Kyrgyzstan.

193. Procedures to allow access to assets or other property frozen pursuant to the UN Security Council Resolution 1267 (1999) do not exist in Kyrgyzstan.

194. In addition, due to the lack of an Article in the Criminal Code providing for criminal liability for TF, the confiscation and seizure of property (for the purposes of possible confiscation) related to TF is not possible.

195. In this regard, despite the presence of the necessary provisions on the confiscation of such property pursuant to the Antiterrorism Law (see description of Recommendation 3), and taking into consideration Kyrgyzstan's system of laws, such sanctions must be provided for in a codifying act, namely the Criminal Code.

196. Article 37 of the Law "On Combating Terrorism" contains a provision on the compensation of damage caused to natural and legal persons by a terrorist act or a counterterrorist operation. Such sums are to be subsequently sought from the person who has caused the damage. In addition, the assets gained as a result of confiscation of property used for terrorism or related activities or gained as a result of terrorist activities may also be used to pay compensation to the victims of terrorist crimes or members of their families.

197. There are currently no measures in place to monitor the compliance with relevant legislation governing the obligations under SR.III. Article 8 of the AML/CFT Law provides for the prosecution of reporting entities for violations of the AML/CFT Law including the reporting obligation as well as the freezing of transactions of persons suspected of involvement in terrorist activities (financing of terrorism), and this procedure is to be carried out in accordance with existing legislation. However this mechanism does not yet exist in Kyrgyzstan.

198. TF related statistics are lacking on the number of persons, organizations and property frozen under UN resolutions. The relevant information was not provided to the assessment team due to the fact that the freezing mechanisms had not yet been used at the time of the evaluation.

#### 2.4.2. Recommendations and Comments

199. It is necessary to introduce a mechanism of unfreezing the assets of persons whose interests have been inadvertently affected by the decision to suspend transactions.

200. Kyrgyzstan should ensure that laws or other regulations provide a uniform mechanism for drafting, disseminating and using the list of persons suspected of terrorist activities (terrorism financing) to comply with the requirements of the AML/CFT legislation.

201. The necessary guidance (instructions, recommendations, etc.) must be developed for financial institutions and other persons or organizations to assist in the use of the mechanisms of freezing terrorist assets or other property.

202. Laws or regulations should contain a mechanism for the exclusion of natural or legal persons from the list as well as for the timely unfreezing of the assets and other property of the persons excluded from this list.

203. Legislative and other regulations should include procedures to allow access to the assets and other property frozen pursuant to the UN Security Council Resolution 1267 yet recognized as vitally necessary for purposes of basic expenditures, payments, etc., as determined by the UN Security Council Resolution 1452 (2002).

204. Kyrgyzstan should adopt necessary measures for effective monitoring of compliance with laws and other regulations relating to the implementation of the freezing mechanisms by financial institutions and other persons or organizations. Non-compliance with such laws and regulations should be subject to civil, administrative or criminal sanctions.

205. Kyrgyzstan's legislation or normative acts should contain measures to protect bona fide third parties.

206. It is necessary to introduce relevant requirements providing for the confiscation and seizure of funds and other property, connected with terrorist activities.

#### 2.4.3. Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	NC	<ul style="list-style-type: none"> <li>• There is no mechanism to unfreeze the funds of persons, who have been inadvertently affected by a freezing order;</li> <li>• There is no uniform mechanism for compiling, disseminating and using the list of persons suspected of terrorist activities (terrorism financing);</li> <li>• No specific guidance (instructions, recommendations, etc.) exist for financial institutions and other persons or organizations regarding their duties in implementing the mechanisms of freezing terrorist assets or other property;</li> <li>• No liability (sanctions) is available for violating the AML/CFT legislation, including the mechanisms of freezing terrorist assets;</li> <li>• The evaluation team did not receive sufficient data demonstrating the effectiveness of measures relating to freezing, seizure and confiscation.</li> </ul>

## Authorities

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

#### 2.5.1. Description and Analysis

207. *The Financial Intelligence Service (FIS)* is the financial intelligence unit of Kyrgyzstan. It was created pursuant to the decree of the President of Kyrgyzstan of September 8, 2005 and started its activities in late 2005 and the collection and analysis of information on November 8, 2006, which is the date when the AML/CFT Law entered into full force. The FIS is an administrative body reporting to the President of Kyrgyzstan. It is independent in its activities.

208. Article 5 of the AML/CFT Law describes the functions of the Financial Intelligence Service which:

- receives and analyzes the information on transactions and operations subject to mandatory reporting;
- develops and implements measures to improve the system of warning, detection and suppression of suspicious transactions and operations as well as transactions and operations connected with money laundering and terrorism financing, including the provision of guidance on AML/CFT procedures, in particular in revealing suspicious transactions and operations and their reporting;
- disseminates to the court (judge), the prosecutor, investigation and inquiry bodies documents and other materials connected with money laundering and terrorism financing on the basis of official written requests in relation to open criminal cases in accordance with the law of Kyrgyzstan. Such information may be submitted by an authorized government body to the law enforcement bodies and courts at its own initiative;
- prevents and suppresses money laundering and terrorism financing;
- under current law has access to data bases (registers) formed and (or) maintained by state bodies;
- given sufficient grounds demonstrating that a deal or operation is connected with money laundering or terrorism financing, disseminates the relevant information and materials to law enforcement bodies with regard to their sphere of competence.

209. The FIS has the right to suspend for up to five working days the deals and operations with money and other assets if at least one party to these deals and operations is a natural person or legal entity suspected of being involved in terrorist activities (financing of terrorism). This right is exercised in addition to the 3-day period, for which financial institutions may suspend the operation. Within this period of 5 days the FIS should analyze the report and submit the information to law enforcement authorities for investigation. Further freezing beyond this period can be done by a decision of the court or law enforcement authorities (under a criminal case supported by a court decision). If by the end of the 5 days there is no decision the assets are unblocked.

210. Employees of the FIS (as well as the National Bank of Kyrgyzstan and other state bodies, including former members) who have or had access to information from reporting entities are subject to criminal and other sanctions under the laws of Kyrgyzstan for illegal disclosure, use of commercial and other secrets and abuse of office.

211. Under Article 4 of the AML/CFT Law the reporting entities must inform the FIS regarding suspicious transactions and operations as well as transactions and operations with cash and other movable and immovable property subject to mandatory reporting not later than on the working day following the day of the transaction or operation. The reporting form is issued by the FIS in accordance with the law. The FIS issues an acknowledgement of the receipt of the information to the reporting institutions. The form has been issued and disseminated to the reporting entities.

212. Reports subject to mandatory reporting are submitted to the FIS electronically and in hard copy. The banks transmit the reports through the interbank communication network made available by the National Bank.

213. The law expressly states the obligation to send reports on suspicious transactions that may be connected with money laundering or financing of terrorism to the FIS regardless of whether they are included in the list of transactions subject to mandatory reporting, and thus empowers the FIS with not only an AML but a CFT function as well (although terrorism financing is not yet a crime, charges may be brought on grounds of complicity in terrorist activities).

214. The FIS has access to data bases (registers) formed and (or) maintained by government bodies. But at present access to such information is limited to replies to information requests from the FIS.

215. In accordance with Section 5 of the Regulation “On the Financial Intelligence Service of Kyrgyzstan” approved by the President’s Decree No.655 (2005), the FIS has the right to request and receive in due procedure information on the transactions with money and other assets from the state bodies and local government bodies, the National Bank of Kyrgyzstan and other organizations engaged in such transactions. At the same time on the first stages of the system’s functioning the financial institutions did not always provide the FIS with information upon additional requests citing the lack of such a provision in the legislation. The FIS obtained the necessary information through the NBKR and FMSRS. At the same time the banks were forthcoming in TF-related requests, and provided information directly to the FIS, which occurred at least 4 times. As the assessment team was informed the FIS no longer experiences difficulties with obtaining additional information and the existing problems have been resolved. At the same time the evaluators are of the view that Kyrgyzstan’s legislation does not currently give the FIS the right to request additional information directly, and this can only be done through supervisory bodies.

216. The FIS analyzes incoming reports. The first component of the information system has been introduced, which contains software allowing to surf the data base against all the parameters of the reporting form. The assessors were informed that servers with greater capabilities were being installed during the month of March 2007, which enhances the analytical capacities of the FIS.

217. The Regulation “On the FIS” (Presidential order No. 655) gives it the power to issue public materials, methodological and other materials. But due to the fact that the FIS has begun to fully perform its functions only recently it has not yet issued any periodic reports, which would include statistics, ML/TF typologies and trends as well as information on its activities. However, the FIS maintains a website ([www.sfr.kg](http://www.sfr.kg)), which contains information on the current and previous activities of the FIS, relevant legislation, FIS Resolutions, software updates for those institutions, which send reports in electronic format, a FAQ section and other information.

218. The requirement of protection of FIS data is contained in Article 5 of the AML/CFT Law, which reads that “the management and staff of the authorized state body, the National Bank of Kyrgyzstan and other state bodies, including former staff who under this law have or had access to information from reporting entities shall be subject to criminal and other liability under the laws of Kyrgyzstan for illegal disclosure, use of commercial or other secrets, and abuse of office.” This requirement, as follows from the text of the article, applies to the staff after they have ended their employment with the FIS. The assessment team was not provided with data on how that rule is complied with.

219. The FIS began receiving reports from reporting entities on November 8, 2006. The FIS has already applied to the Egmont Group expressing regard to the Group’s principles and a desire to become its member.

220. The Financial Intelligence Service carries out a preliminary analysis of the incoming reports to determine if suspicions of money laundering or terrorist financing are sufficient for the materials to be passed to law enforcement bodies. If the suspicions are valid the materials are to be transferred to the law enforcement bodies of the Republic of Kyrgyzstan for investigation. The FIS has initiated 4 ML-related financial investigations at the request of law enforcement agencies, however at the time of the mutual evaluation these investigations were still in progress and the information had not yet been passed to law enforcement (see section 6.1 of this Report).

221. Financial institutions have sent 4 STRs relating to TF to the FIS, however financial analysis (which included the use of additional information received by the FIS)) revealed no TF link in all four cases. At the

same time, taking into account the probable urgency of such information, all these STRs were immediately disseminated to law enforcement.

222. The FIS has authorization to engage in international cooperation. At this stage, the FIS received only 5 international requests from the Russian financial intelligence unit (3 requests in 2006 and 2 requests in 2007). The financial intelligence units of other countries have not yet sent any queries to the FIS. At the initial stage there were difficulties to answer these requests, which was caused by the unwillingness of financial institutions to provide additional information. However soon after the on-site visit the FIS began to answer these requests.<sup>14</sup>

### ***Structure and resources of the FIS***

223. During the on-site visit the FIS demonstrated its new structure, which reflects the tasks and functions of the FIS more fully. As of early 2007 the FIS has a staff of 28. The FIS is composed of the top management (1 Chairman and 2 deputy Chairmen) and for sections – AML/CFT monitoring (analysis), IT and international cooperation, legal support and supervision, administrative affairs. This structure seems to be adequate in the initial stages of functioning.

224. The financing of the FIS is done from the state budget. The necessary financial resources have been allocated. For 2006 the budget amounted to 28 million 810 thousand SOM. The budget for 2007 is planned to be 25 million 155 thousand SOM. Salaries of the FIS staff seem to be adequate taking into account the fact that they are higher than average salaries of the civil servants in Kyrgyzstan.

225. The resources for the IT system allocated from the budget are limited although technical assistance in this respect has been provided through the EAG and this partially solved the issue of obtaining IT hardware and software components for the analytical capabilities.

### ***Statistics***

226. At the time of mission the FIS kept statistics on the number of transaction reports received (large value transactions, STRs on ML and FT), sent for preliminary analysis and on referrals to law enforcement (the latter figure was zero). The statistical data on the reports received has a break-down by the types of reporting entities submitting the reports. The table with reports received (with a breakdown for the different types of reporting entities) may be seen in section 3.7 of the Report under the description of Recommendation 13.

**Period: November 8, 2006 – March 31, 2007**

	ML	TF
Number of reports on transactions above designated threshold	125 439	
STR received from FIS	(exact number of reports not provided)	4
Requests from law enforcement	4	4
Information forwarded to law enforcement	-	4
Financial investigations initiated by FIS	9	8
Requests from FIS to financial institutions for additional information	9	4
Responses to FIS requests from financial institutions	9	4
Requests from foreign FIUs	5	-
Responses to requests from foreign FIUs	5	-
ML/TF link revealed as a result of additional information provided by FIS	-	1
ML/TF link revealed through other means (FIS financial investigation, information from law enforcement)	-	-

<sup>14</sup> By May 2007 all of these requests were answered.



## *Effectiveness*

227. Because the FIS had only been active for a short time as at the time of the evaluation, the quality of the information that the FIS will pass to the law enforcement bodies cannot be assessed at the moment.

### 2.5.2. Recommendations and Comments

228. In the future with the increasing number of incoming reports from reporting entities and cooperation with law enforcement agencies the FIS will have to review the situation regarding the number of staff, first of all analysts.

229. As indicated above, the FIS is authorized to conduct AML/CFT activities. Although it has the powers to pursue such activities, in reality the possibilities of the FIS to conduct them are undermined by the problems with customer identification in a number of reporting entities. This issue is taken into account in the section dealing with Recommendation 5.

230. As reports come in the FIS should consider the possible parameters of additional analytical elements to its information and analysis system in accordance with its needs and the volume of incoming information as well as training of its staff in analytical skills.

231. The FIS has a well-functioning mechanism to inform the private and government sectors of its activities through its website, however this mechanism has not yet been used to post statistical data and information on typologies and trends.

### 2.5.3. Compliance with Recommendation 26

	<b>Rating</b>	<b>Summary of factors relevant to s.2.5 underlying overall rating</b>
<b>R.26</b>	<b>LC</b>	<ul style="list-style-type: none"><li>• <b>The effectiveness of financial analysis cannot yet be assessed, as the FIS has begun this work only recently;</b></li><li>• <b>Statistics and ML/TF typologies and trends have not yet been published in the form of reports or on the FIS website.</b></li></ul>

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

### 2.6.1. Description and Analysis

#### ***Recommendation 27.***

232. Pursuant to Articles 5 and 33-38 of the Criminal Procedural Code of Kyrgyzstan investigations into criminal cases are to be carried out by the Prosecutor's Office and by law enforcement bodies. Under Article 163 of the Criminal Procedural Code of Kyrgyzstan the money laundering crime belongs to the sphere of responsibility of the Financial Police. If a money laundering crime is associated with a crime within the competence of the Drug Control Agency the latter has the right to investigate it. If a specific case contains a combination of crimes, the agency responsible is to be the one that deals with the more serious of the crimes. According to Article 4 of the Antiterrorism Law the authorized state body designated to carry out a uniform government policy in the sphere of combating terrorism in the Kyrgyz Republic and to coordinate the activities of other bodies in the sphere of combating terrorism is the national security body. At the same time since the financing of terrorism is not yet criminalized it has been investigated through aiding and abetting terrorism (Article 30 of the Criminal Code includes the provision of funds).

233. The Prosecutor's Office of Kyrgyzstan may directly or through the law enforcement bodies conduct any criminal investigations and use a wide range of special investigation methods, request (and enforce the provision of) any information and documents related to the investigation and seize documents. The law

enforcement bodies in Kyrgyzstan are: the Ministry of Internal Affairs, the National Security Committee, the Financial Police, the Drug Control Agency and the State Customs Service under the Government of Kyrgyzstan. The Law on Operative and Detective Activity defines powers and responsibilities of law enforcement agencies and prosecution bodies. This law provides for a possibility, among other measures, to perform operative surveillance, controlled deliveries and infiltrations (infiltration of a covert agent into an organized criminal group or establishment of a front company to gather evidence). This gives the right to law enforcement agencies to postpone the arrest of the suspected person or seizure of the money for the purpose of evidence gathering.

234. Decisions on confiscation of property and incomes under Article 52 of the Criminal Code of Kyrgyzstan are taken by the court; the decisions on the arrest of property as a guarantee for possible confiscation are taken by prosecutors and investigators in accordance with Articles 119 and 142 of the Criminal Procedural Code of Kyrgyzstan. The representatives of the law enforcement bodies, who met with the assessment team showed good knowledge of AML/CFT legislation and were aware of their tasks. As at the time of the on-site visit all the investigations into money laundering previously carried out in the country had proceeded from the information obtained by the law enforcement bodies themselves.

235. In 2006 the MIA created a section on combating crimes by officials in the financial and credit system and countering money-laundering and the organization of financial pyramids. The DCA allocated 1 person staff in the rank of a senior investigator of money-laundering cases. The Prosecutor General's Office has created a Department on overseeing the execution of anticorruption legislation, which is responsible for overseeing the implementation of the AML/CFT Law. The function of the Financial Police regarding the revealing and investigating ML crimes belongs to the Department on combating economic crimes and crimes by officials. Similar functions are played by the "C" Department of the National Security Service, which also includes a section on combating the financing of terrorism. The responsibility for investigating money-laundering cases lies above all in the competence of the Financial Police, which investigates all the economic crimes, including tax crimes. According to the Regulation "On the Financial Police Service" (Executive Government Resolution No. 32 (2006)) one of the principal tasks of the Financial Police is "elaborating and taking measures to combat money laundering". At the same time the Financial Police is only now planning to create a special unit to work with FIS materials. To date the Financial Police has not yet investigated any money laundering criminal cases.

236. As of January 15, 2007 the law enforcement bodies sent 4 ML-related requests to the FIS. The FIS did not provide any information to law enforcement on these requests as at the time of the evaluation (see section 6.1 of this Report). The National Security Service sent at least 4 information requests to the FIS regarding terrorism financing. The additional information obtained from the financial institutions on these cases revealed a link to terrorism financing in at least one of them.

237. In the last four years Kyrgyzstan opened 3 criminal cases of money laundering: two in 2003 (one was sent back for further investigation and the other was suspended because the criminal is currently at large), and one case was opened in the second half of 2006. Kyrgyzstan keeps uniform statistics on law enforcement activities according to the Instruction on uniform records of crimes, approved by the orders of the Order of the General Prosecutor's Office, Ministry of National Security, Judicial Department, MIA, Tax Police and Customs Committee dated 13.06.2000 No. 23/197/76/62/261/22/413.

238. The State Customs Committee is responsible for ensuring compliance with customs legislation that regulates the movement of goods and cash across the border. It also handles cases of smuggling.

#### *Additional Elements*

239. The Law "On Operational and Detective Activities" empowers the law enforcement bodies to carry out a wide spectrum of operational, detective and investigative actions, including controlled deliveries. Controlled deliveries are widely used in the cases connected with narcotics in the framework set up between the relevant competent bodies among the CIS countries. The Drug Control Agency representatives informed the mission of the cases when they used this possibility to reveal the drug trafficking routes and networks. So far this possibility was not used in ML cases.

240. Although the law does not restrict the creation of joint operational-investigative groups, there is only practice of their use for crimes other than money-laundering.

### ***Structure and resources***

241. The law enforcement agencies seem to be well resourced and are aware of their powers and responsibilities in the AML/CFT investigations. Their structure generally includes AML/CFT priorities. There are also significant needs in training, related to investigating ML/FT cases.

242. The FIS has held a number of seminars and conferences with all the law enforcement bodies and the Prosecutor's Office. In late December 2006 the coordination meeting of law enforcement bodies discussed the issue of improving the work to investigate money-laundering crimes.

### ***Effectiveness***

243. The Financial Police and the Drug Control Agency have not carried out any investigations into money laundering confining themselves to the investigation of the predicate crimes (the Prosecutor's Office carried out all of the ML investigations, which have been conducted to date).

244. The Financial Police is the only agency planning to assign a special unit to deal with money laundering cases with the use of FIS materials. Lack of specialization in ML investigations lowers effectiveness of the Financial Police in this field of activity.

### ***Recommendation 28***

245. The law enforcement bodies responsible for investigations into money laundering, terrorism (terrorism financing is investigated as complicity because it has not been criminalized) and other predicate crimes have the right to: detain the suspect; search the suspect; keep the suspect in pretrial detention; interrogate the suspect (Chapter 11 of the Criminal Procedural Code of Kyrgyzstan) as well as – by order of the Prosecutor General's Office or investigative agencies - to search the premises, seize data on transactions and identification data obtained during the CDD process, files of accounts and business correspondence and other data, documents and information stored or supported by financial institutions and other companies of persons.

246. Under Article 119 of the Criminal Procedural Code of Kyrgyzstan to ensure the execution of a sentence as regards to the civil claims and other property claims or possible confiscation of property the investigator and the court have the right to arrest the property of the suspect and the accused. The law enforcement bodies and the Prosecutor's Office also have powers to accept testimonies for the purpose of using them in an investigation and in bringing charges of money laundering and terrorism as well as predicate crimes or associated actions under the laws of Kyrgyzstan.

#### **2.6.2. Recommendations and Comments**

##### ***R.27***

247. Additional training is needed for law enforcement and the Prosecutor's Office on issues relating to financial investigations.

248. Although the Law "On Combating Terrorism" of November 8, 2006 No. 178 qualifies the financing of terrorism as a criminal act and, under that law, the persons guilty of financing terrorist activities are subject to criminal prosecution, the Criminal Code of Kyrgyzstan does not have an article on the financing of terrorism. Because the concept of terrorism financing was not introduced in the law until November 2006, there are no specific cases or sentences yet. Due to that law enforcement agencies were not able to investigate TF activity as a stand-alone crime and had to do it only collaterally, in the context of investigations into terrorist activities.

249. Law enforcement authorities need to focus on investigating the offence of ML, as they currently pay attention solely to the predicate offence;

250. Terrorist financing should be criminalized in order to ensure that the authority designated to investigate TF is working efficiently.

R.28

251. This Recommendation is fully observed.

### 2.6.3. Compliance with Recommendations 27 and 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	PC	<ul style="list-style-type: none"> <li>• <b>Effectiveness: No ML investigations have been carried out because law enforcement authorities focus instead on investigating the predicate offence;</b></li> <li>• <b>The authority designated to investigate terrorist financing cannot work efficiently because terrorist financing has not yet been criminalized.</b></li> </ul>
R.28	C	<b>This Recommendation is fully observed.</b>

## 2.7. Cross-border Declaration or Disclosure (SR.IX)

### 2.7.1. Description and Analysis

252. Under Article 4 of the Law of Kyrgyzstan “On Operations in Foreign Currency” No. 6-1, the movement of foreign currency across the border of Kyrgyzstan in either direction is unlimited.

253. Import and export of currency is not subject to any restrictions provided it is declared at the customs control points.

254. Kyrgyzstan has a system of declaration of goods. Under the Customs Code (Article 282) goods are to be declared when moved across the customs border and in other cases stipulated by the Code and other regulations. Under Section 38 of Article 9 of the Customs Code the term “goods” means any movable property being transported across the border, including cash and valuables as well as means of transport. The law “On Operations in Foreign Currency” does say that the transportation of currency valuables (gold, precious metals and other means that can be changed into currency) is to be declared but this does not include bearer negotiable instruments. The Code also covers the movement of mail. Both transportation of goods whether with the person or unaccompanied (in the mail or container) is covered by the Customs Code. But currency is not mentioned explicitly. A person must declare accurate information regarding the goods. According to Instructions No.976 of December 31, 2004 issued by the Government of Kyrgyzstan “On the movement of goods and motor transport across the state border of Kyrgyzstan by natural persons”, the goods moved by natural persons in accompanying luggage have to be declared in written form in the case when the transported goods are currency in excess of \$3000 or goods required to be declared in writing.

255. The declarer is responsible for any inaccurate data in the customs declaration and other submitted documents. Customs officials, under the Customs Code (Article 317), have the right to check the documents and information to establish the authenticity of the documents and the accuracy of the data they contain. The customs body has the right to request additional documents and information to verify the data contained in the customs declaration. But this does not seem to include the right to obtain additional information concerning the origin of the currency and its intended use. Neither the AML/CFT law nor the Antiterrorism law or any other legal act ever mention the circumstances or powers of competent authorities in this respect when there is a suspicion of ML/FT.

256. Customs checks are carried out selectively, with a risk management system used in choosing the forms of customs control. Risk is understood as the probability of violations of the customs laws of Kyrgyzstan. The customs bodies use risk analysis methods to determine the goods, vehicles, documents and persons to be checked and the thoroughness of the check.

257. The Criminal Code of Kyrgyzstan (Article 204 – “Smuggling”) provides for criminal sanctions for the illegal movement of goods by a natural person (the broad interpretation of the concept of “goods” in the Customs Code includes cash, but there is no mention of any bearer negotiable instruments) carried out with bypassing or secretly avoiding customs control or with the use of false documents or customs identification means or in case of failure to declare or providing an inaccurate declaration. This Article of the Criminal Code provides for a prison sentence of up to 5 years with confiscation of property. Customs authorities are not sure about the possibility to use this article of the Criminal Code to cases with cash, and there are no sanctions for carrying out a cross-border transportation that is related to ML or FT.

258. Under the Code on Administrative Liability, if a false declaration is revealed, the Customs Service has the right, under Article 567 to impound objects and documents which are the instruments or direct objects of the violation, revealed during detention, personal inspection or inspection of belongings. The seized belongings and documents are stored pending the consideration of the case of the administrative offense, after the case has been considered and depending on the results, the objects are either confiscated in due procedure or returned to the owner or destroyed.

259. The customs have powers under the Administrative Liability Code in relation to undeclared goods or currency but they do not seem to use it in practice.

260. An agreement is currently being drafted between the FIS and the State Customs Service on information exchange and notification of suspicious transborder movements. So far there is no sharing of customs information with the FIS.<sup>15</sup> Customs authorities submit information on all declarations to the tax authorities. In case of a criminal case this information is referred to the Financial Police. The evaluation team could not accurately assess the level of cooperation with immigration authorities. There was no information given about cooperation with other authorities on issues related to cross-border transportation of currency apart from the general cooperation within the framework of coordinatory collegial body of the General Prosecutor’s Office.

261. The customs representatives with whom the assessors met, reported that a customs official has no right to question or verify the information in the declaration. They also said it was difficult to take measures against failure to declare or a false declaration of cash because it is impossible to determine the party suffering the damage, as confirmed by representatives of other agencies. In this connection the assessors note that customs bodies do not make full use of the powers available to them under the legislation. In the opinion of the assessors, it is necessary to consider additional training of customs officials regarding issues of non-declaration of cash.

262. The Kyrgyz authorities have informed that the customs have no automatic system of data processing with real-time access. The updating takes place once a month. At the same time an automatic data processing system is being created for the customs with the assistance of a grant provided for this purpose by the Asian Development Bank. Customs authorities keep records on declarations for 6 years

263. The customs authorities have the power and possibility to render various assistance to their counterparts abroad. Especially active is the cooperation with customs authorities of the CIS countries. Customs authorities perform controlled deliveries in agreement with foreign counterparts and participate in other joint operations.

264. There are general provisions for administrative arrest and for confiscation of goods (including currency) but the mission was not given information on whether they were used or not in case of suspicion in ML or TF.

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<sup>15</sup> On May 4, 2007 an Agreement on cooperation and information exchange was signed between the FIS and the State Customs Committee.

## Statistics

265. Statistics are kept on the incoming and outgoing currency, which is based on the submitted declarations. At the same time it is difficult to assess the accuracy of this data given the liberal regime of movement of currency.

### 2.7.2. Recommendations and Comments

266. The customs representatives have spoken about difficulties in suppressing the illegal movement of cash. In the opinion of the assessors it is necessary to consider making wider use of the Article of the Criminal Code on Smuggling because the law interprets the movement of cash and valuables across the border as movement of “goods”. In the opinion of the evaluators the powers of the customs authority to monitor the movement of cash are limited. The customs authorities should more actively use available powers to sanction according to the Code on Administrative Liability.

267. It is necessary to create a regulatory regime for the transportation of bearer negotiable instruments.

### 2.7.3. Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	PC	<ul style="list-style-type: none"><li>• <b>The current system does not fully meet the requirements of this Special Recommendation because the customs bodies have limited powers with respect to the movement of cash;</b></li><li>• <b>The movement of bearer negotiable instruments is not regulated in any way;</b></li><li>• <b><i>Effectiveness:</i> Customs authorities require training.</b></li></ul>

## 3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

### *Preamble: the development of the Kyrgyz AML/CFT system*

268. Kyrgyzstan’s AML/CFT system is currently in its initial stages of development. Since the AML/CFT Law was only introduced on November 8, 2006, not all components of the system of preventive measures had started functioning in practice by the time of the on-site mission. During these initial stages, the Kyrgyz authorities have chosen a number of priorities for implementation. These include establishing cooperation mechanisms with banks and other reporting entities, creating reporting channels, drafting necessary secondary legislation and instructions, and building up interdepartmental cooperation, including cooperation amongst the financial sector supervisors, law enforcement agencies and the Financial Intelligence Service. At the time of the mutual evaluation, the banking sector was the most developed sector in terms of implementation of AML/CFT measures. This is due to the fact that the National Bank introduced a number of instructions while the AML/CFT law was still being drafted.

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

269. The AML/CFT Law (Article 2) covers the following financial institutions of Kyrgyzstan<sup>16</sup>, which fall under the categories contained in the Glossary to the FATF Recommendations:

- 1) banks (including branches) and other credit institutions (banking institutions);
- 2) currency exchange bureaus (licensed and regulated by the National Bank);
- 3) professional participants of the securities market including the following types of professions and activities:
  - brokers;
  - dealers;

<sup>16</sup> Information on DNFBPs is given in the respective section.

- investment funds;
  - investment consultants;
  - stock exchanges;
  - securities management activities;
  - clearing activities;
  - depositary activities;
  - maintaining a register of holders of securities.
- 4) commodity exchanges;
- 5) insurance organizations;
- 6) postal and telegraph agencies, which carry out money transfers and other organizations, which carry out payments or settlements.

270. The AML/CFT Law labels the above mentioned financial institutions as “reporting entities”. All AML/CFT measures set out in the law apply equally to all of the reporting entities.

### **Preamble: Legislative framework of preventive measures**

271. The legislative framework for preventive measures centers around the AML/CFT Law and other laws, which define the AML/CFT responsibilities of reporting entities (e.g. Laws “On Banks and Banking Activity” and “On the National Bank”, which include the AML/CFT rules for banks). The Law No. 59 “On the National Bank” defines the powers of the NBKR to issue regulations on a range of AML/CFT matters, “including mandatory reporting to the NBKR or other authorities, change of banking procedures, staff training and disclosure of information on the clients of the bank”. On the basis of this provision the National Bank also issued several acts (e.g. “On minimal internal control requirements...” approved by NBKR Resolution No. 5/9 dated March 2, 2006 (to be referred to as Resolution No. 5/9 in this Report) and “Temporary instruction on operations with deposits” approved by NBKR Resolution No. 4/4 on February 19, 2003 and revised on 16 October, 2006 No. 30/2 (to be referred to as Temporary instruction No. 4/4 in this Report)), which include provisions on CDD procedures, internal control and suspicious transaction criteria. In the context of Recommendation 5 (CDD), 10 (record keeping) and 13 (STR) and in accordance with the criteria contained in the FATF Methodology, those acts fall under the category of “law or regulation”<sup>17</sup> as they are authorized by Law No. 59. The NBKR also issues documents, which are “other enforceable means”. For example, the information letters sent out by the NBRK carry a certain supervisory function, because the violation of an information letter will be considered in the course of an inspection (off-site, or planned on-site general or targeted inspection of a bank). The acts of the NBKR are also applicable to the Kyrgyz Settlement and Savings Company.

272. The FIS also issues certain documents according to the AML/CFT Law. These include the reporting form, the list of suspicious criteria, 2 lists of non-cooperative countries and territories. At the same time the Regulation “On the Financial Intelligence Service” – approved by the Decree of the President of Kyrgyzstan dated December 29, 2005 No. 655 needs to be brought into line with these provisions of the AML/CFT Law to specifically state the authority of the FIS to issue these documents. The FIS also issued the Resolution No. 15/P dated January 29, 2007 “On the system of internal controls...” (to be referred to as Resolution No. 15/P)). This Resolution is issued as guidance for the supervisory authorities in drafting their own AML/CFT internal control requirements for financial institutions.<sup>18</sup>

### **Customer Due Diligence & Record Keeping**

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<sup>17</sup> Issue of translation of term “regulation” – see footnote 15 in Russian version of MER.

<sup>18</sup> In April-May 2007 the FMSRS issued its own requirements, which took into account the recommendations of the Resolution No. 15/P. The NBRK also made the necessary amendments to its internal control regulations with references to Resolution No. 15/P. Where such references exist, Resolution No.15/P is mandatory for the entities supervised by the NBKR and the FMSRS.

### **3.1 Risk of money laundering and terrorist financing**

273. Kyrgyzstan does not use a risk-based approach to AML/CFT matters.

### **3.2 Customer Due Diligence, including enhanced and reduced measures**

#### 3.2.1 Description and analysis

#### ***Recommendation 5***

##### *Anonymous accounts*

274. Since 1997, the financial institutions of Kyrgyzstan, in accordance with the Directive No. 7 of the National Bank, are barred from opening and operating anonymous accounts. As the assessment team was informed, these accounts do not exist in Kyrgyzstan. In accordance with item 1 of Article 3 of the AML/CFT Law, banks and other credit institutions involved in opening and maintaining bank accounts may not open anonymous bank accounts and bearer accounts and perform any operations without identifying their counterparts and/or clients. Anonymous accounts are also forbidden in accordance with item 4.1 of the Temporary Instruction of the NBKR No. 4/4. There is no practice of keeping numbered accounts in Kyrgyzstan. In accordance with item 1 of Article 3 of the AML/CFT Law, no accounts may be opened by persons involved in terrorist activities. Item 4.1 of the Temporary Instruction No. 4/4 forbids the opening of accounts by persons known to be involved in the money laundering and terrorism financing.

##### *When CDD is required*

275. In accordance with item 1 Article 3 of the AML/CFT Law, customer identification must be carried out in any case, without any preconditions or restrictions. This includes CDD in establishing business relations, in carrying out occasional transactions (irrespective of any threshold), including all wire transfers, as well as in cases where there is a suspicion of ML/FT and if the financial institution has doubts about the veracity of previously obtained identification data, as well as in all other possible cases.

##### *Required CDD measures*

276. According to item 1 of Article 3 of the AML/CFT Law, all financial institutions shall take steps to identify all natural and legal persons. Neither the Law nor any related regulation specifies any requirements to verify the customer's identity, as is required by the FATF Recommendations (except for NBKR regulations). In relation to natural persons, the AML/CFT Law requires reporting entities to identify the full name, registration and residence location, birth date, passport data, powers to administer the funds in the bank account, etc.

277. Specifically for the banking sector, the National Bank issued the Temporary Instruction No. 4/4, which also establishes CDD requirements for individuals including those related to the verification of the customer's identity. According to these procedures the bank must obtain from the client (item 5 of the Temporary Instruction), his full name, date and place of birth, citizenship, full address of the place of residence and temporary location, data from the identity document, Taxpayer Identification Number (TIN), workplace and nature of activities, purpose and intended nature of the relationship with the bank and other data as requested by the bank. Natural persons must present their identity documents. Additional requirements are established for individual entrepreneurs. In accordance with item 8 of Appendix 1 of the Temporary Instruction of NBKR No. 4/4, the bank, within 5 days of opening the account, shall verify the obtained information through one of the following methods: verification through official documents, contacting the client by phone, fax, email, confirming the validity of client's documents or otherwise as decided on by the bank. In case of doubts regarding validity of the client's information, banks shall initiate additional client identification and examination procedures (item 9 of Appendix 1), which may include the request of personal recommendations on a client, recommendations of the banks that previously serviced a client, and inquiries from the place of employment. If additional CDD is required, banks sometimes request information from the Ministry of Internal Affairs, however, this is not a legally-binding requirement. Responses to such requests may take up to 2 months.



278. In the area of insurance and securities, there were no mandatory CDD requirements prior to the adoption of the AML/CFT Law<sup>19</sup>. Customer identification on the securities market was carried out in when concluding contracts between the professional participants of the securities market and their customers according to p. 2.1 of the Rules for securities deals adopted in 2002 by the Securities Market Commission.

279. In relation to currency exchange operations, prior to the adoption of the AML/CFT law customer identification was not performed despite the availability of such a requirement in the legal framework. This is set out in item 3.11. of the instruction “On the cash currency exchange procedure in Kyrgyzstan” approved by the Resolution of the National Bank dated November 20, 2000 No. 42/1 (to be referred to as Resolution No. 42/1), which states that cash currency exchange operations shall be accompanied by the identification of the client’s residence upon the submission of an identity document (passport, military ID, driver’s license). In performing exchange operations with non-residents of Kyrgyzstan, a respective record is to be made in the Operations Log, and the total amount of operations performed with non-residents during the transaction day is to be specified in the daily report of the exchange bureau. Banks and exchange bureaus explained their unwillingness to observe this Resolution by their fear of scaring off potential customers. In January 2007 the NBKR sent letters to all exchange bureaus regarding the necessity of observing the requirements of the AML/CFT Law. A client identification form was attached, intended for both customers who are natural and legal persons (name, address, registration data – number of the passport or - for legal persons - registration certificate of the Ministry of Justice of Kyrgyzstan).

280. In conducting wire transfers, no client identification is performed in practice yet. The Post Office of Kyrgyzstan only checks the passport of the addressee when he receives the payment. The documents identifying the sender of the transfer are not required.

281. The requirement relating to the identification of a representative of an individual or legal entity only covers operations subject to mandatory reporting (Article 4 of the AML/CFT Law). In accordance with Article 3 of the AML/CFT Law, a financial institution should “check the authorization and identity of persons entitled to administer the funds on the account”, however, that requirement seems to cover the banking sector only. In accordance with item 5 of Appendix 1 of the NBKR Temporary Instruction No. 4/4, banks shall identify representatives of individuals and legal entities and check their authorization.

282. According to Item 1 of Article 3 of the AML/CFT Law, financial institutions shall identify the legal status of a client which is a legal person, “including information on the client’s name, business structure, address, executive officers and other data relating to charter documents regulating the client’s activities”.

283. Specifically for the banking sector the NBKR established additional requirements for identifying legal persons (item 5 of Temporary Instruction No. 4/4), which provide for the submission of the following documents:

- Application for opening an account, specifying the name of the legal entity, state registration data, Taxpayer Identification Number, OKPO codes, location, mail address, contact phone and fax numbers, type of activity, purpose and intended nature of the relationship with the bank and other data as requested by the bank;
- State registration certificate of the legal entity;
- Notarized copy of the Charter registered by the Ministry of Justice;
- Notarized copy of the license for the respective activity;
- Document confirming tax registration;
- Document confirming powers of the head of the legal entity for administering the funds of the legal entity (minutes of the meeting of founding members or shareholders);
- Notarized card with signature samples and seal.

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<sup>19</sup> In May 2007 the FMSRS adopted the necessary legal acts on internal control procedures in these sectors. These acts contain the necessary provisions in accordance with Recommendation 5, but they do not, however have the force of law or regulation.

284. The bank shall verify the information by obtaining data from state authorities, contacting the client or using other methods, as chosen by the bank.

285. The legislation of Kyrgyzstan, excluding the NBKR instructions, does not contain requirements concerning the identification of beneficiaries as defined by the FATF Recommendations. In the NBKR Resolution No. 5/9 (item 3.1), the National Bank establishes the requirements for the banking sector regarding the identification and verification of information on the beneficiaries – meaning natural persons who are the ultimate owners of the legal entity or who ultimately control it, or those who benefit from the transactions (item 1.4).

286. In accordance with the NBKR Temporary Instruction No. 4/4 (item 6 of Appendix 1), in identifying beneficiaries, banks shall examine all constituent documents of the legal entity and all founding members and identify the persons exercising influence over the decisions made by the governing bodies of the legal person, and examine the structure of the governing bodies of the legal person. In relation to unusual or suspicious transactions if the client is owned by a legal person, then banks must seek to obtain information regarding the owners and persons exercising control over this legal person. This requirement is not completely in line with Recommendation 5, as the identification of beneficiaries must be carried out in a range of scenarios, specified by this Recommendation and not just for suspicious transactions.

287. The requirement concerning the identification of the purpose and intended nature of the business relationships between the client and the financial institution exists solely for the banking sector. According to the NBKR Temporary Instruction No. 4/4, item 5, banking institutions shall observe this requirement for all clients. According to p. 10 of Annex 1 to this Instruction in conducting transactions through the account the client must present the relevant payment documents, written in accordance with the legislation of Kyrgyzstan (e.g. payment slips, contracts, etc.). If a client refuses to provide these, then the bank is required to refuse in carrying out the transaction.

288. Laws or regulations do not contain requirements concerning on-going due diligence, including the scrutiny of a client's transactions conducted throughout a certain period and updating the identification data. Such norms apply only to the banking sector and are contained in the instructions of the National Bank. Item 11 of Appendix 1 of the NBKR Temporary Instruction No. 4/4 obliges banks to study the operations relating to the client accounts in order to get an understanding of "the usual and reasonable activities relating to the accounts of their clients in order to detect operations which are not characteristic to the activity of that client".

289. In accordance with item 3.3 of the NBKR Resolution No. 5/9, banking institutions shall update the clients data no less than once in three years and at least once every year for high-risk categories of customers.

#### *Risk*

290. The legal acts do not contain any requirements concerning the application of enhanced CDD measures to high-risk categories of customers. The NBKR Resolution No. 5/9 lists the activities of a client, which signify a high ML/TF risk, however, no enhanced CDD measures are proposed (with the exception of updating the identification data on a more frequent basis).

291. The legislation of Kyrgyzstan does not allow for simplified CDD measures.

#### *Timing of verification*

292. The only sector where verification is required by Kyrgyzstan's legislation is the banking sector. In accordance with item 8 of Appendix 1 of the NBKR Temporary Instruction No. 4/4 the bank shall verify the client's information within 5 working days following the opening of the account. In this regard, there is a risk-management procedure, where in case of failure to complete verification the bank must consider making an STR (items 4.1.10-4.1.12 of the NBKR Resolution No. 5/9).

#### *Failure to satisfactorily complete CDD*

293. In accordance with item 1 Article 3 of the AML/CFT Law banking institutions must refuse to open an account, if the CDD procedures have been unsatisfactorily completed. They are authorized to terminate existing contracts with clients.

294. For other sectors, there are no restrictions concerning entering into business relationships or performing operations even if the CDD procedures have been unsuccessful.

295. According to item 4.1.1 of the NBKR Resolution No. 5/9 the refusal of a client to provide the necessary documents as required by the CDD process, as well as failure to complete verification (items 4.1.10-4.1.12) is considered to be a high-risk scenario, which the bank must consider reporting to the FIU in the form of an STR.

#### *Existing customers*

296. A binding requirement to perform CDD measures on existing clients exists only for the banking sector. The AML/CFT Law (item 1 of Article 3) requires banking institutions to “refuse a natural or legal person in ... performing account operations until the documents required for opening an account are presented by the respective person”.

#### **Recommendation 6**

297. Currently, the legal acts of Kyrgyzstan do not contain provisions requiring financial institutions to determine whether the client is a politically exposed person (PEP). Financial institutions are also not required to get authorization from the management of the institution, when entering into a business relationship with a PEP. There are no binding requirement for any other provisions under Recommendation 6.

298. The assessment team was informed during meetings with the banking sector that some banks apply special procedures in relation to PEPs. If a client is found (using publicly available sources) to be a politically exposed person, special monitoring measures are applied to him/her. In some banks, an authorization from management is also required to perform operations for such a client. However the implementation of these procedures across all sectors cannot be guaranteed, as there are no binding legislative provisions.

#### *Additional elements*

299. On August 6, 2005, Kyrgyzstan ratified the UN Convention against Corruption. There is no detailed information on progress in the implementation of the Convention’s provisions into the legislation of Kyrgyzstan.

#### **Recommendation 7**

300. Comprehensive measures are taken by Kyrgyzstan to regulate cross-border correspondent relationships. The main requirements are specified in the following legal acts of the National Bank: Resolution No. 5/9 dated March 2, 2006 and Temporary Instruction No. 4/4 dated February 19, 2003 as revised on October 16, 2006 No. 30/2. The AML/CFT Law and several other instructions of the NBKR specifically regulate correspondent relationships with offshore zones.

301. The Banks of Kyrgyzstan have comprehensive procedures for gathering information on correspondent banks, including on their core activities, business reputation etc. The NBKR Temporary Instruction of No. 4/4 contains (in Appendix 3, item 5) the procedure for establishing correspondent relationships, which includes the following components:

- Requesting that the correspondent bank provide copies of documents confirming its registration in the country of origin and copies of licenses for the operations which the correspondent bank aims to perform within the framework of correspondent relationship;
- Verifying the fact of the establishment of the correspondent bank in the country of origin;
- Obtaining the annual financial report of the correspondent bank (including the findings of the

auditing committee);

- Analysis of reports, which grant the correspondent bank a certain credit rating;
- Determining the core business activities of the correspondent bank;
- Assessing the credit solvency of the correspondent bank;
- Determining the types of operations the correspondent bank aims to perform via the given correspondent account;
- Determining whether the correspondent bank is state-owned or private;
- Identifying the main owners of private correspondent banks.

302. In the course of correspondent relationships, the bank shall constantly monitor the information on the correspondent bank using the above parameters. At the same time there are no requirements for obtaining information about whether the correspondent bank has ever been subject to a money laundering or terrorist financing investigation or regulatory action.

303. In accordance with the NBKR Temporary Instruction No. 4/4 and the NBKR Resolution No. 5/9 (item 3.3) banks shall assess the AML/CFT measures taken by the correspondent banks. In particular, this can be done by sending a written request to the correspondent bank, through conversations with the employees of the correspondent bank and through other sources. The AML/CFT activities of the correspondent bank must be monitored by banks throughout the entire period of the relationship. The Kyrgyz Banks are very active in cooperating with foreign correspondent banks on AML/CFT issues.

304. The banks of Kyrgyzstan have internal procedures (in accordance with item 6 of Appendix 3 of the NBKR Temporary Instruction No. 4/4), requiring the consent of the head of the bank and the authorized collegial body of the bank to establish a correspondent relationship.

305. Banks shall document and keep the information on all correspondent relationships, including the AML/CFT arrangements, for five years following the termination of such relationships (in accordance with item 8 of Appendix 3 of the Temporary Instruction of NBKR No. 4/4).

306. In the course of on-site visit, the Kyrgyz authorities and representatives of the private sector informed the assessment team that they have never used payable-through accounts, at the same time it is not clear if such accounts can be created. Other cross-border relationships similar to correspondent banking relationships seem not to exist in Kyrgyzstan.

307. In accordance with item 2 of Article 3 of the AML/CFT Law and item 3 of Appendix 3 of the NBKR Temporary Instruction No. 4/4), banks are prohibited from establishing correspondent relationships with states and territories, which “grant a privileged tax regime and/or do not provide for the complete disclosure of information to banking supervisory bodies following the requirements and recommendations of Basel Committee on Banking Supervision (offshore zones)”. The list of such jurisdictions is approved by the resolution of the Management Board of the National Bank (the last revision dated 18 November, 2005 No. 34/4 – includes 42 states and territories). The above restriction does not apply to correspondent relationships with branches registered in offshore zones, when the head organizations are located (registered) outside the offshore zones.

308. Prior to the introduction of that restriction (in October, 2006), the banks of Kyrgyzstan were allowed to establish correspondent relationships with banks registered in offshore zones, but they were obliged to perform a comprehensive analysis of the reputation and activities of correspondent banks.

309. In the course of inspections the NBKR checks the work carried out by the commercial banks with their correspondents, including the correspondent relationships, which were previously established (prior to the adoption of the AML/CFT Law and the relevant NBKR Regulations), and their AML/CFT component. In case the necessary information is not obtained from the correspondent, the bank receives a warning with the deadline to bring its activities in line with the relevant legislative provisions.

310. Currently, the banks of Kyrgyzstan are allowed to apply simplified credit solvency, reputation and activity assessment procedures to the correspondent banks (item 7, Appendix 3 of the Temporary Instruction

of NBKR No. 4/4) that are registered in an FATF member country and have a Standard and Poor's credit solvency rating not lower than "BB" or a similar rating of Moody's Investors Service or Fitch IBCA.

### ***Recommendation 8***

311. The legal acts of Kyrgyzstan have no provisions requiring financial institutions to develop and apply special procedures for preventing the use of new technologies for money laundering or terrorism financing. Financial institutions are also not obliged to develop procedures for eliminating risks associated with non-face to face business relationships or transactions. There are no special CDD requirements for financial institutions in relation to non-face to face clients.

312. The NBKR Resolution No. 5/9, item 4.1.9 equates non-face to face operations to a high money laundering risk in case the client intentionally avoids direct contact. Such operations are subject to mandatory reporting to the FIS.

#### **2.6.2 Recommendations and comments**

##### ***R.5***

313. Kyrgyzstan has taken practically all necessary measures to ensure the implementation of Recommendation 5 by the banking sector. In relation to other sectors only a general requirement to identify customers exists, while other provisions of Recommendation 5 are not met.

314. The Resolution of the Financial Intelligence Service No. 15/P, includes many requirements of Recommendation 5, including the identification of beneficiaries, on-going CDD measures etc. This Resolution should be issued to financial institutions through their supervisory bodies<sup>20</sup>.

315. Kyrgyzstan should introduce the client verification requirement for all financial institutions (now it is only applied to the banking sector), and to include it as an obligation in a law or regulation. A legally binding norm in law or regulation must require that financial institutions identify beneficiaries (currently this norm exists only partially for the banking sector only), including those natural persons that ultimately exercise control over a legal person, which owns the client of the financial institution.

316. All financial institutions should be required to obtain from customers the information on the purpose and intended nature of the business relationship (this norm currently exists for the banking sector only). A binding norm in law or regulation must require financial institutions to carry out on-going CDD measures (this measure is currently applied to the banking sector only).

317. All financial institutions must apply enhanced CDD procedures to high-risk categories of customers as prescribed by the FATF Recommendations.

318. The information provided by the customers must be verified prior to or in the course of establishing the business relationship. The verification may only be delayed provided that the requirements specified in Recommendation 5 are met.

319. Kyrgyzstan must effectively forbid the establishment of business relationships in case of failure to satisfactorily complete due diligence procedures in relation to a client. Such a restriction must apply to all financial institutions (currently applied to the banking sector only). Financial institutions must be required to consider sending an STR regarding such clients.

320. The CDD measures must apply to all the customers of financial institutions as at the date when national AML/CFT legislative requirements were brought into force (existing clients). It seems that this requirement currently applies to the banking institutions only, however it must be communicated to them dissuasively, because the wording of the AML/CFT Law is not entirely transparent.

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<sup>20</sup> The relevant statutory legal acts and amendments were adopted by the NBKR and FMSRS in April-May 2007 on the basis of recommendations of the Resolution No. 15/P.

321. Kyrgyzstan should ensure a high level of effectiveness in the implementation of existing instructions, in particular, by the banking sector.

322. In the foreign exchange sector, there is an entrenched culture of non-compliance that existed in relation to the previous customer identification requirements. The authorities should pay special attention to this sector to ensure that the CDD requirements of the AML/CFT Law are being implemented effectively.

*R.6*

323. Kyrgyzstan should introduce binding requirements for financial institutions to determine whether the client is a politically exposed person (PEP) and request authorization of the management of the financial institution in establishing relationships with a PEP. Financial institutions must be required to determine the sources of funds of a PEP and pay special attention to all on-going operations of the PEP.

*R.7*

324. The team of assessors obtained sufficient evidence that the measures taken by Kyrgyzstan to regulate banking correspondent relationships are effectively implemented by the banking sector.

325. The Kyrgyz banks must be required to document the respective AML/CFT responsibilities with their correspondent banks to determine which measures will be taken by which institution. It is also necessary to introduce requirements for banks to determine if the correspondent bank has been subject to an AML/CFT regulatory action.

326. Even though it seems that Kyrgyzstan does not have correspondent relationships outside the banking sector, it is necessary to introduce binding norms that would ensure that possible correspondent relationships in other sectors are also covered, this concerns primarily the securities sector, where correspondent relationships may be created by depositories.

327. Despite the fact that Kyrgyzstan's banks do not seem to use payable-through accounts it is necessary to take the relevant legislative measures taking into consideration their possible use in the future.

*R.8*

328. Kyrgyzstan should take legislative and other steps to require financial institutions to develop special programs for preventing the use of new technologies for money laundering and create procedures to eliminate risks associated with remote transactions. Such legislative measures should establish specific CDD procedures during remote transactions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none"> <li>• <b>Verification requirements exist only for the banking sector;</b></li> <li>• <b>No beneficial owner identification requirements. The existing obligations for the banking sector do not meet all of the requirements of Recommendation 5;</b></li> <li>• <b>The requirement to obtain information on the purpose and intended nature of the relationship exists only for the banking sector;</b></li> <li>• <b>The requirement for on-going CDD exists only for the banking sector;</b></li> <li>• <b>No requirement concerning the application of enhanced CDD regarding high-risk customers;</b></li> <li>• <b>No requirement to complete data verification prior to or in the course of establishing the business relationship (except for the</b></li> </ul>

		<p>banking sector);</p> <ul style="list-style-type: none"> <li>• Relationships with clients that unsatisfactorily passed the CDD procedure are forbidden only for the banking sector. Only banks are required to consider sending an STR regarding such clients;</li> <li>• The requirement to conduct CDD on existing customers exists only for the banking sector;</li> <li>• The effectiveness of some existing measures may not always be assessed, as they have been introduced recently.</li> </ul>
R.6	NC	No legislative or other measures have been introduced as required by Recommendation 6.
R.7	LC	<ul style="list-style-type: none"> <li>• The requirement to document AML/CFT responsibilities with correspondent banks is not clearly defined;</li> <li>• No direct requirements for banks to establish whether the correspondent banks has been subject to an AML/CFT regulatory action;</li> <li>• Existing requirements extend to the banking sector only;</li> <li>• There are no requirements in relation to payable-through accounts.</li> </ul>
R.8	NC	No legislative or other measures have been introduced as required by Recommendation 8.

### 3.3 Third parties and introduced business (R.9)

#### 3.3.1 Description and analysis

329. Financial institutions are not allowed to rely on third parties in performing CDD. Intermediaries operate in the insurance and securities sectors, however, they are subject to all the obligations in accordance with the AML/CFT Law. There are no outsourcing arrangements provided for as foreseen under Recommendation 9.

#### 3.3.2 Recommendations and comments

330. Not applicable.

#### 3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	N/a	Not applicable

### 3.4 Financial institution secrecy or confidentiality (R.4)

#### 3.4.1 Description and analysis

331. The banking, commercial and other secrecy laws of Kyrgyzstan meet most of the requirements of Recommendation 4; at the same time there are contradictions between various legal norms, which may create obstacles for the successful functioning of parts of the system. These difficulties arose during the first months of the systems' functioning and, as the assessment team was informed they no longer exist in practice.

332. In accordance with Article 8, item 3 of the AML/CFT Law, the disclosure of information by financial institutions to the authorized state body shall not be considered a breach of banking, commercial or other secrecy laws. However, at the time of the mutual evaluation, several special laws governing the activity of banks, securities and insurance market participants, real estate agents and other reporting entities included provisions, which did not provide for the submission of information to the Financial Intelligence Service<sup>21</sup>. At the same time, the assessors were informed by representatives of several government agencies and the private sector that this is not an obstacle to the submission of information to the Financial Intelligence Service. This is due to the fact that the AML/CFT Law allowing the submission of information was introduced after these specific laws and prevails over them. Currently the Law “On Banking Secrecy” includes a provision requiring banks to submit information to the authorized AML/CFT body in accordance with the AML/CFT Law. The team of assessors was shown that in practice information subject to mandatory reporting was transferred in large quantities by reporting entities to the FIS.

333. However, a difficulty arises concerning the limits on types of data submitted to the FIS. Article 4 of the AML/CFT Law (“Requirements (conditions) of mandatory reporting”) lists the types of data to be submitted by reporting entities in accordance with the rules of mandatory reporting. In this context, the AML/CFT Law or other legal acts do not provide for any requirements obliging financial institutions to provide the FIS with any data other than that required by the mandatory reporting rules.

334. At the time of the on-site mission banking secrecy was the main reason that banks refused to answer ML-related additional information requests of the FIS, citing the fact that banking laws do not provide for the right of the FIS to request additional information from financial institutions. The Kyrgyz authorities informed the assessment team after the on-site visit that this problem no longer exists and the financial institutions have sent all of the necessary information in response to all of the 9 additional requests sent to them by the FIS. At the same time such additional information may be obtained by the FIS through the NBKR or other supervisors, and this procedure has been tested already in practice through the NBRK and the FMSRS. It should be noted as well that all 4 information requests of the FIS regarding TF were answered by financial institutions.

335. The respective supervisory bodies are entitled to request any information from supervised entities. The law enforcement bodies of Kyrgyzstan may access banking and commercial secrets based on court authorization and only in the context of a criminal case. This provision was introduced with the approval of the new Constitution in early 2007. Earlier access was possible based on a Prosecutor’s authorization in the context of a criminal case.

336. Currently, there are no considerable legislative obstacles to the exchange of such information between competent bodies, except for tax-related information. The Financial Intelligence Service provides such information to law enforcement bodies given that there is sufficient evidence of money laundering or terrorism financing. The Financial Intelligence Service also provides such information to supervisory bodies for the purposes of inspections of financial institutions. State bodies and the National Bank submit the information requested by the FIS, and this is not considered (Article 8, item 3 and 4 of the AML/CFT Law) as a violation of banking and commercial secrecy.

337. International exchange of such information is carried out by the FIS and other competent bodies in accordance with Article 7 of the AML/CFT Law and other legislation. There are no legislative obstacles for such exchange between FIUs, law enforcement and supervisory bodies.

338. The Law No. 59 “On the National Bank” (Article 3, item 3) includes a specific provision on the exchange of information regarding any bank with foreign supervisory bodies provided that they comply with the necessary confidentiality requirements. The assessment team was informed that there have been several examples of such cooperation on AML/CFT issues with foreign counterparts.

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<sup>21</sup> In order to bring the laws on banking and commercial secrecy in line with the AML/CFT Law, a draft law was submitted for the consideration of the Parliament of Kyrgyzstan in February 2007 introducing respective changes to the Law “On the National Bank”, “On Banks and Banking Activity”, “On Banking Secrecy”, “On the Securities Market”, “On Insurance Activity in Kyrgyzstan” and a number of other laws.



339. Information subject to banking secrecy requirements may be exchanged between banks in accordance with Article 12 of the Law No. 122 “On banking secrecy”, provided that this is aimed at, among other things, “ensuring the security of banking activity”. In this context, there are no legislative obstacles to information exchange in the context of Recommendation 7. The representatives of the banking sector informed the assessment team that there is frequent customer information sharing with Kyrgyz and foreign banks. The exchange of information in accordance with Special Recommendation VII has no obstacles in the form of banking or other secrecy laws.

#### 3.4.2 Recommendations and comments

340. Kyrgyzstan should eliminate existing contradictions between various legislative provisions on banking and commercial secrecy, which may potentially raise problems for the FIS in obtaining additional information, even though this no longer seems to be a problem in practice.

#### 3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> <li><b>The existing contradictions between various legislative secrecy provisions may create legal obstacles for the FIS in obtaining additional information from financial institutions.</b></li> </ul>

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

#### 3.5.1 Description and analysis

##### **Recommendation 10**

341. According to item 4 of Article 3 of the AML/CFT Law, financial institutions shall keep for at least five years from the account closing date, the data and records relating to client identification, as well as data on transactions and operations with funds and other property. Information in such records must be sufficient to permit the reconstruction of individual transactions and operations in order to provide necessary evidence for a possible examination and investigation.

342. According to the Temporary Instruction of NBKR No. 4/4, item 1, banking institutions shall maintain documents related to customer identification for a period of ten years, as well as data on the customer’s transactions. The Instruction also specifies the minimum requirements for the types of data, which are to be maintained for every transaction: amount of transaction, account number, account type, transaction currency, account name, date, transaction type, purpose of payment. The NBKR Resolution No. 5/9 requires banking institutions to maintain information for a period of five years.

343. In relation to other types of financial institutions no minimal requirements have been set in the AML/CFT Law or regulations for the types of data, which are to be maintained on financial operations. Certain requirements are contained in the List of business documentation formed in the course of the activities of institutions, organizations and businesses with a specified of the period of maintenance. This list was approved by the State Archive Service and is a requirement for all legal persons, yet it does not have the force of law or regulation. It sets a 6-year period for keeping records on all operations with funds, including business correspondence. The Rules for conducting operations on the securities market adopted in 2002 (item 2.6) set a 5-year period for keeping records, which must objectively reflect all operations with securities. A similar requirement is contained in Article 25 of the Insurance Law. At the same time the detailed requirements on the types of data for each financial operation are not set by these documents in the sense that this requirement is contained in Recommendation 10.<sup>22</sup>

<sup>22</sup> In May 2007 the FMSRS established more detailed record-keeping requirements.

344. The Resolution of the FIS No. 15/P provides for more detailed record-keeping and storage rules for financial institutions, however at the time of the evaluation this Resolution was not yet issued to the financial institutions through their supervisory bodies<sup>23</sup>.

345. There is no requirement for financial institutions to ensure that the relevant information is available on a timely basis to competent authorities upon appropriate authority.

### ***Special Recommendation VII***

346. The legislation of Kyrgyzstan does not provide for the entire range of measures required in accordance with SR.VII. Currently, the only measure taken in accordance with SR.VII is the identification requirement. The obligation to identify customers in accordance with the AML/CFT Law covers “postal and telegraph communications organizations involved in wire transfers and other organizations involved in making payments and/or settlements”. Such organizations as well as banking institutions, that is, all organizations involved in wire transfers, shall identify clients and keep the respective information for 5 years regardless of the amount of the transaction. According to the NBKR Resolution No. 5/3 “Rules for filling out the register document “Request for a cash-payment” mandatory information fields are set for all wire transfer operations, including the identification of the sender.

347. The Post Office of Kyrgyzstan does not identify the originator of the transfer. The identification procedure is performed only when making the payment to the transfer addressee.

348. In accordance with the mandatory reporting requirements, the FIS must be provided with the information on any transfers above the amount exceeding 1 million soms (approx. 25 thousand US dollars) performed without the opening of an account or performed by an organization other than a bank.

349. Financial institutions are not legally required to accompany the transfer with originator information.

350. Other measures regarding wire transfers required by Special Recommendation VII are not implemented by Kyrgyzstan. There are no risk-based procedures for handling incoming wire transfers that are not accompanied by full originator information.

#### 3.5.2 Recommendations and comments

##### *R.10*

351. Kyrgyzstan has taken some necessary legislative measures to meet the requirements of Recommendation 10, however the effectiveness of their implementation cannot yet be assessed. At the same time Kyrgyzstan must introduce minimal requirements for the types of data, which are to be maintained (these are currently set for the banking sector only).

352. Financial institutions must be required to ensure that the relevant information is available on a timely basis to competent authorities upon appropriate authority.

### *SR.VII*

353. As wire transfers are an important factor in the economy of Kyrgyzstan, the necessary steps should be taken to implement all the requirements of Special Recommendation VII as soon as possible.

#### 3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
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<sup>23</sup> The NBKR and FMSRS adopted the relevant changes to their regulations in April-May 2007.

<b>R.10</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>There are no requirements for financial institutions (except for banks) specifying the types of data to be maintained;</b></li> <li>• <b>There is no requirement for financial institutions to ensure that the relevant information is available on a timely basis to competent authorities upon appropriate authority;</b></li> <li>• <b>The efficiency of legislative measures cannot yet be assessed.</b></li> </ul>
<b>SR. VII</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>There is no legally binding obligation to accompany the cross-border or domestic wire transfer with originator information. Other basic requirements of SR.VII are not met, with the exception of customer identification;</b></li> <li>• <b>There are no risk-based procedures for handling incoming wire transfers that are not accompanied by full originator information.</b></li> </ul>

### *Unusual and suspicious transactions*

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

### 3.6.1 Description and analysis

#### ***Recommendation 11***

354. The AML/CFT legislation of Kyrgyzstan establishes a number of rules regarding the implementation of requirements of Recommendation 11. The AML/CFT Law defines suspicious transactions and operations closely to the text of Recommendation 11, specifically as "...transactions and operations which are performed with monetary assets and other property without a clear economic or evident lawful purpose and which are not common to the activity of the legal or natural person...". In this context, financial institutions must record all required information on such transactions and operations in accordance with the rules of mandatory reporting (Article 4 of the AML/CFT Law) and then send an STR to the FIS. Article 4 specifies that "banks, financial-credit institutions, professional securities market participants and insurance organizations shall record in writing the detected circumstances of complex and uncommonly large transactions and operations, as well as transactions and operations performed through unusual schemes without an economic purpose". In accordance with general requirements of the AML/CFT Law, records of such transactions shall be kept for 5 years following the termination of the relationship with the client. At the same time this requirement does not work for the currency exchange and non-bank MVT sector.

355. The NBKR Resolution No. 5/9 (item 4.3) also requires banking institutions to keep records of such operations for 5 years. In accordance with that Resolution (items 4.1.5 and 4.1.6), the unusually complex operations without a clear economic purpose fall under the high risk ML/TF criteria. The AML/CFT compliance officer at the bank is to gather additional information regarding such operations.

356. The NBKR Temporary Instruction No. 4/4, item 11 of Appendix 1 requires banks to take account of "economically or commercially unfeasible operations of the client involving large amounts in cash (for example, those exceeding an average size of the client's transactions) and other operations differing from usual patterns of operations of the client". Banks must introduce systems for detecting unusual operations which are carried out through such accounts. The Instruction also recommends that banks introduce automated systems for detecting unusual operations to cover all accounts.

#### ***Recommendation 21***

357. In accordance with Article 3, item 7 of the AML/CFT Law, the reporting entities must pay special attention to "business relationships and transactions and operations with organizations and persons from the states and territories which do not apply or fail to properly apply the FATF Recommendations, as well as affiliate organizations, branches and representative offices the head offices of which are registered in such

states and territories”. The list of such countries and territories to be used by financial institutions is to be approved by the FIS together with the National Bank and other supervisory bodies.

358. The National Bank in accordance with Article 3, item 3 of the AML/CFT Law and its own regulations, has published its own List of states and territories, which grant a privileged tax regime and/or do not provide for the complete disclosure of information to supervisory bodies (offshore zones)”. The list has been approved by the Resolution of the Management Board of the National Bank (the last revision of 18 November, 2005 No. 34/4 includes 42 states and territories). Article 6, item 2 of the AML/CFT Law specifies another list of states and territories, namely of those “which do not provide for the complete disclosure or provision of information in performing financial operations”. In accordance with Article 6, item 2, the list shall be issued and published by the FIS upon agreement with the National Bank “based on the lists approved by international organizations involved in the prevention of the legalization (laundering) of criminal proceeds.” Thus, in accordance with the AML/CFT Law, 3 lists of states and territories are to be formed and used by financial institutions in AML/CFT activities, and the measures to be taken by financial institutions will vary depending on the list.

<b>List (issuing authority, and Article of the AML/CFT Law)</b>	<b>Measures to be taken by financial institutions</b>	<b>Comments</b>
FIS, NBKR, supervisory bodies – Article 3, item 7	Special attention shall be paid to transactions and relationships with organizations and bodies which improperly apply the FATF Recommendations and affiliate companies the head offices of which are registered in such jurisdictions.	Not issued, not published
FIS, NBKR – based on lists of international organizations in the area of AML/CFT – Article 6, item 2	All transactions must be subject to mandatory reporting, where the amount exceeds 1 mln soms, and where at least one party is an individual or legal entity with registration, place of residence or location in these states (territories), or one party is a person holding an account in the bank registered in these states (territories).	Not issued, not published
NBKR – Article 3, item 3 (list of offshore zones)	Direct correspondent relationships must not be established with the organizations and persons registered in such zones, as well as affiliate companies the head offices of which are registered in such jurisdictions.	Issued and published. To be used by the banking sector only

359. According to the NBKR Resolution No. 5/9, item 3.2.1, high risk ML/FT activities include the activities of legal entities registered in offshore zones, their standalone offices, subsidiaries and affiliate companies. Item 3.2.2 also defines “states, which pose a high ML/TF risk” as the states (territories) with high levels of drug production and trafficking, crime and corruption, states that do not observe the AML/CFT standards, as well as states where the information on financial operations is not disclosed. Regarding clients from such states, banking institutions must update their identification data at least once per year (as compared to low risk categories, where the data shall be updated once in 3 years).

### 3.6.2 Recommendations and comments

#### R.11

360. The competent authorities are recommended to establish detailed procedures for financial institution in relation to their obligations under R.11, in order to ensure the effective implementation of existing norms. It is necessary to extend existing obligations to the currency exchange and non-bank MVT sectors.

#### R.21

361. Though several measures have been already taken in accordance with Recommendation 21, Kyrgyzstan has not yet established all mechanisms regarding the countries that do not meet the FATF

Recommendations. Out of three lists to be issued in accordance with the AML/CFT Law, only one has been published and is being complied with. In this context, other lists must be compiled and provided to financial institutions. The lists must be provided together with the explanatory guidance, as the simultaneous use of three lists may be difficult for financial institutions. At the same time, the lists should not restrict financial institutions in their own right to examine the compliance of states with the FATF Recommendations.

362. The legislation of Kyrgyzstan must include requirements obliging all financial institutions to keep the records of their findings on transactions according to R.21 and make them available to competent authorities, if needed.

### 3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none"> <li>• Efficiency of the measures cannot yet be assessed, as they have been recently introduced;</li> <li>• Existing measures are not applied to the currency exchange and non-bank MVT sectors.</li> </ul>
R.21	PC	<ul style="list-style-type: none"> <li>• Efficiency of the measures cannot yet be assessed, as they have been recently introduced;</li> <li>• Two of three lists of states and territories that do not comply with the FATF Recommendations have not yet been issued to financial institutions;</li> <li>• Financial institutions are not required to keep the records of their findings on transactions and make them available to competent authorities, if needed.</li> </ul>

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

### 3.7.1 Description and analysis

#### *Preamble: system of mandatory reporting*

363. The system of mandatory reporting, which has been created in Kyrgyzstan (Articles 4 and 6 of the AML/CFT Law) contains requirements for financial institutions to provide the FIS with both STRs and some types of CTRs as well as all large value transactions above 1 mln soms (about 25 thousand US dollars), if these transactions are:

- Any transactions or operations performed by banking institutions;
- Transactions and operations where at least one party is registered in an offshore zone;
- Buying and selling of foreign currency in cash;
- A cash purchase of securities by a natural person;
- Exchanging small denomination banknotes to large denominations and vice versa;
- A cash installment by a natural person to the capital of an organization;
- Flows of funds of charity and non-profit organizations and foundations;
- An insurance installment by a natural person; a payment to a natural person of a life insurance, pension or other investment related insurance premium;
- Transactions concerning movable property;
- Financial leasing operations;
- Real estate transactions (above the amount exceeding 4.5 mln. soms, i.e. about 100 thousand US dollars);
- Wire transfers performed by organizations other than banks, as directed by the client;
- Wire transfers without the opening of an account.

(There is also a number of criteria for mandatory reporting for DNFBPs)

### **Recommendation 13**

364. If a financial institution suspects that any operation is performed for the purpose of money laundering or terrorism financing, then that financial institution shall inform the FIS (Article 4 of the AML/CFT Law), regardless of the size of the transaction or any set of suspicious criteria.

365. The AML/CFT Law contains the obligation to inform the FIS regarding “suspicious transactions” (item 4, Article 6 of the AML/CFT Law) which are defined as operations which “fall under the suspicious transaction criteria..., lack any clear economic purpose and are not characteristic for that natural or legal person, according to the list of suspicious transaction criteria as approved by the authorized state body” (Article 2). The FIS has issued such a list of criteria (Appendix 5 of the FIS Resolution No. 46/P “On the reporting form...” dated November 2, 2006 (to be referred to as Resolution No. 46/P in this Report)). The NBKR Resolution No. 5/9, item 4.2 also specifies a list of criteria of suspicious transactions which must be followed by banks in detecting operations subject to mandatory reporting.

366. The obligation to file STRs also covers terrorism financing, which has a broad definition in the AML/CFT Law (Article 2) and includes the financing of terrorists as well as terrorist organizations. This definition also covers attempted TF transactions, which are to be reported to the FIS.

367. STRs are to be reported to the FIS regardless of their amount (Article 2 and Article 4 of the AML/CFT Law). At the same time, the legislation of Kyrgyzstan does not require financial institutions to report attempted transactions related to money laundering (attempted FT transactions must be reported according to the definition of FT in Article 2 of the AML/CFT Law).

368. The predicate crimes relating to money laundering also include tax crimes. In that context, a tax crime may be the subject of an STR. There is no obstacle to submitting tax-related information to the FIS.

369. At the current stage, financial institutions seem to be focusing on reporting to the FIS large value transactions. At the time of the on-site mission no STRs had been submitted to the FIS regarding money laundering. The Kyrgyz authorities noted that since then STRs have been sent from financial institutions to the FIS, however the exact quantity as well as the quality of the process could not be assessed by the evaluators. 4 STRs have been submitted on terrorism financing.

370. The assessment team was provided with the following statistical data on the number of transaction reports filed by financial institutions and covered DNFBPs from November 8, 2006 to March 27, 2007:

<b>No.</b>	<b>Type of reporting institution</b>	<b>Number of filed reports</b>
1.	Banks (including branches)	125 439
2.	Other banking (financial credit) institutions	36
3.	Exchange bureaus	0
4.	Pawnshops	
5.	Professional participants of the securities market, commodity exchanges	112
6.	Insurance companies	5
7.	Casinos and other gaming institutions	0
8.	Bookmaker’s offices	0
9.	State automobile registration authority	0
10.	Post and telegraph	0
11.	Authorities, registering rights to movable and immovable property	33
12.	Dealers in precious metals	0
13.	Dealers in precious stones	0
14.	Real estate agents	0
15.	TOTAL:	125 625

#### ***Recommendation 14***

371. In accordance with Article 3, item 6 of the AML/CFT Law, financial institutions and their employees shall not be liable for submitting information to the FIS in accordance with the AML/CFT Law unless the established procedure for submitting information is violated. In this context, the termination of or refusal in performing the operation, and the refusal of opening the bank account and closing of the account in accordance with procedures shall not lead to any liability.

372. According to item 4 of Article 3 of the AML/CFT Law, financial institutions are forbidden from disclosing data on the reporting of information to the FIS.

#### ***Additional elements***

373. The management and employees of the FIS, NBKR and other bodies that have access to the information from financial institutions are criminally and otherwise liable for the unlawful disclosure, use of information subject to commercial and other secrecy requirements and for the abuse of their status (item 4 Article 5 of the AML/CFT Law).

#### ***Recommendation 19***

374. In accordance with item 1 and 2, Article 6 of the AML/CFT Law the information regarding all transactions subject to mandatory reporting must be sent to the FIS including the circumstance when these transactions are done in cash (see Preamble to Section 3.7.1 of this Report). Item 4.2 of the NBKR Resolution No. 5/9 also specifies a number of criteria for cash transactions, which are to be reported to the FIS.

375. The FIS receives the CTRs and maintains the information in a computerized database following the same procedure, as with other incoming reports. The FIS cannot yet extract the exact number of CTRs from the general amount of incoming reports.

#### ***Recommendation 25***

376. The Kyrgyz authorities have already established several feedback mechanisms with the private sector. Following the receipt of messages on operations subject to mandatory reporting from financial institutions, the FIS sends an acknowledgement of the receipt of the report. In case the reporting form was filled in with errors, the FIS sends a message indicating the errors and a request that the errors be corrected. The FIS gives individual feedback regarding the STRs it has received. Case-by-case feedback was also given to financial institutions when they provided additional information on TF financial investigations initiated by the FIS at the request of the National Security Committee. The FIS also informed all financial institutions on the results of a successful financial investigation regarding terrorism financing.

377. Due to the small size of the financial sector, the FIS officers have personal contact with all compliance officers of the Kyrgyz banks and other FIS.

#### ***Special Recommendation IV***

378. In accordance with the AML/CFT Law, the entire mandatory reporting system, including the obligation to submit STRs, covers both money laundering and terrorism financing. In accordance with item 3, Article 6 of the AML/CFT Law, the transactions and operations subject to mandatory reporting include operations, where at least one of the parties is a natural or legal person involved in any way in terrorist or extremist religious activities.

379. Other requirements of Recommendation 13 are equally applicable to the terrorism financing and money laundering. The definition of TF, which is contained in Article 2 of the AML/CFT Law is sufficiently broad and it includes the attempt to finance terrorism. At the same time this definition does not cover the

financing of terrorists or terrorist organizations if the funds are not intended for or linked with a specific terrorist act.

380. 4 STRs relating to terrorism financing have been sent to the FIS. Financial investigations regarding these STRs showed no sign of TF. However the filing of STRs by financial institutions at such an early stage of the system's functioning demonstrates a certain level of effectiveness of the measures taken by Kyrgyzstan in accordance with SR.IV.

381. The STR reporting regime in relation to terrorism financing is apparently more effective at this stage than ML-related STR reporting. The fact that terrorism financing is not criminalized through the Criminal Code apparently does not seem to impact the STR reporting obligation of financial institutions in relation to TF.

### 3.7.2 Recommendations and comments

#### R.13

382. Though the legislation of Kyrgyzstan generally includes the requirements of Recommendation 13, however the absence of concrete data on ML-related STRs does not allow to assess its effectiveness. Kyrgyzstan should take steps to ensure that financial institutions pay more attention to detecting suspicious transactions. It is also recommended to introduce a binding obligation to report attempted suspicious transactions (in relation to terrorism financing these obligations are met).

383. The statistics, which have been provided by Kyrgyzstan's authorities, show that in the course of the initial 5 months of the system's functioning the only entities filing reports under their mandatory reporting obligations were banks and other banking institutions, professional participants of the securities market and insurance companies. With the assistance of the supervisory authorities the FIS should focus on working with other entities, which fail to report, and if necessary this issue could be discussed at the Interagency Commission.

#### R.14

384. Kyrgyzstan has taken all the necessary steps to comply with Recommendation 14.

#### R.19

385. Kyrgyzstan has taken all the necessary steps to comply with Recommendation 19.

#### R.25

386. The competent authorities, including the FIS, do not yet have sufficient experience in carrying out financial investigations to provide general feedback to financial institutions, including statistics and examples of sanitized cases of financial investigations.

#### SR.IV

387. Kyrgyzstan has taken practically all of the necessary steps in accordance with Special Recommendation IV (the deficiencies revealed in the anti-money laundering STR regime are not applicable to TF). At the same time Kyrgyzstan needs to take the necessary legislative measures to ensure that financial institutions are required to report terrorism financing even when the funds are not linked to a specific terrorist act.

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

	Rating	Summary of factors underlying rating
R.13	PC	• As legislative measures are recent, the efficiency of the AML STR



		<p>regime cannot be assessed;</p> <ul style="list-style-type: none"> <li>• There is no clear responsibility to report STRs on attempted transactions (except for TF-related transactions);</li> <li>• Financial institutions pay too little attention to the STR obligation as opposed to the reporting of large value transactions (except for TF-related transactions).</li> </ul>
R.14	C	This Recommendation is fully observed.
R.19	C	This Recommendation is fully observed.
R.25	PC	<ul style="list-style-type: none"> <li>• Insufficient experience of competent authorities does not yet allow them to provide feedback to financial institutions through specific sanitized cases or statistics.</li> </ul> <p>See other factors underlying rating in Section 3.10</p>
SR.IV	LC	The definition of terrorism financing does not cover the financing of terrorists or terrorist organizations if the funds are not intended for or linked with a specific terrorist act. Financial institutions are not required to send STRs in relation to such transactions.

### Internal control and other measures

## 3.8 Internal control, compliance, audit and foreign branches (R.15 & 22)

### 3.8.1 Description and analysis

#### *Recommendation 15*

388. The financial institutions of Kyrgyzstan must develop internal control procedures in accordance with Article 3 item 4 of the AML/CFT Law. Internal control is defined in the AML/CFT Law as the activity of organizations performing operations with money or other property with the purpose to reveal and submit information to the authorized state body regarding operations subject to mandatory reporting, and other operations with money or other property related to ML/TF”. No other internal control requirements are specified in the AML/CFT Law. The FIS has issued the Resolution No. 15/P dated January 29, 2007 “On the internal control procedures to be followed by the persons disclosing data for the prevention of terrorism financing and legalization (laundering) of criminal proceeds”. That document contains detailed internal control procedures in the area of AML/CFT, which include CDD, the detection and reporting of operations subject to mandatory reporting, record-keeping, duties and functions of employees responsible for AML/CFT issues in the financial institution. As the assessment team was informed, the Resolution No. 15/P shall be issued to financial institutions through their respective supervisory bodies, which, in accordance with Article 3, item 8 of the AML/CFT Law shall monitor the implementation of internal control mechanisms in financial institutions.<sup>24</sup>

389. The only sector for which comprehensive internal control requirements exist is the banking sector<sup>25</sup>. General internal control requirements are contained in the Law No. 60 “On Banks and Banking Activity” and Law No. 59 “On the National Bank of Kyrgyzstan”. The latter authorizes the NBKR to issue regulations in the area of AML/CFT, relating, among other things, to “...the revision of banking procedures, training personnel...”. Based on that right, the NBKR issued the Resolution No. 5/9 dated March 2, 2006 “On

<sup>24</sup> The NBKR and FMSRS adopted the relevant changes to their regulations in April-May 2007.

<sup>25</sup> In may 2007 the FMSRS adopted internal control requirements for the supervised financial institutions – the insurance and securities sectors.

minimal requirements to internal control systems in commercial banks and other financial-credit institutions licensed by the NBKR for the purposes of AML/CFT”.

390. In accordance with Article 15, item 4 of the Law “On Banks and Banking Activity”, one of the requirements to the business plan of the bank is a section describing the AML/CFT mechanisms of the bank. In accordance with section 3, item 3.4 of the NBKR Resolution dated 2 March, 2006 No. 5/7 “On the licensing of banking activity” (to be referred to as Resolution No. 5/7 in this Report) the banking license requirements include the submission of documents on “AML/CFT policies and procedures”. The banks adhering to “Islamic principles” in their activities must also have internal AML/CFT policies and procedures (section 3, item 8 of the NBKR Resolution dated 30 October, 2006 No. 32/2 “On the implementation of Islamic principles in Kyrgyzstan within the framework of a pilot project”).

391. In accordance with the NBKR Resolution No. 5/9, internal control procedures must be approved by the Board of Directors of the bank and specify at least the following: procedures to identify and study clients, record-keeping, procedure for detecting operations subject to mandatory reporting, procedure for submitting information to the FIS, as well as such specific procedures, as delineation of powers and responsibilities, interaction and accountability procedures, information confidentiality procedures. Such requirements are also specified in the Temporary Instruction No. 4/4 (item 1). In accordance with the “Methodological guidelines on organizing internal control system and internal audit in banks and financial and crediting institutions licensed by the NBKR” (The Resolution of the NBKR Supervisory Committee dated 28 October, 2004 No. 24/1), all employees of the bank must be involved in the internal control function.

392. Item 5 of the NBKR Resolution No. 5/9 describes the details of internal control procedures. The Board of Directors of the bank must appoint an executive officer/head of division, who would be responsible for AML/CFT issues. The Compliance Manager is only accountable to the Board of Directors of the bank and acts independently of the Management Board of the bank and other structural subdivisions.

393. He/she must: set up internal control procedures and ensure their effective implementation, submit necessary information to the FIS, assist the NBKR in performing inspections, submit reports on his/her activity to the Board of Directors. The Compliance Manager has access to any information of a financial institution (item 5.4 of the Resolution No. 5/9). The Compliance Manager shall consult and arrange (item 5.4 of the Resolution No. 5/9) regular training of the bank personnel regarding AML/CFT issues.

394. The internal audit service of the bank must supervise the compliance of the bank’s activities with AML/CFT legislation and the compliance of the employees’ activities with the internal documents concerning AML/CFT control (item 5.4 of the Resolution No. 5/9). In accordance with Article 59-2, item 13 of the Law “On Banks and Banking Activity”, an external auditor of the bank must within 2 business days, inform the bank on the detected transactions falling under the definition of an operation related to money laundering or terrorism financing.

395. Currently the legislation of Kyrgyzstan does not specify any requirements for financial institutions to establish screening procedures when hiring all employees. These procedures exist for a range of positions in banking institutions, insurance organizations and for professional participants of the securities market (see section 3.10).

## ***Recommendation 22***

396. The financial institutions of Kyrgyzstan have no branches or subsidiaries abroad, however the law allows their creation. In this regard no legislative measures required to meet Recommendation 22 have been introduced by Kyrgyzstan,.

### **3.8.2 Recommendations and comments**

*R.15*

397. Detailed internal control requirements must be set for all financial institutions by a binding legal act (such requirements currently exist for the banking sector only). The Kyrgyz legislation should specify requirements obliging financial institutions to establish screening procedures when hiring employees.

R.22

398. Though financial institutions of Kyrgyzstan have no branches or subsidiaries abroad, the Kyrgyz legislation allows for their creation. In this regard Kyrgyzstan should take the steps required to implement Recommendation 22.

### 3.8.3 Compliance with Recommendation 15 & 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> <li>• There are no detailed internal control requirements for financial institutions relating to CDD, record keeping, revealing STRs (necessary requirements exist only for the banking sector);</li> <li>• No requirement to appoint a compliance officer and provide him with timely access to the necessary information of the financial institution (necessary requirements exist only for the banking sector);</li> <li>• Financial institutions (except for the banking sector) are not required to maintain an independent audit function of AML/CFT mechanisms;</li> <li>• No requirements for financial institutions (except for banks) to carry out AML/CFT training for employees;</li> <li>• No requirements for financial institutions (except for some positions in banks, insurance and securities companies) to put in place screening procedures when hiring employees.</li> </ul>
R.22	NC	No legislative measures have been introduced to meet the requirements of Recommendation 22.

### 3.9 Shell banks (R.18)

#### 3.9.1 Description and analysis

#### **Recommendation 18**

399. There are no shell banks in Kyrgyzstan. Article 3, item 2 of the AML/CFT Law prohibits the establishment of shell banks. More generally, the banking legislation of Kyrgyzstan sets high standards to the licensing of banking activity and excludes the possibility to create shell banks. A bank may not obtain a license without being present in the country, which requires the presence of the governing organs and management of the bank (or its branch/representative office) in the country (Law No.60 “On Banks and Banking Activity”, Article 13 and 19; item 5-1 of NBKR Resolution “On the licensing of banking activity” No. 5/7, item 1.16).

400. According to Article 3, item 2 of the AML/CFT Law, banks and other credit institutions are banned from establishing or maintaining correspondent relationships with shell banks. Also, according to Item 4 of Appendix 3 of the NBKR Temporary Instruction No. 4/4, it is forbidden to establish correspondent relationships with shell banks. Prior to the universal ban on correspondent relationships with offshore zones (Temporary Instruction No. 4/4, Appendix 3, item 3), there existed a ban on correspondent relationships with shell banks registered in offshore zones (item 1.4 of the Resolution of the NBKR Management Board No. 6/8 dated 27 March, 2004)

401. The AML/CFT Law (Article 3, item 2) and Temporary Instruction No. 4/4 (Appendix 3, item 4) require financial institutions to take preventive measures against transactions and operations with foreign correspondent banks, which allow their accounts to be used by shell banks.

### 3.9.2 Recommendations and comments

402. Despite the fact that the entire scope of measures against shell banks has been introduced quite recently, the assessment team was satisfied with the level of their practical implementation.

### 3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
<b>R.18</b>	<b>C</b>	<b>The Recommendation is fully observed.</b>

## **Regulation, supervision, guidance, monitoring and sanctions**

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

#### 3.10.1 Description and analysis

#### ***Recommendation 23***

403. Kyrgyzstan’s AML/CFT system for monitoring and supervision of financial institutions is still at the initial stages of development. In accordance with Article 3, item 8 of the AML/CFT Law, all financial institutions shall be subject to regulation and supervision in relation to compliance with the AML/CFT Law and internal control obligations. According to that Article, the respective supervisory bodies are designated to supervise the compliance with the AML/CFT legislation and the internal control requirements in financial institutions. The National Bank supervises over the banking sector and currency exchange. The Financial Market Supervisory and Regulatory Service (FMSRS) supervises and regulates the insurance and securities sector. There is no supervision over non-bank money or value transfer service operators (MVTs). The FIS supervises over the activities of entities, which do not have any supervisory bodies (the assessment team did not receive any evidence of the fact that the FIS plans to supervise over MVTs). In accordance with the Regulation No. 655, the FIS coordinates the activities of state authorities in AML/CFT issues, which also includes the coordination of supervision of all government agencies.

404. In accordance with the AML/CFT Law, the respective bodies shall monitor compliance with both money laundering and terrorism financing legislation.

#### ***Recommendation 30 (structure and resources of supervisory authorities)***

405. At the time of the mutual evaluation, the AML/CFT supervisory bodies started making steps to reorganize their structure, staffing and distribution of resources to include AML/CFT priorities. The FIS structure includes a Legal and Supervisory Department, consisting of 6 persons, which plays a significant role in the coordination of work with the NBKR and the FMSRS, including in drafting necessary instructions and guidance.

406. AML/CFT issues are managed in the NBKR at the level of NBRK Deputy Chairman and a member of the NBKR Governing Board. The responsibilities are divided, depending on the scope, between several divisions. The Banking Supervisory Division is given primary responsibility for AML/CFT issues, where 1 staff member is allocated (in the Section for Monitoring Problem Banks) to cover AML/CFT issues. The Division on Methodology of Supervision and Licensing drafts AML/CFT instructions, issued by the NBKR. The Division of Non-Banking Supervision supervises over specialized financial and crediting organizations, currency exchanges and pawnshops.

407. AML/CFT issues at the FMSRS are monitored at the level of Deputy Director. The FMSRS Order dated 10.11.2006 No. 216-p has designated six persons staff, each at the level of head of section, to liaise with the FIS. In addition the FMSRS Order dated January 20, 2007 No. 11 designated 2 persons from the Legal Department to liaise with the FIS. At the same time no section has yet been created or staff assigned by the FMSRS for purposes of AML/CFT supervision over financial institutions.

408. The employees of supervisory bodies must meet all requirements imposed on civil servants of Kyrgyzstan, including professional education level, work experience, professional skills required to perform their job functions (Law “On civil service”). Civil servants are hired on a competitive basis. Information confidentiality is a mandatory requirement in the civil service.

409. In accordance with Article 5 of the AML/CFT Law of Kyrgyzstan, the management and employees of the FIS, the National Bank and other state bodies, including employees, which, have or had access to the information submitted by reporting entities, shall be criminally liable for the unlawful disclosure or use of information subject to commercial or other secrecy and for the abuse of their position.

410. According to Article 49 of the Law of Kyrgyzstan No. 59 “On the National Bank”, employees of the NBKR are forbidden from disclosing confidential information on the activities of the NBKR or any other information made known to them in the course of their employment, unless otherwise specified in laws.

411. The training of employees of supervisory bodies has been arranged by the FIS in the form of seminars on the implementation of the AML/CFT Law. Various international organization have conducted training on AML/CFT issues for supervisors, however this training did not relate to AML/CFT supervisory techniques.

### ***Recommendation 29***

412. A system of AML/CFT supervision, monitoring and sanctions is not yet functioning in a number of aspects, and the requirements of Recommendation 29 are only applied to the banking sector.

#### ***Banking sector***

413. The powers of inspection, monitoring and sanctions of the National Bank, are based on Articles 30 and 32 of the Law No. 59 “On the National Bank of Kyrgyzstan” and special secondary legislation issued by the NBKR. In accordance with item 5 Article 30 of that Law, the NBKR is empowered to issue AML/CFT regulations concerning, among other things, “mandatory reporting by financial institutions to the NBKR or other bodies; and changes to banking procedures”.

414. The monitoring process is comprehensive and includes both targeted on-site inspections (in accordance with Article 42 of the Law No. 60 “On Banks and Banking Activity”) and off-site supervision (see the Instruction “On the procedures for comprehensive on-site inspections” approved by the Resolution of NBKR No. 2/2 dated February 4, 2004 (to be referred to as instruction No. 2/2 in this Report)). On-site NBKR inspections are performed by visiting the location and include the examination of bank policies and procedures, including internal control (in accordance with item 1.7 of the Instruction No. 2/2), as well as (as a recent measure) of the banking log on large value transactions and STR reporting to the FIS, which is checked by FIS experts participating in the inspection. In accordance with item 4.3 of the NBKR Instruction No. 2/2, inspectors shall have access to any information and documentation available in the bank as well as to any employee. To access such information, no court sanction is required for the NBKR. Inspections may be both planned and sudden and may be performed without giving prior notice to the bank in case of evidence of fraud, abuse or other unlawful activity conducted by the bank (item 3.6 of the Instruction No. 2/2).

415. According to Annex 1, p.5 of the NBKR Resolution “On enforcement measures to be applied to banks and other financial and credit institutions licensed by the NBKR” No. 16/2 (referred to as Resolution No. 16/2 in this Report), “abnormal and unsafe banking practices” include the violation of AML/CFT legislation and operations considered to be suspicious in accordance with the NBKR Resolution No. 5/9. With respect

to the bank involved in abnormal and unsafe banking practices, the NBKR may apply “enforcement measures, including the withdrawal of license” (“General Provisions” of the NBKR Resolution No. 16/2).

416. The right of NBKR to apply sanctions and other enforcement measures to banking institutions is governed by Article 32 of the Law “On the National Bank” and provides for a range of measures to be taken in case of the failure to comply with the banking legislation and NBKR regulations. In accordance with NBKR Resolution No. 16/2 the National Bank is authorized to apply various sanctions to financial institutions in case of the failure to observe the AML/CFT legislation. The NBKR also adopted amendments to the Resolution No. 7/5 dated March 23, 2006 (rev. on January 31, 2007) “On measures to be applied to credit unions” and Resolution No. 16/3 dated May 19, 2005 (rev. on January 31, 2007) “On preventive measures and sanctions applied by the NBKR to microfinance organizations”. The amendments provide a wide range of measures to be applied in case of a violation of the AML/CFT legislation.

#### *Securities and insurance sectors*

417. In supervising and monitoring the securities and insurance sector, the FMSRS has general powers to perform licensing and supervision and apply sanctions to the supervised entities in case violations of the legislation are detected (see Article 9 of the Resolution of the Executive Government dated 2 December, 2005 No. 551 “On the FMSRS under the Government of Kyrgyzstan” (to be referred to as Resolution No. 551)). The FMSRS is entitled to obtain from supervised entities the necessary reporting information and documents, to perform inspections, if necessary with the participation of law enforcement bodies. At the same time, there are no specialized regulations of the FMSRS regarding the AML/CFT supervision and monitoring procedure.

#### *Currency exchange and money or value transfer (MVT)*

418. The information on the monitoring and supervision of the currency exchange and MVT sectors is located in the description of Recommendation 23 (on-going supervision and monitoring).

### ***Recommendation 17***

419. The AML/CFT legal sanctions regime is at the first stages of development in Kyrgyzstan. Supervisory bodies are entitled to sanction supervised entities in accordance with their own regulations. The AML/CFT Law authorizes the supervisory bodies to “control” financial institutions in relation to their AML/CFT obligations according to the legislation (Article 3, p.8).

#### *Banking sector*

420. The types of sanctions applied by the NBKR to financial and credit institutions are specified in the NBKR Regulation No. 16/2. The sanctions are applied depending on “the nature, frequency and amount of transactions and operations violating the AML/CFT legislation”. Prior to applying any enforcement measures, the NBKR may notify the bank in writing regarding the fact of violation of AML/CFT requirements (item 1.4 of the Resolution No. 16/2), as well as issue specific instructions to be followed by the bank within a certain period of time to correct the violations. In case those measures are not observed, the NBKR may take other steps.

421. In order to demonstrate the readiness to cooperate with the NBKR, the bank may take so-called “voluntary obligations” to correct the detected flaws in its AML/CFT system. This means that one of the following has to be done: voluntary correction of flaws at the preliminary stage of the NBKR investigation, the signing of a letter of commitment (to be prepared by the NBKR and signed by the Board of Directors of the bank), signing of a written agreement with the NBKR concerning the correction of flaws (item 5 of the Resolution No. 16/2).

422. The NBKR may take a number of enforcement measures in case of violations of the AML/CFT legislation. These include the removal of the management of the bank (items 6.9.3 and 5 of Resolution No. 16/2), termination or restriction of certain banking operations (item 6.10), appointment of temporary bank management (item 6.11, subitem 3), conservation of the bank (item 6.12, subitem 4), suspension and

withdrawal of the license (item 6.13.2). The NBKR may also charge fines to the bank and management in case of failure to observe the AML/CFT legislation and resolutions of the NBKR. The Matrix of Fines (Appendix 2 of the Resolution No. 16/2) establishes the size of the fine depending on the severity of the AML/CFT violation.

423. The team of assessors was informed that the NBKR has applied sanctions to at least one bank that violated the AML/CFT requirements in 2006. The types of sanctions were not specified. In 2007, one more bank was given instructions to make corrections to its AML/CFT system. The NBKR conducted an inspection and was considering applying sanctions (installing temporary management) against a third bank at the time of the evaluation.

424. Similar measures may be applied to microfinance organizations and credit unions in accordance with the NBKR Resolution No. 7/5 dated March 23, 2006 (rev. on January 31, 2007) "On enforcement measures applied to credit unions" and the Resolution No. 16/3 dated May 19, 2005 (rev. on January 31, 2007) "On preventive measures and sanctions applied by the NBKR to microfinance organizations". In April 2007 a recommendation letter was also sent to all microfinance organizations, credit unions and pawnshops, regarding the prevention of the use of accounts for money laundering purposes, with an attachment of a List of suspicious transaction criteria, with a high money-laundering risk.

#### *Securities and insurance sector*

425. The FMSRS, in accordance with the Regulation No. 551 is authorized to apply general economic and administrative sanctions to supervised entities in case of the failure to observe the legislation in their areas of professional activities (item 9 of the Regulation No. 551). At the time of the assessment the FMSRS did not have any mechanisms for applying specialized AML/CFT sanctions. There was no practice of applying sanctions for AML/CFT violations.

426. Within the framework of general measures, the FMSRS is authorized to send to supervised entities binding instructions to correct violations, to impose penalties, terminate securities operations, suspend and withdraw licenses. 6 licenses of professional securities market participants were withdrawn in 2005, and 2 were suspended for three months. The assessment team was informed that criminal sanctions have been applied to several executives, working in the securities and insurance markets.

#### *Currency exchange*

427. In accordance with item 7 of NBKR Resolution dated November 30, 2000 No. 42/1 "On the procedure for cash currency exchange operations in Kyrgyzstan", the NBKR is empowered to apply the following sanctions against the banks authorized to perform currency exchange operations and independent exchange bureaus:

- send a notice or instruction on the correction of detected violations and provide a specific timetable to correct violations;
- take steps to impose penalties in accordance with the effective legislation;
- suspend licenses for up to 7 working days;
- withdraw licenses.

428. The National Bank has not applied any AML/CFT sanctions to currency exchanges. The legislation, including NBKR instructions, does not currently contain special provisions on the application of such sanctions.

#### *Money or value transfer (MVT)*

429. AML/CFT sanctions are not available in the legislation of Kyrgyzstan regarding non-bank MVT.

#### ***Recommendation 23 (market-entry)***

430. In Kyrgyzstan, there are legislative requirements only for banking institutions and professional participants of the securities market preventing the participation of criminals in their ownership and management.

#### *Banking sector*

431. The key executives of a bank (members of the Board of Directors, chairman of the Management Board and Deputy Director for Credit Policy, members of the Management Board, Chairman of the Auditing Committee, Chief Accountant, Head of the Credit Department, Head of the Internal Audit Service), must be approved by the NBKR, and checked for criminal records and a proper business reputation. In accordance with item 16.1 of the Resolution No. 5/7 “On Licensing of Banking Activity”, the NBKR may refuse the approval of a nominee in case he/she was convicted of economic, financial, banking or official crimes. A pending criminal case also serves as grounds for refusal (item 16.2 of the Resolution No. 5/7).

432. The NBKR also checks the executives of a major shareholder (if the shareholder is a legal entity) of a bank for criminal records. In accordance with item 10.6 of the Resolution No. 5/7 “the executive officers (members of the Board of Directors (supervisory body) and the Management Board (executive body)) of a major shareholder of the bank must not have outstanding convictions for economic crimes”.

433. In accordance with Article 25-1 of the Law No. 60 “On Banks and Banking Activity”, the NBKR establishes strict requirements for the business reputation of executive officers and the Management Board of the bank, as well as for the executive officers of a major shareholder of a bank. An “improper reputation” (item 12.6 of the Resolution No. 5/7) includes previous unsuccessful business activities followed by bankruptcy, economic crimes, doubtful personal credit history, involvement in operations relating to money laundering and terrorism financing, etc.

434. In accordance with item 7.1, subitem 11 of the Resolution No. 5/7, the NBKR is to obtain all information on the sources of a shareholders’ monetary assets. The assessment team was also informed that the NBKR performs field checks of business activities of the major shareholders of banks.

435. According to sections 14 and 15 of the NBKR Resolution No. 5/7 the management of a bank and the members of the governing board must have a higher education diploma, have the necessary skills and knowledge of corporate management, banking legislation, including the key documents of the National Bank.

#### *Securities sector*

436. The Resolution of the FMSRS dated May 28, 2002 No. 43 “On qualification requirements regarding persons performing professional activities in the securities market of Kyrgyzstan and the procedure for qualification tests” establishes high professional requirements for nominees passing professional tests, including their education level. In case of a conviction record for economic crimes, the nominee must be rejected (item 8 of the Resolution No. 43).

#### *Insurance sector*

437. In accordance with item 6 of Article 11 of Law No. 96 dated July 23, 1998 (rev. on 30 December, 1998) “On insurance activities in Kyrgyzstan”, an insurance license may be issued to an insurance organization provided that the members of its Management Board, chief accountant and auditor meet the criteria of reliability and qualification requirements. There are, however, no legal norms in the legislation containing such criteria<sup>26</sup>.

#### *Currency exchange and MVT*

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<sup>26</sup> As the assessment team was informed these criteria are currently being drafted.



438. Currency exchange may be performed by banks authorized and specially licensed to perform such operations (through exchange offices) and independent exchange bureaus. The NBKR issues licenses based on Articles 17 and 18 of the Law No. 6-1 “On Currency Operations”. The licensing procedure is governed by the Resolution of the NBKR dated November 30, 2000 No. 42/2 “On the licensing procedure for cash currency exchange operations” (to be referred to as Resolution No. 42/2 in this Report). There is no check for criminal records during the licensing procedure.

439. In Kyrgyzstan, no licensing or registration requirements apply to the non-bank organizations involved in the transfer of money or value.

### ***Recommendation 23 (on-going supervision and monitoring)***

440. The National Bank monitors the compliance of banks with the Core Principles, which are taken into consideration in licensing procedures and monitoring of financial risk assessment systems in banks. The NBKR Regulations (e.g. Resolutions No. 5/7, No. 16/2, No. 24/1) apply the measures under the Core Principles for AML/CFT purposes as well.

441. As for the securities and insurance sector, the Core Principles do not apply for AML/CFT purposes.

### ***Monitoring currency exchange and MVT***

442. In accordance with Article 4, item 9 of the Law No. 59 “On the National Bank”, the NBKR performs currency exchange supervision and issues regulations on currency exchange operations. Chapters 5 and 6, Articles 17-21 of the Law No. 6-1 “On Currency Operations” authorize the NBKR to issue currency exchange licenses (to authorized banks and exchange bureaus), and apply sanctions, including the withdrawal of licenses, in case of the failure to comply with the Law No. 6-1 and instructions of the NBKR. Exchange offices and bureaus are supervised based on item 7 of the NBKR Resolution dated November 30, 2000 No. 42/1 “On the procedure for cash currency exchange operations in Kyrgyzstan” (to be referred to as Resolution No. 42/1 in this Report). In accordance with item 7.3, checks may be performed without prior notice. The team of assessors was informed that the NBKR frequently performs inspection visits (raids) to exchange offices, often together with the Financial Police. Checks of authorized banks are performed within the framework of banking inspections.

443. In January 2007, a letter was sent to all exchange bureaus (and pawnshops) by the NBKR notifying of the need to observe the new AML/CFT Law with an attachment containing the minimal requirements of the NBKR regarding the observance of the Law. The letter emphasized that the NBKR would be paying increased attention to AML/CFT issues in the course of inspections.

444. All money remittance carried out through the formal financial system is conducted through banks, and therefore this does not require any licensing or registration. The right to carry out money remittance is given to a bank by a general banking license. However, the assessment team was not provided with evidence of the existence of any licensing or registration regime for MVT service operators, which act outside the formal financial system.

### ***History of inspections and sanctions applied***

445. At the time of the assessment an AML/CFT monitoring and sanctions regime existed only for the banking sector. In 2006 (and earlier), the NBKR performed comprehensive checks of all banks (every bank at least once per year) for compliance with the banking legislation, including NBKR Resolutions regarding AML/CFT issues (e.g. the NBKR Resolution No. 5/9, or the Temporary Instruction No. 4/4 etc.). In addition, specialized AML/CFT inspections are also possible. In 2006, a specialized AML/CFT inspection of at least one bank was performed, which was done at the request of a foreign supervisory body. Sanctions were applied, however, the information on the types of sanctions was not available. In February 2007, a general inspection of a bank revealed flaws in the AML/CFT internal control system. The bank was provided with binding recommendations. The results of another inspection in March 2007 prompted the NBKR to

consider applying sanctions by installing temporary management into the bank (final decision at the time of the evaluation had not yet been made).

### ***Recommendation 25***

446. Several acts have been adopted by competent authorities, including binding resolutions, which explain the obligations of the financial institutions in the area of AML/CFT. The NBKR Resolution No. 5/9 includes general ML/FT indicators (13 indicators), suggesting possible money laundering by the client, as well as a set of criteria of suspicious banking operations subject to a high risk of ML/TF (17 criteria). The Resolution of the FIS No. 15/P also contains lists of suspicious criteria. That Resolution also provides a detailed description of the client identification process, gives samples of client identification forms and procedure for verifying and documenting information on a client. At the same time this Resolution was not yet issued to financial institutions at the time of the on-site visit through their supervisory authorities, and contained contradictions with existing documents of the NBKR, which created difficulties for financial institutions.<sup>27</sup>

447. The reporting form, which was issued to financial institutions by the FIS was accompanied by a reference brochure of indicators of suspicious transactions (approx. 100), to be used by the financial institutions in filling out the reporting form. A guideline regarding the procedure of filling out the reporting form has also been issued.

448. The FIS website contains a FAQ section, which is intended to assist the financial institutions in their compliance with AML/CFT requirements.

449. The FIS has held consultations with the private sector entities, which are required to report STRs to the FIS, and carried out their training. A special working group has been created with the participation of the National Bank and commercial banks, which holds meetings at least once a month. A similar working group has been created with the participation of the FIS, FMSRS and representatives of the insurance and securities sectors. On the basis of their work amendments were introduced into the reporting form.

450. Under Article 28 of Law No. 34 “On Regulatory Legal Acts”, when regulatory legal acts are drafted that affect the interests of citizens or legal entities and enterprises, broad consultations with the private sector are to take place. The National Bank has already used this practice in drafting regulations in the AML/CFT sphere, including the Temporary Instruction No.4/4, Resolution No. 5/9, etc.

451. The representatives of the securities and insurance sectors, as well as DNFBPs noted a lack of sector-specific ML/TF indicators in the published guidance, which is mostly banking-oriented.

#### **3.10.2 Recommendations and comments**

##### ***R.17***

452. It is necessary to ensure that a broad range of sanctions is available regarding financial institutions.

453. The types of sanctions for failure to meet AML/CFT obligations should be diverse across all sectors, from fines to the withdrawal of licenses.

##### ***R.23***

454. The Kyrgyz AML/CFT supervisory and monitoring system is still at the early stages of development. The National Bank has implemented AML/CFT requirements into its legal framework, though it has not yet achieved sufficient practical results to widely demonstrate the efficiency of the systems in place in relation to the banking sector.

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<sup>27</sup> These difficulties were resolved in April-May 2007, when the NBKR adopted the relevant amendments to its regulations.

455. The FMSRS should develop the required legal AML/CFT framework including measures to monitor and sanction financial institutions in the insurance and securities sector. The FMSRS must also ensure that the Core Principles are used for the purposes of AML/CFT by its supervised entities.

456. The NBKR has yet to start applying the AML/CFT monitoring and sanctions regime in relation to exchange offices and bureaus. The monitoring and sanctioning system must be introduced in relation to non-bank MVT service operators to ensure compliance with Special Recommendation VII.

457. Kyrgyzstan needs to introduce the necessary amendments into its legislation to make sure that all persons and organizations providing money or value transfer services are licensed or registered.

458. The FIS, which is authorized, in accordance with the AML/CFT Law, to supervise over entities without specialized supervisory bodies, must have respective powers and mechanisms to implement these powers

R.25

459. The supervisors must issue special guidelines for the private sector to ensure the efficiency of financial institutions' activities under their AML/CFT obligations. Such guidelines must be sector-oriented.

R.29

460. The FMSRS must ensure that its current supervisory and sanction powers are applied for AML/CFT purposes.

461. It is necessary to ensure that effective sanctions may be applied to the currency exchange sector.

462. MVT service operators must be subject to effective supervision, according to the requirements of Recommendation 29.

3.10.3 Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors relevant to section 3.10 underlying the rating
R.17	PC	<ul style="list-style-type: none"> <li>• The mechanism to apply the necessary range of sanctions to all financial institutions (now available only with regard to the banking sector) is not clear;</li> <li>• Insufficient practice for applying sanctions for AML/CFT violations in Kyrgyzstan does not allow to assess the effectiveness of existing measures.</li> </ul>
R.23	PC	<ul style="list-style-type: none"> <li>• A comprehensive AML/CFT supervision, monitoring and sanction system is available for the banking sector only;</li> <li>• Insurance and securities sectors are not required to apply the Core Principles for AML/CFT purposes (currently applied only in the banking sector);</li> <li>• AML/CFT monitoring of currency exchange operations is not yet conducted at the necessary level;</li> <li>• No system of monitoring non-bank MVT service operators;</li> <li>• Non-bank MVT service operators are not subject to licensing or registration;</li> <li>• Efficiency of supervision, monitoring and sanctions cannot be assessed due to the absence of sufficient results.</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>• Reference brochure and other lists with ML/TF indicators issued to private sector are mostly bank-oriented;</li> </ul>

		<ul style="list-style-type: none"> <li>• <b>Contradictions between various legislative provisions and guidelines create difficulties for financial institutions.</b></li> </ul> <p><b>See other factors underlying rating in Section 3.7 and 4.3 of this Report)</b></p>
<b>R.29</b>	<b>PC</b>	<b>Requirements of Recommendation 29 are met by the banking sector only.</b>

### 3.11 Money or value transfer services (SR.VI)

#### 3.11.1 Description and analysis (summary)

#### *Special Recommendation VI*

463. Money remittance through the official system may only be carried out through banks. All of the banks are subject to AML/CFT requirements and the deficiencies noted in relation to the AML/CFT measures in the banking sector are also applicable in the context of money remittance carried out by banks (see previous sections of the Report).

464. Kyrgyzstan has not taken any legislative or other measures required to meet the provisions of Special Recommendation VI in relation to MVT service operators acting outside the formal financial system (e.g. hawala, fei chen). An authority has not been designated to license or register these MVT service operators. There are no requirements for such MVT service operators to comply with relevant FATF Recommendations (4-11, 13-15, 21-23) and Special Recommendations (especially SR.VII). MVT service operators are not required to maintain current lists of their agents. There is no monitoring system and no mechanisms to apply sanctions in accordance with R.17.

#### 3.11.2 Recommendations and comments

465. Kyrgyzstan must take all the legislative or other measures required to meet the provisions of Special Recommendation VI in relation to MVT service operators acting outside the formal financial system. It is also necessary to correct all of the deficiencies noted in relation to the AML/CFT requirements for banks, which are also applicable to banks in the context of money remittance.

#### 3.11.3 Compliance with Special Recommendation VI

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>SR.VI</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>No legislative or other measures have been taken in accordance with Special Recommendation VI in relation to MVT service operators acting outside the formal financial system;</b></li> <li>• <b>The deficiencies noted in relation to the AML/CFT measures in the banking sector are also applicable in the context of money remittance carried out by banks.</b></li> </ul>

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

### *Preamble: types of DNFBPs subject to AML/CFT measures*

466. The requirements of the AML/CFT Law cover the following types of DNFBPs:

- Casinos and other gambling institutions with gaming machines, roulettes, other devices or means for games, and electronic games. The latter apparently includes Internet casinos;

- Real estate agents;
- Dealers in precious metals and stones.

467. The categories of DNFBP listed above will be referred to collectively as “covered DNFBPs”.

468. AML/CFT measures do not apply to lawyers, notaries and trust and company service providers. Since there are no specialized accounting firms and independent accountants in Kyrgyzstan, AML/CFT measures do not have to be used in relation to this category of DNFBPs.

469. There is a difficulty with applying the AML/CFT Law to jewelers, who perform most of the operations with precious metals and stones in Kyrgyzstan in the sense, implied by the FATF Recommendations. The difficulty lies in the terminological discrepancies between the AML/CFT Law and Law No.61 “On Precious Metals and Stones”. The AML/CFT Law uses the term “dealers in precious metals and stones”, while Law No.61 uses the term “dealers of goods made from precious metals and stones”. In the opinion of the Division on Precious Metals of the Ministry of Finance this discrepancy is legally significant, which does not allow the AML/CFT Law to be applied to these entities.

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

(applying R.5, 6 and 8 to 11)

##### 4.1.1. Description and Analysis

##### ***Recommendation 12***

470. Under the AML/CFT Law the covered DNFBPs fall under the same requirements as financial institutions in the following cases:

- casinos and other gambling institutions – in all cases;
- real estate agents if they are engaged in the purchase or sale of real estate for their client irrespective of any threshold for such transactions;
- dealers in precious metals and stones if they engage in any cash transactions with the client irrespective of any threshold for such transactions.

471. The covered DNFBPs are obliged to comply with Recommendation 5 to the same degree as financial institutions (DNFBPs are not covered by the special legislation issued by the National Bank of Kyrgyzstan). DNFBPs carry out customer identification, but there is no binding requirement to verify the data and identify the beneficial owner. There is no requirement to obtain information on the purpose and intended nature of business relationship, to carry out on-going CDD and CDD on existing customers as at the time when the AML/CFT legislation entered into force. There is no requirement for enhanced CDD measures with regard to high-risk clients and special measures in case of failure to complete CDD (including the sending of an STR).

472. The necessary requirements with regard to Recommendations 6 and 8 have not been introduced. DNFBPs are not allowed to rely on third parties in the CDD process (Recommendation 9). The deficiencies, which have been revealed in relation to financial institutions in the implementation of Recommendation 10 are also applicable to the covered DNFBPs.

473. The requirements of Recommendation 11, which are introduced for financial institutions do not apply to DNFBPs.

474. Many of the requirements of Recommendation 5, 6, 8-11 are contained in FIS Resolution No. 15/P, however this Resolution should be issued to DNFBPs through their supervisory bodies.

##### 4.1.2. Recommendations and Comments

475. Kyrgyzstan should widen the scope of its AML/CFT legislation to cover lawyers, notaries and trust and company service providers. Kyrgyzstan should eliminate possible terminological obstacles to the

application of AML/CFT legislation to dealers in precious metals and stones, as they are understood by the FATF Recommendations.

476. DNFBPs must comply with all the requirements of Recommendations 5, 6, 8, 10 and 11. The FIS Resolution No. 15/P, which contains some of the requirements for DNFBPs should be issued to the DNFBPs through their respective supervisory bodies (in accordance with Section 8, Article 3 of the AML/CFT Law).

#### 4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	<ul style="list-style-type: none"> <li>• AML/CFT measures do not cover lawyers, notaries and TCSPs, there are difficulties in applying the measures to dealers in precious metals and stones;</li> <li>• R.5: there is no requirement for verification, identification of the beneficial owner, no obligation to obtain information from the customer on the intended nature of the relationship, no obligation to conduct on-going due diligence and CDD with regard to existing clients, no obligation to apply enhanced due diligence measures to high-risk clients and to take measures in case of failure to satisfactorily complete CDD;</li> <li>• No legislative or other measures exist to comply with the requirements of R.6 and 8;</li> <li>• There is no requirement for financial institutions to examine unusually large and complex transactions, which do not have a clear economic purpose. There is no requirement to document data, obtained as a result of such examination and to maintain it for 5 years (R.11);</li> <li>• As AML/CFT measures have been introduced only recently, it is impossible to assess their effectiveness.</li> </ul>

## 4.2. Suspicious transaction reporting (R.16)

(applying R.3-15 and 21)

### 4.2.1. Description and Analysis

#### **Recommendation 16**

477. The covered DNFBPs are subject to the same rules in accordance with Recommendations 13-15 and 21 that apply to financial institutions (with the exception of the requirements of the National Bank of Kyrgyzstan that apply only to banks and finance-credit institutions).

478. The covered DNFBPs have not yet reported any suspicious transactions. Under the mandatory reporting requirements, the DNFBPs are required, in addition to the STR obligation, to provide information on real estate deals (for real estate agents) over 4.5 million SOM (approx. USD 10,000), on any deals with movable property and casino payments to customers exceeding 1 million SOM (approx. \$25,000). At the same time there is no clear provision in the law that makes it mandatory to report attempted suspicious transactions (except for STRs related to TF).

479. The covered DNFBPs and their staff are protected, like financial institutions, from liability for forwarding information to the FIS and have no right to disclose to clients the fact of sending an STR to the FIS (Recommendation 14). For the DNFBPs there exists only a general requirement on internal controls (Section 4, Article 3 of the AML/CFT Law). Detailed internal control requirements are contained in the FIS Resolution No.15/P (see s.4.1 above).

480. DNFBPs are required to pay special attention to business relations with the states, which do not or insufficiently apply the FATF Recommendations. The lists of states and territories that are to be compiled by the FIS together with other supervisory bodies must be provided to the DNFBPs. There is no requirement for the DNFBPs to look into unusual transactions with such states.

#### 4.2.4. Recommendations and Comments

481. Kyrgyzstan needs to address all of the shortcomings in the implementation of Recommendations 13-15 and 21 in relation to the DNFBPs.

#### 4.2.2. Compliance with Recommendation 16.

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.16	NC	<ul style="list-style-type: none"> <li>Existing measures do not cover lawyers, notaries TCSPs, there are difficulties in applying the measures to dealers in precious metals and stones;</li> <li>R.13: there is no requirement to report attempted suspicious transactions (only ML-related);</li> <li>There are no specific internal control requirements in accordance with R.15;</li> <li>R.21: the list of countries that do not comply with FATF requirements has not been disseminated to DNFBPs; there is no requirement for DNFBPs to independently study unusual transactions with such countries.</li> </ul>

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

#### 4.3.1. Description and Analysis

##### **Recommendation 24**

##### *Supervision and sanctions with regard to casinos*

482. The FMSRS issues licenses, supervises and monitors the activity of casinos (Section 9 of Regulation No.551 “On the FMSRS”). Under Section 8 of Article 3 of the AML/CFT Law, the FMSRS is empowered to supervise casinos for compliance with the AML/CFT Law and their internal control obligations.

483. In accordance with its general powers the FMSRS monitors compliance of gambling institutions with the requirements of the Law of Kyrgyzstan which regulates the procedures of gambling activities. If violations are revealed, the FMSRS has the right to order their correction and if the order is not fulfilled, to suspend or withdraw the license. The FMSRS also has the right to impose economic and administrative sanctions and fines for violations of the Kyrgyz legislation. In practice, as the evaluators had been informed, the Financial Police may initiate criminal proceedings against casino officials. The FMSRS regularly conducts sudden on-site inspections (raids) of casinos jointly with the Financial Police to reveal activities that violate the laws of Kyrgyzstan.

484. At the time of the evaluation the FMSRS had not yet taken the necessary regulatory and organizational measures to create a mechanism of supervision, monitoring and sanctions for violations in the field of AML/CFT.

485. Under Section 4 of Article 9 of Law No. 95 “On Gambling Activities in Kyrgyzstan” a license for gambling activities may be withheld if there is a court decision barring the licensee from engaging in this kind of activity. Under Section 2 of Article 10 of Law No. 95 doubts regarding the business reputation of the licensee or the existence of a previous cancelled conviction may not serve as grounds for refusing a license.

This norm partly contradicts the requirements of Recommendation 24, as there are no barriers for persons with a poor reputation to be the owners of a casino. The FMSRS has informed the assessors that in practice it sends information requests to the Ministry of Interior to determine if the owners/managers of casinos have previous convictions or are currently under prosecution.

486. The supervisory authority for dealers in precious metals and stones is the Precious Metals Division under the Ministry of Finance of Kyrgyzstan. It is still unclear whether the requirements of the AML/CFT Law will apply to dealer in precious metals and stones (jewelers) because of the contradictions in terminology between the AML/CFT Law and Law No.61 “On Precious Metals and Stones” (see preamble to Section 4 of this Report).

487. Real estate agents do not at present have any state body or SRO for general oversight or monitoring of their activities. Under Section 8 of Article 3 of the AML/CFT Law, the FIS monitors the organizations, which have no oversight bodies in their spheres of activity. Accordingly, real estate agents are to be monitored by the FIS. The FIS has had initial contacts with real estate agents to explain the provisions of the AML/CFT Law. At the same time the FIS lacks specific mechanisms to carry out monitoring of real estate agents for compliance with AML/CFT legislation and internal control requirements. The FIS has no concrete mechanisms to issue Resolution No. 15/P to the real estate agents and to ensure compliance through sanctions.

488. It seems that casinos are resisting the implementation of the requirements of AML/CFT legislation. In this regard the absence of a monitoring and sanctions system for AML/CFT violations increases the ML/FT risk in this sector.

## **Recommendation 25**

489. Competent authorities have not issued any sector-specific guidance for the covered DNFBPs. The same feedback mechanisms exist for the covered DNFBPs as for the financial institutions. The FIS jointly with the FMSRS has held a number of seminars with the representatives of covered DNFBPs aimed at explaining the provisions of the AML/CFT Law.

### **4.3.2.Recommendations and Comments**

#### *R.24*

490. Kyrgyzstan should take measures to ensure effective monitoring of the compliance of casinos with AML/CFT requirements, and set additional measures to prevent criminals from managing/owning a casino, which should include the reputation factor as grounds for refusal.

491. It is necessary to effectively monitor the activities of dealers in precious metals and stones and other DNFBPs for compliance with AML/CFT measures. The authorities should create and/or designate a competent authority or self-regulatory organization to be responsible for monitoring real estate agents and ensuring that they comply with their AML/CFT obligations. If this function is carried out by the FIS, then this Service must have the necessary supervisory capacity and mechanisms for their implementation.

492. Due to resistance on the part of casinos to the implementation of AML/CFT requirements it is necessary to pay particular attention to the implementation of Recommendation 24.

#### *R.25*

493. Sector-specific guidance should be issued for the DNFBPs. As the system evolves such instructions will become necessary in order to help DNFBPs to comply with the standards set by the AML/CFT Law.



#### 4.3.3. Compliance with Recommendations 24 and 25 (criteria of 25.1, CNFEPs).

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	NC	<ul style="list-style-type: none"> <li>• No effective AML/CFT supervision and sanctions system has been set up for casinos, which increases the risk of ML/FT in this sector due to resistance by casinos to the implementation of AML/CFT requirements;</li> <li>• Criminal reputation does not prevent persons from managing a casino/owning a controlling interest in a casino;</li> <li>• R.24 does not apply to lawyers, notaries and TCSPs;</li> <li>• There is no effective AML/CFT monitoring for dealers in precious metals and stones;</li> <li>• There is no designated authority or SRO to supervise over real estate agents. The FIS of Kyrgyzstan does not possess the necessary powers and mechanisms to monitor real estate agents.</li> </ul>
R.25	PC	<ul style="list-style-type: none"> <li>• No sector-specific guidance issued for DNFBPs;</li> </ul> <p>See other factors underlying rating in Sections 3.7 and 3.10 of this Report.</p>

#### 4.4. Other Non-Financial Businesses and Professions Modern secure transaction techniques (R.20)

##### 4.4.1. Description and Analysis

##### **Recommendation 20**

494. In addition to financial institutions and DNFBPs AML/CFT measures are also applied to pawn shops, bookmakers' offices, sponsors and organizers of lotteries, totalizators, and electronic gaming. These types of organizations are covered by all the measures and requirements on mandatory reporting and internal control.

495. Pawnshops are supervised by the National Bank of Kyrgyzstan, which issued a letter in January 2007 informing pawnshops of the need to comply with the AML/CFT legislation. Under the mandatory reporting rules pawn shops are required to report to the FIS all the deposits made into a pawnshop if they exceed 1 million soms (approx. \$25,000). Bookmakers' offices, lotteries and totalizators are supervised by the FMSRS. These institutions are in the process of creating AML/CFT mechanisms.

496. Kyrgyzstan is actively pursuing a policy to reduce the number of cash transactions. In this regard a national program of measures for 2003-2008 has been adopted by the Government with the aim of introducing non-cash payments in Kyrgyzstan. The program consists of 4 components:

- 1) Creation and introduction of a system of processing packages of payments (package clearing) for regular and non-urgent small payments (mainly wages, pensions and payments of household utility bills);
- 2) Building a system of real-time settlements for urgent and major payments connected with financial markets;
- 3) Developing a plastic card payments system operating 24 hours a day, 7 days a week. Expanding the infrastructure for servicing plastic cards. Creation of a single processing center to accept and process retail and regular payments through plastic cards;
- 4) Improving the technology of trans-border payments. Development of a SWIFT collective hub for commercial banks to carry out payments via the SWIFT international network. Using the potential of the SWIFT network for internal payments in Kyrgyzstan.

497. The evaluators were informed by the NBKR that active work was underway on all the components of the program. Under the first component the system was introduced into the industry and has been functioning since October 13, 2006. Under component 3, a single processing center with the participation of 13 commercial banks has been set up in Kyrgyzstan.

#### 4.4.2. Recommendations and Comments

498. This recommendation is fully observed.

#### 4.4.3. Compliance with Recommendation 20.

	Rating	Summary of factors underlying rating
<b>R.20</b>	<b>C</b>	<b>This recommendation is fully observed.</b>

## 5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

### 5.1. Legal persons - access to beneficial ownership and control information (R.33)

#### 5.5.1. Description and Analysis

#### *Recommendation 33*

499. According to the data provided, there are 59,000 legal persons in Kyrgyzstan. They are registered by the Ministry of Justice and its territorial branches. Registration is obtained through the submission of the necessary application documents. The procedure is regulated by the Ministry of Justice Resolution No.180 December 3, 2003 “On the Procedure of Registration of Legal Entities, Branches and Representative Offices by the Justice Authority of Kyrgyzstan” (to be referred to as Resolution No.180 in this Report). To obtain registration a legal person must provide its constituent documents (for the types of information contained in the constituent documents – see Section 1.4 of this Report), the decision of the founders or minutes of their meeting, a certificate from a bank confirming the deposit of the required authorized capital in an account (if necessary) and a document confirming the location of the legal person. The registration application must contain the following information on the founders: name of the person or name of the company, and the name of the representative of a founder and his/her passport data, exact address and country of origin. The information on the beneficiaries is contained in the statutory documents of the legal person. No verification procedures regarding the received data exist, as the Ministry of Justice does not have the necessary powers to do so.

500. The MOJ examines the registration documents in order to ensure that they are consistent with the legal requirements and registers the legal person within 10 days. In case of changes to the organizational structure or ownership the legal person must reregister with the Ministry of Justice.

501. The open part of the Register is publicly accessible on the website of the Ministry of Justice and contains the following information on legal persons: name of the entity, name of its CEO, date of its original registration, its legal form, type of ownership, legal address, registration number and OKPO code (national classifier code for companies and enterprises). Other information on the legal person, including its founders, as well as the articles of incorporation are kept at the Justice Ministry in an archive accessible to competent authorities on a timely basis.

502. Practically all the law enforcement bodies, including the Ministry of Interior, the Financial Police, the National Security Committee and the Prosecutor General’s Office consider the existing procedure of registration of legal entities to be the weakest link in Kyrgyzstan’s the efforts to combat economic crime, because of a lack of transparency of legal persons and the absence of reliable beneficial owner information. Apparently, there is a widespread practice in Kyrgyzstan of setting up one-day front companies, which do not carry out economic activities, but are rather created for a short period of time to conceal the traces of

financial transactions and may be used for money laundering. The assessors were presented with specific examples to show that such firms are often part of schemes to obtain illegal VAT refunds from of the budget when exporting goods, which is usually accompanied by the laundering of the gained income.

503. The laws of Kyrgyzstan allow legal entities to issue bearer shares, but no special measures are taken to prevent them from being used for the purposes of money laundering.

#### 5.1.2. Recommendations and Comments

504. The problems and risks of money laundering and terrorism financing arising from the existing procedure of registration of legal persons should be eliminated as soon as possible. Kyrgyzstan’s legislation should provide for the verification of beneficial owner information of legal persons.

505. Kyrgyzstan should also take measures to prevent the use of bearer shares for the purposes of money laundering and terrorism financing.

#### 5.1.3. Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	PC	<ul style="list-style-type: none"> <li>• <b>The legislation of Kyrgyzstan, as well as the existing procedure for registering legal persons does not provide for measures to verify the information on the beneficial ownership of legal persons;</b></li> <li>• <b>No measures are taken to prevent the use of bearer shares for ML/FT.</b></li> </ul>

## 5.2. Legal arrangements - access to beneficial ownership and control information (R.34)

### 5.2.1. Description and Analysis

506. Legal arrangements cannot be created in Kyrgyzstan, including trusts, as the term is used in the FATF Recommendations. This is due to the fact that the legal system of Kyrgyzstan, like other countries of the continental legal tradition (civil law) does not allow for the separation of the right of ownership into a legal title, which is given to the trustee along with the responsibilities of proprietorship, and an equitable title, which is given to the beneficiary.

507. There is a concept of trust management in Kyrgyzstan, which is different from the trusts set up under Anglo-Saxon (common law) systems, because it is solely based on liability. According to Article 850 of the Civil Code of Kyrgyzstan “the transfer of property into trust management does not lead to a transfer of ownership to the trust manager”, which conflicts with the basic principle of a trust. This also contradicts with the definition of “settlor” in the FATF Methodology, which includes the “transfer of ownership of assets”. According to p. 2 of Article 852 of the Civil Code the maximum term for a trust management contract is 5 years, which is intended to avoid a transfer of factual ownership of the property (see comments to Article 852). A commercial entity or an individual entrepreneur may carry out trust management. The objects for trust management may include enterprises and other economic entities, as well as exclusive rights. Moveable property, including funds, cannot be the sole object of trust management. Persons, carrying out trust management of securities must receive a license of the FMSRS. In this capacity they are professional participants of the securities market and are subject to AML/CFT requirements like other financial institutions. Other legal persons may have the characteristics of a trust, however in this case Recommendation 33 applies.

508. Kyrgyzstan does not recognize foreign trusts and is not a signatory to the Hague Convention on the Law Applicable to Trusts and on their Recognition. The lawyers of Kyrgyzstan can however participate in the creation of trusts abroad, at the same time lawyers are not subject to AML/CFT regulations.

509. Kyrgyzstan’s legislation does not contain any impediments for Kyrgyzstan’s citizens to participate in trusts created abroad. The applicable law is the foreign law chosen by the parties or, if none has been chosen, that with which the trust shows the closest connection.

#### 5.2.2. Recommendations and Comments

510. Not applicable.

#### 5.2.3. Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
<b>R.34</b>	N/A	<b>Not applicable</b>

### 5.3. Non-profit organizations (SR.VIII)

#### 5.3.1. Description and Analysis

#### Special Recommendation VIII

511. The activities of non-profit organizations in Kyrgyzstan are regulated by the Law “On Non-Profit Organizations” No.111 of October 15, 1999. A non-profit organization is defined as “a voluntary self-regulating organization, created by natural or legal persons on the basis of common interests for the purposes of achieving spiritual or other non-material aims in the interests of its members and (or) society as a whole, for whom profit is not the main aim of activities, and the profit, which has been obtained is not split among the members, founders and management”.

512. Kyrgyzstan has not carried out a review of existing legislation on NPOs or an analysis of the sector to reveal the risks of terrorism financing. There are no outreach programs to the NPO sector to protect it from terrorism financing abuse.

513. There is no supervision or monitoring of the NPOs that account for a significant portion of the financial resources under control of the sector and a substantial share of the sectors international activities. Because of absence of supervision, a system of sanctions is also lacking. The existing supervision conducted by the General Prosecutor’s Office is not NPO-oriented.

514. All NPOs must register with the Ministry of Justice. The registration procedure requires an NPO to submit its constituent documents (which contain information on the purpose and objectives of the NPO, its structure, etc.) as well as information on the founders in the same format as that used by commercial organizations when registering (see description of Recommendation 33). As is the case with commercial organizations such information on the beneficiaries is not verified.

515. The data on NPOs is entered in the Single State Register of Legal Persons and is publicly accessible on the MOJ website. The constituent documents of NPOs and information on their founders are placed in the Justice Ministry archive for an unlimited time and accessible to competent authorities upon request.

516. According to the general record keeping rules, established by the State Archive Service NPOs are required to maintain records of their transactions for 6 years. The law enforcement bodies have the necessary authority to obtain this information from the NPOs in the course of an investigation.

517. Apparently no measures have been taken to ensure effective and (if necessary) urgent exchange of information between competent bodies regarding NPOs. No contact persons have been identified for such information exchange at the international level.

518. The system of mandatory reporting in Kyrgyzstan requires financial institutions to report to the FIS all transactions of NPOs, which exceed 1 million SOM.

### 5.3.2. Recommendations and Comments

519. Kyrgyzstan should urgently introduce the necessary measures to comply with all the requirements of Special Recommendation VIII.

### 5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	NC	<ul style="list-style-type: none"><li>• No reviews of legislation relating to NPOs have been carried out;</li><li>• No reviews of NPO sector have been carried out to identify risks of terrorism financing abuse;</li><li>• There are no outreach programs to the NPO sector;</li><li>• There is no system of supervision, monitoring and sanctions with regard to a significant portion of the sector;</li><li>• There are no mechanisms to verify the information on the beneficial ownership of NPOs;</li><li>• There are no special mechanisms for information exchange at national and international levels on NPOs suspected of terrorism financing.</li></ul>

## 6. NATIONAL AND INTERNATIONAL COOPERATION

### 6.1. National Cooperation and Coordination (R.31)

420. Already at the present stage, the degree of national cooperation and coordination on AML/CFT issues is fairly high in practically all spheres. It involves law enforcement and supervisory bodies, the financial intelligence unit and the private sector. The current priority of this national cooperation is to create all of the necessary components of the AML/CFT system.

421. An Executive Order of the President dated June 26, 2006 created an Interagency Commission for Combating the Financing of Terrorism and Legalization (laundering) of Proceeds from Crime which is a permanent coordinating body created to ensure concerted actions of the state bodies involved in AML/CFT. The FIS is the executive body of the Interagency Commission providing support to its work, including the organization of its meetings. The Chairman of the Commission is the Chairman of the FIS. The Interagency Commission consists of representatives (at the level of heads or deputy heads of agencies) of the National Bank; the National Security Service; the Financial Police; the Audit Chamber; the Ministry of Internal Affairs; the Ministry of Justice; the Ministry of Economy and Finance, the Ministry of Foreign Affairs, the Supreme Court (by agreement); the State Committee for Managing State Property; the National Statistical Committee; the State Tax Inspection; the State Customs Service; the Financial Markets Supervisory and Regulatory Service; the State Agency for Registration of Rights in Immovable Property; the Drug Control Agency. The Commission has the right to hold meetings with the participation of the representatives of the agencies that are not permanent members of the Commission. The absence of the representatives of the Prosecutor's Office in the Interagency Commission may cause a negative impact. As the assessors have been told, the representatives of the Prosecutor General's Office may attend the meetings of the Interagency Commission without the right to vote.

422. In accordance with the Statute on the Interagency Commission it holds its meetings along the schedule approved by the Chairman of the Commission based on the proposals of the state bodies concerned, but not less than once every two months. At the initiative of the state bodies concerned the Commission Chairman may call extraordinary sessions of the Commission. Nevertheless, from the time the Commission was founded it hasn't held a single meeting<sup>28</sup>, which the authorities attribute to the restructuring of the

<sup>28</sup> The first meeting of the Commission was held on March 28, 2007, which discussed the draft Concept for the strengthening of the AML/CFT system.

Government in the period from November 2006 through March 2007. Preparatory work is underway for the first meeting of the Interagency Commission, which is to consider the drafting of a National AML/CFT Strategy and the creation of various working groups.

423. The main tasks of the Commission are: preparation of proposals on development and implementation of a national strategy on combating money laundering and terrorism financing; ensuring interaction among state bodies in this sphere, including through exchange of information; working out an agreed position on international cooperation in the AML/CFT sphere; preparation of proposals to improve the AML/CFT system.

424. The interaction between various state bodies is governed by regulatory acts and agreements. For example there is a decree of the Government of Kyrgyzstan of December 13, 2005 No.577 “On Approving the Regulations on Mutual Exchange of Information and Cooperation between the State Tax Inspection under the Government of Kyrgyzstan, the State Customs Service under the Government of Kyrgyzstan and the Financial Police Service of Kyrgyzstan”.

425. In addition, competent authorities and the FIS exchange information as part of agreements on cooperation and information exchange. The FIS at the time of mutual evaluation had signed 7 agreements on cooperation and information exchange, specifically with the National Bank, the Drug Control Agency, the Financial Police Service, the National Security Service, the Ministry of Internal Affairs, the FMSRS, the Ministry of Economy and Finance (Precious Metals Division). Agreements with supervisory bodies provide not only for information exchange upon request, but cooperation in inspections of financial institutions and DNFBPs, as well as joint drafting of legislation and regulations. The agreement signed with the National Bank allows the FIS to use the channels of the inter-bank communication network to receive reports from banks. In addition, under Section 3 of Article 8 of the AML/CFT Law the National Bank is required to provide the FIS of Kyrgyzstan with all the information and documents the FIS needs to perform its functions. The FIS has sent additional information requests to the NBKR, when banks refused to provide information directly to the FIS on its additional requests. The information regarding these requests was provided soon after the on-site visit.

426. The Law enforcement agencies have sent 4 ML-related information requests to the FIS, however at the time of the on-site mission the replies to these requests were not yet given. On 2 of them there was no information in the database, another 2 were awaiting to be processed, as the FIS was setting up new software, aimed at increasing the quality of financial analysis.

427. The NSC sent 4 FT-related requests to the FIS. The financial institution provided data on all 4 requests, which was later sent to the NSC.

428. Under the system of mandatory reporting such government agencies as the Real Estate Registry and the State Automobile Inspection Service (Under the Ministry of Internal Affairs) are required to send reports to the FIS regarding all operations, involving movable property (over 1 million soms) and real estate (over 4 million SOM). They are also required to report suspicious transactions and meet other requirements of mandatory reporting.

429. The AML/CFT legislation provides for the publication of several regulatory legal acts jointly with other government bodies, including the lists of states and territories which do not or insufficiently comply with the FATF Recommendations (to be issued by the FIS and the National Bank); the list of terrorists and terrorist organizations (to be published by the FIS and the National Security Service). The latter has already been issued as a joint executive order.

530. Cooperation between different law enforcement bodies occurs on a regular basis. To this end there is a mechanism of a coordination meeting of the heads of law enforcement bodies under the Prosecutor General’s Office. Possible complexities in the investigation of cases that fall within the jurisdiction of different law enforcement agencies are regulated by Article 136 of the Criminal Procedural Code. If necessary, the Prosecutor’s Office may appoint an interagency investigation task force.

531. In order to enhance the efforts to combat economic crime, a Directive was issued in 2002 by the Prosecutor General’s Office, the National Security Service, the Internal Affairs Ministry, the Financial Police Service and the State Customs Service “On enhancing measures to combat economic crime, corruption and smuggling” which addressed the issue of specialization in investigating this category of cases and of enhancing interagency coordination.

#### 6.1.2. Recommendations and Comments

532. The Interagency Commission provides a good basis for interagency cooperation within the country at the highest level. The Commission should begin its work as soon as possible. At the first stages the work of the Interagency Commission could be focused on the discussion from the AML/CFT angle of the implementation of the Directive of the Prosecutor General’s Office and the law enforcement bodies on “Intensifying the fight against economic crime, corruption and smuggling”.

533. In order to increase the efficiency of the Interagency commission Kyrgyzstan should include representatives of the General Prosecutor’s Office into the Commission.

534. The evaluation team was informed that the regulations of Kyrgyzstan envisage the assessment of the AML/CFT performance of law enforcement bodies, which is reflected in the reports of the National Statistical Committee. At the same time, in the opinion of the evaluators, the evaluation of the performance of the AML/CFT system should not be limited to assessing the activities of law enforcement bodies and to reports of the National Statistical Committee.

#### 6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC	<ul style="list-style-type: none"> <li>• <b>The Interagency Commission created in June 2006 has not yet started its work;</b></li> <li>• <b>It is impossible to assess the effectiveness of a number of bilateral interagency agreements because they have been signed only recently.</b></li> </ul>

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

#### 6.2.1. Description and Analysis

535. Kyrgyzstan acceded to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienna Convention) under the Decree of the Parliament of Kyrgyzstan No. 1500-XII of April 16, 1994; and ratified the UN Convention against Transnational Organized Crime of 2000 (Palermo Convention) under the Law of Kyrgyzstan No. 74 of April 15, 2003, and acceded to the UN Convention On the Suppression of the Financing of Terrorism of 1999 under Law No.79 of April 15, 2003.

536. As discussed above in the assessment of compliance with Recommendations 1 and 2, under Article 183 of the Criminal Code of Kyrgyzstan the definition of the crime of money laundering in terms of language and structure does not fully correspond to the international standards set forth in the Vienna and Palermo Conventions. The definition of the crime of money laundering, in particular, does not include concealment of the nature, origin, location, character, and transfer of property or rights in property known to have been acquired by criminal means, as defined by the Vienna and Palermo Conventions.

537. The Criminal Code does not currently contain liability for terrorism financing. Because of the ancillary character of the crime of terrorism financing, it may also be treated as complicity or being an accessory to a crime and carries the same liability as the primary crime of terrorism. Besides, a number of provisions on combating terrorism financing are contained in the Law “On Combating Terrorism” referred to above in the assessment of compliance with Special Recommendation II.

538. Kyrgyzstan has taken a number of steps indicating its commitment to the UN Security Council Resolutions 1267 and 1373. At the same time, analysis of the legislation of Kyrgyzstan leads the assessment team to conclude the UN Security Council Resolutions are not fully complied with. In particular, there is no uniform mechanism for identifying and disseminating to the relevant organizations the lists of persons involved in terrorist activities on the basis of which organizations are obliged to suspend operations of persons involved in terrorist activities (terrorism financing).<sup>29</sup>

539. A detailed description of the measures taken by Kyrgyzstan to implement UN Security Council Resolutions is contained in Section 2.4 of this Report.

#### *Additional Elements*

540. Kyrgyzstan has ratified 10 out of the 13 international conventions and protocols on combating terrorism as well as the UN Convention against Corruption.

#### 6.2.2. Recommendations and Comments

541. Article 183 of the Criminal Code of Kyrgyzstan does not clearly state all the crimes related to money laundering in accordance with the Vienna and Palermo Conventions. In this regard the necessary amendments must be introduced into Article 183.

542. In order to ensure full compliance with the UN Security Council resolutions it is necessary to introduce amendments into the current legislation.

543. Laws and other regulations should provide a uniform mechanism for compiling, disseminating and using the list of persons suspected of being involved in terrorist activities (terrorism financing) to meet the requirements of the AML/CFT legislation.

544. Kyrgyzstan should introduce amendments to the Criminal Code providing for criminal liability for terrorism financing.

#### 6.2.2. Compliance with Recommendation 35 and Special Recommendation I

	<b>Rating</b>	<b>Summary of factors underlying rating</b>
<b>R.35</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>Vienna and Palermo Conventions are not fully complied with in terms of criminalization of money laundering;</b></li> <li>• <b>Not all elements of the International Convention on the Suppression of the Financing of Terrorism (1999) are covered.</b></li> </ul>
<b>SR.I</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>The UN International Convention on the Suppression of the Financing of Terrorism of 1999 is not fully complied with;</b></li> <li>• <b>UN Security Council Resolutions are not fully complied with.</b></li> </ul>

### **6.3. Mutual Legal Assistance (R. 36 – 38, SR.V)**

#### 6.3.1. Description and Analysis

#### ***Recommendation 36***

545. International cooperation on the provision of mutual legal assistance is based in Kyrgyzstan on international treaties or written reciprocal agreements.

<sup>29</sup> However, the authorities intend to adopt additional internal legislation to enable Kyrgyzstan to fully comply with the UN Security Council Resolutions 1267 and 1373.



546. The international cooperation with CIS countries on MLA issues is carried out on the basis of the Minsk Convention “On legal assistance and legal relations on civil, family and criminal cases” and the Kishinev Convention “On legal assistance and legal relations on civil, family and criminal cases”. In addition, on issues relating to law enforcement cooperation Kyrgyzstan has 28 bilateral and 13 multilateral treaties, in particular with such states as Azerbaijan, Kazakhstan, Russia, Uzbekistan Turkmenistan, Ukraine, India, Iran, China, Latvia, Lithuania, Mongolia.

547. Section XIV of the Criminal-Procedural Code deals with issues of international relations in criminal legal proceedings, including the cooperation of courts, prosecutors and investigators with the relevant bodies and officials of foreign countries.

548. According to Article 428 of the Criminal Procedural Code a court, prosecutor and investigator are to fulfill the requests, which have been received in due process from foreign courts and investigative bodies of foreign countries, on specific investigative or judicial actions in line with the general rules of the Criminal Procedural Code. The rules of the Criminal Procedural Code are applied when executing the requests, however the legal provisions of foreign governments may be applied in case a bilateral treaty exists with this government. A request may be returned without having been executed, if it contradicts Kyrgyzstan’s legislation or if it may cause damage to the security or sovereignty of the state.

549. The central authority responsible for carrying out cooperation with the competent authorities of foreign governments on MLA matters is the General Prosecutor’s office. The incoming MLA requests are considered by the GPO and then sent to the competent law enforcement authorities (MIA, NSC, Drug Control Agency, Financial Police). As the assessment team has been informed such cooperation is conducted in five areas: (i) handling international investigation requests; (ii) handling extradition requests for purposes of administering criminal sentences and serving the sentences; (iii) consideration of criminal cases forwarded by foreign governments regarding citizens of Kyrgyzstan, who have committed a crime abroad; (iv) cases regarding foreign citizens, who have committed a crime on the territory of Kyrgyzstan; (v) citizens statements, complaints regarding inaction by law enforcement bodies. According to the data provided to the assessment team the General Prosecutor’s Office handled 228 legal assistance requests in 2006 from the law enforcement bodies of Kyrgyzstan, CIS member-states, and other foreign countries on various categories of criminal cases in progress. From this number 101 legal assistance request of domestic law enforcement agencies was sent by the GPO to foreign counterparts. Of these requests 13 have been refused. It is necessary to note that none of these requests was ML/TF-related.

550. In addition Article 7 of the AML/CFT Law provides for the cooperation of the FIS with competent authorities of foreign states at the stages of collection of information, preliminary investigation, court proceedings, execution of court decisions in the AML/CFT sphere in accordance with the international agreements of Kyrgyzstan. The FIS and other government agencies of Kyrgyzstan involved in AML/CFT issues provide the relevant information to competent authorities at the request of the latter or at their own initiative on the basis and according to the procedures established by the international agreements of Kyrgyzstan. According to this article the competent authorities at the request of foreign states also conduct forensic tests, interrogation of suspects, accused, witnesses, victims and other persons, conduct searches and seizures and transfer material evidence and hand in and send documents to their counterparts. Articles 427 and 428 of the Criminal Procedural Code also provide for such assistance, and do not contain any restrictions on facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country. As the assessment team was informed such assistance is being provided. The transfer of instrumentalities of offences and objects linked to offences is possible according to article 436 of the Criminal Procedural Code, however this is only done when extradition is not possible and only if the requesting side guarantees their return upon the completion of the case.

551. The Antiterrorism Law provides for international cooperation in combating terrorism. According to the mentioned Law the main methods for such cooperation are: (i) information exchange; (ii) cooperation in revealing, freezing and arrest of any assets used or intended for use in terrorist-related crimes, as well as confiscation of property obtained as a result of such crimes; (iii) extradition of persons, who have committed or are suspected of carrying out terrorist crimes; (iv) extradition of persons, convicted of terrorist crimes, for purposes of serving the sentence, as well as carrying out joint investigations and transfer of materials on

criminal proceedings; (v) mutual legal, operative, methodological, technical and other forms of assistance; (vi) conducting joint operative, investigative and other activities; (vii) transfer of materials on a criminal case for operative and investigative and other activities; (viii) handling of requests regarding operative and other activities; (ix) training of staff; (x) cooperation in the military sphere; (xi) drafting of legislation in the sphere of terrorism prevention; (xii) joint work on the prevention and elimination of conditions favorable to the commission of terrorist acts; (xiii) elaboration of a coordinated policy and cooperation in counterterrorism information and propaganda campaigns.

552. At the same time the failure of Kyrgyzstan to criminalize terrorism financing in the Criminal Code hampers the possibility to execute MLA requests. Due to the fact that Kyrgyzstan has not criminalized several of the required predicate offences and has not covered some of the elements of the ML offence as required by the Vienna and Palermo Conventions, this could create difficulties for the handling of MLA requests related to such cases, especially in terms of confiscation.

553. The evaluators have been informed that MLA is provided in the shortest timeframe possible after receiving the request. At the same time the assessors had no opportunity to check this timeframe, since the requested statistical data had not been provided.

554. The motives for refusing a legal assistance request are not specifically listed in the legislation of Kyrgyzstan. The authorities noted, that Kyrgyzstan does not refuse a MLA request even if it involves tax matters. An international investigation request may be refused if the requesting side has not properly followed the form and procedures of MLA, provided for by international agreements.<sup>30</sup> However after the necessary corrections are made the requests may be again considered by the requested side.

555. The law enforcement authorities currently have access to information subject to banking and secrecy provisions only if a criminal case has been initiated. In the absence of a criminal case banks refuse to provide the necessary information to law enforcement on the basis of the Law “On banks and banking activity”. Such restrictions in the opinion of the assessors, may impede MLA requests from being properly executed.

556. The capabilities of the law enforcement authorities analyzed in Recommendation 28 may be used to answer MLA requests.

### ***Recommendation 37***

557. As the assessors were informed if a crime is not recognized in both jurisdictions (dual criminality) MLA requests may be fulfilled to the highest degree possible and the technical differences between the legislation in the requesting and requested countries are not an impediment for provision of MLA in Kyrgyzstan.

558. In other cases, according to the Convention “On legal assistance and legal relations on civil, family and criminal cases” (Kishinev Convention) the parties must provide MLA by taking procedural and other actions as provided for by the legislation of the requesting party. The parties may also provide MLA in other forms depending on the specific circumstances, interests of the judiciary and society as a whole and according to the internal legislation of the parties.

### ***Recommendation 38***

559. The competent authorities engaged in activities related to AML/CFT fulfill, within their competence, the requests of competent bodies of foreign states on confiscation of proceeds from crime and carry out

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<sup>30</sup> There are the following examples, when request have been returned to the requesting side without having been executed:

- i) It was requested to provide assistance and interrogate several persons, however it was not specified who they would be interrogated as, and an extract from the Criminal Code of the requesting government was not provided;
- ii) The request was returned without being executed, as there was no seal of the requesting authority.

procedural activities on cases of revealing criminal proceeds, arresting property, seizing property, including forensic tests, interrogation of suspects, accused, witnesses, victims and other persons, conduct searches and seizures and transfer material evidence and hand in and send documents to their counterparts.

560. The Antiterrorism Law provides for cooperation in revealing, freezing or arrest of any assets used or intended for use in terrorist crimes, as well as for the confiscation of property if it was: (i) obtained as a result of such crimes, as well as income and other benefits obtained from the use of such property; (ii) used in the commission of a terrorist crime or was obtained as payment for the commission of a terrorist crime; (iii) directly or indirectly used to facilitate the commission of a terrorist crime; (iv) held under the direct or indirect control of terrorists or terrorist organizations (groups); (v) located in a premises or other location, which is used by terrorists, a terrorist group or organization to hold meetings, carry out propaganda, for safekeeping of means of carrying out terrorist crimes and for other illicit purposes. At the moment the property cannot be confiscated upon the request of a foreign state because the Criminal Code does not contain an article criminalizing TF.

561. As the assessment team was informed the Kyrgyz legislation does not contain restrictions for handling requests on revealing, freezing, arrest and confiscation in cases, when the request is related to property of corresponding value. At the same time there is no practice in handling such requests.

562. The MLA, which relates to the revealing, freezing, arrest and confiscation of property is carried out on the basis of Conventions ratified by Kyrgyzstan, namely the UN Convention against Transnational Organized Crime (Palermo Convention), UN Convention against Corruption, International Convention on the Suppression of the Financing of Terrorism, as well as the Minsk and Kishinev Conventions.

563. Kyrgyzstan has not created an asset forfeiture fund and has not yet considered creating one. Kyrgyzstan has also not considered the creation of mechanisms to divide confiscated property between the participating governments, when confiscation was directly or indirectly carried out due to law enforcement cooperation.

#### *Additional elements*

564. According to Article 287 of the Kyrgyzstan Civil Code confiscation may be carried out without compensation by the decision of the court as a criminal or other type of sanction. Confiscation may also be carried out as an administrative measure. At the same time, non-criminal confiscation at the request of foreign counterparts is not provided for by the legislation of Kyrgyzstan.

#### *Effectiveness*

565. The authorities have informed the assessment team that relevant government agencies are cooperating on MLA requests effectively and in a timely manner. However the assessors could not verify the level of cooperation, as there are no centralized statistics on all MLA cases, including requests related to ML, predicate offences and FT, as well as on the results of these requests. The received comments from other EAG member-states do not reveal any problems, connected with MLA provision.

#### 6.3.2. Recommendations and Comments

566. Kyrgyzstan should keep centralized statistics on MLA requests, which have been received or forwarded in relation to ML, TF and the predicate offences, including information on the nature of the requests, their results and response time.

567. Effective and specific procedures must be introduced, which allow for the quick execution of MLA requests without undue delays, and timely answers to MLA requests.

568. Confidentiality restrictions and limitations must be lifted, in order to ensure that MLA requests are not refused due to legislation, imposing secrecy obligations on financial institutions and DNFBPs.

569. Kyrgyzstan should introduce specific mechanisms to determine the best venue for the prosecution of defendants in the interests of justice.

570. Provisions must be introduced, which provide for the execution of a MLA request, connected to the revealing, freezing, arrest and confiscation of a property equivalent.

571. It is necessary to consider the issue of creating an asset forfeiture fund.

572. Kyrgyzstan should consider the issue of creating a mechanism providing for the division of confiscated property between the participating governments, when confiscation was directly or indirectly carried out due to law enforcement cooperation.

573. Kyrgyzstan should criminalize terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as all of the elements of ML offence according to the Vienna and Palermo conventions, in order to ensure that MLA confiscation requests on these matters are answered.

### 6.3.3. Compliance with Recommendations 36-38, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	LC	<ul style="list-style-type: none"> <li>• No specific procedures ensuring timely consideration of MLA requests;</li> <li>• MLA requests may be refused on the basis of secrecy laws, requiring financial institutions and DNFBPs to maintain confidentiality of information;</li> <li>• No specific mechanisms exist to determine the best venue for the prosecution of defendants in the interests of justice.</li> <li>• Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of ML offence according to the Vienna and Palermo conventions are not criminalized, which may cause difficulties for handling MLA confiscation requests.</li> </ul>
R.37	LC	<ul style="list-style-type: none"> <li>• Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy MLA requests concerning confiscation.</li> </ul> <p>See factors underlying rating in section 6.4</p>
R.38	PC	<ul style="list-style-type: none"> <li>• No provisions, which provide for the execution of a MLA request, connected to the revealing, freezing, arrest and confiscation of a property equivalent;</li> <li>• The issue of creating an assets forfeiture fund has not been considered;</li> <li>• Kyrgyzstan has not considered the issue of creating a mechanism providing for the division of confiscated property between the participating governments, when confiscation was directly or indirectly carried out due to law enforcement cooperation;</li> <li>• Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy MLA requests concerning confiscation.</li> </ul>
SR.V	PC	<ul style="list-style-type: none"> <li>• Lack of TF offence hampers MLA requests from being answered;</li> </ul>

		<ul style="list-style-type: none"> <li>• <b>No specific procedures ensuring timely consideration of MLA requests;</b></li> <li>• <b>MLA requests may be refused on the basis of secrecy laws, requiring financial institutions and DNFBPs to maintain confidentiality of information;</b></li> <li>• <b>No provisions, which provide for the execution of a MLA request, connected to the revealing, freezing, arrest and confiscation of a property equivalent.</b></li> </ul>
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#### **6.4. Extradition (R.37 & 39, & SR.V)**

##### 6.4.1. Description and Analysis

574. In accordance with article 6 of the Criminal Code of Kyrgyzstan, foreign citizens and persons without citizenship who committed an offence outside of Kyrgyzstan and are located on its territory can be extradited to a foreign State to undergo criminal proceedings or to serve a sentence in accordance with international agreements. The mentioned provisions are applicable to ML crimes and other predicate offences, with the exception of those, which are not criminalized in Kyrgyzstan: TF, sexual exploitation of children and insider trading and market manipulation. This is also the case with some of the elements of ML offence, which are not criminalized by Kyrgyzstan according to the Vienna and Palermo conventions.

575. According to the provisions of the Minsk and Kishinev Conventions extradition to undergo criminal proceedings is conducted for criminalized offences under the internal legislation of the two states, with punishment in the form of imprisonment for at least one year for the offence.

576. Therefore, all offenses stipulated for by the Criminal Code of Kyrgyzstan are grounds to extradite, including the offences related to ML.

577. In accordance with article 20 of the Kyrgyz Constitution, citizen of Kyrgyzstan cannot be extradited to foreign State.

578. At the same time the provisions of the Criminal Procedural Code of Kyrgyzstan (articles 429 and 430) provide for a possibility of forwarding the respective materials for criminal prosecution abroad. Requests from foreign states to continue the prosecution and initiate a criminal case in Kyrgyzstan may also be fulfilled. Thus, if the offence was committed within the bounds of Kyrgyzstan by a citizen of a foreign state who left Kyrgyzstan, under a decision of the General Prosecutor's Office of Kyrgyzstan all materials of the initiated and investigated case will be forwarded to the respective authorities of a foreign State for the continuation of the criminal prosecution. If a foreign State forwards a criminal case for further investigation in relation to a citizen of Kyrgyzstan, who committed an offence in a foreign State and returned to Kyrgyzstan, if decided by the General Prosecutor's Office, a trial is to be carried out along the procedure provided for by the Criminal Procedural Code. The evidence gathered in the course of the investigation in a foreign State by an authorized official acting in his function and in accordance with a set procedure, shall have the same legal effect as other gathered evidence if the investigation is to be continued in Kyrgyzstan. In case a crime is committed in a foreign State by a person with Kyrgyz citizenship who returned to Kyrgyzstan before a criminal case was initiated against him in the jurisdiction where the crime had taken place, a criminal case can be initiated and investigated by the competent authorities of Kyrgyzstan based on the materials of this offence provided by the authority of a foreign State to the General Prosecutor's Office of Kyrgyzstan.

579. In accordance with article 428 of the Criminal Procedural Code of Kyrgyzstan the court, prosecutor and investigator perform the requests of Courts and investigative authorities of foreign States regarding investigative and court proceedings according to the general principles of the Criminal Procedural Code of Kyrgyzstan.

580. In accordance with article 71 of Kishinev Convention a request for extradition is to be examined during a period of 30 days after its receipt by the competent justice authority of the requested Party, if other provisions are not contained in the legislation of this Party. If the request for extradition doesn't contain all

the necessary data, the justice authority of the requested Party may request additional information, setting a term of 30 days. This term can be prolonged for another 30 days at the request of the justice authority of the requesting Party. The assessment team was informed that in the practice of Kyrgyzstan, the requests are fulfilled in the shortest possible timeframe. At the same time, the assessment team believes that there are currently no procedures in Kyrgyzstan to process requests for extradition and proceedings related to ML without undue delays. Moreover, no statistics were provided to the assessors to establish the quantity of received requests for extradition, the portion of handled requests or average time period for the handling of requests.

581. According to the data on extradition provided to the assessment team for 2004-2006 the General Prosecutor's Office of Kyrgyzstan handled 334 requests of General Prosecutor's Offices of foreign countries on the extradition of persons at large on the territory of Kyrgyzstan sought for various crimes on the territory of other CIS member-states. 27 of the considered requests were fulfilled, 9 of them – in 2006. 8 out of 9 requests of the GPO of Uzbekistan fulfilled by Kyrgyzstan in 2006 were related to crimes connected to an attempt to seize power with force or overthrow the constitutional order and terrorism. 5 of these requests were fulfilled in 2006. It should be noted however that none of the mentioned requests was related to ML/TF. In addition no data was provided so that the evaluation team could assess the average period for handling a request.

582. As mentioned above, Kyrgyzstan may extradite foreign citizen or persons without citizenship residing in Kyrgyzstan, to a foreign State to undergo criminal proceedings or serve a sentence on ML charges or related offences. Yet, in accordance with article 434 of the Kyrgyz Criminal Code extradition is forbidden if the action that is basis for the extradition request is not criminalized in Kyrgyzstan.

583. At the same time, as stated by the authorities, the refusal to extradite a person doesn't mean that MLA can't be provided to the largest extent possible, in particular on procedural and evidentiary issues.

584. According to Article 6 of the Kishinev Convention the parties may also provide MLA in other forms depending on the specific circumstances, interests of the judiciary and society as a whole and according to the internal legislation of the parties.

585. The Antiterrorism Law regulates issues of international cooperation in the field of combating terrorism. In particular, in accordance with the mentioned Law the competent authorities of Kyrgyzstan must handle requests from other States on extradition of persons who committed or are suspected in committing terrorist offences. The Kyrgyz authorities, involved in combating terrorism, must prosecute domestically the persons involved in terrorist activity, including in cases when terrorist offences were planned or committed outside of Kyrgyzstan, but caused damage to Kyrgyzstan, and in other cases stipulated for by the international agreements of Kyrgyzstan. However the absence of the terrorism financing offence in the Criminal Code hinders the possibility of TF-related extradition, because according to Article 434 of the Criminal-Procedural Code the extradition of a person may be refused if the act (in this case FT), which serves as the basis of the request is not criminalized.

### *Effectiveness*

586. The assessment team did not have the opportunity to assess the level of effectiveness of existing measures, as there are no centralized statistics kept on the number of extradition requests, which have been received and sent in connection with cases on ML, FT and the predicate offences.

#### 6.4.2 Recommendations and comments.

587. Kyrgyzstan should produce centralized yearly statistics on requests for extradition which were received or sent in connection with cases on ML and FT, on predicate offences, including on the nature of the requests, their results and timeframe of answer.

588. Kyrgyzstan should introduce procedures that will allow the extradition requests to be handled without undue delay and create alternative simplified procedures for extradition in necessary cases.

589. To introduce clear provisions stipulating for the possibility of extradition of persons to foreign states despite any possible technical differences between laws of requesting and requested countries.

590. To introduce procedures for the timely handling of requests for extradition in cases of FT.

591. Kyrgyzstan should criminalize terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as all of the elements of ML offence according to the Vienna and Palermo conventions, in order to ensure that extradition requests on these matters are answered.

#### 6.4.3 Compliance with Recommendations 37 and 39 and Special Recommendation V

	Rating	Summary of factors, relevant to s.6.4, underlying overall rating
R.37	LC	<b>Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of the ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy extradition requests concerning extradition.</b>
R.39	PC	<ul style="list-style-type: none"> <li>• <b>No clear procedures providing for the timely handling of requests for extradition.</b></li> <li>• <b>Absence of terrorism financing offence in the Criminal Code hinders extradition for TF crimes.</b></li> <li>• <b>No clear procedures providing for the timely handling of TF-related requests for extradition.</b></li> <li>• <b>Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of the ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy extradition requests.</b></li> </ul>
SR.V	PC	<ul style="list-style-type: none"> <li>• <b>No clear procedures providing for the timely handling of TF-related requests for extradition.</b></li> <li>• <b>Absence of terrorism financing offence in the Criminal Code hinders extradition for TF crimes.</b></li> </ul>

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

#### 6.5.1. Description and Analysis

592. Under Article 7 of the AML/CFT Law all the competent authorities (FIS, supervisory and law enforcement bodies) engaged in AML/CFT activities must provide the competent bodies of other states with relevant information at the request of the latter or at their own initiative. The transfer of such information only takes place if it does not conflict with the national interests of Kyrgyzstan.

593. Under Section 4 of Article 7 of the AML/CFT Law information connected with the detection, seizure and confiscation of proceeds from crime and/or in connected with terrorism financing is provided at the request of a competent authority of a foreign state on condition that it will not be used without prior consent of the corresponding government bodies of Kyrgyzstan which have provided this information for purposes not stated in the request.

594. The competent authorities, pursuant to Article 7 of the AML/CFT Law, engaged in activities related to AML/CFT fulfill, within their competence, the requests of competent bodies of foreign states on confiscation of proceeds from crime and carry out procedural activities on cases of revealing criminal proceeds, arresting property, seizing property, including forensic tests, interrogation of suspects, accused, witnesses, victims and other persons, conduct searches and seizures and transfer material evidence and hand in and send documents for their counterparts.

## *FIS*

595. Under Article 7 of the AML/CFT Law the authorized body, in accordance with the international treaties of Kyrgyzstan, cooperates with the competent bodies of foreign states at the stage of information gathering, preliminary investigation, court examination/hearing and execution of court decisions in the sphere of AML/CFT. The FIS, under its statute, has the right to take part in the drafting and signing of international agreements of Kyrgyzstan on AML/CFT issues. At the same time, in the absence of an approved model text of an agreement, the President of Kyrgyzstan issues an executive order authorizing each FIS agreement with a foreign partner.

596. As of late January 2007 the FIS received 5 requests from the financial intelligence unit of Russia. No requests have come from the financial intelligence units of other countries. Soon after the on-site mission the FIS began to provide information on these requests<sup>31</sup>.

## *Customs Bodies*

597. Kyrgyzstan is a member of the World Customs Organization. The Customs authorities of Kyrgyzstan regularly take part in various international operations, above all those under the cooperation mechanisms among the CIS and CSTO member-countries. Controlled deliveries are also conducted. At the same time, emphasis in such operations is primarily on revealing the illegal movement of goods and narcotics. Practically no attention is paid to tracing the financing of criminal activities and money laundering. More than 30 cooperation and mutual assistance agreements have been signed with the customs services of other states. Meetings with the liaison officers of foreign states are regularly held.

## *Financial Police*

598. The Financial Police is actively involved in international cooperation, first and foremost in the framework of the CIS. Kyrgyzstan is a member of the Coordinating Council of the tax (financial) investigation bodies of the CIS, which takes coordinated measures to combat financial crimes.

599. The Financial Police received 1 ML-related request from Department of Financial Monitoring of the Republic of Belarus, which took 34 days to answer.

## *Supervisory Bodies*

600. Under Article 7 of the AML/CFT Law, the National Bank has the right to request, receive and provide relevant information to the bank supervisory bodies of foreign states both on request and at its own initiative, if this is done for AML/CFT purposes. Section 3 of Article 3 of Law No. 59 “On the National Bank” allows the National Bank to exchange information on any bank with the supervisory bodies of a foreign state provided that the confidentiality of information is respected. The assessment team was told that cooperation on AML/CFT cases took place between the NBKR and the Belarus National Bank as well as the Central Bank of Russia. The bilateral agreements signed by the NBKR with the Russian Central Bank as well as the National Bank of Ukraine contain separate sections on AML/CFT issues.

601. Under Regulation No.551 “On the FMSRS” that agency also has general powers to cooperate with the competent bodies of foreign states, but no information was provided on specific mechanisms and instances of such cooperation.

602. Because tax crimes are predicate crimes with regard to money laundering in Kyrgyzstan the fact that a foreign request may involve tax matters cannot be grounds for refusing to fulfill the request.

603. At the time of the on-site mission banking and other secrecy provisions were a serious impediment to international exchange of information, in particular for the FIS. However in the period after the mission

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<sup>31</sup> By May 2007 all of the necessary information was provided.



these issues were solved. The National Bank has the right to exchange information with foreign counterparts under Law No. 51 (Section 3, Article 3).

604. Under Article 7 of the AML/CFT Law authorized bodies are obliged to respect the confidentiality of the information provided by foreign partners.

605. According to the AML/CFT Law and the Antiterrorism Law practically all existing mechanisms of international cooperation in the context of Recommendation 40 are applicable both to ML and TF.

#### 6.5.2 Recommendations and Comments

606. The existing mechanisms of international cooperation in the AML/CFT sphere are not yet actively used. The AML/CFT Law and other legislation provide a good basis for further cooperation in this area.

#### 6.5.3. Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
<b>R.40</b>	<b>LC</b>	<ul style="list-style-type: none"> <li>• <b>The existing mechanisms of international cooperation are not yet actively used.</b></li> </ul>
<b>SR.V</b>	<b>PC</b>	<ul style="list-style-type: none"> <li>• <b>The existing mechanisms of international cooperation are not actively used;</b></li> </ul> <p><b>See other factors underlying rating in s. 6.3 and 6.4.</b></p>

## 7. OTHER ISSUES

### 7.1 Resources and statistics

607. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report primarily contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
<b>R.30</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>The FIU is not provided with sufficient funds and technical resources to finance an adequate analytical component;</b></li> <li>• <b>FIU staff require training on financial investigations;</b></li> <li>• <b>Law enforcement and prosecutorial agencies are not provided with adequate AML/CFT-related training;</b></li> <li>• <b>Supervisory agencies are not yet adequately staffed and structured for AML/CFT supervision purposes;</b></li> <li>• <b>Supervisory agencies have not yet received training on AML/CFT supervisory methods.</b></li> </ul>
<b>R.32</b>	<b>NC</b>	<ul style="list-style-type: none"> <li>• <b>Kyrgyzstan has not yet begun reviewing its AML/CFT system on a regular basis;</b></li> <li>• <b>The statistics regarding cross-border transportation of currency and bearer negotiable instruments are not yet accurately kept due to liberal currency transportation regime;</b></li> <li>• <b>No statistics available regarding the amount of property frozen, seized and confiscated relating to ML/FT/predicate offences;</b></li> </ul>

		<ul style="list-style-type: none"> <li>• <b>No statistics available regarding the amounts of property frozen under U.N. Resolutions;</b></li> <li>• <b>No statistics kept on MLA or extradition requests related to ML/FT;</b></li> <li>• <b>No ML/FT statistics kept by supervisors (except for NBKR).</b></li> </ul>
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**7.2 Other relevant AML/CFT measures or issues**

608. There are no other relevant AML/CFT measures or issues.

**7.3 General framework of the AML/CFT system (see also section 1.1)**

609. There are no other issues relating to the general framework of the AML/CFT system.

## 8. TABLES

**Table 1. Ratings of Compliance with FATF Recommendations**

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA). These ratings are based only on the essential criteria, and defined as follows:

- Compliant** ➤ The Recommendation is fully observed with respect to all essential criteria.
- Largely compliant** ➤ There are only minor shortcomings, with a large majority of the essential criteria being fully met.
- Partially compliant** ➤ The country has taken some substantive action and complies with some of the essential criteria.
- Non-compliant** ➤ There are major shortcomings, with a large majority of the essential criteria not being met.
- Not applicable** ➤ A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating
<b>Legal systems</b>		
1. ML offence	<b>PC</b>	<ul style="list-style-type: none"> <li>• Criminalization of money laundering does not fully correspond to the Vienna and Palermo Conventions;</li> <li>• The list of predicate offences does not include 3 of the 20 categories of predicate crimes established under the FATF 40 Recommendations;</li> <li>• <i>Effectiveness</i>: Available statistics raise doubts as to the effective application in Kyrgyzstan of provisions regarding the crime of money laundering.</li> </ul>
2. ML offence – mental element and corporate liability	<b>PC</b>	The laws of Kyrgyzstan do not contain special norms providing for the liability of legal persons for money laundering.
3. Confiscation and provisional measures	<b>NC</b>	<ul style="list-style-type: none"> <li>• The Criminal Code of Kyrgyzstan does not provide for the confiscation of assets related to financing of terrorism and a range of predicate offences (sexual exploitation of children, insider trading and market manipulation);</li> <li>• 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 the incomes, profit or any other benefits from proceeds of crime;</li> <li>• The laws of Kyrgyzstan lack provisions on possible confiscation of property possessed or owned by a third party;</li> <li>• The legislation lacks clear provisions that secure the rights of</li> </ul>

		<p>bona fide third parties;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• 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;</li> <li>• The law enforcement and other competent bodies including the Financial Intelligence Service (FIS) of Kyrgyzstan, are not adequately empowered to identify and find the property subject to confiscation or when there are suspicions that it constitutes the proceeds from a crime;</li> <li>• The assessment team was not presented with sufficient data to prove that existing measures for freezing, seizing and confiscation are effective.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>LC</b>	The existing contradictions between various legislative secrecy provisions may create legal obstacles for the FIS in obtaining additional information from financial institutions.
5. Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>• Verification requirements exist only for the banking sector;</li> <li>• No beneficial owner identification requirements. The existing obligations for the banking sector do not meet all of the requirements of Recommendation 5;</li> <li>• The requirement to obtain information on the purpose and intended nature of the relationship exists only for the banking sector;</li> <li>• The requirement for on-going CDD exists only for the banking sector;</li> <li>• No requirement concerning the application of enhanced CDD regarding high-risk customers;</li> <li>• No requirement to complete data verification prior to or in the course of establishing the business relationship (except for the banking sector);</li> <li>• Relationships with clients that unsatisfactorily passed the CDD procedure are forbidden only for the banking sector. Only banks are required to consider sending an STR regarding such clients;</li> <li>• The requirement to conduct CDD on existing customers exists only for the banking sector;</li> <li>• The effectiveness of some existing measures may not always be assessed, as they have been introduced recently.</li> </ul>
6. Politically exposed persons	<b>NC</b>	No legislative or other measures have been introduced as required by Recommendation 6.
7. Correspondent banking	<b>LC</b>	<ul style="list-style-type: none"> <li>• The requirement to document AML/CFT responsibilities with correspondent banks is not clearly defined;</li> <li>• No requirements for banks to establish whether the correspondent banks has been subject to an AML/CFT regulatory action;</li> <li>• Existing requirements extend to the banking sector only;</li> <li>• There are no requirements in relation to payable-through accounts.</li> </ul>

8. New technologies & non face-to-face business	<b>NC</b>	No legislative or other measures have been introduced as required by Recommendation 8.
9. Third parties and introducers	<b>N/a</b>	Not applicable.
10. Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>• There are no requirements for financial institutions (except for banks) specifying the types of data to be maintained;</li> <li>• There is no requirement for financial institutions to ensure that the relevant information is available on a timely basis to competent authorities upon appropriate authority;</li> <li>• The efficiency of legislative measures cannot yet be assessed.</li> </ul>
11. Unusual transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Efficiency of the measures cannot yet be assessed, as they have been recently introduced;</li> <li>• Existing measures are not applied to the currency exchange and non-bank MVT sectors.</li> </ul>
12. DNFBP – R.5, 6, 8-11	<b>NC</b>	<ul style="list-style-type: none"> <li>• AML/CFT measures do not cover lawyers, notaries and TCSPs, there are difficulties in applying the measures to dealers in precious metals and stones;</li> <li>• R.5: there is no requirement for verification, identification of the beneficial owner, no obligation to obtain information from the customer on the intended nature of the relationship, no obligation to conduct on-going due diligence and CDD with regard to existing clients, no obligation to apply enhanced due diligence measures to high-risk clients and to take measures in case of failure to satisfactorily complete CDD;</li> <li>• No legislative or other measures exist to comply with the requirements of R.6 and 8;</li> <li>• No requirement to study the circumstances of unusually large or complicated transactions with no evident economic purpose (R.11);</li> <li>• There is no requirement for financial institutions to examine unusually large and complex transactions, which do not have a clear economic purpose. There is no requirement to document data, obtained as a result of such examination and to maintain it for 5 years;</li> <li>• As AML/CFT measures have been introduced only recently, it is impossible to assess their effectiveness.</li> </ul>
13. Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• As legislative measures are recent, the efficiency of the AML STR regime cannot be assessed;</li> <li>• There is no clear responsibility to report STRs on attempted transactions (except for TF-related transactions);</li> <li>• Financial institutions pay too little attention to the STR obligation as opposed to the reporting of large value transactions (except for TF-related transactions).</li> </ul>
14. Protection & no tipping-off	<b>C</b>	This Recommendation is fully observed.
15. Internal controls, compliance & audit	<b>PC</b>	<ul style="list-style-type: none"> <li>• There are no detailed internal control requirements for financial institutions relating to CDD, record keeping, revealing STRs (necessary requirements exist only for the banking sector);</li> <li>• No requirement to appoint a compliance officer and provide him with timely access to the necessary information of the financial institution (necessary requirements exist only for the</li> </ul>

		<p>banking sector);</p> <ul style="list-style-type: none"> <li>• Financial institutions (except for the banking sector) are not required to maintain an independent audit function of AML/CFT mechanisms;</li> <li>• No requirements for financial institutions (except for banks) to carry out AML/CFT training for employees;</li> <li>• No requirements for financial institutions (except for some positions in banks, insurance and securities companies) to put in place screening procedures when hiring employees.</li> </ul>
16. DNFBP – R.13-15 & 21	NC	<ul style="list-style-type: none"> <li>• Existing measures do not cover lawyers, notaries TCSPs, there are difficulties in applying the measures to dealers in precious metals and stones;</li> <li>• R.13: there is no requirement to report attempted suspicious transactions (only ML-related);</li> <li>• There are no specific internal control requirements in accordance with R.15;</li> <li>• R.21: the list of countries that do not comply with FATF requirements has not been disseminated to DNFBPs; there is no requirement for DNFBPs to independently study unusual transactions with such countries.</li> </ul>
17. Sanctions	PC	<ul style="list-style-type: none"> <li>• The mechanism to apply the necessary range of sanctions to all financial institutions (now available only with regard to the banking sector) is not clear;</li> <li>• Insufficient practice for applying sanctions for AML/CFT violations in Kyrgyzstan does not allow to assess the effectiveness of existing measures.</li> </ul>
18. Shell banks	C	This Recommendation is fully observed.
19. Other forms of reporting	C	This Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	This Recommendation is fully observed.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> <li>• Efficiency of the measures cannot yet be assessed, as they have been recently introduced;</li> <li>• Two of three lists of states and territories that do not comply with the FATF Recommendations have not yet been issued to financial institutions;</li> <li>• Financial institutions are not required to keep the records of their findings on transactions and make them available to competent authorities, if needed.</li> </ul>
22. Foreign branches & subsidiaries	NC	No legislative measures have been introduced to meet the requirements of Recommendation 22.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> <li>• A comprehensive AML/CFT supervision, monitoring and sanction system is available for the banking sector only;</li> <li>• Insurance and securities sectors are not required to apply the Core Principles for AML/CFT purposes (currently applied only in the banking sector);</li> <li>• AML/CFT monitoring of currency exchange operations is not yet conducted at the necessary level;</li> <li>• No system of monitoring non-bank MVT service operators;</li> <li>• Non-bank MVT service operators are not subject to licensing or registration;</li> <li>• Efficiency of supervision, monitoring and sanctions cannot be assessed due to the absence of sufficient results.</li> </ul>

24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> <li>• No effective AML/CFT supervision and sanctions system has been set up for casinos, which increases the risk of ML/FT in this sector due to resistance by casinos to the implementation of AML/CFT requirements;</li> <li>• Criminal reputation does not prevent persons from managing a casino/owning a controlling interest in a casino;</li> <li>• R.24 does not apply to lawyers, notaries and TCSPs;</li> <li>• There is no effective AML/CFT monitoring for dealers in precious metals and stones;</li> <li>• There is no designated authority or SRO to supervise over real estate agents. The FIS of Kyrgyzstan does not possess the necessary powers and mechanisms to monitor real estate agents.</li> </ul>
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> <li>• Insufficient experience of competent authorities does not yet allow them to provide feedback to financial institutions through specific sanitized cases or statistics;</li> <li>• Reference brochure and other lists with ML/TF indicators issued to private sector are mostly bank-oriented;</li> <li>• Contradictions between various legislative provisions and guidelines create difficulties for financial institutions;</li> <li>• No sector-specific guidance issued for DNFBPs.</li> </ul>
Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> <li>• The quality of financial analysis cannot yet be assessed due to lack of materials passed for investigation to law enforcement bodies;</li> <li>• Statistics and ML/TF typologies and trends have not yet been published in the form of reports or on the FIS website.</li> </ul>
27. Law enforcement authorities	PC	<ul style="list-style-type: none"> <li>• <i>Effectiveness</i>: No ML investigations have been carried out because law enforcement authorities focus instead on investigating the predicate offence;</li> <li>• The authority designated to investigate terrorist financing cannot work efficiently because terrorist financing has not yet been criminalized.</li> </ul>
28. Powers of competent authorities	C	This Recommendation is fully observed.
29. Supervisors	PC	Requirements of Recommendation 29 are met by the banking sector only.
30. Resources, integrity and training	NC	<ul style="list-style-type: none"> <li>• The FIU is not provided with sufficient funds and technical resources to finance an adequate analytical component;</li> <li>• FIU staff require training on financial investigations;</li> <li>• Law enforcement and prosecutorial agencies are not provided with adequate AML/CFT-related training;</li> <li>• Supervisory agencies are not yet adequately staffed and structured for AML/CFT supervision purposes;</li> <li>• Supervisory agencies have not yet received training on AML/CFT supervisory methods.</li> </ul>
31. National co-operation	LC	<ul style="list-style-type: none"> <li>• The Interagency Commission created in June 2006 has not yet started its work;</li> <li>• It is impossible to assess the effectiveness of a number of bilateral interagency agreements because they have been signed</li> </ul>

		only recently.
32. Statistics	<b>NC</b>	<ul style="list-style-type: none"> <li>• Kyrgyzstan has not yet begun reviewing its AML/CFT system on a regular basis;</li> <li>• The statistics regarding cross-border transportation of currency and bearer negotiable instruments are not yet accurately kept due to liberal currency transportation regime;</li> <li>• No statistics available regarding the amount of property frozen, seized and confiscated relating to ML/FT/predicate offences;</li> <li>• No statistics available regarding the amounts of property frozen under U.N. Resolutions;</li> <li>• No statistics kept on MLA or extradition requests related to ML/FT;</li> <li>• No ML/FT statistics kept by supervisors (except for NBKR).</li> </ul>
33. Legal persons – beneficial owners	<b>PC</b>	<ul style="list-style-type: none"> <li>• The legislation of Kyrgyzstan, as well as the existing procedure for registering legal persons does not provide for measures to verify the information on the beneficial ownership of legal persons;</li> <li>• No measures are taken to prevent the use of bearer shares for ML/FT.</li> </ul>
34. Legal arrangements – beneficial owners	<b>N/a</b>	Not applicable.
International Co-operation		
35. Conventions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Vienna and Palermo Conventions are not fully complied with in terms of criminalization of money laundering;</li> <li>• Not all elements of the International Convention on the Suppression of the Financing of Terrorism (1999) are covered.</li> </ul>
36. Mutual legal assistance (MLA)	<b>LC</b>	<ul style="list-style-type: none"> <li>• No specific procedures ensuring timely consideration of MLA requests;</li> <li>• MLA requests may be refused on the basis of secrecy laws, requiring financial institutions and DNFBPs to maintain confidentiality of information;</li> <li>• No specific mechanisms exist to determine the best venue for the prosecution of defendants in the interests of justice.</li> <li>• Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of ML offence according to the Vienna and Palermo conventions are not criminalized, which may cause difficulties for handling MLA confiscation requests.</li> </ul>
37. Dual criminality	<b>LC</b>	<ul style="list-style-type: none"> <li>• Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy MLA requests concerning confiscation and extradition.</li> </ul>
38. MLA on confiscation and freezing	<b>PC</b>	<ul style="list-style-type: none"> <li>• No provisions, which provide for the execution of a MLA request, connected to the revealing, freezing, arrest and confiscation of a property equivalent;</li> <li>• The issue of creating an assets forfeiture fund has not been considered;</li> <li>• Kyrgyzstan has not considered the issue of creating a mechanism providing for the division of confiscated property between the participating governments, when confiscation was directly or indirectly carried out due to law enforcement cooperation;</li> <li>• Terrorism financing, sexual exploitation of children and insider</li> </ul>



		trading and market manipulation, as well as some of the elements of ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy MLA requests concerning confiscation.
39. Extradition	<b>PC</b>	<ul style="list-style-type: none"> <li>• No clear procedures providing for the timely handling of requests for extradition.</li> <li>• Absence of terrorism financing offence in the Criminal Code hinders extradition for TF crimes.</li> <li>• No clear procedures providing for the timely handling of TF-related requests for extradition.</li> <li>• Terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as some of the elements of the ML offence according to the Vienna and Palermo conventions are not criminalized, which makes it impossible to satisfy extradition requests.</li> </ul>
40. Other forms of co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>• The existing mechanisms of international cooperation are not yet actively used.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<b>NC</b>	<ul style="list-style-type: none"> <li>• The UN International Convention on the Suppression of the Financing of Terrorism of 1999 is not fully complied with;</li> <li>• UN Security Council Resolutions are not fully complied with.</li> </ul>
SR.II Criminalise TF	<b>NC</b>	<ul style="list-style-type: none"> <li>• Terrorism financing is not criminalized, consequently other requirements of SR.II are not met;</li> <li>• No liability for legal persons for TF.</li> </ul>
SR.III Freeze and confiscate terrorist assets	<b>NC</b>	<ul style="list-style-type: none"> <li>• There is no mechanism to unfreeze the funds of persons, who have been inadvertently affected by a freezing order;</li> <li>• There is no uniform mechanism for compiling, disseminating and using the list of persons suspected of terrorist activities (terrorism financing);</li> <li>• No specific guidance (instructions, recommendations, etc.) exist for financial institutions and other persons or organizations regarding their duties in implementing the mechanisms of freezing terrorist assets or other property;</li> <li>• No liability (sanctions) is available for violating the AML/CFT legislation, including the mechanisms of freezing terrorist assets;</li> <li>• The evaluation team did not receive sufficient data demonstrating the effectiveness of measures relating to freezing, seizure and confiscation.</li> </ul>
SR.IV Suspicious transaction reporting	<b>LC</b>	The definition of terrorism financing does not cover the financing of terrorists or terrorist organizations if the funds are not intended for or linked with a specific terrorist act. Financial institutions are not required to send STRs in relation to such transactions.
SR.V International co-operation	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of TF offence hampers MLA and extradition requests from being answered;</li> <li>• No specific procedures ensuring timely consideration of MLA requests;</li> <li>• MLA requests may be refused on the basis of secrecy laws, requiring financial institutions and DNFBPs to maintain confidentiality of information;</li> <li>• No provisions, which provide for the execution of a MLA</li> </ul>

		<p>request, connected to the revealing, freezing, arrest and confiscation of a property equivalent;</p> <ul style="list-style-type: none"> <li>• No clear procedures providing for the timely handling of TF-related requests for extradition.</li> <li>• The existing mechanisms of international cooperation are not actively used.</li> </ul>
SR.VI AML requirements for money/value transfer services	NC	<ul style="list-style-type: none"> <li>• No legislative or other measures have been taken in accordance with Special Recommendation VI in relation to MVT service operators acting outside the formal financial system;</li> <li>• The deficiencies noted in relation to the AML/CFT measures in the banking sector are also applicable in the context of money remittance carried out by banks.</li> </ul>
SR.VII Wire transfer rules	NC	<ul style="list-style-type: none"> <li>• There is no legally binding obligation to accompany the cross-border or domestic wire transfer with originator information. Other basic requirements of SR.VII are not met, with the exception of customer identification;</li> <li>• There are no risk-based procedures for handling incoming wire transfers that are not accompanied by full originator information.</li> </ul>
SR.VIII Non-profit organisations	NC	<ul style="list-style-type: none"> <li>• No reviews of legislation relating to NPOs have been carried out;</li> <li>• No reviews of NPO sector have been carried out to identify risks of terrorism financing abuse;</li> <li>• There are no outreach programs to the NPO sector;</li> <li>• There is no system of supervision, monitoring and sanctions with regard to a significant portion of the sector;</li> <li>• There are no mechanisms to verify the information on the beneficial ownership of NPOs;</li> <li>• There are no special mechanisms for information exchange at national and international levels on NPOs suspected of terrorism financing.</li> </ul>
SR.IX Cash Couriers	PC	<ul style="list-style-type: none"> <li>• The current system does not fully meet the requirements of this Special Recommendation because the customs bodies have limited powers with respect to the movement of cash;</li> <li>• The movement of bearer negotiable instruments is not regulated in any way;</li> <li>• <i>Effectiveness</i>: Customs authorities require training.</li> </ul>

**Table 2: Recommended Action Plan to Improve the AML/CFT System**

AML/CFT System	Recommended action (listed in order of priority)
<b>1. General</b>	
<b>2. Legal System and Related Institutional Measures</b>	
Criminalisation of ML (R.1 & 2)	<ul style="list-style-type: none"> <li>• Kyrgyzstan should make the necessary amendments to Article 183 of the Criminal Code to bring it in line with the provisions of the Vienna and Palermo Conventions. In particular it is necessary to criminalize the concealment, ownership and acquisition of illegally gained income.</li> <li>• It is necessary to introduce amendments to the Criminal Code of Kyrgyzstan providing for criminal liability for terrorism financing; sexual exploitation of children; insider trading and market manipulation to ensure that the money laundering offence covers the entire list of the categories of predicate offences established under the FATF 40 Recommendations.</li> <li>• Special provisions should be introduced into the legislation ensuring civil and administrative liability of legal entities for terrorist financing and money laundering.</li> </ul>
Criminalisation of TF (SR.II)	<ul style="list-style-type: none"> <li>• Kyrgyzstan needs to introduce amendments to the Criminal Code to establish criminal liability for terrorism financing.</li> <li>• Kyrgyzstan’s legislation should be amended in order to include provisions which state that a person engaged in the financing of terrorism may be prosecuted even if the money raised for terrorist purposes has not actually been used or no link has been established between the assets and the specific terrorist act, if a terrorist act has not been committed or if no attempt was made to commit it, as well as provisions whereby participation in any type of activities listed in Section 5 of Article 2 of the International Convention on the Suppression of the Financing of Terrorism would also be recognized as a crime.</li> <li>• The crime of terrorism financing must be a predicate offence in relation to money laundering. There should be effective proportionate and dissuasive sanctions for terrorism financing.</li> <li>• There should be liability for legal persons for FT.</li> <li>• Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.</li> </ul>
Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> <li>• It is necessary to introduce amendments into the Criminal Code of Kyrgyzstan to make confiscation mandatory if a guilty sentence has been delivered regarding money laundering or financing of terrorism.</li> <li>• Confiscation must be possible in relation to all types of predicate offences. In this regard it is necessary for Kyrgyzstan to criminalize all the relevant predicate offences (insider trading etc.).</li> <li>• Legislative provisions should be introduced that make possible</li> </ul>

	<p>the confiscation of property derived directly or indirectly with the use of proceeds of crime; including the income, profit or any other benefits from the proceeds from a crime.</p> <ul style="list-style-type: none"> <li>• Kyrgyzstan is also recommended to introduce provisions stipulating for the possible confiscation of the property owned or possessed by a third party and at the same time to introduce provisions to protect the rights of bona fide third parties, as envisaged by the Vienna and Palermo conventions.</li> <li>• Laws or measures should allow the initial application to freeze or seize property subject to confiscation to be made ex-parte or without prior notice. There should be 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.</li> <li>• Relevant amendments need to be introduced to the laws of Kyrgyzstan to empower the law enforcement and other competent authorities in identifying and tracing the property subject to confiscation or suspected of being the proceeds from a crime.</li> </ul>
Freezing of funds used for TF (SR.III)	<ul style="list-style-type: none"> <li>• It is necessary to introduce a mechanism of unfreezing the assets of persons whose interests have been inadvertently affected by the decision to suspend transactions.</li> <li>• Kyrgyzstan should ensure that laws or other regulations provide a uniform mechanism for drafting, disseminating and using the list of persons suspected of terrorist activities (terrorism financing) to comply with the requirements of the AML/CFT legislation.</li> <li>• The necessary guidance (instructions, recommendations, etc.) must be developed for financial institutions and other persons or organizations to assist in the use of the mechanisms of freezing terrorist assets or other property.</li> <li>• Laws or regulations should contain a mechanism for the exclusion of natural or legal persons from the list as well as for the timely unfreezing of the assets and other property of the persons excluded from this list.</li> <li>• Legislative and other regulations should include procedures to allow access to the assets and other property frozen pursuant to the UN Security Council Resolution 1267 yet recognized as vitally necessary for purposes of basic expenditures, payments, etc., as determined by the UN Security Council Resolution 1452 (2002).</li> <li>• Kyrgyzstan should adopt necessary measures for effective monitoring of compliance with laws and other regulations relating to the implementation of the freezing mechanisms by financial institutions and other persons or organizations. Non-compliance with such laws and regulations should be subject to civil, administrative or criminal sanctions.</li> <li>• Kyrgyzstan's legislation or normative acts should contain measures to protect bona fide third parties.</li> <li>• It is necessary to introduce relevant requirements providing for the confiscation and seizure of funds and other property, connected with terrorist activities.</li> </ul>
The Financial Intelligence Unit and	<ul style="list-style-type: none"> <li>• In the future with the increasing number of incoming reports</li> </ul>

its functions (R.26)	<p>from reporting entities and cooperation with law enforcement agencies the FIS will have to review the situation regarding the number of staff, first of all analysts.</p> <ul style="list-style-type: none"> <li>• As indicated above, the FIS is authorized to conduct AML/CFT activities. Although it has the powers to pursue such activities, in reality the possibilities of the FIS to conduct them are undermined by the problems with customer identification in a number of reporting entities. The FIS should pay special attention to working with these organizations.</li> <li>• As reports come in the FIS should consider the possible parameters of additional analytical elements to its information and analysis system in accordance with its needs and the volume of incoming information as well as training of its staff in analytical skills.</li> <li>• The FIS has a well-functioning mechanism to inform the private and government sectors of its activities through its website, however this mechanism should be used to post statistical data and information on typologies and trends.</li> </ul>
Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> <li>• Additional training is needed for law enforcement and the Prosecutor’s Office on issues relating to financial investigations.</li> <li>• Law enforcement authorities need to focus on investigating the offence of ML, as they currently pay attention solely to the predicate offence.</li> <li>• Terrorist financing should be criminalized in order to ensure that the authority designated to investigate TF is working efficiently.</li> </ul>
<b>3. Preventive Measures – Financial Institutions</b>	
Risk of ML or TF	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<ul style="list-style-type: none"> <li>• Kyrgyzstan has taken practically all necessary measures to ensure the implementation of Recommendation 5 by the banking sector. In relation to other sectors only a general requirement to identify customers exists, while other provisions of Recommendation 5 are not met.</li> <li>• The Resolution of the Financial Intelligence Service No. 15/P, includes many requirements of Recommendation 5, including the identification of beneficiaries, on-going CDD measures etc. This Resolution should be issued to financial institutions through their supervisory bodies.</li> <li>• Kyrgyzstan should introduce the client verification requirement for all financial institutions (now it is only applied to the banking sector), and to include it as an obligation in a law or regulation.</li> <li>• A legally binding norm in law or regulation must require that financial institutions identify beneficiaries (currently this norm exists only partially for the banking sector only), including those natural persons that ultimately exercise control over a legal person, which owns the client of the financial institution.</li> <li>• All financial institutions should be required to obtain from customers the information on the purpose and intended nature of the business relationship (this norm currently exists for the banking sector only).</li> <li>• A binding norm in law or regulation must require financial institutions to carry out on-going CDD measures (this measure is currently applied to the banking sector only).</li> </ul>

- All financial institutions must apply enhanced CDD procedures to high-risk categories of customers as prescribed by the FATF Recommendations.
- The information provided by the customers must be verified prior to or in the course of establishing the business relationship. The verification may only be delayed provided that the requirements specified in Recommendation 5 are met.
- Kyrgyzstan must effectively forbid the establishment of business relationships in case of failure to satisfactorily complete due diligence procedures in relation to a client. Such a restriction must apply to all financial institutions (currently applied to the banking sector only). Financial institutions must be required to consider sending an STR regarding such clients.
- The CDD measures must apply to all the customers of financial institutions as at the date when national AML/CFT legislative requirements were brought into force (existing clients). It seems that this requirement currently applies to the banking institutions only, however it must be communicated to them dissuasively, because the wording of the AML/CFT Law is not entirely transparent.
- Kyrgyzstan should ensure a high level of effectiveness in the implementation of existing instructions, in particular, by the banking sector.
- In the foreign exchange sector, there is an entrenched culture of non-compliance that existed in relation to the previous customer identification requirements. The authorities should pay special attention to this sector to ensure that the CDD requirements of the AML/CFT Law are being implemented effectively.
- Kyrgyzstan should introduce binding requirements for financial institutions to determine whether the client is a politically exposed person (PEP) and request authorization of the management of the financial institution in establishing relationships with a PEP. Financial institutions must be required to determine the sources of funds of a PEP and pay special attention to all on-going operations of the PEP.
- The Kyrgyz banks must be required to document the respective AML/CFT responsibilities with their correspondent banks to determine which measures will be taken by which institution. It is also necessary to introduce requirements for banks to determine if the correspondent bank has been subject to an AML/CFT regulatory action.
- Even though it seems that Kyrgyzstan does not have correspondent relationships outside the banking sector, it is necessary to introduce binding norms that would ensure that possible correspondent relationships in other sectors are also covered, this concerns primarily the securities sector, where correspondent relationships may be created by depositories.
- Despite the fact that Kyrgyzstan's banks do not seem to use payable-through accounts it is necessary to take the relevant legislative measures taking into consideration their possible use in the future.
- Kyrgyzstan should take legislative and other steps to require financial institutions to develop special programs for preventing the use of new technologies for money laundering and create procedures to eliminate risks associated with remote transactions. Such legislative measures should establish specific CDD

	procedures during remote transactions.
Third parties and introduced business (R.9)	Not applicable.
Financial institution secrecy or confidentiality (R.4)	Kyrgyzstan should eliminate existing contradictions between various legislative provisions on banking and commercial secrecy, which may potentially raise problems for the FIS is obtaining additional information, even though this no longer seems to be a problem in practice.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> <li>• Kyrgyzstan has taken some necessary legislative measures to meet the requirements of Recommendation 10, however the effectiveness of their implementation cannot yet be assessed. At the same time Kyrgyzstan must introduce minimal requirements for the types of data, which are to be maintained (these are currently set for the banking sector only).</li> <li>• Financial institutions must be required to ensure that the relevant information is available on a timely basis to competent authorities upon appropriate authority.</li> <li>• As wire transfers are an important factor in the economy of Kyrgyzstan, the necessary steps should be taken to implement all the requirements of Special Recommendation VII as soon as possible.</li> </ul>
Monitoring of transactions and relationships (R.11 & 21)	<ul style="list-style-type: none"> <li>• The competent authorities are recommended to establish detailed procedures for financial institution in relation to their obligations under R.11, in order to ensure the effective implementation of existing norms. It is necessary to extend existing obligations to the currency exchange and non-bank MVT sectors.</li> <li>• The relevant lists must be compiled and provided to financial institutions. The lists must be provided together with the explanatory guidance, as the simultaneous use of three lists may be difficult for financial institutions. At the same time, the lists should not restrict financial institutions in their own right to examine the compliance of states with the FATF Recommendations.</li> <li>• The legislation of Kyrgyzstan must include requirements obliging all financial institutions to keep the records of their findings on transactions according to R.21 and make them available to competent authorities, if needed.</li> </ul>
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<ul style="list-style-type: none"> <li>• Kyrgyzstan should take steps to ensure that financial institutions pay more attention to detecting suspicious transactions. It is also recommended to introduce a binding obligation to report attempted suspicious transactions (in relation to terrorism financing these obligations are met).</li> <li>• With the assistance of the supervisory authorities the FIS should focus on working with those entities, which fail to report, and if necessary this issue could be discussed at the Interagency Commission.</li> <li>• As the competent authorities eventually gain the necessary experience in carrying out financial investigations they would need to provide general feedback to financial institutions, including statistics and examples of sanitized cases of financial investigations.</li> <li>• Kyrgyzstan needs to take the necessary legislative measures to</li> </ul>

	<p>ensure that financial institutions are required to report terrorism financing even when the funds are not linked to a specific terrorist act.</p>
<p>Cross-border declaration or disclosure (SR.IX)</p>	<ul style="list-style-type: none"> <li>• The customs representatives have spoken about difficulties in suppressing the illegal movement of cash. In the opinion of the assessors it is necessary to consider making wider use of the Article of the Criminal Code on Smuggling because the law interprets the movement of cash and valuables across the border as movement of “goods”. In the opinion of the evaluators the powers of the customs authority to monitor the movement of cash should be broadened.</li> <li>• The customs authorities should use available powers to sanction according to the Code on Administrative Liability more actively.</li> <li>• It is necessary to create a regulatory regime for the transportation of bearer negotiable instruments.</li> </ul>
<p>Internal controls, compliance, audit and foreign branches (R.15 &amp; 22)</p>	<ul style="list-style-type: none"> <li>• Detailed internal control requirements must be set for all financial institutions by a binding legal act (such requirements currently exist for the banking sector only). The Kyrgyz legislation should specify requirements obliging financial institutions to establish screening procedures when hiring employees.</li> <li>• Though financial institutions of Kyrgyzstan have no branches or subsidiaries abroad, the Kyrgyz legislation allows for their creation. In this regard Kyrgyzstan should take the steps required to implement Recommendation 22.</li> </ul>
<p>Shell banks (R.18)</p>	<p>This Recommendation is fully observed</p>
<p>The supervisory and oversight system - competent authorities and SROs: role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17 &amp; 25).</p>	<ul style="list-style-type: none"> <li>• It is necessary to ensure that a broad range of sanctions is available regarding financial institutions.</li> <li>• The types of sanctions for failure to meet AML/CFT obligations should be diverse across all sectors, from fines to the withdrawal of licenses.</li> <li>• The FMSRS should develop the required legal AML/CFT framework including measures to monitor and sanction financial institutions in the insurance and securities sector. The FMSRS must also ensure that the Core Principles are used for the purposes of AML/CFT by its supervised entities.</li> <li>• The NBKR should start applying the AML/CFT monitoring and sanctions regime in relation to exchange offices and bureaus.</li> <li>• The monitoring and sanctioning system must be introduced in relation to non-bank MVT service operators to ensure compliance with Special Recommendation VII.</li> <li>• Kyrgyzstan needs to introduce the necessary amendments into its legislation to make sure that non-bank MVT service providers are licensed or registered.</li> <li>• The FIS, which is authorized, in accordance with the AML/CFT Law, to supervise over entities without specialized supervisory bodies, must have respective powers and mechanisms to implement these powers</li> <li>• The supervisors must issue special guidelines for the private sector to ensure the efficiency of financial institutions’ activities under their AML/CFT obligations. Such guidelines must be sector-oriented.</li> </ul>



	<ul style="list-style-type: none"> <li>• The FMSRS must ensure that its current supervisory and sanction powers are applied for AML/CFT purposes.</li> <li>• MVT service operators must be subject to effective supervision, according to the requirements of Recommendation 29.</li> </ul>
Money or value transfer services (SR.VI)	Kyrgyzstan must take all the legislative or other measures required to meet the provisions of Special Recommendation VI in relation to MVT service operators acting outside the formal financial system. It is also necessary to correct all of the deficiencies noted in relation to the AML/CFT requirements for banks, which are also applicable to banks in the context of money remittance.
<b>4. Preventive Measures –Non-Financial Businesses and Professions</b>	
Customer due diligence and record-keeping (R.12)	<ul style="list-style-type: none"> <li>• Kyrgyzstan should widen the scope of its AML/CFT legislation to cover lawyers, notaries and trust and company service providers. Kyrgyzstan should eliminate possible terminological obstacles to the application of AML/CFT legislation to dealers in precious metals and stones, as they are understood by the FATF Recommendations.</li> <li>• DNFBPs must comply with all the requirements of Recommendations 5, 6, 8, 10 and 11. The FIS Resolution No. 15/P, which contains some of the requirements for DNFBPs should be issued to the DNFBPs through their respective supervisory bodies (in accordance with Section 8, Article 3 of the AML/CFT Law).</li> </ul>
Suspicious transaction reporting (R.16)	Kyrgyzstan needs to address all of the shortcomings in the implementation of Recommendations 13-15 and 21 in relation to the DNFBPs.
Regulation, supervision and monitoring (R. 24-25)	<ul style="list-style-type: none"> <li>• Kyrgyzstan should take measures to ensure effective monitoring of the compliance of casinos with AML/CFT requirements, and set additional measures to prevent criminals from managing/owning a casino, which should include the reputation factor as grounds for refusal.</li> <li>• It is necessary to effectively monitor the activities of dealers in precious metals and stones and other DNFBPs for compliance with AML/CFT measures. The authorities should create and/or designate a competent authority or self-regulatory organization to be responsible for monitoring real estate agents and ensuring that they comply with their AML/CFT obligations. If this function is carried out by the FIS, then this Service must have the necessary supervisory capacity and mechanisms for their implementation.</li> <li>• Due to resistance on the part of casinos to the implementation of AML/CFT requirements it is necessary to pay particular attention to the implementation of Recommendation 24.</li> <li>• Sector-specific guidance should be issued for the DNFBPs. As the system evolves such instructions will become necessary in order to help DNFBPs to comply with the standards set by the AML/CFT Law.</li> </ul>
Other non-financial businesses and professions (R.20)	This Recommendation is fully observed.

<b>5. Legal Persons and Arrangements &amp; Non-Profit Organisations</b>	
Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> <li>• The problems and risks of money laundering and terrorism financing arising from the existing procedure of registration of legal persons should be eliminated as soon as possible. Kyrgyzstan’s legislation should provide for the verification of beneficial owner information of legal persons.</li> <li>• Kyrgyzstan should also take measures to prevent the use of bearer shares for the purposes of money laundering and terrorism financing.</li> </ul>
Legal Arrangements – Access to beneficial ownership and control information (R.34)	Not applicable.
Non-profit organisations (SR.VIII)	Kyrgyzstan should urgently introduce the necessary measures to comply with all the requirements of Special Recommendation VIII.
<b>6. National and International Co-operation</b>	
National co-operation and co-ordination (R.31)	<ul style="list-style-type: none"> <li>• The Interagency Commission provides a good basis for interagency cooperation within the country at the highest level. The Commission should begin its work as soon as possible. At the first stages the work of the Interagency Commission could be focused on the discussion from the AML/CFT angle of the implementation of the Directive of the Prosecutor General’s Office and the law enforcement bodies on “Intensifying the fight against economic crime, corruption and smuggling”.</li> <li>• In order to increase the efficiency of the Interagency commission Kyrgyzstan should include representatives of the General Prosecutor’s Office into the Commission.</li> <li>• The evaluation team was informed that the regulations of Kyrgyzstan envisage the assessment of the AML/CFT performance of law enforcement bodies, which is reflected in the reports of the National Statistical Committee. At the same time, in the opinion of the evaluators, the evaluation of the performance of the AML/CFT system should not be limited to assessing the activities of law enforcement bodies and to reports of the National Statistical Committee.</li> </ul>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<ul style="list-style-type: none"> <li>• Article 183 of the Criminal Code of Kyrgyzstan does not clearly state all the crimes related to money laundering in accordance with the Vienna and Palermo Conventions. In this regard the necessary amendments must be introduced into Article 183.</li> <li>• In order to ensure full compliance with the UN Security Council resolutions it is necessary to introduce amendments into the current legislation.</li> <li>• Laws and other regulations should provide a uniform mechanism for compiling, disseminating and using the list of persons suspected of being involved in terrorist activities (terrorism financing) to meet the requirements of the AML/CFT legislation.</li> <li>• Kyrgyzstan should introduce amendments to the Criminal Code providing for criminal liability for terrorism financing.</li> </ul>
Mutual Legal Assistance (R. 36-38,	• Effective and specific procedures must be introduced, which

SR.V)	<p>allow for the quick execution of MLA requests without undue delays, and timely answers to MLA requests.</p> <ul style="list-style-type: none"> <li>• Confidentiality restrictions and limitations must be lifted, in order to ensure that MLA requests are not refused due to legislation, imposing secrecy obligations on financial institutions and DNFBPs.</li> <li>• Kyrgyzstan should introduce specific mechanisms to determine the best venue for the prosecution of defendants in the interests of justice.</li> <li>• Provisions must be introduced, which provide for the execution of a MLA request, connected to the revealing, freezing, arrest and confiscation of a property equivalent.</li> <li>• It is necessary to consider the issue of creating an asset forfeiture fund.</li> <li>• Kyrgyzstan should consider the issue of creating a mechanism providing for the division of confiscated property between the participating governments, when confiscation was directly or indirectly carried out due to law enforcement cooperation.</li> <li>• Kyrgyzstan should criminalize terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as all of the elements of ML offence according to the Vienna and Palermo conventions, in order to ensure that MLA confiscation requests on these matters are answered.</li> </ul>
Extradition (R.37 & 39, & SR.V)	<ul style="list-style-type: none"> <li>• Kyrgyzstan should introduce procedures that will allow the extradition requests to be handled without undue delay and create alternative simplified procedures for extradition in necessary cases.</li> <li>• It is necessary to introduce clear provisions stipulating for the possibility of extradition of persons to foreign states despite any possible technical differences between laws of requesting and requested countries.</li> <li>• It is essential to introduce procedures for the timely handling of requests for extradition in cases of FT.</li> <li>• Kyrgyzstan should criminalize terrorism financing, sexual exploitation of children and insider trading and market manipulation, as well as all of the elements of ML offence according to the Vienna and Palermo Conventions, in order to ensure that extradition requests on these matters are answered.</li> </ul>
Other Forms of Co-operation (R.40, & SR.V)	The existing mechanisms of international cooperation in the AML/CFT sphere should be more actively used.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<ul style="list-style-type: none"> <li>• The FIS should be provided with sufficient funds and technical resources to finance an adequate analytical component;</li> <li>• FIS staff require training on financial investigations;</li> <li>• Law enforcement and prosecutorial agencies should be provided with adequate AML/CFT-related training;</li> <li>• Supervisory agencies should be adequately staffed and structured for AML/CFT supervision purposes;</li> <li>• Supervisory agencies should receive training on AML/CFT supervisory methods;</li> <li>• Kyrgyzstan should begin reviewing its AML/CFT system on a</li> </ul>

	<p>regular basis;</p> <ul style="list-style-type: none"> <li>• The statistics regarding cross-border transportation of currency and bearer negotiable instruments should be accurately kept;</li> <li>• Statistics should be kept regarding the amount of property frozen, seized and confiscated relating to ML/FT/predicate offences;</li> <li>• Statistics should be kept regarding the amounts of property frozen under U.N. Resolutions;</li> <li>• No statistics kept on MLA or extradition requests related to ML/FT;</li> <li>• Kyrgyzstan should produce centralized yearly statistics on requests for extradition which were received or sent in connection with cases on ML and FT, on predicate offences, including on the nature of the requests, their results and timeframe of answer.</li> <li>• ML/FT statistics should be kept by supervisors (currently kept by the NBKR only).</li> </ul>
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**Table 3. Authorities' Response to the Evaluation (if necessary)**

Relevant sections and paragraphs	Country comments
Overall Report	

## ANNEXES

### ANNEX 1: **List of abbreviations**<sup>32</sup>.

AML	Anti-money laundering
CDD	Customer due diligence
CFT	Combating the financing of terrorism
CIS	Commonwealth of Independent States
CSTO	Collective Security Treaty Organization
DCA	Drug Control Agency
DNFBP	Designated non-financial businesses and professions
EAG	Eurasian group on combating money laundering and financing of terrorism
EurAsEC	Eurasian Economic Community
FATF	Financial Action Task Force
FIS	Financial Intelligence Service
FIU	Financial intelligence unit
FMSRS	Financial Markets Supervisory and Regulatory Service
GDP	Gross Domestic Product
GPO	General Prosecutor's Office
ID	Identification documents
IMF	International Monetary Fund
IMU	Islamic Movement of Uzbekistan
ITP	Islamic Turkistan Party
KR	Kyrgyz Republic
KST	Kyrgyz Stock Exchange
MER	Mutual evaluation report
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
ML	Money laundering
MLA	Mutual legal assistance
MOF	Ministry of Finance
MOJ	Ministry of Justice
MVT	Money or value transfer
NBKR	National Bank of the Kyrgyz Republic
NPO	Non-profit organization
NSC	National Security Committee
OECD	Organization for Economic Cooperation and Development
OKPO	National classifier code for companies and enterprises
OSCE	Organization for Security and Cooperation in Europe
PEP	Politically exposed person
R.	Recommendation

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<sup>32</sup> Some abbreviations are solely used in the Russian version of the MER and are not listed in the English version.

SCC	State Customs Committee
SCO	Shanghai Cooperation Organization
SR	Special Recommendation
SRO	Self-regulatory organization
STR	Suspicious transaction report
TCSPs	Trust and company service providers
TF/FT	Terrorism financing/financing of terrorism
TIN	Taxpayer identification number
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
VAT	Value added tax
WB	World Bank

**ANNEX 2: Details of all bodies met on the on-site mission – Ministries, other government authorities or bodies, private sector representatives and others**

**I. Ministries and other government authorities**

- Ministry of Finance
- Ministry of Justice
- Ministry of Foreign Affairs
- Parliamentary Committee on Defense, Security and Information Policy
- Supreme Court
- Financial Intelligence Service

**II. Investigation and law enforcement bodies**

- State Customs Committee
- Financial Police
- Drug Control Agency
- Ministry of Internal Affairs
- National Security Committee
- General Prosecutor's Office

**III. Financial Sector bodies**

- National Bank
- Financial Markets Supervisory and Regulatory Service
- Division on Precious Metals of the Ministry of Finance
- Kyrgyzstan Postal Service

**IV. Other government bodies**

- Governmental Agency on Registration of Real Estate Property Rights

**V. Private sector representatives and associations**

- Kyrgyzstan Union of Banks
- Association of Insurers of Kyrgyzstan
- Association of Real Estate Agents
- Representatives of private banks
- Professional participants of the securities market
- Kyrgyz Stock Exchange
- Casino representatives
- Dealers in precious metals and stones
- Pawnshops
- Currency exchange bureaus and offices
- Real estate agents

**ANNEX 3:           Copies of key laws, regulations and other measures**

***Money laundering offence. Article 183 of the Criminal Code.***

*Article 183. Legalization of illegally gained funds and other property*

(1) Carrying out financial transactions and other operations with funds or other illegally gained property, as well as the use of such funds for business purposes or other economic activity – is punishable by a fine of 500 to 1000 estimated indicators or imprisonment of up to 4 years with a fine of up to 100 estimated indicators.

(2) The same offences, carried out:

- 1) By a group of people upon prior agreement;
- 2) Repeatedly;
- 3) By a person with abuse of office – are punishable by imprisonment for a period from 4 to 8 years with or without the confiscation of property.

(3) The offences under part 1 and 2 of this Article, if committed by an organized group at a large scale – are punishable by imprisonment for a period from 7 to 10 years with the confiscation of property.



**LAW OF THE KYRGYZ REPUBLIC**  
**On Combating Terrorist Financing and the**  
**Legalization (Laundering) of Proceeds of Crime**

Bishkek, July 31, 2006, No. 135

Also see: Resolution of the President of the Kyrgyz Republic dated June 26, 2006 RP No.245 (On the approval of the Regulation on the Interagency commission on combating terrorism financing and the legalization (laundering) of illegally gained income).

Chapter I. General Provisions

Chapter II. Prevention of Terrorist Financing and Legalization (Laundering) of the Proceeds of Crime

Chapter III. Organization of Activity to Counter Terrorist Financing and Legalization (Laundering) of Proceeds of Crime

Chapter IV. International Cooperation in the Area of Combating Terrorist Financing and legalization (Laundering) of Proceeds of Crime

Chapter V. Closing Provisions

**Chapter I.**  
**General Provisions**

*Article 1. Purpose, objectives and scope of this Law*

1. The purpose of this Law shall be to protect rights and lawful interests of citizens, the society and the state, and also the integrity of the financial system of the Kyrgyz Republic from criminal encroachment by setting up a legal mechanism to combat terrorist financing and legalization (laundering) the proceeds of crime.

2. The main objective of this law is to establish legal framework for the prevention, detection and investigation of the activities related with terrorism financing and the legalization (laundering) of the proceeds of crime; and also to set legal norms for the establishment and proceedings of an authorized state body that is authorized to receive, analyze and disseminate information on suspicious transactions, and transactions subject to mandatory reporting as prescribed by this Law. Such body shall be entitled to require reporting entities to undertake measures to combat the financing of terrorism and laundering of the proceeds of crime as provided by this Law and other normative legal acts.

3. This Law shall regulate the relationships of the citizens of the Kyrgyz Republic, foreign citizens and stateless citizens permanently residing in the Kyrgyz Republic, entities engaging in transactions with cash or other property as well as the government bodies exercising control in the Kyrgyz Republic over transactions with cash or other property to prevent, reveal and suppress actions related to terrorist financing and the legalization (laundering) of proceeds of crime.

4. If the rules set by the international agreement which is legally effective and to which the Kyrgyz Republic is a party state otherwise than the rules stipulated in this Law, the rules of the international agreement shall override.

*Article 2. Main definitions and notions used in this Law*

For the purposes of this Law the following main definitions and notions shall be used:

*Proceeds of crime* – is money and any movable and immovable property obtained through the commission of any offense provided by the Criminal Code of the Kyrgyz Republic;

*Legalization (laundering) of the proceeds of crime* – is the feigning of legitimate appearance of ownership, usage or disposal of funds or other property obtained in a knowingly criminal way;

*Other property* – is objects and things as well as property rights representing material value (movable or immovable property including securities, jewels and precious metals, antiquities and other property as established by the legislation currently in effect;

*Suspicious transaction* – is a transaction that has signs of the suspicious transactions as provided by this Law, i.e., the transactions made with cash or other property that have no apparent economic or visible lawful purpose, and are not characteristic for the activity of the particular legal entity and/or natural person(s) as per the list of suspicious transaction indicators approved by the authorized state body;

*Authorized state body* — is a body of executive power instituted or determined by the President of the Kyrgyz Republic authorized under this Law to receive and analyze information and to conduct appropriate measures aimed at combating the legalization (laundering) of proceeds of crime and terrorist financing;

*Financing of terrorism* – is providing or collecting funds by any means, or trying to provide or collect funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any act intended to commit explosion or arson or any other actions that put in danger human lives or have resulted in people's death, or to inflict significant damage or cause any other hazardous consequences for the public, when the purpose of such act is to intimidate a population aiming to undermine or weaken the existing state power, or to intimidate or to compel public authorities or international, commercial, public or other organization to do or abstain from doing any act to the benefit of the terrorist organizations, as well as the threat of committing such actions with the same purpose.

*Reporting entity* – is any of the following legal entities and/or natural persons: banks (including branches); financial, credit and other institutions licensed and regulated by the National Bank of the Kyrgyz Republic including exchange bureaus and pawn shops; professional participants in the securities market; commodity exchanges; insurance organizations; casino and other gaming clubs, which have slot machines, roulettes or other devices or means for conducting games, bookmaker establishments, and initiators and organizers of lotteries, totalizers, system (electronic) games; organizations executing the registration of movable and non-moveable property ownership; state bodies of traffic inspection; postal and telegraph communication organizations conducting transfer of funds, and other organizations executing settlements and/or payments; real estate agents (realtors) when they participate in transactions of a client selling or buying real estate; and dealers in precious stones and precious metals– when they are conducting any cash operations with a client;

*Mandatory reporting* – is a set of measures to be taken by the authorized state body as set forth in this Law and regulations as adopted in accordance with it, intended to exert control over transactions with funds and other property based on the information provided to it by the organizations engaging in such transactions, and the checking of such information as provided by the legislation of the Kyrgyz Republic.

*Internal control* – is the activity of the organizations executing transactions with funds and other property to provide the information to the authorized state body on the transactions subject to mandatory reporting and other transactions with funds or other property related to terrorist financing and the legalization (laundering) of proceeds of crime.

*Shell-bank* – is a bank registered in states and territories in which it is not physically present.

*FATF* – is the Financial Action Task Force.

## **Chapter II. Prevention of Terrorist Financing and Legalization (Laundering) of the Proceeds of Crime**

*Article 3. Measures to counter terrorist financing and the laundering of the proceeds of crime.*

1. Banks and other financial-credit institutions that are entitled to open and maintain bank accounts shall not have the right to open or keep anonymous accounts (deposits), or accounts (deposits) in bearer's name, and to conduct any transactions without prior identification of the counterparties and/or clients in compliance with normative legal acts of the Kyrgyz Republic.

Banks and other financial-credit institutions that have rights to open and maintain bank accounts shall refuse the request of a legal entity/or a natural person to open bank account (deposit), or conduct a transaction with the account if appropriate documents needed to meet the requirements to open a bank account (deposit),

conduct transactions with it and identify and verify a customer are not provided by the appropriate person, or if documents provided are obviously unreliable or information on engagement of this person in terrorist activity or the financing of terrorism is received under this Law. In cases specified in this paragraph, the banks and other financial-credit institutions that have rights to open and maintain bank accounts shall be entitled to terminate the contracts previously made with the clients (account holders) and depositors.

Reporting entities shall be obliged to carry out the following procedures:

- establish a customer's identity, i.e. to carry out a number of measures to identify a natural person (individual) client (full name, place of registration and residence, date of birth, passport details, authority to manage the account and other data required in line with the legal-normative acts of the Kyrgyz Republic);
- determine the current legal status of a customer-legal entity, including the information on the name of a company and a customer, business and legal form of the customer's activity, address, executive officials and other data related to charter documents regulating client's activity;
- determine the power and identity of persons authorized to manage funds kept in the account;
- execute other procedures as required by normative legal acts.

2. Banks and other financial and credit institutions having the right to open and maintain bank accounts shall not have the right to establish direct correspondent relations with banks registered in offshore zones, persons affiliated with them, subsidiary banks and detached units which do not have the independent legal entity status, and also registered in the countries or territories that provide preferential tax regimes and/or do not require disclosure and/or provision of information to banking supervision bodies in compliance with the requirements and recommendations of Basel Committee on Banking Supervision.

This restriction does not apply to establishing direct correspondent relations with branches registered with offshore zones when their head offices are located (registered) outside the offshore zones.

Establishment of shell-banks shall be prohibited.

Banks and other financial and credit institutions having the right to open and maintain bank accounts, shall have no right to establish or continue maintaining correspondent relations with shell banks, as well as shall take precautions not to establish contacts with correspondent foreign financial institutions that permit their accounts to be used by shell banks.

3. Any legal person that has the status of a company registered in an offshore zone in conformity with the legislation of the country of registration may not be the promoter or shareholder of the bank resident in the Kyrgyz Republic.

For the purpose of licensing and regulation of banks and other financial and credit institutions the National Bank of the Kyrgyz Republic shall maintain a list of the offshore zones' entities, countries and territories, and shall establish the conditions of, and restrictions on the transactions with them.

4. Reporting entities must:

- develop internal control rules to counter the legalization (laundering) of the proceeds of crime and terrorist financing, and the procedures for their implementation;
- keep data and records related to identification of a customer and transactions with cash or other property for not less than five years after the account is closed. Such records must be sufficient to permit reconstruction of individual transactions so as to provide evidence for the consideration and investigation.
- not disclose information on submission of data to the authorized government body.

Information on submission of such data to the third parties may be disclosed only in cases directly stipulated by the laws of the Kyrgyz Republic. Employees of organizations carrying out transactions with cash or other property shall not have the right to inform customers of this organization or other persons on submission of the information to the authorized state body.

5. Banks and other financial and credit institutions having the right to open and maintain bank accounts shall suspend transactions of natural and legal persons with regard of whom the information has been received on involvement in terrorist activity (terrorist financing) for three working days from the date when a customer's order is to be executed, and shall submit the information about it to the authorized state body not later the date when the operation was suspended.

Should a resolution of the authorized body to suspend the respective transaction of the natural and legal persons with regard of whom the information has been received on involvement in terrorist activity (terrorist financing) for a specified further time not be received within the three working day time period, the banks and other financial and credit institutions having the right to open and maintain bank accounts shall carry out the transaction with cash and other property according to the customer's order.

Transactions with cash and other property of the natural and legal persons with regard of whom the information has been received on involvement in terrorist activity (terrorist financing) may be suspended or arrested beyond the period of time specified in the resolution of the authorized body only upon the court ruling or decision, or resolution of the organs of inquiry with regard to cases at hand.

Should a court ruling or decision, or resolution of the organs of inquiry with a public procurator's sanction to suspend or arrest the respective transaction not be received within the time specified in the resolution of the authorized body, the banks and other financial and credit institutions having the right to open and maintain bank accounts shall carry out the transaction with cash and other property according to the customer's order

6. Reporting entities and their employees shall be exempted from liability for the losses, lost profits or moral damage to the legal entity or a natural person caused by discharging in good faith of duties stipulated by this Law to submit the information on suspicious transactions and transactions subject to mandatory reporting as per the established procedure if no violation of the established procedure has been committed.

Suspension of such transactions, refusal to open a bank account (deposit) or execute a transaction in the account and termination of a bank account agreement and closure of a bank account under this Article shall not raise civil liability of the reporting entity.

7. Reporting entities shall give special attention to business relations and to the transactions with organizations and persons from the countries and territories, which do not apply, or apply not to the sufficient level, the FATF Recommendations, and also with the subsidiaries, branches and agents, whose parent companies are registered in such countries and territories. The list of such countries and territories shall be approved by the authorized state body jointly with the National Bank of the Kyrgyz Republic and other supervisory bodies.

8. Monitoring of natural and legal persons' compliance with this Law with regard to recording, keeping and provision of information on transactions subject to mandatory reporting, and also of the internal control arrangements shall be exercised by the appropriate supervisory bodies within their competence and in compliance with the procedure established by the legislation of the Kyrgyz Republic, and also by the authorized state body in cases where there are no supervisory bodies in the business areas of certain organizations conducting transactions with cash or other property.

#### *Article 4. Requirements (conditions) for mandatory reporting*

Reporting entities shall be obliged to provide the information on suspicious transactions, and on transactions with cash or other movable and immovable property that fall within the list of mandatory reporting criteria specified in this Law or in line with it to the authorized state body as per the form prescribed by authorized state body not later than the business day following the day of the transactions execution.

This information shall be documented and include:

- type of the transaction and reasons for its execution;
- date of the transaction execution and its amount;
- data required to identify a natural person that initiated the transactions (details of passport or other document identifying the person), place of residence and registered place of residence;
- name, taxpayer identification number, place of registration and place of location of a legal entity;

- data required to identify a natural person or legal entity on behalf and on the instruction of which the transaction is initiated, taxpayer identification number (if available), place of residence or place of location of a natural person or a legal entity;
- data required to identify the representative of a natural person or a legal entity that execute the transaction on behalf on another person based on the authority delegated by a power of attorney, the law or the statement of the authorized state body or local self-governance body, place of residence of a representative of a natural person or a legal entity;
- data required to identify the beneficiary of the transaction with cash or other property including the name of a recipient and his account number.

Should the reporting employees have a suspicion that any transactions are conducted with the purposes of terrorist financing and legalization (laundering) of the proceeds of crime, such persons shall be obliged to provide to the authorized state body the information on such transactions irrespective of whether they come under the transactions specified in Article 6 of this Law or not.

The banks, financial and credit institutions, professional participants in the securities market and insurance companies must keep records of actually identified circumstances of complex and unusually large transactions, and of the transactions that are conducted using unusual patterns without an apparent economic purpose.

### **Chapter III. Organization of Activity to Counter Terrorist Financing and Legalization (Laundering) of Proceeds of Crime**

#### *Article 5. Authorized State Body*

1. An authorized body established or determined by the President of the Kyrgyz Republic shall be a government body the objectives, functions and power of which in the area of combating terrorist financing and the laundering of proceeds of crime are established consistent with this Law. Interference of all government bodies in resolving the issues that pursuant to this Law fall under the jurisdiction of the authorized state body shall be prohibited, except for cases stipulated by this Law and other Laws of the Kyrgyz Republic.

2. The authorized state body within the limits of its competence shall:

- 1) gather and analyze information related to the transactions subject to mandatory reporting;
- 2) develop and implement measures to improve the system of prevention, detection and suppression of operations connected with terrorist financing and legalization (laundering) of illegally obtained proceeds including provision of clarification on applying measures in fighting terrorist financing and the laundering of proceeds of crime in particular in detecting suspicious operations and forwarding reports on them;
- 3) submit to the court (judge), prosecutor, investigation bodies and bodies of inquiry the documents or other materials related to terrorist financing and the laundering of proceeds of crime on the grounds of official requests in writing on instituted proceedings in compliance with the legislation of the Kyrgyz Republic. The above-stated information may also be forwarded, to law-enforcement bodies and courts by the authorized state body at its own initiative;
- 4) carry on its activity on prevention and suppression of the laundering of proceeds of crime;
- 5) enjoy the right of access (use) to the database (registers) formed and (or) maintained by the state bodies;
- 6) forward respective information and materials to relevant law-enforcement bodies for investigation if there are reasonable grounds to believe that the transaction is related to terrorist financing and/or the laundering of proceeds of crime.

3. The authorized state body shall suspend execution of the transaction with cash or other property for up to five business days if at least one of the parties to such transactions is a natural or legal person with regard to which information has been received of its involvement in terrorist activities (terrorist financing), provided that such information received by it under paragraph 6, Article 3 of this Law may not be deemed ungrounded based on the results of the preliminary examination.

4. The management and employees of the authorized state body, NBKR and other government bodies including the former ones who have or had access under this Law to the information received from the reporting entities shall be liable criminally and otherwise for the illegal disclosure, use of commercial or other secret and abuse of position under the legislation of the Kyrgyz Republic.

#### *Article 6. List of Mandatory Reporting Criteria for Transactions*

1. A transaction with cash or other property or several linked transactions executed within a period of 14 days shall be subject to mandatory reporting if its amount is equal to or exceeds 1,000,000 soms (including its equivalent in foreign currency), where the nature of such transaction comes under any of the transaction types specified in paragraph 2 of this Article.

2. The transactions with cash or other property subject to mandatory reporting include the following:

- 1) all domestic and external transactions conducted by banks and other financial and credit institutions that have the right to open and maintain bank accounts (deposits);
- 2) transactions whereto at least one of the parties is a natural or legal person having registration, residency or place of location in a state (territory), where disclosure and communication of the information in executing financial transactions is not stipulated, or whereto one of the parties is a person that owns an account with a bank registered in the aforementioned state (territory). The list of such states (territories) shall be determined by the authorized state body upon coordination with the National Bank of the Kyrgyz Republic based on the lists approved by international organizations engaging in combating the legalization (laundering) of proceeds of crime, and shall be subject to publication;
- 3) other transactions in excess of the threshold established by this Law:
  - purchase or sale of foreign currency;
  - purchase of securities by a natural person for cash;
  - exchange of banknotes of one denomination for another denomination;
  - individual's contribution to the capital of a company in cash;
  - movements of funds of charity and public organizations, institutions and foundations;
- 4) other transactions with movable and immovable property in excess of the threshold established by this Law:
  - placement of securities, precious metals, precious stones or other valuables in pawn shops;
  - payment of insurance fee by a natural person or receipt of insurance premium on life insurance and other types of accumulation insurance or pensions from a natural person;
  - transaction with immovable property if the transaction amount is equal or exceeds 4,500,00 soms;
  - transaction with movable property;
  - receipt or granting property under an agreement of finance lease;
  - payments of funds in the form of a gaining from lottery, totalizator or other types of risk- based games;
- 5) transfer of funds:
  - made by non-financial and credit organizations at the request of a customer;

- through the systems allowing to execute such transactions without opening an account, and their receipt.
3. Any transaction with funds or other property shall be subject to mandatory reporting if any party involved in the transaction is a natural person or a legal entity with respect to which information on participation in terrorist activity (financing of terrorism) including religious extremist organizations has been obtained under the procedure established by the laws or the international agreements of the Kyrgyz Republic.
  4. Suspicious transactions shall be subject to mandatory reporting.

#### **Chapter IV. International Cooperation in the Area of Combating Terrorist Financing and Legalization (Laundering) of Proceeds of Crime**

##### *Article 7. Exchange of information and legal assistance*

The authorized state body in compliance with the international agreements of the Kyrgyz Republic shall cooperate with the authorities of foreign states in the stages of information collection, preliminary investigation, judicial proceedings and execution of court decisions in the area of countering the legalization (laundering) of proceeds of crime and terrorist financing.

The authorized state body and other state bodies of the Kyrgyz Republic engaged in the activity of prevention of terrorist financing and the laundering of proceeds of crime shall provide respective information to the competent bodies of foreign states at their request or at their own initiative as per the procedure and on the grounds stipulated by the international agreements of the Kyrgyz Republic.

Communication of the information related to detection, seizure and confiscation of proceeds of crime and/or related to terrorist financing shall be executed in all cases if it does not bring any damage to the national security interests of the Kyrgyz Republic.

Information related to detection, seizure and confiscation of proceeds of crime and/ or related to terrorist financing shall be forwarded at the request of a competent body of a foreign state on the condition that such information will not be used for purposes that are not specified in the request without the prior consent of the state authorities of the Kyrgyz Republic providing such information.

The authorized state body that forwarded the request to a competent body of a foreign state shall ensure confidentiality of the provided information and shall use it only for the purposes specified in the request.

The state authorities of the Kyrgyz Republic carrying out the activity on prevention of money laundering and terrorist financing shall satisfy the requests of the competent bodies of the foreign states, within the scope of its competency, on confiscation of illegally obtained income and some court proceedings on detection of proceeds of crime, arresting property, seizure of property and shall also conduct expert analysis, interrogation of suspects, convicted, witnesses, victims and other persons, conduct search, seizure and transmit the material evidence, arrest the property and deliver and pass over the documents.

Expenditures related to the satisfaction of such requests shall be compensated as provided by the international agreements of the Kyrgyz Republic.

To combat terrorist financing and legalization (laundering) of proceeds of crime, the banking supervision and regulating body shall have the right to request for, receive and communicate the respective information with the banking supervision bodies of the foreign states both based on requests and at its own initiative.

Requirements to communication and communication of the information (materials) for the purpose of terrorist financing and money laundering shall be made (executed) in the Kyrgyz Republic in consistency with the conditions stipulated by this Law.

## **Chapter V. Closing Provisions**

### *Article 8. Responsibility for breach of this Law*

1. Organizations engaging in transactions with cash or other property found guilty of infringement of the requirements of this Law shall be liable under the legislation of the Kyrgyz Republic.
2. Provision of information on suspicious transactions, transactions with cash or other property and the transactions subject to mandatory reporting to the authorized state body in compliance with the requirements established by this Law shall not constitute the divulgence of the official, commercial or bank secrecy.
3. The National Bank of the Kyrgyz Republic shall provide to the authorized state body, including at its request, information and documents necessary for the fulfillment of its functions as per the procedure agreed upon with the National Bank of the Kyrgyz Republic.
4. Provision of information and documents, including that at the request of the authorized state body, by the public authorities and local self-governance bodies for the purposes and in accordance with the procedure stipulated by this Law shall not constitute the violation of the official, commercial or bank secret.

### *Article 9. Enactment of this Law*

1. The present Law shall take effect after three months from the date of its official publication.

Published in “Erkintoo” Newspaper on August 8, 2006, No. 58

2. The Government of the Kyrgyz Republic shall:
  - prepare and submit proposals to the Jogorky Kenesh of the Kyrgyz Republics on bringing in compliance the legislative acts of the Kyrgyz Republic with this Law;
  - develop required normative legal acts on enforcement of this Law.

President of the Kyrgyz Republic K. Bakiev

Adopted by Jogorky Kenesh (Parliament) of the Kyrgyz Republic on June 16, 2006



**REGULATION  
on the Financial Intelligence Service of the Kyrgyz Republic**

- I. General provisions
- II. Objective of the Service
- III. Tasks of the Service
- IV. Functions of the Service
- V. Rights of the Service
- VI. Organization of the activity of the Service
- VII. Responsibility of the staff of the Service and their legal protection
- VIII. Financing and material and technical support of the Service
- IX. Reorganization and abolition of the Service

**I. GENERAL PROVISIONS**

1. The Financial Intelligence Service of the Kyrgyz Republic (hereinafter – the Service) is a state body authorized to take measures against the financing of terrorism and legalization (laundering) of illegally gained income (CFT/ML), implement government policy in CFT/ML and coordinate the activities of other state bodies with regulatory functions in this sphere.

In carrying out its activities the Service shall be guided by the Constitution of the Kyrgyz Republic, laws of the Kyrgyz Republic, decrees and instructions of the President of the Kyrgyz Republic, resolutions and instructions of the Government of the Kyrgyz Republic, international agreements of the Kyrgyz Republic, which have entered into force through appropriate legislative mechanisms (hereinafter – international agreements) other statutory and legal acts of the Kyrgyz Republic and the present Regulation.

3. In its activities the Service is accountable before the President of the Kyrgyz Republic.

4. The Service is a legal entity, and has a seal with the image of the state coat of arms of the Kyrgyz Republic bearing its full name and abbreviation in the state and the official languages.

5. The Service is located in the capitol of the Kyrgyz Republic – the city of Bishkek.

**II. OBJECTIVE OF THE SERVICE**

6. The objective of the activities of the Service is the implementation of measures to combat terrorism financing and legalization (laundering) of illegally gained income, to protect the rights and lawful interests of citizens, society and the state, as well as the integrity and stability of the financial system of the Kyrgyz Republic.

**III. TASKS OF THE SERVICE**

7. According to the objective of the Service the main tasks of the Service are the following:

- collection, processing and analysis of information, documents and other materials (hereinafter referred to as information) on operations with funds or other property subject to mandatory reporting in accordance with the CFT/ML legislation of the Kyrgyz Republic;
- Establishment of a uniform information system and maintaining the data-base in the area CFT/ML;

- Referring the relevant information to law-enforcement bodies in accordance with their competence in case of sufficient evidence, which proves that the operation with funds or other property is connected to the financing of terrorism or legalization (laundering) of illegally gained income;
- In accordance with international agreements of the Kyrgyz Republic carrying out cooperation and information exchange with competent national bodies of foreign states in the CFT/ML sphere as well as representing the Kyrgyz Republic in international organizations on issues of CFT/ML.

#### **IV. FUNCTIONS OF THE SERVICE**

8. To implement its main tasks the Service shall execute the following functions:

- To collect, process and analyze information on operations subject to mandatory reporting in accordance with the CFT/ML legislation of the Kyrgyz Republic;
- To study, analyze, evaluate, accumulate information and on this basis to forecast and plan CFT/ML measures;
- To verify following the established procedure the received information on CFT/ML related to operations with funds and other property and receive the necessary clarifications regarding the received information;
- To identify signs testifying that the operation with funds or other property is connected to the financing of terrorism or legalization (laundering) of illegally gained income;
- To refer the information on operations with funds or other property to law-enforcement bodies in accordance with their competence in case there is sufficient evidence testifying that the operation is connected to CFT/ML;
- To participate in the development and implementation of programs of international cooperation on CFT/ML issues;
- To organize the establishment and maintain databases, as well as ensure methodological consistency and coordinated functioning of information systems in the CFT/ML sphere;
- To present the necessary information to the courts and law-enforcement bodies in accordance with the legislation of the Kyrgyz Republic;
- To cooperate in the CFT/ML sphere with the relevant government bodies, local government, public associations and other organizations, including international;
- According to the procedures and in cases provided for by the legislation of the Kyrgyz Republic to monitor natural and legal persons in their implementation of relevant CFT/ML legislative provisions of the Kyrgyz Republic in observing the procedure of registration, storage and submission of information on operations with funds or other property subject to mandatory reporting;
- To summarize the practice of application of legislation of the Kyrgyz Republic in the area of CFT/ML based on information received from government bodies and other organizations, as well as develop and submit proposals on its improvement following the established procedure;
- To ensure an adequate regime of secrecy, storage and protection of information received in the process of its activities, which is subject to official, banking, tax, commercial, communication and personal privacy secrecy provisions;
- To study international experience and practice in the area of CFT/ML;
- To conduct activities on re-training and skills upgrading of the staff in the CFT/ML area;
- To participate in the activities of international organizations in the CFT/ML area according to the established procedure;
- Following the established procedure, to participate in drafting statutory and legal acts and international agreements of the Kyrgyz Republic on CFT/ML issues;
- To prepare analytical reviews, methodological recommendations, draft statutory and legal acts and other documents on CFT/ML matters;
- To coordinate the activities of government bodies in the CFT/ML sphere;
- To carry out other functions in the CFT/ML area as envisaged by laws, other statutory and legal acts and international agreements of the Kyrgyz Republic

## **V. RIGHTS OF THE SERVICE**

9. For implementation of its tasks and functions the Service shall have the right:

- Of full access (use) of documents, data-bases (registers), which are formed and (or) maintained by government and local authorities, governmental or local establishments or enterprises;
- To request and receive according to the established procedure the information on operations with funds or other property from government bodies, local authorities, National Bank of the Kyrgyz Republic and other organizations, carrying out such operations;
- To coordinate the activities of government bodies in the CFT/ML sphere;
- To attract and receive consultations and conclusions of specialists from state bodies on issues requiring special knowledge;
- To refer information on operations with funds or other property to law-enforcement bodies of the Kyrgyz Republic in accordance with their competence in case there is sufficient evidence testifying that the operation with funds or other property is connected to terrorism financing and legalization (laundering) of illegally gained income;
- Address relevant public authorities with the proposal to call to account individuals for violating CFT/ML legislation of the Kyrgyz Republic following the established procedure;
- Following the established procedure, establish with other executive bodies temporary interdepartmental commissions to consider CFT/ML issues;
- Following the established procedure and within its competence, interact with public administration bodies, organizations, officials and citizens of foreign states both in the Kyrgyz Republic and abroad;
- To request from competent bodies of foreign states, in accordance with international agreements of the Kyrgyz Republic, information necessary to achieve objectives in the CFT/ML area;
- To provide information to competent authorities of foreign states, upon their request or on its own initiative, in accordance with the procedure and on the basis as envisaged by international agreements of the Kyrgyz Republic, in case the information to be provided has no threat to interests of national security of the Kyrgyz Republic;
- To participate in preparation and conclusion of international agreements of the Kyrgyz Republic on CFT/ML issues;
- To represent the Kyrgyz Republic in international organizations on issues of the specified sphere of competence;
- To participate according to the established procedure in CFT/ML activities carried out in the Kyrgyz Republic and abroad;
- In accordance with legislation of the Kyrgyz Republic to determine the procedure of formation of a uniform database in the CFT/ML area;
- To open settlement and other accounts in the Central Treasury of the Ministry of Economy and Finance of the Kyrgyz Republic;
- In cases and in accordance with legislation of the Kyrgyz Republic to suspend operations with funds or other property in case when at least one of the parties is an organization or an individual in relation to which information has been received on their participation in terrorist financing or laundering of illegally gained proceeds, terrorist activities, or an entity, which is directly or indirectly owned or controlled by such organizations or an individual, or an individual or a legal entity acting on behalf or upon instructions of such organizations;
- To issue within its sphere of competence print information materials, to draft and approve within its sphere of competence methodological materials, programs and recommendations, as well as adopt its own internal acts, regulating the activities of the Service;
- To involve according to the established procedure independent local and international experts to implement various tasks of the Service;
- Execute other authority in accordance with the legislation of the Kyrgyz Republic.

## **VI. ORGANIZATION OF THE ACTIVITY OF THE SERVICE**

10. The Service is headed by the Chairman, who is appointed to his post by the President of the Kyrgyz Republic:

11. The Chairman of the Service shall be personally responsible for implementation of tasks and functions established for the Service. The Chairman shall:

- Directly manage the Service to achieve the established objectives, plan its work, execute control over its implementation, specify duties of the staff of the Service, as well as major directions of activities;
- Submit proposals regarding the Republican budget and the financing of the Service;
- Approve the structure and staffing of the Service within the specified conditions for salaries, salary fund and number of staff;
- Issue Orders on matters, relating to the activities of the Service;
- Have the right to address within the limits of the sphere of activity the relevant Ministers and heads of other executive bodies;
- Organize according to the legislation of the Kyrgyz Republic the hiring of personnel to the Service, their discharge, conclude, change and cancel staff contracts with hired persons;
- Award government service ranks to civil servants according to the legislation;
- Set the rights and functional duties of his Deputies, the rights and functional duties of other officials of the Service in their activities in the area of responsibility of the Service;
- Approve the regulations regarding the Sections and other normative acts on issues, related to the sphere of activity of the Service;
- Make perspective and current planning of work of the Service, control timely and complete implementation of plans;
- Make proposals to the President of the Kyrgyz Republic on improving the work of the Service, including issues of amending the Regulation on the Service and changing the staff numbers;
- Submit to the President of the Kyrgyz Republic and the Government of the Kyrgyz Republic proposals on the drafting and adoption of normative legal acts on issues, relating to the sphere of activities of the Service;
- Take decisions to form task groups on specific actions related to obtaining necessary information;
- Submit to the President of the Kyrgyz Republic reports on the activities of the Service;
- Apply disciplinary penalties and reward the staff of the Service;
- Following the established procedure, recommend specifically outstanding staff of the Service, as well as those of organizations under the Service to be awarded with honorable titles and decorate with state awards of the Kyrgyz Republic;
- Issue Orders and Resolutions mandatory for all staff of the Service;
- Organize for timely implementation of CFT/ML measures as envisaged by legislation and international agreements;
- Create and head a collegial expert council;
- Following the established procedure manage the funds, allocated from the Republican budget for the functioning of the Service and other sources of funding provided for by the legislation of the Kyrgyz Republic;
- Execute other authority in accordance with legislation of the Kyrgyz Republic.

12. The Chairman has two Deputies, including one First Deputy. The First Deputy Chairman and the Deputy Chairman are appointed and discharged from their posts by the President of the Kyrgyz Republic upon the proposal of the Chairman.

13. In the absence of the Chairman his functions are carried out by one of his Deputies.

## **VII. RESPONSIBILITY OF THE STAFF OF THE SERVICE AND THEIR LEGAL PROTECTION**

14. The staff of the Service acts in accordance with their functional duties, as approved by the Chairman of the Service.

15. When executing official duties an employee of the Service is a representative of the state authorities and shall be protected by the state according to the legislation of the Kyrgyz Republic.

16. A failure to fulfill lawful requirements of an employee of the Service and actions preventing from executing his duties shall be subject to liability following the procedure established by legislation;

17. The staff of the Service must not disclose or transfer data on the activities of the Service, access to which is restricted to a certain circle of persons, or other information, which became known to them in the course of their professional duties, except for cases specified in the Kyrgyz legislation.

18. Imposing of other functions on the staff, than those allowed by their functional responsibilities is not allowed.

#### **VIII. FINANCING AND MATERIAL AND TECHNICAL SUPPORT OF THE SERVICE**

19. The building, the movable and immovable property of the Service is state property and is not subject to be revoked from the state or privatized.

20. The activities of the Service shall be financed from the Republican budget of the Kyrgyz Republic and other sources as provided for by the legislation of the Kyrgyz Republic, including grants, donor assistance of international organizations and foreign governments.

#### **IX. REORGANIZATION AND ABOLITION OF THE SERVICE**

21. The reorganization and abolition of the Service is carried out according to the procedure set by the legislation of the Kyrgyz Republic.

## **ANNEX 4: List of key laws, regulations and other material received**

### Constitution and Codes

1. Constitution No. 2 (2007)
2. Civil Code No. 15 (1996, last amendments - 2003)
3. Civil-Procedural Code No. 146 (1999, last amendments - 2005)
4. Administrative Liability Code No. 114 (1998, last amendments - 2006)
5. Customs Code No. 87 (2004)
6. Criminal Executive Code No. 142 (1999, last amendments - 2005)
7. Criminal Procedural Code No. 62 (1999, last amendments - 2005)
8. Criminal Code No. 68 (1997, last amendments - 2006)

### Laws

9. Law on the drug control authority No. 53 (2004)
10. Law on banks and banking activity (1997, last amendments - 2006)
11. Law on banking secrecy No. 122 (2002)
12. Law on fighting terrorism No. 116 (1999)
13. Law on accounting No. 76 (2002)
14. Law on state registration of legal persons No. 39 (1996, last amendments - 2005)
15. Law on precious metals and stones No. 69 (1998, last amendments – by Law No. 61, 2003)
16. Law on credit unions No. 117 (1999)
17. Licensing Law No. 12 (1997, last amendments - 2006)
18. Law on microfinance organizations no. 124 (2002, last amendments - 2005)
19. Law on the National bank No. 59 (1997)
20. Law on non-profit organizations No. 111 (1999)
21. Law on normative legal acts No. 34 (1996, last amendments - 2006)
22. Law on notaries No. 70 (1998, last amendments - 2004)
23. Law on postal communications No. 52 (2001, last amendments - 2003)
24. Law on the postal savings system No. 119 (2004)
25. Law on prosecutorial authorities No. 1341-XII (1993, last amendments 2003)
26. Law on combating terrorism No. 178 (2006)
27. AML/CFT Law No. 135 (2006)
28. Law on the estimated indicator No. 13 (2006)
29. Law on the securities market No. 95 (1998, last amendments - 2006)
30. Law on financial rent (leasing) No. 121 (2002, last amendments - 2005)
31. Law on cooperatives and companies No. 25 (2001, last amendments - 2006)
32. Barrister's Law No. 114 (1999, last amendments - 2004)
33. Law on stock companies No. 64 (2003, last amendments - 2006)
34. Law on gaming No. 95 (2004)
35. Law on operative and investigative activity No. 131 (1998, last amendments - 2004)
36. Law on operations with foreign currency No. 6-1 (1995)
37. Insurance Law No. 96 (1998)
38. Law on electronic and postal communication No. 31 (1998, last amendments - 2005)

### Other normative legal acts

39. NBKR Temporary instruction No. 4/4 (2006)
40. State program for 2003-2008 on introducing a cash-free payment system in the Kyrgyz Republic
41. NBKR direct order No. 9 on internal control in commercial banks (1997)
42. NBRK instruction regarding on-site inspections No. 2/2 (2004)
43. Government Instruction on the movement of goods and automobile transport across the border by natural persons No. 976 (2004, last amendments - 2006)
44. National framework document on combating drug abuse and drug trafficking (2004)

45. NBKR Methodological recommendations on the organization of internal control and internal audit systems in banks and financial-credit institutions, licensed by the NBKR No. 24/1 (2004)
46. FMSRS Regulation on the qualification requirements for the professional participants of the securities market and the framework of qualification tests No. 43 (2002)
47. NBKR Regulation on the licensing of banking activity No. 5/7 (2006)
48. NBKR Regulation on the licensing of credit unions No. 4/6 (2006)
49. NBKR Regulation on measures to be applied to credit unions No. 7/5 (2006)
50. NBKR Resolution on minimal internal control requirements in commercial banks and other financial-credit institutions, licensed by the NBKR for purposes of combating money laundering and financing of terrorism No. 5/9 (2006)
51. NBKR Regulation on licensing procedures of cash currency exchange operations No. 42/2 (2000)
52. NBKR Regulation on the procedures of cash currency exchange operations No. 42/1 (2000)
53. NBKR Regulation on preventive measures and sanctions applied by the NBKR to microfinance organizations No. 16/3 (2005 rev. - 2007)
54. NBKR Regulation on implementing Islamic financial principles in the Kyrgyz Republic as a pilot project No. 32/2 (2006)
55. Government Regulation on the Financial Markets Supervisory and Regulatory Service (approved by Government Resolution No. 551 (2005))
56. Regulation on the Interagency Commission on combating terrorism financing and money laundering (approved by Presidential Decree No. 245 (2006))
57. Regulation on the Ministry of Internal Affairs No. 72 (2001, last amendments - 2006)
58. Regulation on the procedure for registering legal persons by the Justice Ministry authorities No. 180 (2003)
59. Regulation on the Financial Police Service No. 32 (2006)
60. Regulation on the Financial Intelligence Service (Presidential Decree No. 655 (2005))
61. Governmental Regulation on the licensing of various types of business activity No. 260 (2006)
62. FIS Resolution on internal control, mandatory for all reporting entities for AML/CFT purposes No. 15/P (2007)
63. FIS Resolution on the form of reporting information to the Financial Intelligence Service No. 46/P (2006)
64. Regulation on information exchange between the State Tax Inspection, Customs Service and the Financial Police Service of the Kyrgyz Republic (Government Resolution No. 577 (2005))
65. NBKR Resolution on enforcement measures to be applied to banks and other financial-credit institutions licensed by the NBKR No. 16/2 (2006)
66. NBKR Resolution on establishing correspondent banking relationships with banks, registered in offshore states and territories No. 6/8 (2004)
67. NBKR Resolution on establishing requirements in relation to the list of offshore zones
68. Banking sector development strategy until 2008
69. Order of the General Prosecutor's Office, National Security Service, ministry of Internal Affairs, Financial Police, State Customs Service on strengthening efforts to combat economic crime, corruption and smuggling No. 13 (2002)

#### Agreements

70. Agreement between the FIS and DCA (2006)
71. Agreement between the FIS and FMSRS (2006)
72. Agreement between the FIS and DFM of the Republic of Belarus (2006)
73. Agreement between the FIS and the Ministry of Finance (2006)
74. Agreement between the FIS and the NBKR (2006)
75. Agreement between the FIS and the Financial Police (2006)