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EXPERT COMMITTEE ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES

(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON MOLDOVA[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum prepared by
the Secretariat
Directorate General of Human Rights and Legal Affairs (DG-HL)

[1] Adopted by MONEYVAL at its 24th Plenary meeting (Strasbourg, 10-14 September 2007).

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LIST OF ABBREVIATIONS AND ACRONYMS

AML Law	Law on the Prevention and Repression of Money Laundering and the Financing of Terrorism
AML	anti-money laundering
CCCEC	Center for Combating Economic Crimes and Corruption
CC	Criminal Code
CDD	Customer Due Diligence
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code of Moldova
CSCE	Conference on Security and Co-operation in Europe
CTR	Cash transaction report
DNFBPs	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series (since 1 January 2004, CETS - Council of Europe Treaty Series)
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GDP	Gross domestic product
HDI	Human Development Index
IN	Interpretative Note
ISSA	State Inspectorate for the Supervision of the Insurance Industry and Pension Funds
KYC	Know your customer
MDL	Moldovan Leu
ML	Money laundering
NBM	National Bank of Moldova
NBML	Law on the National Bank of Moldova
NSC	National Securities Commission
NGO	Non-governmental organisations
OPCML	Office for Prevention and Control of Money Laundering
OSCE	Organisation for Security and Co-operation in Europe
PEP	Politically exposed person
SC	Security Council
SECI	Southeast Europe Cooperative Initiative
SEM	Stock exchange of Moldova
SIS	Information and Security Service
STRs	Suspicious transactions reports
UN	United Nations

I. INTRODUCTION

1. This evaluation of anti-money laundering (AML) and combating the financing of terrorism (CFT) regime in Moldova was the third conducted by the MONEYVAL Committee and the first in its third evaluation round. The previous evaluation of Moldova was in June 2003 and the report was adopted in July 2004. This third evaluation has been brought forward in the Committee's normal calendar to coincide with the one being carried out by the IMF. The evaluation was based on the Forty Recommendations of 2003 and the nine Special Recommendations on terrorist financing of 2001 of the Financial Action Task Force (FATF). It is also based on the AML/CFT Methodology of 2004. The evaluation draws primarily on legislation, regulations and other documentation supplied by the Moldovan authorities and information gathered during the first evaluation team's visit to the country from 24 to 29 January 2005 and throughout the evaluation process, as well as on additional information supplied during the updating evaluation visit which took place from 6 to 8 December 2006. During the visits, the evaluation teams met officials and representatives of all the relevant governmental and private sector bodies. A list of the organisations and bodies met appears in Annex 1 to the mutual evaluation report.

2. The first evaluation visit was conducted by a team of examiners composed of experts from the MONEYVAL Committee specialising in legal, law enforcement and financial aspects. It comprised Mr N. Fuiorea, Head of the International Relations Service of the Financial Intelligence Unit of Romania (law enforcement evaluator); Mrs C. Mingorance, a judge specialising in criminal cases, Principality of Andorra (legal evaluator); Mr P. Rabczuk, senior inspector in the General Inspectorate of Bank Supervision of the National Bank of Poland (financial expert); and a member of the MONEYVAL secretariat. The updating evaluation visit team comprised Mr Boudewijn Verhelst, Deputy Director of the CTIF/CFI and scientific expert of the MONEYVAL Committee (legal and law enforcement evaluator); Mr Oleksii Berezhny, Head of the AML/CFT Department of the National Bank of Ukraine (financial evaluator) and two members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT legislation regulations, guidelines and other requirements and the regulatory and other systems in place to deter money laundering and the financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBPs). The capacity, implementation and effectiveness of all these systems were also examined.

3. The first evaluation visit took place under difficult conditions. There were gaps in the information received before the visit and discussions were conducted using consecutive interpretation. As a result of the discussions of the MONEYVAL Committee at its 19th Plenary meeting (4 -7 July 2006) on the draft mutual evaluation report, a specific questionnaire was addressed to the Moldovan authorities and an updating mission was carried out in order to supplement the information already gathered during the first evaluation visit. The authorities of Moldova provided on a timely basis the additional information requested and co-operated fully with the MONEYVAL Committee throughout this second phase.

4. The report provides a summary of the AML/CFT measures in place in Moldova at the date of the on-site visit (24 to 29 January 2005) or immediately thereafter. It also takes into account major developments which had occurred by the time of the updating visit (6-8 December 2006), though these have not been considered for the purposes of the rating. The report only covers those parts of Moldova under government control. It describes and analyses these measures and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also indicates Moldova's levels of compliance with the 40+9 FATF Recommendations (see Table 1).

II. EXECUTIVE SUMMARY

1. Background information

1. This report provides a summary of the AML/CFT measures in place in the Republic of Moldova as at the date of the third on-site visit from 24 to 29 January 2005) or immediately thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened and sets out Moldova's levels of compliance with the 40 + 9 FATF Recommendations. The report only covers those parts of Moldova under government control. It also refers to major developments, which had occurred by the time of the updating visit (6-8 December 2006), though these have not been considered for the purposes of the rating.

2. The third round on-site visit took place shortly after the adoption of the second mutual evaluation report (July 2004), leaving Moldova little time to take account of the second round recommendation. The two previous evaluation rounds highlighted a large number of shortcomings and resulted in the application of compliance enhancing procedures in respect of Moldova.

3. The Moldovan authorities strived to address some of these shortcomings through the modification of the existing laws, the adoption of new ones and of implementing legislation and recommendations. The AML law, in force since November 2001, was amended almost every year since, to address a number of changes, particularly in relation to the suspicious transaction reporting regime and the competences of the authorities responsible for AML/CFT matters. Efforts to implement the CFT dimension remained modest but under development. The limited data and information available indicate that the overall requirements in place to prevent and combat money laundering and terrorist financing are generally inadequate to meet relevant international standards and that additional efforts are required to address the concerns regarding the effectiveness of the AML/CFT system in place.

4. The main sources of illegal income are considered to be generated through drug trafficking, smuggling (tobacco, petroleum products, alcohol), tax evasion, corruption and trafficking in human beings. The gross quantities and sums of money represented by these offences remained surprisingly stable during the period 2001-2005, and it is not possible to speak of trends.

5. There is limited information available and no consensus on the most commonly used money laundering methods and techniques as well as on which sectors are vulnerable to laundering.

6. Moldova is perceived by the authorities as a low risk for terrorist financing and, as regards the financing of international terrorism, no assets of terrorist groups or terrorist have been found in Moldova so far.

2. Legal system and related institutional measures

7. The money laundering offence was introduced in September 2002 and was subsequently repealed with the entry into force of a new Criminal Code on 12 June 2003. The provision which is now in force - article 243 of the Criminal Code – adequately reflects the moral and material elements required by international standards. All designated predicate offences are covered in the Criminal Code, except for the offence of insider dealing (penalised since 24/11/2006). Penalties, which apply to both natural and legal persons, are in line with international practices; however the scope of corporate criminal liability is limited to commercial legal entities. The current legal basis could serve as an adequate tool to combat money laundering if further refined and clarified (for instance as regards the level of proof of the predicate offence, self laundering, foreign predicate offences, etc). The limited data on the number of cases investigated and cases brought to court (on the basis of the old or new ML offence) and the absence of convictions achieved indicate a lack of effective implementation and that serious efforts need to be made to increase the effectiveness of the system, particularly in the judiciary phase.

8. Article 279 of the Criminal Code on "financing of and materials support for terrorist acts" covers both domestic and international terrorism. The TF offence however does not currently cover the financing of terrorists and terrorist organisations, unrelated to the actual perpetration, attempt or preparation of terrorist activities. The absence of case law prohibits any substantiated assessment of the effectiveness and implementation of the provision. In terms of dissuasiveness however, the penalties are adequately severe. Legal persons cannot be held liable for terrorist financing.

9. Provisional measures and confiscation are provided for in the newly adopted Criminal Procedure Code, which entered into force in June 2003. As the statistics indicate the authorities still make insufficient use of the new provisions enabling to seize, freeze and confiscate. Also, the power to suspend transactions where there is a risk of laundering (both under the AML Law and under the Act on the CCCEC) was hardly used. A number of deficiencies still need to be addressed such as providing unequivocally for the confiscation of the body of the offence, both in (stand alone) money laundering and in terrorist financing cases; further addressing the full protection of the interests of the bona fide third party in confiscation matters; raising the awareness of the law enforcement and judiciary authorities to make full use of these provisions and taking measures to solve practical problems arising from the application of provisional measures.

10. At the time of the on-site visit, very limited action had been taken to ensure compliance with the UN Security Council resolutions and, despite several measures taken in the course of 2006, the legal structure for the implementation of the UN Resolutions remained incomplete. Almost none of the requirements of SR. III are fulfilled.

11. Articles 7 and 9 of the AML Law provide that the Centre for Combating Economic Crimes and Corruption (CCCEC) has the overall responsibility for the enforcement of the law, for the co-ordination of activities conducted by the AML/CFT authorities, as well as for international co-operation in this field. In 2003, the Office for Prevention

and Control of Money Laundering (OPCML), a specialised section of the CCCEC, took over the function of Financial Intelligence Unit, which was exercised since November 2001 by a special section of the Public Prosecutor's Office. The OPCML was officially established on 15 September 2003 and has a staff of 10 permanent officials. At the time of the on-site visit, the OPCML did not have a computer system for electronically analysing and recording statements; it relied heavily on the logistic support of other CCCEC services. Statistics were difficult to produce in real time. No periodical/ annual reports were elaborated and published with statistics, typologies and trends. Supervisory powers of the CCCEC/ OPCML under the AML Law are not clearly defined. Though meanwhile the OPCML has been delegated, through orders of the Director of the CCCEC, additional powers and responsibilities, the evaluation team considers that the FIU's structure, powers, organisation, human and technical resources raise serious concerns and need reviewing.

12. Several authorities have responsibilities in the field of investigation and prosecution of money laundering and the financing of terrorism offences, namely the CCCEC, the Ministry of Internal Affairs, the Information and Security Service (SIS), the Prosecutor's Office. The CCCEC investigates laundering cases uncovered as part of its own inquiries into predicate offences and may place an important role in ML offences launched by the Police. The Ministry of Internal Affairs and the SIS mainly retain responsibility for terrorist financing cases. The Prosecutor's Office directs and supervises criminal investigations carried out by the law enforcement agencies and has exclusive responsibility for investigating money laundering cases committed by specific categories of persons (president, members of Parliament, members of Government, judges, prosecutors, generals, criminal prosecution officers). Adequate powers are available to the law enforcement to conduct searches, hear witnesses, seize documents and perform all the typical investigative activities aimed at collecting evidence and tracing criminal assets. Financial information held by the financial institutions is also accessible through the intervention of the judiciary authorities and no particular difficulties were voiced in the use of the above-mentioned powers. However, there was little information and data available to assess the efficiency of the ML/FT investigation and prosecution process.

3. Preventive measures – Financial institutions

13. The preventive side of the AML/CFT system is based on the AML Law, which defines the "organisations which perform financial transactions" that are subject to AML/CFT obligations and the Recommendations of the National Bank of Moldova (NBM) on developing programs on prevention and combat of money laundering and the financing of terrorism, applicable to the banking sector and other entities licensed by the NBM. It is to be pointed out that the examiners have a reservation about the legal status of the latter. The Moldovan authorities indicated that this text is of a legal mandatory nature, it was published in the Official Journal and is said to be sanctionable and sanctioned in practice. However, the evaluators are not convinced that the NBM Recommendations qualify as "other enforceable means" as provided for by the Methodology, in the absence of a clear legal basis for sanctions to be issued under them.

14. The AML law lists the following financial institutions: banks, subsidiaries of foreign banks, peoples savings and loans associations, bureaux de change, the stock exchange of Moldova, professional participants on the securities market (independent recorders, brokerage companies, investment funds, underwriting companies, fiduciary administrators, depositories of investment funds, audit companies, dealers, self regulatory organisations), insurance companies.

15. Overall, the preventive system regarding customer due diligence is insufficient and not in line with international standards. Major changes are required, either by amending the AML law and sector-specific regulations or by adopting new legislation and by-laws to ensure that the following mechanisms are adequately provided for: identification of beneficial owner, know your customer policies, on-going due diligence in respect of the business relationship, enhanced due diligence mechanisms for specific high-risk customers (including PEPs), modalities for the verification of identification, etc.

16. The AML law addresses only a small part of the FATF requirements and most steps are required to fully comply with the basic requirements of Recommendations 5 to 8. Anonymous accounts and accounts in fictitious names are explicitly prohibited. The legal requirements in the AML Law cover explicitly only simple identification at account opening and the requirement for a CDD process, including verification, is not clearly provided for. There are no requirements in the AML law or regulation to verify the customer's identify using reliable, independent source documents, data or information.

17. Regarding the identification of the beneficial owner, neither the AML law nor the NBM regulations or any other normative acts contain a definition of "beneficial owner" within the meaning of the FATF Recommendations. As a consequence, there are no legal requirements to take reasonable measures to determine the natural persons who ultimately own or control the customer or the person on whose behalf transactions or services are provided for by financial institutions, nor to understand the ownership and control structure of the customer.

18. Similarly, there is no clear provision found, of a general application, which requires financial institutions, with the exception of banks, to inquire of all clients the purpose and intended nature of the business relationship. The notion of on-going due diligence is insufficiently embedded in law or regulation. Also, there is no specific requirement of general application for financial institutions across the whole financial sector to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

19. There are no general legal or regulatory provisions applicable to the entire financial and non-financial sector covering the requirements of Recommendation 6 on politically exposed persons.

20. The AML Law is silent on the issue of correspondent banking relationships and the references to this issue in the NBM's regulations and recommendations do not address the requirements of Recommendation 7.

21. Moldova has not implemented Recommendation 8 through enforceable means. Despite the existence of a general requirement for banks to have internal measures needed to address the risks related to information technologies, there are no specific policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions.

22. The provisions of the AML law on bank secrecy are generally satisfactory and no practical problems to obtain information from financial institutions were reported in practice, so long as the information and documents were in fact available.

23. Moldova's record-keeping requirements are generally not satisfactory. The provisions of the AML law do not cover the entire transactions carried out by financial institutions but exclusively those regarding suspicious and limited transactions. Also, there is no clear specific legal requirement on the financial institutions to ensure that information on customers and on all customer and transaction records are available on a timely basis to competent authorities. Legislative changes are required to address issues relevant to compliance with most requirements of SR.VII.

24. The current requirements to pay special attention to all complex and unusual large transactions, or unusual patters of transactions that have no apparent or visible economic or lawful purpose do not adequately meet the FATF standards. Also, there are no enforceable obligations to examine transactions with persons from countries that do not or insufficiently apply FATF recommendations, with no apparent economic or visible lawful purpose, and to make written findings available to assist competent authorities nor any mechanism to apply counter-measures apart from the automatic suspicious transaction reporting.

25. Moldova has put in place a reporting system. The AML law requires the institutions concerned to report transactions likely to be linked to money laundering and, since December 2004, suspicious transactions related to terrorism, although the latter's formulation is rather restrictive. A fully comprehensive provision should be introduced by law or regulation requiring financial institutions to report to the FIU whenever they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism, in line with SRIV. The attempted transactions are not reported.

26. Transaction reporting calls for specific forms for each sector or profession concerned and the CCCEC is responsible for elaborating and distributing them, thus officially indicating that the institutions concerned are required in practice to report transactions. At the time of the first visit (January 2005), such forms existed for banks, bureaux de change, insurance companies, intermediaries in the securities market and notaries.

27. In general the overall reporting system performance is fairly ineffective: the thresholds for reporting transactions had to be revised as it was leading to an excessive number of reports, also few suspicious transactions reports were made outside the banking sector, and the overall figures remained very low. The FIU does not appear to have a policy on feedback. The CCCEC and the supervisory authorities have not yet and should be authorised to provide guidance to the reporting institutions to assist in improving the

quality of STRs submitted. The issue of sanctions in the AML Law in case of non-compliance with the prohibition of tipping off also needs clarifying.

28. The import and export of currency and cheques above a threshold of the equivalent of 10.000 € is subject to mandatory declaration to the Customs. The obligation does not extend to other bearer negotiable instruments. Violations of the rules are dealt with by the Customs, who interact with the CCCEC on suspicious transportations. They however do not really focus on the detection of criminal assets crossing the border.

29. As regards internal controls, the situation in banks and bureaux de change is fairly satisfactory. In the other financial sectors, the implementation of the requirements is not evidenced by available information. Moldovan financial institutions do not have branches abroad.

30. The establishment of shell banks is not permitted by the Moldovan legislation. However, there are no requirements, in law, regulation or other enforceable means which oblige financial institutions to discontinue existing correspondent banking relationships with shell banks, if any. Also, there is no obligation on financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

31. Moldova's supervisory and oversight system is fairly complex and raised serious concerns regarding the allocation of powers and responsibilities among competent authorities. The AML Law refers to "authorities controlling the legitimacy of operations conducted by the financial institutions". In practice, the FIU carries out onsite inspections and relies also on checks carried out by the sectoral supervisory authorities. The latter are not listed or named specifically in the AML Law. The information available did not permit to conclude that the securities and the insurance sector's supervisory bodies are sufficiently vigilant in monitoring all the relevant AML obligations. Moldova should thus address the various shortcoming in the field of supervision and monitoring of the whole financial sector, in particular the explicit designation of the supervisory bodies, the need for adequate powers to monitor and ensure compliance, to ensure full coverage of AML/CFT aspects in inspections in the whole financial sector, to put in place supervisor programmes for AML/CFT purposes with proper inspection procedures. Also better statistical data should be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed.

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

32. A range of Designated Non Financial Businesses and Professions, are listed in the AML law: trusts (though it seems that there are none in Moldova and it was explained that these are fiduciary companies performing the function of professional participants on the securities market), agencies providing legal assistance – in practice lawyers, agencies providing notarial assistance, agencies providing accounting assistance, agencies providing financial and banking assistance, pawnbrokers, casinos, clubs with gambling equipment and other institutions which organise and set up lotteries and

games of chance, and any other natural or legal person which concludes transactions outside of the financial – banking sector.

33. The main deficiencies that apply in the implementation of the AML/CFT preventive measures applicable to financial institutions apply also to the DNFBPs. Moldova has not yet and should implement Recommendations 5, 6 and 8 fully. Also, the requirements under the Moldovan legislation do not comply fully with the requirements set out in Recommendations 11 and 21 regarding the monitoring of transactions and the vigilance regarding business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations nor to business relationships with a PEP.

34. At the time of the visit, the only specific form for DNFPBs was for notaries and forms were being elaborated for casinos and pawnbrokers. Additional measures are required to ensure that all DNFPBs comply with their reporting obligations and more outreach and guidance should be developed for all DNFBPs. The requirements regarding internal controls, compliance and audit (R. 16) were not implemented. In practice, DNFPBs did not appear to be adequately supervised and monitored for AML/CFT purposes.

35. Although DNFBPs are covered by the AML law, overall there are major concerns regarding the level of implementation of effective AML/CFT measures by the non-financial businesses and professions and their level of awareness and commitment. Moldova should urgently address this issue. Efforts are needed to be made to raise the AML/CFT awareness within the non-financial sector, especially through sectoral and practical guidelines.

5. Legal persons and Arrangements & Non-Profit Organisations

36. There are several types of legal persons in Moldova: commercial companies, co-operatives, State and municipal enterprises and non-commercial organisations.

37. Registration of all legal entities has been greatly modernised with the creation, in 2001, of the State Registration Chamber in the Department of Information Technology, and the introduction of computerised central registers of natural and legal persons to which relevant administrative departments and agencies (including the supervisory and monitoring bodies and the CCCEC) have timely access.

38. The main weaknesses observed derive from the fact that the State Registration Chamber and the Licensing Chamber perform to a certain extent a verification of investors' histories on the basis of the information available to them (Interpol, the Moldovan police), but they lack the means to check the origin of funds, especially in cases of increases in capital, where the Registration Chamber is concerned. Moreover, account auditing obligations are limited (they apply only to a few financial firms such as banks).

39. There are three legal forms in which non-commercial organisations can operate in Moldova: associations, foundations and institutions. The Ministry of Justice is currently in charge of registering the public and philanthropic associations and exercises the

control over the compliance of the association's activities with the purpose and the provision in its statutes. The Service of Cults under the Government registers religious associations. The financial and fiscal authorities exercise the control over the course of income, expenditure, payment of taxes and other financial activities and the Prosecutor's Offices supervise the compliance of public associations' activities with the Constitution and existing legislation in force. The CCCEC has the authority, under the Act on the CCCEC, to perform specialised audits for public associations and foundations aimed at detecting misuse of collected funds under their control.

40. Moldova has not carried out a comprehensive formal review of the laws and regulations that relate to NPOs that could be abused for the financing of terrorism, nor any analysis of the TF threats posed by this sector. No information was provided with regard to effective supervision or monitoring of the NPOs. As regards the specific investigative and information gathering approaches, as well as special procedures to respond to international requests related to NPOs, no measures are in place.

41. Moldova should implement adequate measures in line with the international requirements regarding legal persons, arrangements and non-profit organisations.

6. National and International Co-operation

42. There are a number of inter-institutional agreements and working parties in place in Moldova. However, the differences of opinion and lack of precision frequently observed during the visit suggested that there is still room for improvement as regards co-operation and co-ordination mechanisms. Dialogue with the non-banking private sector should also be developed rapidly.

43. Moldova ratified the Vienna Convention on 15 December 1995 and the Palermo Convention after the on-site visit. The International Convention for the Suppression of the Financing of Terrorism was ratified in 2002, with two declarations. Certain aspects of the ML and FT offences, as well as the scope and application of the provisions regarding provisional measures and confiscation need to be addressed in order to ensure an effective implementation of the international Conventions. The implementation of UN resolutions 1267 and 1373 is deficient.

44. As regards mutual legal assistance, there are no indications of the existence of legal obstacles jeopardising the system, nor of particular problems with the execution of requests. The legal grounds for refusal are founded and no specific problems or undue obstacles have been reported. In theory, there are still the domestic weaknesses already observed such as the controversy on the use of special investigation methods in mutual assistance procedures and the absence of full corporate criminal liability.

45. Moldova has ratified the Council of Europe Convention on Extradition and its two protocols. Extradition is based in accordance with bilateral and multilateral treaties to which Moldova is a Party or on the basis of reciprocity where such an agreement does not exist. There are no reports of unreasonable delays in the procedure. The extradition system does not seem to pose problems though the lack of detailed statistical

information makes it difficult to ascertain fully how the system works, whether or not in the AML/CFT context.

46. As for other forms of international co-operation, gaps in the framework enabling financial supervisory bodies to exchange information and cooperate with foreign counterparts need to be addressed. As part of the reinforcement of its organisational autonomy, the OPCML should also be able to exchange information directly with its foreign counterparts and if possible, have the power to enter into agreements directly for this purpose.

7. Other issues

47. The report raises a number of serious concerns regarding the inadequacy of the legal AML/CFT requirements to combat money laundering and terrorist financing with the FATF standards and the effectiveness of the AML/CFT system in place. This calls for a concerned and clearly co-ordinated national strategy on AML/CFT matters, involving all the different supervisory and monitoring authorities and agencies, and as far as possible, the private sector.

48. Stepping up the effort against corruption should also remain a priority, in particular on the part of the various authorities and supervisory bodies involved in efforts to tackle money laundering and the financing of terrorism.

III. MUTUAL EVALUATION REPORT

1 GENERAL INFORMATION

1.1 General information on the Republic of Moldova and its economy

1. The Republic of Moldova is located in south-eastern Europe, bordered by Ukraine to the north and west and Romania to the south and east. With Romania's accession to the European Union (EU) in January 2007, Moldova became part of the EU' Eastern border. It has a land area of 33 800 km^2 and a population of 4.205.747 in 2005. Moldova was ranked 115^{th} in the 2005 Human Development Report, with a Human Development Index (HDI) value of 0.733, an adult literacy rate of 99.1% and life expectancy at birth of 67.8 years. The national currency is the Moldovan Leu (MDL), EUR 1 was equal to approximately MDL 15 at the time of the first on-site visit.

2. Moldova is a parliamentary republic and a unitary state, which gained its independence from the Soviet Union on 27 August 1991. It adopted a new Constitution on 29 July 1994 (in force 27 August 1994), which replaced the old Soviet constitution of 1979 and established a system of governance that is a compromise between a presidential and prime-ministerial system. The Constitution provides that the Parliament is the supreme representative organ and the single legislative authority of the State. The Parliament is unicameral, comprising 101 members elected by universal suffrage. The President is directly elected by the Parliament for a four-year term and is eligible for re-election. He is both the Head of State and the Commander-in-chief of the armed forces. His legislative and executive powers include the right to initiate legislation, promulgate legislative acts and regulations, conduct negotiations and conclude international treaties in the name of the country. The Government consists of a prime-minister, vice prime-ministers, ministers, and other members. It is responsible for proposing and implementing the domestic and foreign policy of the state and for exercising control over public administration.

3. In January 1992, Moldova became a member state of the CSCE (OSCE after 1995) and was also admitted to the United Nations in March of the same year. It joined the Council of Europe on 13 July 1995. Its relations with the European Union are based on a Partnership and Cooperation Agreement (in force since July 1998) and on the European Neighbourhood Policy, which is implemented through the EU-Moldova Action Plan (adopted in February 2005 for a timeframe of 3 years).

4. Moldova's legislative acts comprise the Constitution at the top of the hierarchy, constitutional laws, organic laws and ordinary laws. International treaties and conventions regarding human rights to which Moldova is a party overrule its national laws, pursuant to article 4 of the Constitution. Sub-statutory normative acts include decrees issued by the President of the Republic of Moldova, Government's decisions and orders, and other normative acts of state agencies. These normative acts acquire legal effect and are considered official only after they are published in the Official

Monitor of the Republic of Moldova. They take effect either on their publication date or on the date mentioned in the text.

5. The Moldovan legal system has been categorised as a legal system in the civil law family, mixed with Germanic features. Since 2003, the judicial system is divided into three branches: ordinary courts (46 district and municipal courts), Courts of Appeal (5) and the Supreme Court. The Supreme Court is the highest court in the judicial system, acting as a court of cassation and performing extraordinary review of judicial decisions. It also exercises jurisdiction as a first instance court in certain cases, mainly criminal cases against high officials and judges. There are also specialised courts which have jurisdiction over limited categories of cases (Economic Court of Appeal, Circuit Economic Court, Military Court). Most judges (municipal/district courts, courts of appeals, economic and military courts) are appointed by the President, on the proposal of the Superior Council of Magistracy. Judges who pass the entrance exam are initially appointed for a five-year term, after which they may be reappointed until the mandatory retirement age (65 years). The judges of the Supreme Court of Justice are appointed by the Parliament, on the proposal of the Superior Council of Magistracy.

6. The Constitutional Court, which was created in 1995, is formally outside the judiciary. Upon request, the Constitutional Court interprets the Constitution and rules on the constitutionality of the Parliament's laws and decisions, the decrees of the President of the Republic of Moldova and the acts of the Government. It issues advisory opinions, decisions and delivers judgments which are final.

7. Both the Constitution and the Law on the Court System of 1995 provide that the judicial system must be independent of the executive and the legislative branches. The reform of the judiciary remains a priority of the Moldovan government, in particular as regards increasing the independence of judges and prosecutors, ensuring access to justice and enforcing court decisions.

8. The public administration comprises central and local administrations. According to the Law no. 764-XV of 27 December 2001 on the administrative and geographical organisation of the Republic, the territory of Moldova is divided into 32 counties ("raioane"), 3 municipalities and 2 territorial entities, one of which is autonomous.

9. As noted in the previous report, Moldova exercises no authority over a part of its territory to the east of the River Dniestr/Nistru, which seceded in 1991 and has subsequently established its own institutions, including a constitution, parliament, president, army, customs, though these have not been recognised by the international community. In spite of Transnistria's small size (12% of the territory and 17% of the population), most Moldovan industry is located in that region. After the end of hostilities, the 1992 agreements under international auspices stipulated freedom of movement of persons, goods and capital. Following a period of uncertainty, so-called "flying customs officials" operated in the territory controlled by the Moldovan authorities, but these have now been abolished. However, Transnistria has imposed significant and dissuasive import taxes. Several persons to whom the evaluation team spoke said that the Transnistria problem continued to encourage criminal activities based in or transiting through the region, particularly smuggling and trafficking. This

renders Moldova vulnerable to smuggling from an area with which there is no frontier for the purposes of capital and goods of doubtful origin. The country's anti-money laundering system does not apply to Transnistria, which makes the latter's banks (several of which were unlicensed at the time of the first on-site visit) and other institutions vulnerable to laundering activities. The National Bank of Moldova has taken energetic measures since 2002 to inform other countries - bank supervisory and anti-laundering institutions, and non-banking institutions providing bank transfer services – of the situation and has requested on a number of occasions the cessation of banking relations with Transnistria. Certain banks in Austria, the Netherlands and Russia still maintained relations at the time of the first on-site visit, despite regular letters from the National Bank and allegations that criminal funds formed part of regular transfers to and from Transnistria[2]. Moldova has since asked for international support to resolve this problem and inform international opinion of the danger.

10. Moldova is a low-income country with a gross national income per capita of $ 880 in 2005 (GNI Atlas method, 2005). Moldova's transition to a market economy system was marked by a particularly prolonged and deep recession. It has often been cited as the poorest country in Europe[3], though the economy has started to grow in recent years. The country recorded its sixth consecutive year of positive GDP growth in 2005, with year-end real GDP growth of 7.1%. The Moldovan economy continues to rely greatly on remittances sent from Moldovans working abroad. According to official statistics of the National Bank of Moldova (NBM), the overall level in 2005 is estimated at US$ 900 million which represents close to 30% of Moldovan GDP. The national poverty rate has dropped from 73% in 1999 to 29% in 2005. The unemployment rate amounted to 7.3% in 2005. The country remains to a large extent a cash based economy.

11. Moldova's social-economic indicators are as follows:

Social-economic indicators	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**
GDP growth rate, %	2.1	6.1	7.8	6.3	7.3	7.1
Unemployment rate, %	8.5	7.3	6.8	7.9	8.1	7.3
Inflation rate, end of year, %	18.4	6.3	4.4	15.7	12.5	10.0
Poverty incidence, % national poverty line	67.8	54.6	40.4	29.0	26.5	29.1
Work remittances, % of GDP	13.8	16.4	19.4	24.2	27.0	30.6
Annual inflow of foreign direct investment, % of GDP	9.8	6.9	8.0	4.0	5.5	7.0

Source: 2006 National Human Development Report

12. Moldova's economic situation may go some way to explain the scale of corruption. In the Corruption Perceptions Index published by Transparency International, Moldova was ranked 88th (scoring 2.9 out of 10) in 2005 and 79th (scoring 3.2 out of 10) in 2006.

[2] Information was provided that since then, the relevant Austrian and Dutch financial institutions had terminated these relations.

[3] For information, the average monthly wage of an employee in the national economy in 2005 amounted to MDL 1318.7 (approx. € 87). Source: Annual Report of the National Bank of Moldova, 2005.

Moldova has been a member of the Group of States against Corruption (GRECO) since 28 June 2001. It ratified the Council of Europe Criminal Law Convention on Corruption in January 2004 and the Civil Law Convention on Corruption in March 2004. It signed the United Nations Convention against Corruption on 28 September 2004. A series of national measures have been taken by the Government to address this problem:

- adoption of an anti-corruption law in June 1996;
- in 1999, adoption of a national programme to combat crime, corruption and nepotism over the period 1999-2002 (followed by a similar programme for the period 2003-2005);
- set up of specialist anti-corruption sections in the police and prosecutor's office;
- in 2001, establishment of an anti-corruption co-ordination council responsible to the President;
- in 2002, establishment of the Centre for Combating Economic Crimes and Corruption (CCCEC), a special section of which acts as the Financial Intelligence Unit;
- in 2002, adoption of the Act no. 1264-XV on the Declaration and Monitoring of the Income and Assets of State Dignitaries, Judges, prosecutors, Public servants and certain Persons holding Managerial Positions.
- in 2004, adoption of a National Strategy for Prevention and Combating of Corruption in the Republic of Moldova (Decision of Parliament no. 421-XV of 16th December 2004), followed by three consecutive Actions Plans to implement the Strategy (2005, 2006, 2007-2009).

13. The Moldova section of Transparency International and the CCCEC have done much to document the extent of corruption. An internal memorandum on the CCCEC's 2004 activities presented to the first evaluation team onsite shows that it had launched 654 criminal actions, more than half of which (369 cases) concerned corruption. It should be stressed that Moldova defines corruption very broadly, which is to be welcomed. It is not confined to giving or receiving bribes but also includes misappropriation of assets, misuse and abuse of authority, negligence in the exercise of public duties, forging public documents and so on. Of 515 cases terminated by the CCCEC since its inception in 2002, 249 were passed to the judicial authorities and 253 were discontinued because the time-limit had been exceeded or on account of an amnesty (particularly in connection with the coming into force in 2003 of the new Criminal Code). The International Crime Department of the Police dealt with 245 corruption cases in 2004 (including 40 concerning the customs) within its area of responsibility that is linked to international crime.

14. Nevertheless, Moldova's efforts continue to be undermined by organisational problems. Several of the departments visited by the first evaluation team suffered from a lack of resources. Moreover, the first director of the CCCEC had had to be replaced in April 2004 for reasons that the first evaluation team was unable to determine[4].

[4]They were told after the visit that the Government had held the director responsible for his inability to settle a problem connected with the underground economy and the importation of cereals.

15. The first evaluation team found that the AML/CFT culture was not yet well developed in the institutions and bodies covered by the relevant preventive provisions, with the exception of the banking system. Some of the persons met on site found it difficult to express an opinion on these subjects.

16. The anti-money laundering legislation dated from November 2001 and various significant changes might have impeded the development of such a culture. The provisions criminalising money laundering were introduced only in September 2002 and were modified shortly after the new Criminal Code came into force in June 2003. In November 2001 a special section of the Public Prosecutor's Office took on the role of financial intelligence unit but this function was transferred in May 2003 to the CCCEC, which established a special department for that purpose. The Prosecutor's Office therefore had very little time to establish its credibility, to develop relations with the institutions/agencies covered by the AML legislation and to make them aware of their obligations. Some continuity was provided by the fact that the prosecutor's section already benefited from the support of staff seconded by the CCCEC, which took over cases already under way.

17. Of all the entities covered by the legislation, the banking sector is currently the most affected by AML/CFT issues. Under special regulations dating from 1996, the banks have had a duty to report suspicious transactions (even though the legislation was not applied in practice, as the second cycle report emphasised). Also, certain categories of the entities covered by the anti-money laundering legislation did not appear to be really concerned by it in practice, pending the issuing of "instructions" by the CCCEC. As long as the authority responsible for AML activities has not issued special instructions making the legislation applicable to a specific sector nor the specific form for reporting transactions, that sector is deemed not to be covered. At the time of the visit, forms existed for banks, solicitors/notaries, *bureaux de change* (including ones in hotels), insurance companies and intermediaries in the securities market.

18. The lack of material resources continues to have a major effect on the development of an AML/CFT culture. Apart from the AML Law and regulations mainly emanating from the National Bank, the only publication available is a practical guide on suspicious transactions produced by the CCCEC in 2004 upon the initiative of its anti-money laundering office. The guide describes money laundering, the applicable legislation and the FATF Recommendations, explains the "know your customer" principle and publishes a list of indicators of suspicious transactions. These mainly concern the financial sector, though also, to a lesser extent, the non-financial sector. The publication was made possible with international financial support.

19. In recent years various steps have been taken to increase transparency but once again financial resources are a crucial element in any attempt to ensure the visibility and transparency of the authorities' activities. The measures already mentioned in the previous mutual evaluation report included the establishment, in 1999, of a licensing authority and its near monopoly since late 2001 in respect of the issuing of licences, using objective and transparent criteria. These apply to 37 types of activity and have helped put an end to certain opportunities for corruption and cronyism, such as those which occurred when various authorities and ministries exercised these competences.

Since 2000, the newly created Information Technology Department [5] has been responsible for the registration of legal persons and the production of official documents, such as identity documents, as well as for the management of other ministries' data bases, for example customs data on persons entering and leaving Moldovan territory, the Ministry of Internal Affairs' record of Moldovan registered vehicles and the state tax authority's register of taxes paid.

20. Transparency within the judicial system remains a crucial issue. The courts are considered to be vulnerable to corruption, though there are other connected problems, such as shortage of resources and premises (some civil and – less and less frequently - criminal hearings are held in the judge's office[6]), hearings are not always notified, the Judicial Services Commission is apparently inoperative, and so on. An NGO, established in 2000, the Centre for the Analysis and Prevention of Corruption (www.capc.md), which is particularly concerned with judicial activities and transparency.

21. In 2002, Moldova revised its system for recruiting public officials to make it more objective and ensure that the applicants had no criminal record. Codes of conduct have been put in place for judges and prosecutors (since 2000), accountants and auditors (adopted in March 2001, in force in January 2002), lawyers (20 December 2002) and the police (since 2003 and subsequently in May 2006).

22. In the context of transparency, the first evaluation team had a number of difficulties in obtaining information, including on laundering and sectors at risk.

1.2 General situation regarding money laundering and the financing of terrorism

23. The first evaluation team found it difficult to obtain a clear picture of the scale of the money laundering problem in Moldova, its characteristics and trends.

24. It appears that money laundering is widespread, as are crimes that typically generate proceeds, such as smuggling of goods and persons, fraud, tax evasion and corruption.

25. The following information was supplied in the questionnaire:

- Under the new powers and responsibilities granted to it by the AML Law, the CCCEC examined 1031 "suspicious cases" in 2003 and 1804 in the first nine months of 2004. This is more or less the number of suspicious transactions recorded in the table in section 3.7.1, not including reports relating to Transnistria. 86% of the transactions carried out by natural persons and reported as suspicious are cash transactions.

[5] It has been reorganised within the Ministry of Information Development.

[6] Three or four years ago it was rumoured that persons could purchase their freedom in the judge's office, at a cost of € 1 000 per year of the term of imprisonment to which they were liable.

- 4 criminal prosecutions for money laundering were launched in the same period, involving an estimated MDL 5 million (more than €330 000).

- 11 laundering investigations were also initiated on the basis of related offences.

- The laundering methods used appear to vary. In particular, they were said to involve ghost or fictitious companies, with no real activity. Such methods have evolved since the introduction of the AML law of 2001. The list of at-risk sectors and the perceived size of the risks also appear to vary.

26. In the absence of detailed information, the first evaluation team raised questions onsite. It was indicated to them that money laundering did not have any particular characteristics in Moldova. The CCCEC's analysis and forecasting department, which was presented as being responsible for analysing the main trends in laundering, informed the team that laundering was carried out using cash transactions, international transfers (for the purposes of concealment), bank card forgery and off-shore companies operating in Moldova, including ones with Moldovan beneficiaries. In 2004, seven such companies were prohibited from operating in Moldova. The examiners were also informed that in 2002-2003, 130 criminal investigations were opened into persons with interests in such so-called ghost companies. This has also led to the introduction of "pseudo-entrepreneurial activity" as a criminal offence in the Moldovan Criminal Code. In 2004, the CCCEC conducted a number of field operations, as a result of which it identified 750 accounts belonging to such companies. This led to confiscations (MDL 5 millions), the identification of two criminal organisations which were using these companies to launder their funds and two criminal investigations, one of which has come before the courts.

27. Turning to other sectors and techniques, the team was told that the property sector represented a moderate risk, and that the reinvestment of criminal proceeds into legitimate commercial undertakings did occur but was marginal compared to the use of off-shore and ghost companies.

28. The customs service thought that credit transfers and credit cards were being used increasingly for the international transfer of the proceeds of crime.

29. The Ministry of Finance, via its inspectorate responsible for supervising the insurance industry and pension funds, considered that since 1999-2000, given the fact that insurance companies work with non-residents, there has been reason to suspect a number of criminal activities. There did not seem to have been any studies carried out (at least to the inspectorate's knowledge), despite the apparent risk that in the field of offshore reinsurance, Moldovan insurers could become "transit insurers". It was acknowledged that many operations in this area had been deliberately split up to avoid the declaration obligation under the rules governing maximum permissible undeclared transactions. The new and higher ceilings should avoid the need for some of this in future. The CCCEC has also started several investigations in the insurance and

reinsurance sectors that it has not been able to complete because of lack of co-operation from equivalent departments in other countries.

30. The following data provide an overview of serious offences recorded in Moldova and the scale of the illegal proceeds/profits for categories of offences considered to be the main sources of criminal income.

Number of recorded cases				
Year	***Drug sales***	***Smuggling***	***Tax evasion***	***Trafficking in human beings***
2000	1427	132	119	
2001	1556	115	103	23
2002	2140	76	100	28
2003	2099	91	111	25
2004	2113	104	114	52
2005	2106	579	125	246
2006	2101	611	142	248

Quantities and amounts concerned (in MDL)					
Year	***Drugs***	***Tobacco smuggling (MDL millions)***	***Smuggling of petroleum products (MDL millions)***	***Alcohol smuggling (MDL millions)***	***Tax evasion (MDL millions)***
2001	1031 g	53	63	28	139
2002	1 070 g	49	58	33	148
2003	1 200 g	47	61	30.5	141
2004	1 119 g	49	65	31	143
2005	1038	43.5	57	29	145
2006	1011	41	52	23	143

31. The figures on the number of offences and the sums involved are surprisingly constant. This may reflect the persistence of certain problems despite the authorities' efforts and the difficulty the latter experience in dealing with these problems. This may also be a consequence of the situation in Transnistria.

32. With regard to CFT activities, immediately after the 11th September terrorist attacks, Moldova responded rapidly to the need for checks on possible sources of terrorist funding. On 27 September 2001, after considering a report by the director of the Information and and Security Service, the Parliament decided that Moldova should join international anti-terrorist efforts, including measures to counter terrorist financing. In particular, it resolved to introduce the necessary legal reforms, strengthen the protection of its vital installations and surveillance of its frontiers, and call on its media not to contribute to xenophobia and encourage discrimination. In December 2001, the

relevant organs of the Ministry of Finance, in conjunction with the Ministry of Foreign Affairs, concluded that no terrorist funds or financial transactions had been observed in Moldova. Relevant responsibilities for preventive and enforcement activities were allocated (see the extract from the minutes of the meeting on 4 December 2001 in Annex III). In October 2001, the Parliament adopted Law no. 539-XV on fighting against terrorism. A number of significant steps were taken to amend the legislation. Article 279 of the 2003 Criminal Code makes terrorist financing a criminal offence and the AML legislation was amended on 24 December 2004 to extend its scope to terrorist financing (thus becoming the Law on the Prevention and Repression of Money Laundering and the Financing of Terrorism – AML Law – Annex III). At the time of the first on-site visit, few steps had been taken to explain the new anti-terrorist dimension of the new law. They mainly concerned measures taken by the National Bank, such as changes to regulations, new recommendations to banks and the organisation of two seminars for banks. Certain banks have since made a practice of contacting the special section of the CCCEC to ask for information or clarification. The Moldovan authorities acknowledged that efforts to implement the CFT dimension are still modest, but considered that they are being developed.

1.3 Overview of the financial sector and designated non-financial businesses and professions

a) The Financial Sector

Financial and credit establishments and *bureaux de change*

- 16 *banks:* licensed and supervised by the National Bank of Moldova (15 as of January 2006);

- 244 *bureaux de change*: these must be linked to a bank, via an agreement, and are licensed and monitored by the National Bank; a small number of them are managed by hotels, in which case they are not allowed to purchase foreign currency;

- 170 *peoples' savings and loans associations***:** they grant loans from deposits made by their members, but do not receive the savings of other individuals or legal persons. By their nature they are not covered by the legislation on financial institutions. These associations are largely based in rural areas **(**other than one in Chisinau**)**. Most recent information shows that the sector represented 977 savers with a total of MDL 7.9 million of funds. The average deposit was MDL 6000 (€400). With assets valued at MDL 310 millions, the sector accounts for 7.9% of the assets of Moldova's financial sector. It is supervised by the Ministry of Finance.

- As yet, there are no pension funds in Moldova. They are provided for in legislation but there are no implementing regulations to allow such funds to be established.

The securities sector

33. The Stock Exchange of Moldova (SEM) was established in December 1994 under the Law on securities circulation and stock exchanges and commenced operation in June

1995**.** The market is very modest in size: the total value of transactions in 2003 was MDL 825.9 million (about € 56 million). Of this total, foreign investors accounted for MDL 378 million of purchases and MDL 215 million of sales. The total value of transactions in 2006 was MDL 343 million (about € 22.8 million).

34. Operators are licensed and supervised by the National Securities Commission (NSC). In 2005, there were 75 professional participants operating on the securities market (73 in 2006), as mentioned below :

	2005	**2006**
independent recorders	14	14
brokerage companies	22	22
investment funds	19 (of which at the time of the first visit 13 were being wound up because of insufficient net assets or guarantee funds, or because they were being reorganised into the new form required by the law)	6
underwriting companies	1	-
fiduciary administrators	12 (including 6 which manage assets of investments funds)	12
depositories of investment funds	5	5
audit companies	6	6
companies responsible for valuing securities	5	5
dealer companies	1	1
self-regulatory organisation	1	0

35. According to the National Securities Commission, only the first two categories, independent recorders and brokers, together with the national depository/register and the securities exchange are covered by the AML Law. All the operators are national.

36. The evaluation team was told that there were no bearer securities.

37. About 800 companies are registered on the securities exchange, and about 30 are quoted. Some of the clientele are of foreign origin, but their numbers are unknown and there was no information available at the time of the visit on their origin)[7].

38. Insider dealing is not an offence under Moldovan law and such cases would be dealt with in the civil courts. Measures do exist to prevent such risks. The activities of persons with privileged information are regulated and they must complete a procedure similar to an invitation to tender if they wish to purchase 5% or more of a company's capital.

[7] The team was informed after the visit that up-to-date information was kept.

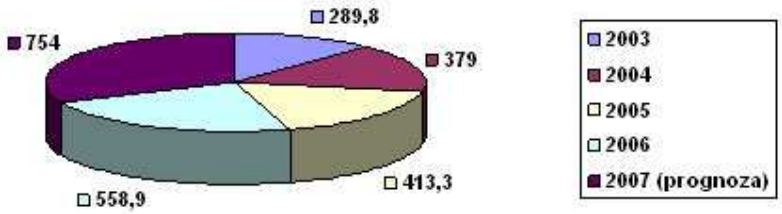
Insurance sector

39. The activities of insurance organisations are governed by Law no. 1508-XII of 15 June 1993. Insurance activities can be performed only on the basis of a licence. The insurance act provides for the following categories:
    a) personal insurance (including life insurance, medical, pension),
    b) property insurance,
    c) third party liability insurance.

40. The insurance organisations are licensed by a Licensing Agency and supervised by the Ministry of Finance (the State Inspectorate for the supervision of the insurance industry and pension funds – ISSA). According to the Insurance Law, ISSA has the right to suspend or limit the scope of a licence and to revoke a licence for violation of the legislation, of insurance activities or violation of other economic and financial activities which affect the solvency of an insurance company as well as in case of non-activity of the insurance company within 1 year from the granting of the licence.

41. The insurance sector is relatively small. In 2005 it comprised 32 companies according to the Registration Office of the Department of Information Technology (compared with 50 in 2004, before capital requirements were increased to reduce the number and rationalise the market); 33 in 2006.

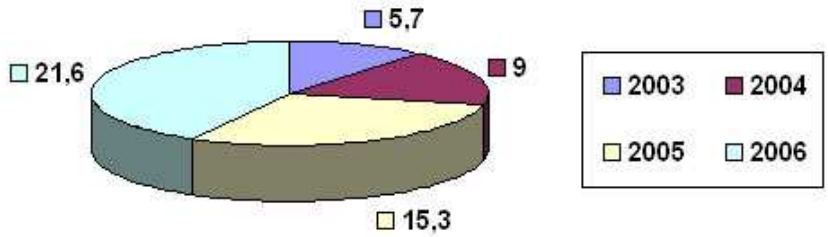
Evolution of the insurance sector for 2003-2006 (million MDL)



Source: All Moldova (based on data from the State Inspectorate for the supervision of the insurance industry and pension funds)

42. Insurance companies are mainly owned by commercial enterprises and individuals and 5 () are partially owned by banks. The minimum capital for insurance companies is MLD 2 million (approx. € 133.333)

43. Ninety percent of insurance companies specialise in motor vehicle insurance while the remainder have a general remit. The life insurance market is very small but expanding; in 2005 only 3 companies actively provided life insurance. The evolution of the life insurance market over 2003-2006 in MDL millions is indicated below:



Source: All Moldova (based on data from the State Inspectorate for the supervision of the insurance industry and pension funds)

44. In December 2006, a new insurance law was adopted (Law no. 407-XVI of 21 December 2006, in force 7 April 2007) which requires that within a 5-year period from its entry into force, insurance organisations shall bring their activities into compliance with the new requirements (such as the minimum amounts for the share capital), re-organise themselves in open joint stock companies and comply with the limitations on reinsurance with non-resident insurers. With these new requirements, the number of operating insurance companies is expected to decrease.

b) Designated non-financial businesses and professions (DNFBPs)

45. DNFBPs are listed in the AML Law, under sub-paragraphs b) and c) of the definition of organisations carrying out financial operations. Essentially, they comprise:

- *Trusts:* though the term is used in the English translation of the AML Law, it was explained that these are fiduciary companies whose activities are governed by the provisions of the Civil Code (articles 1053-1060), the Law no. 199-XV of 18 November 1998 regarding the securities market (article 36) and the National Securities Commission's Decision no. 29/4 of 16 June 2005 regarding normative acts which regulate the activity of fiduciary administration of investments. At present there are 4 fiduciary companies which perform the function of professional participants on the securities market and which perform exclusively the activity of fiduciary administration of investments.

- *agencies providing legal services*: in practice lawyers (the occupation of legal counsellor was abolished in 2002)

- *agencies providing notarial assistance*

- *agencies providing accounting assistance*

- *agencies providing financial and banking assistance* (the kind of profession referred to was not clear, but for the financial aspects they are likely to be auditors)

- **"***any other natural person or legal entity who, by his/her/its actions, concludes transactions outside the financial and banking system***"**: this is a catch-all provision which potentially applies to any commercial activity; in particular, this category includes pawnbrokers: 15 companies representing a total of 50 to 60 operators.

- *casinos***:** there are 5 (7 before recent mergers) operating 10 casinos.

- "*leisure centres having gambling equipment, institutions which organise and set up lotteries or games of chance*": 65 licences have been issued to operate gaming machines; data for other activities are not known (during the visit, reference was made to numbers lotteries and instant returns lotteries and betting firms). There is a Moldovan National Lottery, affiliated to the *World Lottery Association* and the *European State Lotteries and Toto Association.*

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

46. The Civil Code (Law no. 1107-XV of 6 June 2002) sets out the basic rules for the establishment of a legal person, which is defined as an "organisation with its own assets, which is liable for its obligations to the extent of its assets, which can acquire and exercise pecuniary rights and personal non-pecuniary rights in its own name, enter into obligations and be either a plaintiff or defendant in court". The Civil Code refers to the following types of legal persons: commercial companies, co-operatives, State and municipal enterprises and non-commercial organisations. There are 3 forms of non-commercial organisations: associations, foundations and institutions.

47. The activities and registration of companies are primarily regulated by three main acts, which have been amended several times: the Law on enterprises and entrepreneurship (Law no. 845-XII of 3 January 1992 as amended), the Law on joint stock companies (Law no. 1134-XIII of 2 April 1997) and the Governmental decision no. 500 on companies regulation (10 October 1991). Article 13 of the Law on enterprises and entrepreneurship enumerates the following legal structures:
    a) individual company,
    b) general partnership,
    c) limited partnership,
    d) limited liability company,
    e) joint stock company,
    f) production co-operatives,
    g) lease company,
    h) State company,
    i) and municipal company.

    The first three are companies without legal personality; the six other are companies with legal personality. The main difference between these companies and companies with legal personality is the unlimited liability of founders/associates for obligations accepted by the company. The Law also provides for the conditions for forming a company, the content of the incorporation documents, the procedures for registration and re-

registration of commercial companies, and the modalities for the termination of a company's activity through liquidation and restructuring.

48. The most widespread forms in Moldova are joint stock and limited liability companies. Banks can only be registered as joint stock companies. According to the State Register of Enterprises and Organisations Data, as of 15 October 2006, 130 622 companies were registered, including:

- 62 971 individual companies;
- 53 565 limited liability companies;
- 5092 joint stock companies;
- 4374 cooperatives (production cooperatives, consumer cooperatives, enterprise cooperatives)
- 1124 state enterprises;
- 433 municipal enterprises;
- 285 non-commercial organisations
- 938 others (collective companies, limited companies, and others)

49. In 2002, one company in two ceased trading within less than a year of its existence. The number of companies has increased significantly (+20%) since 2004, reflecting what is considered to be a favourable business climate. Some 120 000 entities have been registered as economic operators, 3800 of them being of foreign origin or foreign-owned. One founder may establish several companies.

50. The State Registration Chamber was established in 1991 within the Ministry of Justice by a presidential decree. In October 2000, the Law no. 1265-XIV related to the state registration of companies and organisations was adopted by the Parliament, setting out the registration procedures and establishing the State Register of Enterprises and Organisations Data. Through Law no. 417-XV of 26 July 2001, the State Registration Chamber was transferred to the Ministry of Information Development. It is responsible for registering all legal persons and provides a focal point for all relevant information and files. The registration process has been modernised, centralised and speeded up. It now takes about ten days to complete all the formalities. The establishment under the information technology department of a modern register of all those concerned facilitates the precise identification of those submitting declarations, investors and so on and the detection of the false identity information occasionally presented. The Chamber checks applicants' criminal records, where necessary using Interpol records. However, it is not concerned with any subsequent increases in capital, which it maintains is the responsibility of the commercial banks (at the time when the funds are deposited in a temporary account with a view to registering the company's capital). Sectoral supervisory bodies monitor increases in capital in their respective spheres of responsibility: the National Bank for banks, the National Securities Commission for other registered public companies, and the CCCEC for limited liability companies.

51. There is a single set of rules governing associations and foundations, both of which are authorised to make profits. The major distinction concerns whether they are registered as profit making or non-profit making bodies.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT strategies

52. As noted in section 1.1 in connection with the AML/CFT culture, the 2001 AML legislation was widened in December 2004 to include terrorist financing. The system for detecting possible laundering operations has therefore been extended to potential terrorist financing.

53. The law has a broad definition of the bodies concerned and almost any organisation carrying out transactions is bound by it. In view of the difficulties of applying such an approach, in practice the CCCEC has to determine priorities and decide which bodies are really concerned. It then draws up special forms for the corresponding sectors. These make up what might be termed the core of the financial sector – banks, *bureaux de change*, intermediaries in the securities market and insurance companies, together with notaries.

54. Naturally, the banking sector is the absolute priority and receives special attention, not just from the CCCEC but also from the National Bank. This also includes the prevention of terrorist financing.

55. Another feature of the approach adopted is the dual emphasis placed on the reporting of transactions above a particular level and of suspicious transactions.

56. Moldova also makes significant efforts to limit problems concerned with Transnistria, which is outside the Moldovan authorities' supervision but has a banking and financial system with which several countries maintain links. Moreover, in principle goods and capital circulate freely between Transnistria and other neighbouring countries. At the boundary between Transnistria and the rest of Moldova, temporary customs posts have been set up to control the flow of goods and assets and levy appropriate duties. There is also strict surveillance of transactions between Transnistria and the rest of Moldova, and settlements are made via the National Bank's clearing house in Tiraspol. According to the Moldovan authorities, the main threat is posed by the economic links between the Transnistrian zone and other countries.

b. The institutional framework for combating money laundering and terrorist financing

Ministries

57. *Ministry of Finance*: prepares and implements fiscal policies and legislation, prepares the budget, collects taxation revenues, keeps the government's accounts and manage states' assets, supervises financial matters. The following bodies are answerable to the Ministry of Finance: the Tax inspectorate, the Financial Control Department, the State Inspectorate for the supervision of the insurance industry and pension funds, the Department Responsible for Supervising Savings and Loans Associations. A number of sections of the Ministry of Finance have supervisory responsibilities with regard to the insurance and pension fund sectors, savings and loans associations, games of chance

and the trade in precious metals. The Ministry also exercises supervisory powers over companies and other organisations concerned with taxes. In particular, its customs department monitors the export and import of foreign currency and securities.

58. *Ministry of Justice*: is responsible for drafting and elaboration of legislation and co-ordination of activities regarding the judiciary reform. Together with the General prosecutor's office, the Ministry of Justice is responsible for the provision of international legal assistance. In particular, it deals with applications for mutual assistance drawn up during the trial and execution of judgment phases and extradition requests in respect of convicted persons. The Ministry of Justice keeps a register on international legal assistance requests. It also deals with the registration of social-political organisations and political parties and maintains a State register of legal acts. It supervises notaries, together with the Council of the Union of Notaries. It also maintains a register of licences for lawyers.

59. *Ministry of Internal Affairs*: is a central body of State administration which includes the Moldovan Police. It is made up of various directorates, offices, departments which include among others: the Directorate General for combating organised crime, the Directorate General for criminal investigation, the Directorate of cross-border and data processing offences, the Operative Directorate, the National Central Bureau – Interpol. The Ministry of Internal Affairs is also listed as a "criminal prosecution body" under article 253 of the Criminal Procedure Code and as such, it is competent for carrying out the criminal prosecution of any crime for which the law does not establish the competence of other criminal prosecution bodies or if this crime is given into its competence through a prosecutor's order. It has operational and investigative functions in the area of anti-terrorism, smuggling, economic crime and is now only involved in laundering investigations relating to its particular area of competence, that of international crime.

60. *The Ministry of Information Development*: its Registration Chamber Department manages the centralised data of the various ministries and the registration of profit making and non-profit making entities.

61. *The Ministry of Transport and Telecommunications:* is the authority responsible for the Moldovan Post Office, which is a subject of the anti-money laundering law.

62. *The Ministry of Foreign Affairs:* is involved in international co-operation, the negotiation, signature and ratification of international agreements.

Criminal justice and operational agencies

63. *Public Prosecutor's Office*: The activities of the Public Prosecutor's Office are regulated by the Constitution, Parliament's decision regarding the organisation of the prosecutor's bodies, their residence and territorial competences, structure and staff (decision no. 609- XVI of 1 October 1999) and the Law on the Public Prosecutor's Office (Law no. 118-XV of 14 March 2003 as amended). The Public Prosecution in Moldova is structured as follows:

a) the General Prosecutor's Office,

b) the Prosecutor's Office of Gagauzia,
c) district, municipal and sector offices
d) and other specialised prosecutor's offices (military, transport, anti-corruption).

64. It performs criminal prosecution, directs and supervises criminal investigations carried out by law enforcement agencies. Article 270 of the Criminal Procedure Code provides for the exclusive competence of the Prosecutor's Office for crimes (including money-laundering) allegedly committed by the President, members of Parliament, members of Government, judges, prosecutors, generals, criminal prosecution officers.

65. The General Prosecutor's Office was responsible for enforcing the AML law and performed the core FIU functions until 2003, when this competence was transferred to the Center for Combating Economic Crimes and Corruption. It is also the authority responsible for sending out and receiving applications for mutual assistance drawn up during the criminal prosecution phase, including extradition requests.

66. *The Center for Combating Economic Crimes and Corruption (CCCEC):* is a specialised law enforcement body, directly answerable to the Government, established through Law no. 1104-XV of 6 June 2002, to combat financial and economic crimes, tax offences and corruption. It is headed by a director appointed for 4 years by the Government. It is staffed by prosecutors and other law enforcement officers. Its structure includes the Office for the Prevention and Control of Money Laundering (the FIU), a general prosecution directorate, a general anti-corruption directorate, a general analysis and prognoses directorate, an operational directorate, an internal security directorate, etc. The CCCEC (its specialised anti-money laundering section) was vested with the responsibility of implementing the AML Law, exercising the general supervision of the AML/CFT process, co-ordinating at national level the AML/CFT activities as well as the international co-operation in this field.

67. *The Office for the Prevention and Control of Money Laundering (OPCML)*: is a specialised unit within the CCCEC. It became the Financial Intelligence Unit (FIU) in 2003, following the transfer of competencies from the specialised section of the General Prosecutor's Office. Its duties are outlined in the Regulation no. 111 (of 15 September 2003) issued by the Director of the CCCEC. In September 2006, a new regulation was issued, giving the FIU the statute of an independent subdivision within the CCCEC.

68. *Customs service*: is now a body of the public administration which includes 17 customs units (6 at the border with Romania, 6 at the border with Ukraine, 1 at the airport and 4 internal customs offices). Its main tasks include: the elaboration of customs legislation, the collection of taxes at the border (customs duties, VAT and excise taxes), combating smuggling and customs offences, detecting cross-border transportation of cash and other valuables. It also carries out its own investigations until a criminal investigation is opened by the General Prosecutor's Office. The Customs service maintains a criminal database and a declaration database. Moldova is a member of the World Customs Organisation (1994) and the World Trade Organisation (2001). A number of bilateral agreements were signed and entered into force with Armenia, Azerbaijan, Kyrgyzstan, Belarus, Russia, Lithuania, Uzbekistan, Romania, Poland, Bulgaria, Hungary, Italy, Albania, Turkey, Croatia, "the former Yugoslav republic of

Macedonia" and Ukraine. On 7 October 2005, a Memorandum of Understanding was signed between the European Commission, Moldova and Ukraine launching on 30 November 2005 the European Union Border Assistance Mission to the Republic of Moldova and to Ukraine (late November 2005).

69. *Information and Security Service (SIS):* was established by Law no. 753-XVI of 23 December 1999. It is an intelligence agency, responsible for the organisation of counter-terrorism activities, including the power to conduct criminal investigations of crimes against peace and security of humanity (articles 135-144 of the Criminal Code) and crimes against state security (articles 337-347 of the Criminal Code)[8]. It is responsible for collecting operational information on economic and financial crimes, on international terrorist organisations and it also monitors the activity of non-profit organisations, commercial companies and economic transactions with Transnistria. On 13 November 2006 (Government decision no. 1295), the Anti-Terror Centre of the SIS was set up which is the responsible structure for co-ordinating and implementing anti-terrorism activities of national authorities and for compiling and analysing information on the situation, dynamics and trends of terrorism. Its tasks also include the elaboration of proposals for harmonising the national legal framework in accordance with Moldova's international obligations related to the prevention and fight against terrorism as well as collaboration with international organisations to combat terrorism.

Financial Sector Bodies

70. *The National Bank of Moldova (NBM):* The functions of the NBM, which was founded in 1991 and is regulated by Law no. 548-XIII of 21 July 1995, have not changed since the second round. The Bank is responsible for supervising and regulating financial institutions' activities (article 44). It is also responsible for issuing licences to foreign exchange bureaux to carry out currency exchange activities and for their supervision through its Exchange Control Directorate. The NBM is responsible for prudential oversight and also for AML/CFT related matters.

71. *The National Securities Commission (NSC):* is a body of the public administration set up under Law on the National Securities Commission (Law no. 192-XIV of 12 November 1998) which regulates, supervises and monitors the securities market and industry. Its main tasks are:

- organisation and implementation of the securities market development policy,
- regulating, supervising and monitoring the securities market,
- protecting the rights of investors and public,
- informing securities owners and the public on supply and demand, issuance and circulation of securities,
- determining the standards for the professional activities on the securities market.

The NSC is responsible for issuing licences for operators and self-regulating organisations on the securities market; it is required by law to ensure the transparency

[8] Its competence to conduct criminal investigations of the crimes mentioned above was modified by Law no. 177 - XVI of 22.07.2005 (in force 08.12.2005).

of the market and as such is able to impose sanctions. It carries out prudential inspections, including on AML aspects. It reports directly to the Parliament.

72. *The Licensing Chamber*: was established in accordance with the Law no. 451-XV of 30 July 2001 on licensing some types of activities and was set up as an administrative entity by the Government decision no. 1327 of 3 December 2001. The law lists 50 types of activities, including: auditing services, stock exchange activities, insurance, savings and loans associations, pawnbroking, dealing in precious stones and metals, gambling (lotteries, casinos, operating slot machines), activities of financial institutions and currency exchange units, activities of professional participants on the securities market, civil insolvency administration, certain real-estate professionals, etc. Licences are issued for a period of five years, with a limited number of them issued for 1 year (gambling activities), 3 years and up to 25 years. The Chamber has the authority to issue, re-register, suspend, renew, revoke, invalidate licences, it organises the control over compliance with licensing conditions by the licensees, and maintains a unique Register of licenses.

73. *The State Inspectorate for the Supervision of the Insurance Industry and Pension Funds (ISSA):* was set up within the Ministry of Finance by the Government Decision no. 296 of 12 June 1991. Its responsibilities were set out later with the adoption of the Law on Insurance (no. 1508-XII of 15 June 1993) and the Government Decision no. 77 of 8 February 1996: it is responsible for policy making, regulating and supervising the insurance industry (in co-operation with the Licensing Chamber). It also maintains the state register of insurers.

<u>DNFPBs</u>

74. *Casino supervisory authority:* the Law on Gaming (Law no. 258-XIV of 18 February 1999 as amended) provides that the supervision and control of gambling activities are carried out by the Ministry of Finance and the Licensing Chamber.

75. *Lawyers:* the profession is governed by a Bar, the organs of which are the Congress, the Council of the Bar, the Commission for Ethics and Discipline and the Censorship Commission.

76. *Notaries:* Law no. 1453 –XV (of 8 November 2002) on notaries provides that they are licensed and supervised by the Ministry of Justice.

c. The approach to risk

77. Opinions in Moldova vary concerning the sectors exposed to the risk of, or affected by, laundering. There are no studies or far-reaching analyses of the problem that might serve as a basis for a comprehensive strategy, despite the scale of associated criminal activities in Moldova. By contrast, the risks associated with terrorist financing are universally considered to be almost non-existent. This conclusion reflects a significant body of intelligence and investigative activity on the part of the authorities and the personal experience of business and administrative circles.

78. With regard to protection, the AML/CFT risk policy, in a strengthened form, is reflected from a general standpoint in the AML Law and in terms of the different sectors in the regulations issued by the National Bank. The approach adopted by the AML Law lacks detail and consists of a requirement for close attention to be paid to transactions originating in countries with inadequate rules and regulations and a high level of criminal activity. The National Bank's approach, as it appears in its 2002 recommendations on the establishment of AML programmes, is inter alia to advise on how to devise internal procedures to take account of risk - reputational, operational, legal, commercial and operational - and on how to incorporate the "*know your customer*" principle, define the responsibilities of the institution's senior managers and directors, identify business sectors exposed to risk.

d. Progress since the last mutual evaluation

79. The MONEYVAL Committee conducted its last evaluation in June 2003, as part of the second round of visits, and the mutual evaluation report was approved in July 2004. The first third round on-site visit took place three months after the second round report was adopted, which left Moldova little time to take account of the second round recommendations.

80. Moreover, as noted in the second report, significant changes took place during or shortly after the visit, such as the establishment of a new FIU and the introduction of new Criminal and Criminal Procedure Codes.

81. The second round report identified the following major weaknesses, where no significant progress was observed during the third round visit:

- Money laundering is not considered an autonomous offence;
- Interpretations of the confiscation provisions sometimes vary;
- There must be greater awareness of the potential for applying seizure and confiscation measures;
- The supervisory authorities are not clearly identified;
- Outside the banking sector the situation regarding supervision is critical;
- The situation regarding the role of intermediaries remains confused;
- All economic operators are potentially required to report suspicious transactions;
- Under the Code of Criminal Procedure, certain special investigation methods cannot be used, even for serious offences;
- Some of these weaknesses have an impact on international co-operation.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and regulations

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

2.1.1 Description and analysis

82. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) was ratified on 15 December 1995 and the United Nations Convention Against Transnational Organised Crime (the Palermo Convention) and its two protocols on 16 September 2005 (after the third on-site evaluation visit), without reservations.

83. The criminal offence of money laundering was introduced by Law no. 1326-XV of 26 September 2002 which was subsequently repealed with the entry into force of the newly adopted Criminal Code on 12 June 2003.

84. Article 243 of the Criminal Code is the main provision making money laundering an offence (Articles 241 and 242 also make it an offence to engage in the unlawful exercise of a business activity and to set up bogus companies). The legislation in force at the time of the second round evaluation was modified by Law no. 353-XV of 31 July 2003 which amended Article 243 of the Criminal Code with effect from 8 August 2003. The article now reads:

Article 243. Money laundering

(1) Anyone who commits acts intended either to confer a legal aspect on the source and origin of financial means, property or income obtained unlawfully following the commission of an offence or to conceal, disguise or distort information relating to the nature, origin, movement, placement and ownership of those financial means, property or income which he/she knows to constitute the proceeds of an offence; anyone who acquires, owns or uses property which he knows to be the proceeds of an offence, or who participates in any association, agreement, complicity by providing assistance or advice with a view to the commission of the offences in question" shall be sentenced to a fine of between 500 and 1 000 conventional units or up to 5 years' imprisonment and in both cases may be disqualified from holding a post or from exercising an activity for between 2 and 5 years.

(2) The same acts committed:

- *a) repeatedly;*
- *b) by two or more persons;*
- *c) with the assistance of a professional situation,*

shall be punished by a fine of between 1 000 and 5 000 conventional units or a prison sentence of between 4 and 7 years.

(3) The acts defined in paragraphs (1) and (2) committed:

- *a) by an organised criminal group or by a criminal organisation;*
- *b) which gave rise to significant losses,*

shall be punished by a prison sentence of between 5 and 10 years.

85. The material and non-material elements of the offence now reflect international requirements, particularly as set out in the 1988 and Palermo UN conventions. The definition of the material element covers a broad range of laundering-related activities, including association, intelligence and complicity. Attempted laundering is punishable under Articles 27 and 81 of the Criminal Code.

86. It is unclear why "acquiring", "possessing" and "using" only apply to *"property*", whereas the first part of the article refers to "*financial means, property and income*". Although the United Nations conventions only refer to property, this is nevertheless defined very broadly, since the term encompasses assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets. The notion has also been interpreted broadly in Moldova under a Supreme Court decision of 27 December 1999, which establishes authoritative jurisprudence, under which property originating from an offence includes any economic benefit of whatever sort, tangible or intangible, moveable or immoveable, together with legal or other documents establishing title to or a right to property. This decision also clarifies that the term also covers all indirect proceeds including substitute assets and investment yields (see Annex III).

87. Laundering by negligence is not an offence. The moral element of the Article 243 offence is one of knowledge and intention. Although there had not been any court rulings or judgments on this article at the time of the on-site visit, it may be assumed that the intention aspect can be inferred from objective circumstances. Not only is this conclusion in line with article 27 of the Criminal Procedure Code on the free appreciation of evidence by the judges, it is also standard court practice in other criminal cases. The level of proof required in money laundering cases on the predicate offence is less clear in the absence of firm jurisprudence.

88. According to information supplied, four Article 243 cases appear to be under way. These are currently being investigated by the CCCEC[9].

89. There are no principal or fundamental legal objections to the criminalisation of self-laundering. The wording of article 243 certainly does not preclude this eventuality, except where it refers to the acquisition and to the ancillary offences that are clearly third party related. The absence of any case-law at the time of the onsite visit raised doubts whether Article 243 covered self-laundering. Those whom the evaluation team met on site argued that there was nothing to prevent such an application.[10]

90. Neither is there a principal or textual argument that excludes foreign criminal activity as predicate for the money laundering offence. This issue has not been tested before the

[9] In 2006 a stand-alone money laundering case was tried ending up in a conviction, although there was no conviction for the predicate offence. It was an established fact however that the proceeds were generated through tax evasion.

[10] In the meantime this issue has received a jurisprudential response: the money laundering conviction in the 2006 case related to self laundering activity.

courts yet, but the opinion prevailed with the judiciary that article 243 also covered foreign predicate offences, provided the dual criminality condition was met. This issue has been solved in that sense in the context of the receiving offence (article 199).

91. Moldova also applies the principle of the universality of the predicate offence and there is therefore no list of these offences. All designated predicate offences are covered in the Criminal Code, except for the offence of insider dealing (penalised only since 24/11/2006).

Designated categories of offences	Articles of the Criminal Code of Moldova
Participation in an organised criminal group and racketeering	Article 284 (setting up or leading a criminal organisation)
Terrorism, including terrorist financing	Article 278 (terrorism) , 279 (activity for funding and materially ensuring the terrorist acts)
Trafficking in human beings and migrant smuggling	Article 165 (trafficking in human beings)
Sexual exploitation, including sexual exploitation of children	Articles 206 (trafficking in children), 165 (trafficking in human beings)
Illicit trafficking in narcotic drugs and psychotropic substances	Article 217 (illegal circulation of narcotics and psychotropic substances or precursors)
Illicit arms trafficking	Article 290 (illegal carrying, storage, acquisition, manufacturing, repairing and sale of firearms and ammunitions)
Illicit trafficking in stolen and other goods	Article 199 (obtaining and commercialization of goods knowing its criminal origin)
Corruption and bribery	Article 324 (passive corruption), Article 325 (active corruption), Article 333 (taking of bribe), Article 334 (giving of a bribe)
Fraud	Article 190 (fraud)
Counterfeiting currency	Article 236 (the manufacturing or bringing into circulation of counterfeited money and securities)
Counterfeiting and piracy of products	Article 237 (fabrication or distribution of cards or other false pay checks)
Environmental crime	Article 223 (violation of the environmental security requirements), Article 235 (violation of the regime of protection and administration of natural areas protected by the state)
Murder, grievous bodily injury	Article 145 (deliberate murder), Article 146 (murder committed in a state of affect), Article 151 (deliberate gross bodily or health harm), Article 152 (deliberate medium bodily harm or health harm), Article 153 (light bodily harm or health harm)
Kidnapping, illegal restraint and hostage-taking	Article 164 (kidnapping), Article 166 (illegal imprisonment), Article 167 (slavery and similar to slavery conditions), Article 280 (taking hostages)
Robbery or theft	Article 186 (Theft), Article 187 (Robbery), Article 188 (Burglary)
Smuggling	Article 248 (Smuggling)
Extortion	Article 189 (Blackmail)
Forgery	Article 361 (forging or using forged documents, stamps, seals or false blanks)
Piracy	Article 289 (piracy)
Market manipulation	Article 246 (limitation of competition)

92. Ancillary offences covered in the Criminal Code are: attempt (article 27), participation (article 41 and 43) which covers the author, organiser, instigator and different forms of aiding and abetting (accomplice, facilitating, counselling) and association (in the sense

of organised groups). Moreover, except for the attempt, these behavioural elements are again expressly covered in article 243. The penalties are laid down in articles 81 and 83 of the Criminal Code. Conspiracy, in the sense of two people agreeing to commit money laundering, is specifically provided for in article 243.

93. The basic money laundering offence is punishable by a fine or a term of imprisonment of up to 5 years, which according to article 16 corresponds to the penalty level for less serious offences. The financial penalties are lower than the ones in the previous version of the article. The fines are based on a system of conventional units, in which 1 unit = MDL 20 (a little over 1 €), and the fine is now a little over € 1 000, or € 5 000 in the case of the less aggravating circumstances in paragraph 2. In the most serious cases, committed by a criminal group or which resulted in significant losses[11], there is no possibility of a fine, only terms of imprisonment (5-10 years). It is possible that certain problems of differentiation may arise in practice because there are two sets of aggravating circumstances and paragraph 3 refers to the offences in paragraph 2 whereas the latter in fact contains a list of aggravating circumstances. But on the whole, these penalties are in line with international practices and standards.

94. Under Article 21(3) of the Criminal Code, legal persons may be held criminally liable for a series of offences, including the ones under Article 243. This does not prevent individuals from being charged with the same offences. The common civil liability applies to legal entities and their representatives. Administrative sanctions can also be levied on financial institutions and their owners or administrators (article 38 of the Law on financial institutions). Corporate criminal liability under article 21(3) however is limited to those legal entities that conduct "entrepreneurial" (sic), *i.e.* commercial activity. Consequently, all other legal persons of a non-commercial nature, such as civil or non-profit corporations, do not incur criminal liability if involved in money laundering offences.

95. The penalties for legal persons under Articles 63 and 64 of the Criminal Code are fines (500 to 10 000 units, with the same basis of calculation as seen earlier), a ban on operation and compulsory winding up. The fines do not seem very high but they seem consistent with the country's economic circumstances. As the economy develops, an increase in the maximum fines could be envisaged.

Statistics and practice

96. Article 243 was too recent to have been tested in practice by the time of the first on-site visit**.** This makes it difficult to form a judgment on its practical application or on whether the penalties are sufficiently proportionate to the offence to act as a disincentive.

97. The examiners note that other cases – apart from the four currently being investigated – could probably lead to prosecutions and convictions for laundering. Articles 504 to 509 of the new Code of Criminal Procedure establish the principle of plea bargaining.

[11] "Significant losses" are defined in article 126 CC as exceeding the fine amount of 500 conventional units. The scales will be adapted to reflect the inflation.

However it appears that at least one case (see section 2.6) was discontinued in exchange for recognition of the offences of smuggling and laundering and payment of a sum equivalent to tax revenue foregone, with no other penalties, even though a fictional body was used to give the appearance of legality to income from smuggling. It might be advisable to place certain limits on the powers conferred by Articles 504 to 509 to avoid abuses in laundering cases.

98. Nevertheless, the main problem with Article 243 CC is the uncertainty voiced by the relevant practitioners – prosecutors, members of the CCCEC and the police – whom the team met on the level of proof of the predicate offence, particularly whether evidence must be supplied that a specific predicate offence has definitely been committed, which could necessitate a prior conviction. The controversy on this issue obviously negatively impacts the applicability of this provision and consequently the effectiveness of the system as a whole. The absence of cases brought before the courts on the basis of the old or new article 243 CC also means no practice is being built up and no guiding jurisprudence is being created[12].

2.1.2 Recommendations and comments

99. The text of Article 243 adequately reflects the moral and material elements required by the Vienna and Palermo Conventions. The all-crimes approach is a positive feature both as in principle and in respect of the burden of proof. As there are no inhibiting fundamental principles of law, the provision should formally cover the laundering by the author of the predicate offence. The issue of the foreign predicates to money laundering (subject to dual criminality or not) could also be further addressed, either in law or by way of creating jurisprudence. This would help to clarify the wording and avoid possible interpretations at variance with current accepted opinion. It should also make it clear what evidence is required concerning the associated offence and criminal intent.

100. The corporate criminal liability under article 21(3) CC should apply beyond the commercial legal entities, to include non-commercial and non-profit legal persons.

101. A serious effort needs to be made to increase the effectiveness of the system, particularly in the judiciary phase. With the refining of article 243 and clarification of the remaining uncertainties, as recommended above, the legal basis is solid enough to serve as an adequate tool to combat money laundering. The implementation aspect is presently quite unsatisfactory, however, and needs to be addressed by a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements. Such measures should be accompanied by awareness-raising and information aimed at police officers, prosecutors and judges (publications, internal memoranda, guidelines, instructions, training courses etc.) which would also emphasize the need to prevent abuses of the plea bargaining system in cases of money laundering or serious crime. The revision process should be used to reconsider overall consistency

[12] This conclusion is in the meantime confirmed by the *post factum* figures: only one conviction was pronounced in 2006 for (tax fraud related) money laundering.

(include a general reference to financial assets, property and income and the links between aggravating circumstances).

2.1.3 Compliance with recommendations 1 and 2

	Conformity assessment	Summary of reasons for the conformity assessment
R.1	PC	• Coverage of self laundering raises doubts • insider trading is not covered as predicate offence; • the issue of foreign predicate offences needs to be further clarified; • low effectiveness needs to be addressed.
R.2	LC	• The scope of corporate criminal liability is limited to commercial legal entities.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

102. Article 279 of the Criminal Code makes terrorism a criminal offence.

Article 279. Financing of and material support for terrorist acts

Any person who, by any means, directly or indirectly, intentionally provides or collects financial means or materials in order for them to be used to carry out terrorist acts, shall be sentenced to 10 to 25 years imprisonment.

103. This provision must be seen in conjunction with Article 278, which defines terrorist acts:

Article 278. Terrorism

(1) Terrorism, defined as causing explosions or fire with intent or any other actions likely to endanger life or cause significant material losses or other serious damage, if these are directed against public security, are intended to intimidate the population or to compel the public authorities or individuals to take certain decisions, as well as threatening to commit such acts shall be punishable by a term of imprisonment from 5 to 10 years.

(2) The same offence committed:
a) repeatedly;
b) by an organised criminal group;
c) with the use of firearms or explosives;

d) and which caused serious or moderately serious harm to individuals' physical integrity and health;

e) which gave rise to very significant material damage;

shall be punished by a term of imprisonment from 8 to 15 years.

(3) The acts defined in paragraphs (1) and (2),

a) committed by a criminal association

b) which led to the death of a person by negligence;

shall be punished by a term of imprisonment from 12 to 20 years.

(4) Terrorism committed together with intentional homicide shall be punished by a term of imprisonment of between 16 and 25 years or by life imprisonment.

(5) The perpetrator of a terrorist act, other participants who have disclosed the acts concerned to the authorities thereby preventing a person's death, serious harm to their physical integrity or health, other serious consequences or who contributed to the uncovering of other perpetrators can be punishable by the minimum sentences provided for in this article.

(6) The person who participated in the preparation of a terrorist act shall be exempt from criminal responsibility if by means of timely warnings to the authorities or other means he/she contributed to prevent the commission of the terrorist act and if his/her actions do not constitute another offence.

104. These provisions follow Moldova's ratification of the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter TF Convention). To date, there have been no judicial decisions based on these provisions so any assessment must be confined to the wording of the legislation.

105. The first point to make is that taken in conjunction with Article 278, Article 279 refers to the financing of terrorist acts in the strict sense of the term, which seems to make it necessary to adduce evidence of the use of financial or material resources for the preparation of specific terrorist acts (the examiners assume that individual acts are covered, even though Articles 278 and 279 only refer to acts in the plural). The approach adopted by Moldova therefore appears to be fairly restrictive, although both domestic and international terrorism are covered. No reference is made to the financing of terrorist organisations or individual terrorists, which excludes its application to the funding of terrorist organisations' day-to-day activities or terrorist recruitment and training. Whereas the general financing of individual organisations is clearly not covered, the absence of a specific offence of financing of terrorist organisations may be addressed by applying article 284 on criminal associations, which makes it an offence to supply funds or use other means to support such associations, its individual members and the criminal activity of the group. This article is worded fairly broadly.

Article 284. Formation or control of a criminal association

Anyone who establishes or controls a criminal association, that is plans the formation of such an association or its activities, recruits members of the criminal association, organises meetings of offenders, establishes funds or other material resources to supply the offenders and the criminal activity, procures arms or other materials to enable the criminal association to commit offences, organises the gathering of information on potential victims

or on the activities of law enforcement agencies, or reaches agreement with other criminal associations, criminal groups or offenders, either resident in the country or abroad, on certain criminal plans or actions, shall receive a term of imprisonment of between 16 and 25 years.

106. Closely related to the issue of the link between the collected or supplied funds and specific terrorist acts, is the circumstance that article 279 does not refer to attempted terrorism. The attempt to commit terrorist acts is covered by the general rule of article 27 CC, so providing or collecting funds should also be considered an offence even if only associated with attempted terrorism. Any dispute in this respect will be pre-empted by clearly dissociating the funds from specific acts whatever stage of execution.

107. Since Moldova has ratified the TF Convention, the list of terrorist acts referred to in its appendix should in principle take precedence over the notion of terrorist act in articles 278 and 279. However, in a declaration made at the time of ratification, it stated that it did not consider treaties to which it was not party as being included in the appendix to this convention (though since then, Moldova has ratified some of these conventions). Moldova's approach is that international treaties on the suppression of terrorism require transposition into and amendments to existing domestic legislation. It might therefore be advisable to include an additional reference in Article 278 to terrorist acts provided for in international treaties. All terrorist acts falling within the scope of the relevant Conventions referred to in the 1999 TF Convention are covered in the Criminal Code however.

108. The form of support is defined in fairly broad terms: "*any person who, by any means, directly or indirectly, provides or collects funds or material*". Nevertheless, the TF Convention is more detailed in this respect since it refers to "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including .... bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit". In the absence of any court decisions, it is difficult to conclude whether certain intangible assets, to take just one example, might cause problems in practice. Reference may possibly be made to the Supreme Court decision of 27 December 1999 (see item 87) that uses the same terminology to describe the notion of proceeds. Article 279 does not make any distinction between lawful and unlawful sources of funding, so both appear to be covered.

109. The common ancillary offences (see above for money laundering) are also applicable in terrorism financing context. Reference is made to the general part of the Criminal Code, in particular article 27 and 81 on attempted offences, on the basis of which attempted terrorism financing is punished. Articles 41 ff also provide for the offence of participation, which includes the role of organiser, instigator and accomplice. Article 83 makes the last three liable to the same penalty as the perpetrator of the offence. These notions are defined in very broad terms and it is interesting to note that complicity also applies to supplying the necessary *means*, another broad term.

Article 42. Participants

(1) Participants are considered to be persons who have contributed to the commission of an offence as perpetrators, organisers, instigators or accomplices.
(2) *Persons who have committed an offence, either personally or through the agency of persons who are not criminally responsible on account of their age or for other reasons specified in this Code, shall be punished as the perpetrators of that offence.*
(3) Persons who have organised the commission of an offence or directed its conduct, and those who have established an organised criminal group or criminal organisation or directed its activities, shall be punished as organisers.
(4) Persons who have persuaded another person, by what ever means, to commit an offence, shall be punished as instigators.
(5) Persons who have contributed to the commission of an offence through advice and instructions, who have provided the necessary information and means or have removed certain obstacles to the commission of the offence, who have promised to supply the instigator with certain subsequent favours, to conceal the instruments and any other means used in commissioning the offence and remove all traces of it, and to handle the proceeds of the offence, or who have promised in advance to purchase or dispose of the proceeds of the offence shall be punished as accomplices.
(6) Participants shall be those who meet the various requirements for being a criminal subject.

110. Beside art. 47 CC covering acts of (criminal) association, it is also worth noting that Article 49 makes it an offence to encourage the commission of an offence in the absence of prior agreement, which could also be applied to the offence of financing terrorism in Article 279. Although Article 323, to which Article 49 refers, appears in *Chapter XIV on Offences against Justice*, its wording clearly indicates that it is applicable to serious offences (under Article 16 on the classification of offences these are offences punishable by up to 15 years' imprisonment), which makes it applicable to terrorist financing offences. At all events, the other offences referred to in Chapter XIV fail to qualify for the very high minimum sentence required.

Article 49 Encouraging the commission of an offence

Anyone who, without having made any promises in advance, encourages the commission of an offence or handles the instruments, traces or proceeds of that offence, shall be declared criminally responsible, in accordance with Article 323.

Article 323. Assisting offences

(1) Anyone who encourages, without prior promises, the commission of a serious, particularly serious or exceptionally serious offence is punishable by a fine of 200 to 500 conventional units or to a term of imprisonment of up to 3 years.
(2) The penalty will not be imposed if the offence of assistance is committed by the spouse or a close relative of the perpetrator of the offence

111. The absence of case law prohibits any substantiated assessment of the effectiveness and implementation of the provision. In terms of dissuasiveness however the penalties are adequately severe and in line with the serious threat terrorism related activity poses to society.

112. Because Moldova accepts the principle of the universality of the predicate offence relating to laundering, terrorist financing constitutes an underlying offence to that of laundering.

113. As noted above, Moldova provides for the criminal responsibility of legal persons, or corporate bodies. However, Article 21(3) of the Criminal Code, which lays down the offences that may be committed by legal persons, excludes Article 279, which means that they may not be held responsible for terrorist financing, regardless of the gravity of the offence.

114. As with the money laundering or any other intentional offence, it is standard practice that the courts adduce the moral element from objective factual circumstances. As for the rules of territoriality reference has to be made to the general principles, in particular those laid down in Article 11, which provide for the traditional jurisdiction over offences committed abroad by Moldovan citizens and ones committed in Moldova by Moldovan or foreign nationals. Paragraph 3 is particularly relevant because it grants Moldova universal jurisdiction to hear offences committed abroad by foreign nationals or stateless persons not residing in Moldova if the offences *are detrimental to peace and the security of humanity*. According to the examiners, this particular wording could apply to terrorism and its financing, but an explicit reference to the relationship between articles 11 and 279 would be helpful. This provision also refers to the applicable international treaties, including the Convention on the financing of terrorism, which Moldova has ratified. This clearly indicates that international provisions must take precedence in cases where international and domestic law differ. In any case Moldova holds jurisdiction whenever (part of) the financing/collecting activity occurs on its territory, irrespective of the location of the terrorist individual, organisation or acts.

Article 11. Territorial application of criminal law

(1) Any person who has committed a criminal offence in the territory of the Republic of Moldova will be held criminally responsible in accordance with this Code.

(2) The Code is applicable to offences committed abroad by Moldovan nationals or by stateless persons normally residing in Moldovan territory.

(3) Offences committed abroad by foreign nationals or stateless persons not residing in Moldovan territory will be punished in accordance with this Code if those offences are detrimental to Moldovan interests, peace and the security of humanity, constitute war crimes or are provided for in international treaties to which Moldova is a party, and if the perpetrators have not been punished abroad.

(4) Offences committed by diplomatic representatives of foreign states or other persons who are exempt from Moldovan criminal jurisdiction under international conventions are not covered by this criminal legislation.

(5) Offences committed in Moldovan territorial waters or airspace are deemed to have been committed in the territory of the Republic of Moldova. This Code is applicable to offences committed aboard ships registered in Moldovan ports or Moldovan aircraft transiting in foreign waters or airspace unless otherwise stipulated in international treaties to which Moldova is a party.

(6) This Code shall apply to any offences committed aboard Moldovan naval vessels or military aircraft, wherever they are located. (…)

2.2.2 Recommendations and comments

115. The examiners welcome the decision to make terrorist financing an offence and to give Moldova a legal armoury allowing it to offer a broad ranging response to the requirements of special recommendation II. However certain points still need to be clarified, either in practice (with explanatory notes, training activities, etc) or in the relevant legislation. They therefore recommend taking legislative and other steps that prove necessary to ensure that:

- the financing of terrorism under Article 279 (in conjunction with Article 278) also covers organisations and persons recognised as engaging in terrorist activities, even in the absence of (preparation of) a specific terrorist act;
- the terrorist acts provided for in Articles 278 and 279 include the acts provided for in the international conventions to which the 1999 Convention refers;
- the form of support given includes all types of funds whether material or non-material;
- the scope of Article 21 (corporate criminal liability) is extended to make it applicable to Articles 278 and 279.

2.2.3 Compliance with Special Recommendation II

	Conformity assessment	**Summary of reasons for the conformity assessment**
SR.II	PC	• The financing of terrorists and terrorist organisations as such, unrelated to the actual perpetration, attempt or preparation of terrorist activities, is not covered; • The TF offence should expressly refer to and cover all offences, defined as terrorist offences in the Annex of the TF Convention; • The criminal liability of legal persons does not apply to the financing of terrorism and terrorism.

2.3 Confiscation, freezing and seizure of proceeds of crime (R.3)

2.3.1 Description and analysis

Confiscation

116. The main principles surrounding confiscation are laid down in article 46 of the Constitution regarding the right to private property and its protection (see annex III). The general provisions on confiscation mainly appear in the Criminal Code and those on provisional measures in the Code of Criminal Procedure. The latter provides for two options: seizure and sequestration. In the case of the special measures concerning laundering, reference should be made to the AML Law and the Act governing the CCCEC.

117. As already stated in the second mutual evaluation report, the relevant provision on confiscation is Article 106 of the Criminal Code. Amendments were made in August 2003 to paragraph 1, to include the possibility of confiscation to the equivalent value, and to paragraph 3, to make confiscation applicable to proceeds transferred to a third party.

Article 106. Special confiscation

(1) Special confiscation is the compulsory transfer to the state, free of charge, of the ownership of assets which have been used in the commission of an offence and the proceeds of the offence. If the assets used to commit the offence or the proceeds of the offence no longer exist, confiscation applies to their equivalent value.

(2) Special confiscation shall apply to:

- *a) the proceeds of the offence;*
- *b) assets which were used or intended to be used in committing the offence where they belong to the convicted person;*
- *c) assets which were used to incite the offence and those for which the offender was remunerated;*
- *d) assets manifestly acquired through crime, unless they are restored to the victim or are intended to be used to make reparation to him;*
- *e) assets held illegally.*

(3) *Special confiscation shall apply to persons who have committed an offence prescribed in the Criminal Code. The assets referred to in paragraph 2 may also be confiscated if they belong to a third party who has accepted them in full knowledge of their unlawful origin.*

(4) *Special confiscation may be ordered even where no penalty has been pronounced.*

118. In accordance with this article, the proceeds and instruments of an offence may be confiscated whether they belong to the offender or have been transferred to a third party. "Illegally held assets" (2.e) refer to objects that have a prohibited, regulated or legally restricted character (such as drugs, arms, smuggled goods …). Paragraph 4 also authorises confiscation *in rem* in the absence of a conviction, be it in very general terms. The new system also allows confiscation by equivalent, when the proceeds of an offence have disappeared, which would also apply when they have been converted or mixed with assets of lawful origin. The examiners have been assured after the visit that the second sentence of paragraph 1 does include the conversion of proceeds. The courts

can also void contracts or invalidate any other action intended to avoid or prohibit confiscation (cfr. Article 1398 Civil Code).

119. Even with the latest additions on the equivalent value confiscation and third party treatment, article 106 CC still raises doubts as to its comprehensiveness and compliance with the international standards:

- The provision does not expressly cover the confiscation of the laundered property as "corpus" (body or object) of the offence. It was argued that the laundered assets become proceeds after laundering (2.a), or that they could be considered instrumental to the offence (2.b) but, if not supported by firm jurisprudence[13] or other authoritative sources, this is stretching the interpretation very far. Moreover, even in the hypothesis of the object of the offence being covered in (2)b) – quod non – the condition of the assets belonging to the offender is clearly unacceptable. The rule is that laundered proceeds should be subject to confiscation unconditionally (the bona fide third party exemption aside), otherwise the effectiveness of the measure is heavily jeopardised as in a lot of cases the launderer is not the owner of the assets (couriers, intermediaries, nominees …).

- The notion of "*corpus delicti"* is however not unknown in the Moldova penal legislation: Articles 158 to 162 CPC deal with the handling of the objects of an offence, which may include money and other valuables, from the perspective of the preservation and disposal of objects that serve as evidence (exhibits). These provisions, who also contain some protective arrangements for the "legal owner", can indeed be used as a fall-back measure resulting in the disposal of illegally acquired goods (article 162.4 CPC), but they do not have the character of asset recovery by way of confiscation. In any event, in stand-alone ML context it is essential to have a clear position on the possibility to confiscate the illegal proceeds that have become the object of the ML offence.

- A similar issue comes up in the TF context, where the collected or provided funds constitute the "corpus" of the offence. Arguably this might be covered by par. 2.c (assets used to "incite" the offence[14]), or by 2.b. as instrumentality[15], but both interpretations are very open to challenge.

- Besides the principle in article 46 of the Constitution, little is said on the protection of the bona fide third party, except very indirectly with the addition to paragraph 3 of article 106 CC. The added reference to the role of third parties did not introduce a novelty anyway: if the third party has knowingly accepted illegal proceeds, it falls under the application of articles 199 CC or 243 CC, so the transferred property is subject to confiscation as such in any case. There is the possibility to take civil action on the basis of article 1398 of the Civil Code (compensation or return of property), but

[13] The Moldovan authorities referred after the visit to a Supreme Court decision of 2006 on the confiscation of contraband goods in a smuggling case. However the examiners were not in a position to verify this text.
[14] Or, in another translation: "determine the commission of ".
[15] In the civil law tradition "instrumentality" normally refers to objects that are used to facilitate the commission of a crime.

nothing is provided as a possibility for the third party to intervene in the confiscation proceedings to protect its interests. As stated above, the CPC also contains some provisions on how to deal with the claims of the "legal owners" of the exhibits, mainly by way of civil proceedings (art. 159.6 and 162.4 CPC), but even if they go a certain way in that direction, these articles do not provide full coverage of the third party interest protection as required (e.g. third parties are not necessarily "owners" of the relevant objects) .

120. (Special) confiscation is not a penalty in Moldova. Nor do any of the articles of the Criminal Code stipulate confiscation as an additional penalty, even though the Code of Criminal Procedure states that sequestration may only be ordered when the offence concerned expressly provides for confiscation of the proceeds of the crime (Article 205.1). It is in fact one of the preventive measures laid down in the Criminal Code (Article 98) to avoid any possible risk and prevent the commission of offences provided for in criminal law. Confiscation is therefore seen in the legislation as a predominantly preventive tool or as a means of securing reparation for damage suffered, as was often stated by those whom the evaluation team spoke to. The team was also told that after a conviction, assets acquired through the offence are restored to their lawful owner and in the absence of such an owner are transferred to the state. Finally, the examiners were assured that, at least in principle, the existing measures permitted the confiscation of the illegal portion of assets corresponding to the proceeds of an offence, when these were mixed up lawfully acquired assets.

121. The question of the mandatory or discretionary nature of the confiscation measure initially led to confusion and contradictory statements. In the end it was understood that confiscation was obligatory: article 106 CC uses imperative terms such as "shall"[16] and "applies", and only softer language ("can" or "may") where it refers to the confiscation without conviction. The hesitant response to this question is significant in respect of the inconsistent application of forfeiture by the judiciary authorities, resulting in low effectiveness**.**

122. The economic situation in Moldova may go some way to explaining why confiscation applies in the first place to the direct proceeds of smuggling, forged items – including forged currency – and other objects whose possession is illegal, such as arms, drugs and items linked to pornography. This may be why most of the statistics available at the time of the first visit largely came from the departments concerned with these problems, the police and customs[17]. In 2004, some MDL 19 million (about € 1 million) worth of goods were confiscated, or otherwise made the subject of temporary measures "for the purposes of repairing damage caused", by the police cross-border offences department. Some MDL 0.5 million worth of criminal profits were estimated to have been made in the field covered by that department in the first six months of 2005.

[16] *"supuse"* in the original language, which according to authoritative linguistic sources carries the inference of obligation.

[17]The first team of examiners was informed after the visit that the Ministry of Justice actually had primary responsibility for maintaining statistics on confiscations and that such statistics did exist and would show how extensively the confiscation provisions were applied. However, the first team of examiners was not supplied with these statistics.

123. For constitutional reasons, the current system does not allow for a reversal or even a sharing of the burden of proof for confiscation purposes following convictions, for example in the case of assets that clearly originate from income from criminal activities or whose lawful origin cannot be established[18].

Provisional measures in criminal law

124. As noted in the second report, the Code of Criminal Procedure lays down various rules concerning provisional measures applicable to seizure (Articles 126 to 132 and 159 to 162) and sequestration (Articles 203 to 210). The first is more concerned with securing items necessary for the investigation or illegally acquired assets, although various provisions are relevant for the purposes of this study (see comments above). The second is more useful for the purposes of securing the proceeds of crime with a view to their confiscation.

125. As regards the seizure arrangements, Article 126 provides generally that the prosecution authority is entitled to seize assets that are material to the criminal proceedings. Article 55(4) states that the prosecution authority must take the necessary measures to ensure the seizure of illegally obtained assets.

Article 55. The prosecution authority and its responsibilities
(…)
(4) Where it is indicated that an offence has been committed, the prosecution authority shall register the case and at the same time shall initiate the prosecution procedure on the basis of this Code, take the necessary steps to establish that the offence has taken place and adduce evidence indicating whether or not the offence has been committed, and take measures to ensure the civil action or the seizure of the illegally obtained assets;
(5) The prosecution authority shall immediately inform the Public Prosecutor that the offence has been committed and that the prosecution has been initiated

126. Under Article 56, power of seizure is conferred on the competent officers of the Ministry of Internal Affairs, the Information and Security Service of the Republic of Moldova[19], the Customs Department and the CCCEC. It is they who, pursuant to Article 57, request the Public Prosecutor to apply to the court for an order for sequestration of the assets seized and for seizure of assets held by third parties. Where the assets in question contain information protected by state secrecy or commercial or banking secrecy, however, seizure must be authorised by the investigating judge. Although the person concerned, one of his close relatives or his representative must in principle be present when assets are seized or premises are searched, the action does not require prior notice to the defendant. Seizures at night are prohibited except in the immediate aftermath of the offence.

127. The rules governing sequestration appear in Articles 203 ff. of the Code of Criminal Procedure. The provisions are detailed and specify the types of goods concerned

[18] The Moldovan authorities indicated that a constitutional amendment that would reduce the burden of proof was under consideration and the Constitutional Court rendered a positive decision on the amendment on 25 April 2006.
[19] After the first visit, the security service's powers were cut back so that they are now only concerned with the intelligence function.

(material goods, including moneys held in accounts – Article 203), the grounds of sequestration (including, as in Article 56, provision for subsequent confiscation and not just civil compensation – Article 203(2)), the sequestration of the assets of the suspect and also those of his close relatives or persons who are jointly liable (Article 204), etc. These proceedings can be used to also immobilise untainted assets in order to secure equivalent value confiscation. Sequestration is sought by the prosecuting authority (the Public Prosecutor) and authorised by the investigating judge or by the court, depending on the case. Where assets are to be sequestered immediately after an offence has been committed or in a case of emergency, the decision is taken directly by the prosecution authority and must be confirmed by a judge within 24 hours (Article 205(2), Article 205(5)). Articles 207 to 209 define the procedure for the placement and the lifting of sequestration measures. Article 208 refers specifically to the measures applicable to shares and securities.

Provisional measures under the AML Law and rules governing the CCCEC

128. Apart from Articles 199 ff of the Tax Code, which authorise the enforced disposal of assets to settle unpaid taxes, there are two statutory bases for provisional measures.

129. Article 4.1.d of the AML Law authorises the CCCEC to suspend the execution of any suspicious financial transaction or one exceeding the specified maximum for a period specified in the decision but not exceeding five days[20].

130. Article 7h of the CCCEC Act of 6 June 2002 authorises the Centre to order banks and other financial institutions to suspend the operations and transactions of legal persons and individuals engaged in business activities and to seize the financial, material and other assets of these persons where unlawful economic or financial activities or failure to meet obligations to the state have been uncovered. The examiners were informed that the CCCEC made general use of this tool as part of its overall responsibilities, but that its anti-laundering office also benefited fairly considerably from this facility.

131. The power to suspend transactions under the AML Law was only used once in 2004, and that under the CCCEC Act, which concerns the Centre's whole range of responsibilities and not just AML/CFT, thirteen times[21]. Hardly any use is therefore made of the power to suspend transactions where there is a risk of laundering, particularly bearing in mind the significant number of transactions reported.

Effectiveness

132. The Ministry of Justice keeps detailed statistics on confiscation, freezing and seizure and other measures of constraints, on the courts' activity regarding legal persons' trials and on the number of cases on each article of the Criminal Code. Courts are obliged to submit, once in 3 months, reports on confiscation, freezing, seizure and other measures of constraints, on the courts' activity regarding legal persons' trials, on the number of

[20] By order of 10/2/2006 the director of the Centre delegated this authority to the OPCML (FIU).
[21] This information was supplied after the visit. In 2005, the CCCEC only used the second option (34 times).

cases on each article of the Criminal Code, etc. The statistical data indicate a minimal application of confiscation measures:

Confiscation

2004

Criminal Code Offence	*Number of convictions with the application of special confiscation*	*Value*
Theft, Robbery, Burglary	1	65$
Embezzlement of other's property	1	982 MDL
Smuggling	11	991043 lei 13200 $
Offences committed by persons with responsible function	3	1200 MDL
Corruption	9	2700 lei 100 $
Other offences	8	60374 lei 130$ 60€ 2 guns

2005

Criminal Code Offence	*Number of convictions with the application of special confiscation*	*Value*
Theft, Robbery, Burglary	3	Tractor 1180 lei 260 $
Illegal circulation of narcotic and psychotropic substances or precursors	1	2910 grams of marijuana
Smuggling	70	14854 packs of cigarettes 575 pounds 19100 € 4071992 lei 550 $
Offences committed by persons with responsible function	15	7600 lei 1110$
Corruption	**5**	900 lei 200$
Other offences	**9**	500 lei 90$ 2 cars

2006

Criminal Code Offence	***Number of convictions with the application of special confiscation***	***Value***
Theft, Robbery, Burglary	2	2000 lei
Fraud	2	108 lei 200€
Illegal circulation of narcotic and psychotropic substances or precursors	3	6230 lei 121 Hrivna (UAH)
Smuggling	62	1776920 lei 17000€ 9033$ 4 cars 51512 packs of cigarettes
Offences committed by persons with responsible function	20	1780 lei 40€ 2210$
Corruption	4	3450 lei
Other offences	20	39327 lei 2210 $ 3 cars

Provisional measures

Measures of constraint	***Admitted in 2003***	***Admitted in 2004***	***Admitted in 2005***	***Admitted in 2006***
Search (corporal search)	793	2727	3249	3402
Withdrawing of goods	153	713	658	867
Seizure of correspondence	86	128	218	189
Interception of communications	745	2241	2578	1891
Seizure of goods	45	103	266	131
Other measures	541	7713	2612	4115

2.3.2 Recommendations and comments

133. As the statistics also show, the authorities undoubtedly still make insufficient use of the new provisions of the Code of Criminal Procedure, which offer a broad range of powers of seizure and confiscation. Awareness raising and adequate training of the law enforcement and judiciary authorities is vital. Some legal issues need to be further addressed, through legislation or jurisprudence, to ensure basic legal security. It is also surprising that the system for reporting transactions does not lead to more suspensions

where suspicions are aroused and it is difficult to say whether the problem concerns the standard of reporting or a lack of analytical capacity on the part of the anti-laundering office, or more simply, as suggested in section 2.5.1, a problem of cumbersome procedures.

134. In the light of these points, it is recommended that:

- The confiscation of the body (" corpus") of the offence should be unequivocally provided for, both in (stand-alone) money laundering and in terrorism financing cases;
- Further develop the full protection of the interests of the *bona fide* third party within the context of the criminal proceeds confiscation proceedings;
- Steps are taken to solve the practical problems sometimes *caused* by freezing and seizure (administration of assets pending confiscation, application to less tangible products such as company shares – appointment of a civil administrator, conversion to stable financial products, etc.)
- The anti-laundering office is encouraged to make more frequent requests under its own powers for transactions to be suspended.
- More efforts are made to familiarise law enforcement and judiciary authorities with these measures.
- To consider reducing the burden of proof by reversing (or sharing) it following conviction and for purposes of confiscation.

2.3.3 Compliance with Recommendation 3

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.3	PC	• Confiscation of laundered money in stand alone money laundering prosecution not unequivocally covered; • Idem for the funds related to the terrorism financing offence; • insufficient bona fide third party protection; • inconsistent application and insufficient effective use of the current seizure and confiscation provisions.

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

2.4.1 Description and analysis

Freezing and where appropriate, seizing under the relevant UN resolutions

135. The implementation of SR. III was explained as being covered by: the Criminal Procedure Code (article 202 *on assurance measures for the reparation of the prejudice and the guarantee of the execution of the punishment*, article 203 *on application of the sequester*, article 205 *on grounds for the application of the sequester*), article 8/1 of the Law on combating terrorism (Law no. 539 – XV of October 12, 2001 as amended), and articles 2, 4(1) and 8 of the AML law. The Ministry of Foreign Affairs has presented 4 reports to the SC Committee established pursuant to resolution 1373(2001): in December 2001, September 2002, October 2003 and January 2006.

136. However, none of the evaluation teams was advised on site of a clearly established legal mechanism to convert designations specifically under United Nations Security Council resolutions 1267 (1999) and 1373 (2001) into Moldovan law, in order to circulate these lists to their authorities and financial institutions.

137. The evaluation team had difficulties to fully understand the information regarding the communication procedure. The Moldovan authorities advised that the National Bank of Moldova sent several letters in 2005 to commercial banks received from the US embassy in the Republic of Moldova regarding the involvement of some organisations and persons in activities related to ML/FT and requested the banks to check the existence of possible bank accounts of these organisation and persons in the territory of Moldova. The Minister of Foreign Affairs also handed out a number of letters for the identification of some persons and entities engaged in terrorist activities. Banks were requested to check the existence of possible bank accounts and to report back to the CCCEC and NBM if such cases were detected. However it was not clear whether these communications were made with reference to obligations arising under resolution 1373 or others.

138. In the course of 2006, the Moldovan authorities have taken some steps to identify the assets of individuals and organisations listed in UN instruments though two orders issued by the Director of the CCCEC. The first *Order (no. 97) regarding some measures to implement the provisions of the law on preventing and combating money laundering and terrorist financing* was issued on 28 June 2006. It provides *inter alia* that financial operations carried out by persons, groups and entities identified as participating in terrorist activities, as listed in Annex 5 of the order, are to be considered as suspicious operations. It is unclear how the names on this list came into being, but they appear to cover names on some UN Lists. This order is of course only part of a general implementing order which also purports to cover countries insufficiently applying AML/CFT measures, offshore zones and countries allegedly producing illegal narcotics, and countries with supposed high levels of corruption.

139. On 1 December 2006 (shortly before the second on-site visit), Order no. 187 *concerning the lists of persons suspected of terrorist financing* was also issued. This order's declared purpose in general terms is to implement the UNSC resolutions in the field of combating terrorism financing. It provides that the list of persons, groups and entities identified in the participation of terrorist activities shall be communicated to organisations carrying out financial operations, shall be posted on the website of the CCCEC and be regularly updated. The organisations carrying out financial operations are under an obligation "to stop any transaction that is to be prepared, carried out or already finalised" by these persons and to inform the FIU about the actions undertaken no later than 24 hours from receiving the transaction request. The FIU is the responsible authority for supervising the implementation of this order, putting it on the internet and updating the information concerned. This order appears to require financial institutions to freeze without delay transactions, through there is no reference in it to funds generally of persons names on lists. The order does not explicitly require financial institutions to search all their accounts to ascertain whether persons on the lists have funds deposited with them (where no transaction is contemplated). Equally, the order does not contain a definition of "funds" in line with the definition in the IN to SR.III.

140. It appeared that as a result, the financial institutions checked against the lists, measures were applied against 1 person although the person turned out to have been subject to measures by mistake (it was not the person listed). It also seems that official efforts have concentrated mainly on banks, even though the first evaluation team was advised that a great deal of intelligence on other sectors, such as firms and other organisations, was available from the security service and the CCCEC.

141. There is no specific procedure for unfreezing or unblocking funds or assets of bodies that are withdrawn from the UN lists or where measures have been inappropriately imposed. In principle, the general rules governing appeals against judicial decisions apply in such cases (Articles 311 to 313 of the Code of Criminal Procedure).

142. It follows from the above that the examiners were not advised of any procedures for challenging domestic designations or for protecting the rights of bona fide third parties.

Freezing, seizing and confiscating in other circumstances

143. The general framework and mechanisms on seizure and confiscation have been discussed earlier. The Moldovan authorities advised that it is the general measures on seizure and sequestration that would be applied to funds suspected of being used for terrorist financing, or belonging to terrorists or terrorist organisations. In theory, since the provisions on sequestration are applicable to all assets subject to confiscation, this also supposes their applicability to the counter-value (art. 106 Criminal Code combined with art. 203 Code of Criminal Procedure). The strengths and weaknesses identified earlier concerning provisional and final measures applicable to criminal proceeds could affect, in theory, measures aimed at terrorist assets.

144. The Law on combating terrorism (Law no. 539 – XV of October 12, 2001 as amended in 2002) introduces also a freezing obligation through its article 8/1 which provides that

"*organisations carrying out financial operations are obliged, upon instruction from the criminal investigation bodies, to freeze funds, financial assets and other economic resources of persons involved in committing or attempting terrorist acts or favouring actions; legal persons which depend, are controlled or owned by such persons, physical or natural persons acting on behalf or as instructed of such persons (…). The organisations carrying out financial operations (….) are obliged to inform immediately the criminal investigation bodies of the freezing of funds, financial assets and other economic resources*". The criminal investigation bodies are obliged, within the limits of their powers, to execute urgently the necessary actions in order to investigate the detected case, and inform subsequently the organisation which carried out the financial operation of the decision taken. The law also provides in its article 24 that in case an organisation has been recognised as a terrorist one by the court, it is wound up and its assets are confiscated in favour of the state. In the case of an international organisation registered abroad, its activity on the Moldovan territory is forbidden, its office, branches or representation is wound up and its assets are confiscated in favour of the state.

145. No information on the number of cases in which these provisions were applied was made available to the evaluation team.

Monitoring

146. As indicated earlier, the Orders provide that the FIU is entrusted with controlling the proper implementation of the Orders. The examiners were not told of any FT specific controls which would have enabled them to check whether all financial institutions were themselves making the necessary checks and whether listed persons, groups, entities have assets in Moldova. Considering the gaps in the implementation of SR.III, one can conclude that appropriate measures to monitor effective compliance under SR.III were not in place at the time of the on-site visits.

Additional elements

147. The Moldovan authorities indicated that the measures set out in the Best Practices Paper for SR.III and the procedures to authorise access to funds or other assets that were frozen pursuant to S/RES/1373(2001) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and services charges or for extraordinary expenses have not been implemented.

2.4.2 Recommendations and comments

148. At the time of the first on-site visit in January 2005, few steps had been taken to ensure compliance with the United Nations Security Council Resolutions, and despite the measures taken in the course of 2006, the legal structure for the implementation of UN resolutions remains incomplete. Though it appeared that banks were checking the lists, practice appeared to be limited. No clear, general legal authority had been implemented for the conversion of designations under RES 1267 or 1373 or lists of other countries

into Moldovan law. There is no designating authority for RES 1373. According to the Order no. 187, the FIU circulates the lists and updates them (though the examiners could not trace these lists on the official website of the CCCEC, as the order provides for).

149. It is thus recommended to urgently adopt the various measures required by SR.III and the United Nations Security Council Resolutions (clear legal structure for the conversion of designations under RES 1267 and RES 1373, national authority to consider requests for designations under 1373, procedures for systematically checking whether designated persons have funds or other assets – as defined in the IN Note to SR.III with a view to freezing them without delay - procedures for listing and de-listing, procedure to follow up on foreign freezing decisions, procedures to challenge a listing decision and to release part of the frozen assets for legitimate purposes, etc). The sole application of the normal preventive and repressive procedures is not in accordance with the special and exceptional procedure the implementation of the UNSC Resolutions calls for.

150. It is recommended that clear guidance to all financial and non financial sector operators and adequate official awareness and information measures are developed on those measures and for detecting terrorist assets.

151. It is also recommended to ensure that adequate monitoring of compliance with SR.III is taking place in practice.

2.4.3 Compliance with Special Recommendation III

	Conformity assessment	**Summary of reasons for the conformity assessment**
SR.III	NC	• No clear legal structure for the conversion of designations into Moldovan law under UNSCR 1267 and 1373 or under procedures initiated by third countries; • No designating authority in place for UNSCR 1373; • No effective and publicly known procedures in place for, or guidance relating to, considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses and for challenging such measures; • No clear guidance to all financial and non-financial sector ; • Insufficient bona fide third party protection; • Practice appears to be limited and so does the monitoring of compliance.

Authorities

2.5 The Financial Intelligence Unit (FIU) and its functions (R.26, 30 & 32)

2.5.1 Description and analysis

152. The function of FIU was transferred in 2003 from a special section of the *Prokuratura* (the public prosecutor's office) to a special department of the CCCEC, the Office for Prevention and Control of Money Laundering (OPCML), which was set up on 15 September 2003. The OPCML has a staff of ten permanent officials, including the head and deputy head, who are appointed by and answerable to the Director of the CCCEC. Five new staff were about to join the department at the time of the first on-site visit[22].

153. The office's duties are outlined in section II of Order no. 111 of 15 September 2003 of the Director of the CCCEC on Rules of the Office for Prevention and Control of Money Laundering (see Annex III). These include:

1. *receiving and analysing information from organisations and bodies covered by the AML Law;*
2. *co-operating and exchanging information with national and international authorities and equivalent bodies abroad;*
3. *deciding on the suspension of transactions;*
4. *identifying offences and imposing the statutory penalties;*
5. *proposing changes to legislation and other changes necessary to combat laundering more effectively;*
6. *organising and running training for the banking and financial sectors;*
7. *conducting studies and analyses of laundering, including new trends;*
8. *preparing forms for reporting financial operations;*
9. *conducting operational surveys;*
10. *providing methodological and practical support to other CCCEC sections and national authorities concerned with laundering and financial and banking offences;*
11. *providing information, via the Centre Director, on "negative phenomena" affecting the proper functioning of the economic system and making proposals for preventing and controlling laundering.*

To carry out its investigation and monitoring responsibilities, the OPCML uses the departments of the CCCEC specialising in audits, criminal investigation, operational investigation (e.g. for telephone tapping), identification of persons and so on. According to the Moldovan authorities, when on-the-spot inspections are carried out, the OPCML is only concerned with financial aspects linked to laundering and terrorist financing.

154. Article 7 and 9 of the AML Law provide that the CCCEC has the overall responsibility for the enforcement of the Law and the coordination of activities conducted by the AML/CFT authorities as well as the international co-operation in this field. Article 8 of

[22] A CCCEC order (no. 18-1 dated 10/02/2006) provided for 10 additional staff of the CCCEC to facilitate the work of the FIU.

the law specifies a number of responsibilities of the CCCEC in respect of AML and CFT.

155. The office's responsibilities are therefore very broad-ranging and extend beyond the core functions of a typical FIU, particularly given its investigative powers. According to information supplied on the spot, the office is not really an indoors operation. Most of its officials are concerned with analysis, inquiries and supervision, including on-the-spot inspections. This is not surprising in view of the scope of its activities and its limited staffing. The evaluation team was told that special checks are carried out on the professional integrity and qualifications of the office's staff. They are in fact recruited from the Centre and as such have considerable experience of economic and business crime.

156. No reference was made to any problems in accessing national information needed by the OPCML, whose powers are quite broad in this respect (art. 8 AML law and art. 7.i. CCCEC law) on the condition that it is in the framework of its legal assignment to combat ML/TF. The powers of inquiry include direct or indirect access to all (additional to the CTR/STR information) financial and other relevant information held by public authorities, financial institutions, "economic agents" and natural persons. However, it did seem to be difficult to secure co-operation from certain foreign FIUs outside this part of Europe, ostensibly on the grounds that the office/Centre was not a member of the Egmont Group. In fact, it appears that the real problem was that of recognition of the OPCML as an FIU, with all the guarantees regarding the confidentiality of information exchanged that that implied. Although membership of the Egmont Group is not a *sine qua non* condition for information exchanges between FIUs, it is nevertheless the case that the CCCEC's extensive powers, which include almost the whole range of economic crime and corruption, may be seen as a problem[23]. Those of the OPCML, which cover not only laundering but also financial and banking offences, according to the list of tasks in Order no. 111, may also give rise to certain doubts[24].

157. The OPCML has no direct authority to request the suspension of transactions of bodies for which it is responsible[25]. Its first option is to submit such a request to the CCCEC under Article 7 h of the Law on CCCEC (see annex III), which authorises the latter to suspend directly any operation of a bank or financial institution and seize the assets of persons suspected of unlawful financial activities or failure to meet their obligations to the state. The second option of suspending transactions was provided for under article 4.1 of the AML Law. In such cases, following a request from the OPCML, the head of the CCCEC asked the public prosecutor to order such a suspension. The evaluation team was told that in the case of banks the OPCML mainly used the first option of the provisions of the Act on the CCCEC, which did not specify a maximum period of

[23] During the Egmont Group application procedure in 2006, the issue was raised of the TF remit of the Moldovan unit, which was considered deficient in respect of the Group's FIU definition. The Moldova application was postponed awaiting redress.

[24] The OPCML does no longer have competence of financial-banking crime (Order of the CCCEC no. 113-1 from 08.09.2006).

[25] Since 10/2/2006, the Head of the OPCML can ask directly the prosecutor to suspend a transaction (Order of the Director of the CCCEC NO. 18-1)

suspension. In practice, a period of 30 days was applied (compared with the 5 days specified in the AML Law), after which the Centre submits a request to the public prosecutor under that Act. However, the team was also told that the OPCML tried to give priority to AML Law applications from the outset. The examiners questioned the value of two parallel systems, one of which no longer needed to be used to assist detection of laundering cases since special machinery already existed. They also thought that the AML Law approach could lead to delays, since the OPCML's request had to pass through two intermediate levels, the head of the CCCEC and the public prosecutor, before suspension could be enforced[26].

158. The process of drawing up forms for notifying transaction, which was started by the special section of the *Prokuratura*, is still in its early stages. Moldova's approach to this is to have a special form for each sector, even though the eventual possibility of a common form for a certain number of sectors is not excluded. Yet despite the fact that the AML Law makes reporting obligatory for nearly all economic agencies, financial and non-financial, operating in Moldova, for the moment forms only exist for *bureaux de change* (including ones in hotels), banks, insurance companies, intermediaries in the securities and commodities markets and notaries. For example, there are no forms for such groups as lawyers, casinos and gaming establishments or pawnbrokers, and these sectors do not report transactions[27]. It was explained that the obligation to notify transactions derived from the existence of such forms, and as these sectors were not important or a priority it was not considered necessary to impose the obligation in practice. However, the examiners were given to understand, as had already been shown in the previous report, that casinos and pawnbrokers at least were at risk sectors. Another issue that needs to be considered is the fact that the AML Law provides for the use of forms to notify transactions over a certain limit (section 4.1.b) but not to notify suspect transactions (article 4.1.c). Nevertheless, it appears that in practice suspicious transactions are occasionally notified, for example a lottery manager who reports a transaction by telephone or a notary by fax. The examiners consider the situation unsatisfactory and confused. The AML Law must be applied as laid down in the legislation, without the need for the OPCML to confirm the notification obligation in writing.

159. The OPCML has no authority to conclude agreements, in the form of memoranda of co-operation, with its foreign counterparts. This power rests with the CCCEC[28].

160. Though the Order of the Director of the CCCEC no. 111 (15 September 2003) provides that the Office shall elaborate annual and semestrial reports of activities,

[26] The CCCEC has since submitted a proposal to parliament, approved at first reading, which would abolish the public prosecutor's power to order five days' suspension and only leave him a power of supervision.

[27] Specific forms were made available for the securities sector, the insurance sector and exchange bureaus (Order no. 193 of 15.12.2005 of the CCCEC on special forms for financial transactions and their modality of transmission, published in the Official Gazette no. 55-58/219 of 07.04.2006).

[28] Order no. 18-1 of 10/02/2006 delegated to the head of the OPCML the power to sign the correspondence with foreign FIUs, followed by Order no. 113-1 of 08/09/2006 which provides that the Head of the Office cooperates and promotes bilateral agreements with similar services from abroad and realises, on the basis of reciprocity, conventions, treaties and agreements, information exchange with similar subdivisions abroad.

studies, analyses, syntheses on its activities, the evaluation teams were not advised of any reports issued so far [29].

161. As far as maintaining appropriate statistics is concerned, the examiners cannot help thinking that the task of information collection causes problems. The main reason is that at present the OPCML has no computerised system for assembling and analysing data. All its reported information is sent by letter or fax or by hand[30]. Considerable efforts are required to produce statistics on reported transactions, such as type (over the minimum for reporting or suspicious), origin and average time to process. Several days are needed to compile the data and this seems to represent a major research task. This was already a problem when the *Prokuratura* preformed the role of FIU. It is also difficult to obtain statistics on other aspects of the activity, such as number of suspended transactions, numbers and types of inspection or requests for mutual assistance sent and received.

162. The examiners were told that a major monitoring exercise had been carried out in December 2003 in conjunction with Ukraine to ensure that organisations subject to the regulations were fulfilling their AML obligations and that any irregularities had in fact been reported. In two cases, penalties were imposed for failure to submit a report.

163. The OPCML's main activity of analysis of reported transactions has highlighted four laundering cases, which were being investigated by the CCCEC at the time of the visit. One of them was clearly identified on the basis of the reporting system.

164. It is also interesting to see how the cases were dealt with by the OPCML and the outcome of or follow up to the transactions reported. The data were only made available shortly after the visit, so the cases could not be discussed on the spot with the relevant authorities.

	Preliminary inquiries terminated with no follow up	***Preliminary inquiries under way***	***Files sent to the Centre's criminal investigation department for questioning regarding tax evasion, smuggling, drug trafficking, etc.***	***Laundering cases referred to the courts***
2003	633	392	30	3
2004	918	963	11	1
2005	715	897	22	1
2006	980	1020	7	1

165. It should be noted first that certain cases that were open in 2003 were still open at the time of the visit in early 2005, and that only a tiny proportion of the transactions

[29] In the meantime a report on the 2005 activities of the OPCML was published. Order no. 113-1 of 08/09/2006 on the Regulation of the OPCML also provides that the OPCML shall prepare annual reports on registered progress.

[30] A modern system of reporting for the banking sector only, using secure on-line access became operational on 1 August 2005.

reported (see the figures in 3.7.1) have led to criminal investigations or been referred to the courts (33 in 2003 and 12 in 2004), even taking into account that the vast majority of the STRs concern Transnistria related transactions that are subject to mandatory reporting, irrespective of their suspicious nature.

166. Most of the cases that were analysed by the FIU and subsequently forwarded for further investigation led to referral to the courts for offences other than laundering (just four cases in 2003 and 2004, as noted above). This in itself need not automatically lead to a negative conclusion, as criminal asset recovery may well be accomplished by going after the predicate or other offences. The disappointing general figures on confiscation however emphasise the picture of serious inefficiency in this respect. [31]

2.5.2 Recommendations and comments

167. The evaluation team welcomes the improvements brought about by the establishment of this specialist section of the CCCEC, which has wide and recognised powers for preventing laundering. However, it is difficult to say with certainty whether the CCCEC or the OPCML office acts as Moldova's FIU, since the latter is heavily dependent on the former. If it is the CCCEC, its powers and responsibilities clearly go well beyond those of most FIUs. On the other hand, if it is the OPCML, it suffers from a significant handicap, namely its lack of autonomy. Aside from certain practical issues that remain unsettled, such as computerisation, shortage of resources, organisational structure and the need to clarify the relevant legislation, the question of what constitutes a satisfactory model of an FIU for Moldova still needs to be resolved. The special section in the public prosecutor's department was unable to convince doubters and was probably given insufficient time to do so.

168. At all events, even though the existing model needs to be refined, it should be given an opportunity to prove its worth. It is disappointing that various countries' FIUs are refusing to co-operate with the CCCEC and its special section. The argument that Moldova is not a member of the Egmont Group seems to reflect a certain unease and difficulties of recognition. Yet the Egmont group's definition of an FIU would appear to encompass a full range of models and in the current state of affairs the Moldovan variety differs very little from that of countries that have opted for an FIU within the police force, as in Germany. However, it must be said that even in police models, FIUs generally enjoy a certain level of autonomy, which did not appear to be the case in Moldova. For the time being it is more the CCCEC that fulfils the role of FIU.

169. A more independent Moldovan FIU would at least be able to overcome some of the constraints arising from total integration with another body and could have its own special, secure premises, a distinct computer system limited to the section itself, greater financial autonomy and more freedom to exchange information.

170. The examiners recommend that within the CCCEC, the identity and independence of the OPCML are strengthened to bring it more into convergence with the criteria for and

[31] In the 2006 ML case application was made for confiscation to a total amount of 242.000 USD.

characteristics of FIUs generally [32], concentrating on the prevention of money laundering, and that it is given sufficient resources to discharge its main tasks, ie. the analysis of financial intelligence.[33] For this purpose, this FIU should have a secure computer system and specific databases and be directly accorded the same powers as those usually accorded to an FIU, in particular those of exchanging information without prior agreement, signing co-operation memoranda under its own name, and asking for operations to be suspended without the intervention of the CCCEC director.[34]

171. The OPCML's identity should also be established more clearly in legislation, in particular in the AML Law, which refers only to the CCCEC.

172. Once that identity is established, the other relevant standards must be implemented as a whole, in particular:
    - protection of information held by the FIU (confidentiality)
    - the elaboration of periodical reports, which include statistics, typologies and trends as well as information regarding its activities
    - giving guidance to the subjected entities on the reporting procedure[35].

173. It is also recommended that the OPCML's powers be reviewed. In addition to its analytical tasks, it might benefit from a general power of supervision on compliance with the obligations laid down in the AML law. The latter does not make express provision for this, and this supervisory power seems to derive from the powers of the CCCEC.

2.5.3 Compliance with recommendations 26, 30 and 32

	Conformity assessment	Summary of reasons (relating specifically to section 2.5) for the conformity assessment
R.26	PC	• Generally, the autonomy and powers of the FIU need reviewing and the identity of the FIU should be established clearly in legislation; • Reporting forms and procedures have not been issued for all reporting entities; • Insufficient physical and electronic security systems to securely protect the information held by the FIU; • No periodic reports issued by the FIU with statistics, typologies, trends and information on its activities;

[32] A Council of Europe project started in August 2006 aimed at strengthening the AML/CFT system, from which the Financial Intelligence Unit will benefit.

[33] On 8/9/2006 the "Regulations of the Office for Prevention and Control of Money Laundering" were issued (Order of the Director of the CCCEC no. 113-1), doing away with the blending between the CCCEC and the OPCML, and giving the latter the statute of an independent subdivision within the Centre.

[34] See footnote 25.

[35] Addressed by CCCEC Order no. 193 of 15/12/2005 "on the special forms for financial transactions and their modality of submission" for the financial, security, insurance and foreign exchange sector.

		• In practice real issues as to whether the Egmont Principles are applied in relation to security of information , thus impacting on effective co-operation. • Low turnover in terms of cases forwarded to prosecution (efficiency)
R.30	PC	• The OPCML's resources (bearing in mind the scale of its tasks) and technical means are insufficient
R.32	LC	• Effectiveness: statistics are not available rapidly and in a detailed, accurate, reliable way.

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, 30 & 32)

2.6.1 Description and analysis

174. As mentioned earlier, several authorities have responsibilities in the field of investigation and prosecution of money laundering and the financing of terrorism offences, namely the CCCEC, the Ministry of Internal Affairs, the Information and Security Service, the Prosecutor's Office.

175. The *CCCEC* investigates laundering cases uncovered as part of its own inquiries into predicate offences. The first case of this type goes back to 2003 and ended when proceedings were discontinued under the new Code of Criminal Procedure that came into force that year. This authorises the termination of cases when the suspect admits to the offence and agrees to pay damages or make restitution to the public purse (Articles 504 to 509). The case in question related to smuggling, in which the illegal profits (MDL 180 000, or a little over € 9 000) were "legalised" via a shell company. The investigation lasted ten days and the suspect was forced to acknowledge the facts in response to information accumulated before the investigation stage.

176. The CCCEC may also play an important role in ML investigations launched by the police. Such cases may be conducted entirely by the police, with the aid of the CCCEC, or the case may be split, with the CCCEC conducting the criminal investigation into laundering. In both cases a joint working group will be established. As a rule, though, since its formation the CCCEC has mainly conducted such inquiries, and the rules regarding discipline, integrity and confidentiality appear to be fairly strict.

177. The *Ministry of Internal Affairs and the SIS* mainly retain responsibility for terrorist financing cases[36]. The latter has a dual responsibility in this area (and also, to a certain extent, with regard to laundering). In the international context, it is responsible for exchanging and checking information and intelligence. At the national level, it has operational authority to conduct inquiries and gather intelligence. It therefore receives and manages possible terrorist-related cases, in co-operation with the CCCEC, the National Bank, the Finance Ministry, other Foreign Ministry departments and the *Prokuratura.*

178. The *Prosecutor's office* directs and supervises criminal investigations carried out by the law enforcement agencies and according to article 270 of the CPC, it also has exclusive responsibility for investigating money laundering cases allegedly committed by the specific categories of persons (President, members of Parliament, members of Government, judges, prosecutors, generals, criminal prosecution officers).

[36] Since the visit, the service has lost its criminal investigation function, which gives the CCCEC a greater role in conducting inquiries.

179. The Moldovan authorities acknowledged that there are no explicit provisions that allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering.

180. The Moldovan authorities advised that in 2004, various checks were carried out on businesses, as part of efforts to combat terrorist financing. As a result, some 200 companies established in Moldova and run by nationals of Arab countries have been identified and subjected to SIS surveillance, which has revealed that:

a) they are concerned with a wide range of commercial activities involving both goods and services (retail and wholesale, trade in food products, tourism, restaurants, bars and so on);

b) fairly often, the accounts failed to reflect the real financial situation, a situation associated with tax evasion and laundering.

As a result, steps have been taken as part of a general effort to combat and limit the number of shell companies, which were considered to represent around 20% of all those registered in Moldova.

181. After 11 September, a number of companies and charitable associations were suspected of involvement in terrorist financing. Two of them, based in Lebanon and Sudan, were involved in illegal immigration. About 600 foreign nationals had entered Moldova for onward transit to other parts of Europe. The SIS representatives appeared to confirm in interviews later that in certain cases there might have been links between illegal immigration and terrorist financing in Moldova, as a transit country. Another group of companies owned and financed by citizens of the United Arab Emirates were strongly suspected of terrorist financing because they used a Moldovan intermediary who had opened accounts in the Emirates without the National Bank's authorisation. These funds (about USD 50 000 a year) were then transferred or retransferred to Moldova in the form of investments. Criminal proceedings have been opened in the latter case.

182. Finally, the CCCEC, in conjunction with other relevant bodies such as the SIS, the National Bank and the Ministry of Internal Affairs, monitors the situation in Transnistria and receives information on transfers of capital to and from that region.

183. Generally speaking, there is a lack of unanimity among Moldovan officials about the country's level of involvement in terrorist financing. In contrast to the SIS, the CCCEC maintains that it has not so far been possible to confirm suspicions of terrorist financing. The refusal of certain key countries to exchange intelligence, on the grounds that Moldova is not a member of the Egmont Group, means that the country lacks valuable information. There is also little coherent, co-ordinated and up-to-date analysis of trends in laundering and the examiners learned very little about the laundering processes used.

184. These uncertainties also extend to which sectors of the Moldovan economy are at risk of laundering. Some see the risk as lying mainly in the financial sector. Others think that non-financial institutions, such as moneylenders, the gambling sector as a whole and real estate, are also problematic. The forecasting section of the CCCEC carries out

strategic studies of laundering. While tax evasion, drug trafficking, smuggling, human trafficking (more recently apparently) and to a lesser extent arms trafficking are the main sources of criminal proceeds, there are no data - at police level, for example - on the resulting criminal profits. According to CCCEC officials, there is nothing specific to distinguish laundering techniques in Moldova. Laundering is carried out using cash transactions, international bank transfers, forged credit cards and offshore companies. Officials admitted that screen companies remained a major problem – 750 accounts belonging to such companies had been identified in 2004 and MDL 5 million, or € 333 000, had been seized. Two criminal groups had been identified and dismantled.

185. According to the Law on Police of 18 December 1990 and the Law on operative investigations of 12 April 1994, the law enforcement bodies concerned have adequate powers to conduct searches, hear witnesses, seize documents and perform all the typical investigative activities aimed at collecting evidence and tracing criminal assets. Financial information held by the financial institutions, including the data collected and kept in the context of KYC and CDD process, and other information covered by confidentiality or secrecy is also accessible through the intervention of the judiciary authorities (court order, investigative judge). Investigation and prosecution officials whom the team met made no reference to particular difficulties, though the examiners were told on other occasions that lawyers were entitled to claim total professional confidentiality (see section 3.4).

186. However, the situation regarding special investigation methods is fairly complex, even though once again those interviewed expressed no particular reservations on the subject.

187. As noted in the second mutual evaluation report, the Code of Criminal Procedure places severe restrictions on the use of special investigation techniques. No provision is made for certain methods and they can only be used in cases where the alleged offences are liable to the strictest penalties. The previous report stated, for example, that the majority of effective investigative methods were precluded not only in money laundering investigations but also those concerned with economic and financial crime, corruption, drug trafficking and smuggling (even when these were linked to organised crime). The report also noted that there was no provision for controlled deliveries in the Code of Criminal Procedure. The penalty for offences under Article 279 of the Criminal Code on the financing of terrorist acts – 10 to 25 years' imprisonment – would appear to place those offences in the category that justified the most intrusive investigation methods.

188. In contrast, the Operational Investigations Act no. 45-XIII of 12 April 1994 appears to go much further along this path, since article 6 authorizes agencies engaged in operative investigative activities to carry out, with the authorization of the instructive judge, the following investigative techniques:

a) searching the domicile and install audio and video recording, taking photographs, filming, etc.
b) Carrying out surveillance using modern methods;
c) Intercepting telephone conversations and other kind of communication;
d) Controlling the communications other the telegraph

e) Gathering the information from the telecommunication institutions;

It also authorizes them to carry out other operative investigative activities such as:

a) Question citizens;
b) Gather intelligence;
c) Carry out visual surveillance;
d) Carry out surveillance and recording using modern methods and equipment;
e) Collect information from communication institutions;
f) Carry out control acquisitions and controlled deliveries of goods and merchandise in free or limited circulation;
g) Examine objects and documents;
h) Identify persons;
i) Search premises, buildings, land plots and transport units;
j) Inspect the correspondence of convicted persons;
k) Interview suspects using simulated behavior detection devices (polygraph);
l) Mark with chemical and other special substances;
m) Operative experiment ;
n) Infiltrate criminal organisations using operative personnel of operational subdivisions and persons who co-operate confidentially with agencies that engage in operative investigative activity, using ID cards and other operative documents;
o) Monitor the transfer of money or other extorted.

This law is also extremely flexible, since it does not lay down comprehensive conditions governing the use of these measures, for example regarding their period of applicability, the types of offences concerned, the need for authorisation from an independent judicial body and so on. At meetings with law enforcement agencies and judicial authorities, this law was usually cited as the legal basis for such actions. However, the evaluators were not informed on the number of occasions in which such techniques were used.

189. In practice, investigations commence at an early stage - when suspicions are first aroused or at all events before the formal opening of judicial proceedings as laid down in the Code of Criminal Procedure. The information collected is collated and may serve as the basis for such formal judicial proceedings. Since the Code of Criminal Procedure only accepts evidence obtained through telephone taps in a limited number of cases, information secured under the 1994 Act must ideally be "validated", for example through a retrospective review of its lawfulness and possibly following acknowledgment of the facts of the case by the accused. In theory, any evidence is retained in the archives, which serve as a passive information base. There does not appear to be any time limit on how long information is stored or conditions governing the safeguarding of information, and there is no indication of whether the information stored finally led to a conviction.

190. Although the Code of Criminal Procedure offers those conducting inquiries a modern legal framework that largely reflects international standards regarding how it should be applied, it does not give them adequate means of investigation. These methods are mainly laid down in the 1994 Act, but the formalities governing their use are excessively vague and could lead to legal uncertainty. The examiners have reservations about the lawfulness of current practice, and like their predecessors in the second round, they think that certain proceedings might eventually be set aside for failure to

comply with the European Convention on Human Rights, for example on grounds of procedural errors or non-respect for the general principle of non-retroactivity of criminal law. They consider that the introduction of the new Code of Criminal Procedure should probably have been accompanied by repeal or incorporation of the 1994 legislation, which in the meantime has provided the legal basis for the use of the relevant investigation methods. The Code postdates the 1994 Act and as such should logically regulate the use of special investigation techniques, while referring to the implementing legislation to deal with practical aspects, ethical matters and so.

191. Efforts are made to ensuring the integrity and enhancing the professional skills of the law enforcement authorities concerned. They are trained and tested in the police academy, or have university degrees. Each subdivision establishes its own criteria and adequate qualifications. All civil servants must make a statement of property (Law on declaration of income 1997).[37]

192. All the relevant judicial personnel need to be familiarised with the use of special investigation techniques. More generally, further training should be provided in the fields of laundering, financial investigations and the general business culture. Appointing and training magistrates specialised in financial crimes and money laundering cases is one way to obtain more know-how and expertise in this domain, which then should be translated in an active prosecution and the establishment of guiding jurisprudence (see *supra*). Following the forthcoming introduction of computerised data processing tools for analysing criminal and financial data, particularly by the CCCEC and its anti-laundering office and by the police, training will also be needed on how to use the relevant software and techniques.

2.6.2 Recommendations and comments

193. There should be more in-depth analysis of the phenomenon of and trends in money laundering and its institutional framework, including sectors which are not universally regarded as vulnerable to laundering but about which the examiners sometimes heard fairly firm risk allegations (gaming, outside as well as within casinos, real estate, insurance, pawnbrokers etc.);

194. The results of investigation and intelligence work on the financing of terrorism should be more fully shared between the SIS and the CCCEC, which also has preventive powers in the field;

195. Detailed statistics should be kept on money laundering and terrorist financing investigations, prosecutions and convictions, as well as on seizures and confiscation (see also sect. 2.3.2); in particular, this would make it possible to assess the practice of the authorities in this sphere and ensure that a policy exists on the proceeds of crime;

196. Moldova may consider to review, as a matter of urgency, the legal framework for the use of special investigation techniques and examine if the Code of Criminal Procedure

[37] In May 2006, the Ministry of Internal Affairs issued a code of ethics.

should be amended to extend the use of special investigation techniques, including controlled deliveries, to a wider range of offences associated with AML/CFT;

197. Training must be developed/continued, with an emphasis on systematic recourse to financial investigations, the culture of the business world, the use of investigation techniques in a modern legal framework, analysis and use of computer techniques (involving in particular, but not only, the anti-laundering office).

2.6.3 Compliance with recommendations 27, 28, 30 and 32

	Conformity assessment	Summary of reasons (relating specifically to section 2.6) for the conformity assessment
R.27	PC	• limited information and data available to assess the efficiency of the ML/FT investigation and prosecution process ; • no legislative or other measures that allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering; • more focus on the investigation of the financial aspects of crime to achieve more effective asset recovery.
R.28	C	
R.30	LC	• the authorities designated as responsible for AML/CFT need further resourcing; • training needs to be developed in the fields of finance, use of financial analysis, use of computer techniques, evidential requirements and asset recovery.
R.32	LC	• It is difficult to obtain statistics on seizures and confiscations

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer due diligence and record-keeping

198. The AML Law, as amended in December 2004, applies to both money laundering and terrorist financing. The obligations it imposes apply to organisations carrying out financial operations, which according to article 3 of the Law are :

a) *banks, subsidiaries of foreign banks, other financial institutions and their subsidiaries;*

b) *stock exchanges, other exchanges, investment funds, insurance companies, fiduciary companies, dealers and brokers offices, other enterprises, organisations and institutions (hereafter referred to as the institutions) which carry out transactions to receive, transmit, alienate, transport, transfer, exchange or which keep financial resources or assets; institutions that legalise or register the ownership rights; bodies providing legal, notary, accounting, financial-banking services, and any other natural and legal persons concluding transactions outside the financial-banking system;*

c) *[casinos, leisure centres equipped to organise games of chance, institutions which organise and set up lotteries or games of chance.]*

199. The list therefore coincides to a large extent with financial institutions as defined by FATF.

3.1 Risk of money laundering or terrorist financing

At the strategic level

200. It is difficult to say how the notion of risk is taken into consideration in Moldova. Although a number of those whom the examiners met said that certain economic sectors or operators presented varying degrees of risk, the only general effect of this is that some sectors are actually required to report transactions in accordance with the AML Law and others are not. The reason is that the Moldovan system depends not just on the AML Law itself but also on a number of additional aspects, in particular whether or not the relevant forms exist. In their absence, no notifications can be made and the sectors concerned do not consider themselves to be bound by this legislation. Forms only exist for a small number of sectors deemed to be priorities. Other sectors that are also considered to be at risk from an AML/CFT standpoint are not required to report transactions because there are no forms for doing so[38].

[38] Specific forms were made available for the securities sector, the insurance sector and exchange bureaus (Order no. 193 of 15.12.2005 of the CCCEC on special forms for financial transactions and their modality of transmission, published in the Official Gazette no. 55-58/219 of 07.04.2006).

201. Nevertheless, this gap does not affect the main financial institutions since forms already exist for banks, *bureaux de change*, insurance companies and securities brokers.

At the operational level

202. The notion of increased risk is clearly recognised in the AML Law. Its article 4.4 requires financial institutions to pay special attention to resident clients or beneficiaries that receive funds from countries identified as having inadequate or non-existent anti-money laundering regulations, and which therefore represent an enhanced risk due to a high rate of crime and corruption. The CCCEC is required to compile and circulate relevant information to the institutions involved in carrying out financial transactions.

203. In accordance with this provision, the CCCEC has circulated letters and taken other steps to inform a number of categories of operators of countries and areas that pose a risk (eg. list of non-cooperative countries and territories, selected UN list of persons, groups and entities involved in terrorist actions, the list of drug producing states and offshore areas, etc).

204. In practice, this information exercise has been confined to organisations for which a notification form already exists, in particular the banking sector.

205. Following a National Bank initiative, the banking sector has also taken special steps to incorporate and develop the AML Law's principles. For example, the Recommendations adopted by the National Bank in 2002 on AML/CFT programmes provide that financial institutions should take into account when developing internal programmes against ML the risks (reputation, operational, legal, concentration, information technologies) by imposing specific obligations on their officials. These include procedures for identifying high risk clients and approving their transactions, identifying sectors exposed to the risk of money laundering and taking into account the reputational risk. Banks should also establish "know your customer" rules, in which the notion of risk would also play a part.

3.2 Customer due diligence, including enhanced or reduced measures (R. 5 to 8)

3.2.1 Description and analysis

206. The relevant texts which endeavour to address the various requirements of Recommendations 5 to 8 of FATF are: the AML Law, applicable to all obliged entities, and the Recommendations of the National Bank of Moldova on developing programs on prevention and combat of money laundering and terrorism financing (hereinafter 2002 NBM Recommendations), applicable to the banking sector and other entities licensed by the NBM (i.e exchange bureaux).

207. The AML Law addresses only a small part of the FATF Recommendations.

208. The 2002 NBM Recommendations, on the other hand, take into account to a larger extent the requirements of "know your customer" policy, correspondent banking, politically exposed persons etc. The requirement, in the 2002 NBM Recommendation 6 on "Know your customer rules" deals in particular with:

- customer acceptance policies, based on categories of clients based on the risk factor, the prior approval of relationships with customers at risk by the managerial level etc.
- customer identification policies, including for politically exposed persons, non face to face client relationships, introduced business, transactions involving correspondent banking relationships;
- ongoing monitoring of customer accounts and transactions with a view to determine the standard of normal transactions etc.

209. The Moldovan authorities indicated that this text is of a legal mandatory nature: it has a regulatory strength and was adopted as a result of the decisional power of the Central Bank under article 11 of the Law on the National Bank of Moldova (hereinafter NBML), it was published in the Official Journal, it is said to be sanctionable and sanctioned in practice. It was also indicated by the Moldovan Banking Association that the NBM is exerting a strict level of control over the implementation of those requirements.

210. However, the examiners have a reservation about the legal status of this text. Article 2 of the NBML provides that "*recommendation means an instruction submitted by the National Bank without obligatory power*". This is also reflected in item 9.2 of the Recommendations which provides that "*the Recommendations do not interfere with or modify the obligations of financial institutions on compliance with legislation in force on prevention and combating of money laundering and terrorist financing*". The examiners consider that the fact that the Recommendations were approved by a decision of the Council of Administration of the NBM cannot change the status of this document, in particular as the exclusive scope of enforceable NBM regulations, provided for by article 46 of the NBML does not include AML prevention. Furthermore the Law on Financial Institutions, referred to in the Recommendations as another legal act establishing the regulatory powers of the NBM in the AML sphere, explicitly limits them to "*the purpose of supervision and regulation of the financial institutions' activities (…) to give effect to the provisions of this law*" (article 40). The only article of the Law on Financial Institutions regarding money laundering (article 23) establishes a prohibition on banks knowingly to assist any person in concealing the illicit origin of funds, and requires banks to "*inform competent authorities of the evidence that cash or other valuables are derived from criminal activity*" which does not correspond with the obligations of the preventive law. Moreover, it clearly follows from the definition of "financial institution" provided by article 2 of the Law on Financial Institutions that the activities regulated by the NBM for prudential reasons do not include compliance with the AML law.

211. The 2002 NBM Recommendations as amended in 2003 regard exclusively the development of programs by the banks on prevention and combat of money laundering[39].

212. Overall, the examiners are not convinced that the NBM Recommendations are 'other enforceable means', in the absence of a clear legal basis for sanctions to be issued under them.

*Criterion 5.1**

213. Criterion 5.1 of the Methodology is marked with an asterisk. This means that it belongs to the basic obligations that should be set out in a law or regulation.

214. The AML Law explicitly prohibits anonymous accounts and accounts in fictitious names. This also applies to the opening of safe deposit boxes (article 4.2).

"Financial institutions are not entitled to keep anonymous accounts or ones opened under a fictitious name. When opening any account, the financial institution shall ask for presentation of an identity document or power of attorney legalised in compliance with the established procedure and shall enter the relevant data. The same procedure shall apply to the opening of safe deposit boxes."

215. The National Bank's Regulation on the opening, modification and closure of accounts in authorised banks in Moldova (no. 297 of 25 November 2004) also includes a similar provision. Banks must require persons opening accounts to produce identity as well as other necessary documents. Where the person opening the account is an agent acting on behalf of someone else, the necessary documentation must be accompanied by a power of attorney or contract of agency. Similarly, safe deposit boxes are covered by the regulation of 25 February 2000 on bank cash transactions.

216. Finally, the 2002 NBM Recommendations (item 6.3) explicitly prohibit the opening of anonymous accounts and accounts under fictitious names.

217. The examiners were also informed that numbered accounts never existed in the banking system and therefore no reference to such accounts is made in the legislation or regulations.

*Criterion 5.2**

218. Criterion 5.2, which is also asterisked, requires all financial institutions to undertake CDD measures when:

a) establishing business relations;
b) carrying out occasional transactions above the applicable threshold (USD/Euros 15.000). This includes also situations where the transaction is carried out in a single operation or in several operations that appear to be linked;

[39] An amendment approved by the Council of Administration of the NBM on 14/09/2006 introduced several references of general nature to preventing the financing of terrorism.

c) carrying out occasional transactions that are wire transfers in the circumstances covered by the IN to SR.VII;
d) there is a suspicion or ML or TF regardless of any exemption or thresholds that are referred to elsewhere under the FATF recommendations;
e) or the financial institution has doubts about the veracity or adequacy of previously obtained identification data.

219. Article 4 paragraph 1 of the AML Law establishes a general obligation on financial institutions at account opening or while performing transactions if there are doubts that customers are not acting on their own behalf to provide identification of such customers. The drafting is not very clear though. This article does not specify any type of occasional transaction, neither threshold-based nor wire transfers covered by the Interpretative Note to SR VII. Suspicions of money laundering and terrorist financing require the completion of a special form and reporting to the CCCEC. However, there is no explicit requirement to identify customers in such cases.

220. The examiners consider that the AML Law should deal with the "establishment of business relationships", a concept which is broader than "opening of accounts" which is currently in use, and which focuses too much on banking relations. The requirement for financial institutions to conduct the CDD process is only implicitly provided for by a reference made in paragraph 3 (a) of article 4 of the AML Law to compliance with "Know Your Customer Rules". However, the Law does not specify any minimum standards regarding this, nor does it give relevant authority to any other state body.

221. The 2002 NBM Recommendations require CDD measures at establishing business relations (item 6.2). The NBM Regulation on Cash Operations in Banks in the Republic of Moldova requires customer identification regardless of a threshold at depositing cash or cashing a check (approved by Decision no. 47 of the Council of Administration of the NBM from 25 February 2000, as amended). The NBM Regulation no. 10018-20 on organisation and functioning in the territory of the RM of foreign exchange offices and foreign exchange bureaus by hotels (of 06/05/1994, section 4.7) obliges to require the customers' identity act (passport, identity card, residential permit, other national identity document) for transactions exceeding 5000 USD. Also, occasional customer identification is required from exchange offices.

222. In practice, the legal requirement in the AML Law only explicitly covers simple identification at account opening and the requirement for a CDD process, including verification, is not explicitly provided for.

223. The AML Law does not contain an explicit requirement for increased vigilance in case of doubts as to the authenticity and relevance of previously obtained identification data. The 2002 NBM Recommendations do contemplate the situation after an account was opened but verification problems appeared (item 6.3), and *recommend* financial institutions to report to the CCCEC if the verification problems cannot be solved.

Criterion 5.3

224. By virtue of the AML Law (article 4 paragraph 1(a)), the identification requirement applies to both individuals and legal persons, and to intermediaries as well as clients. This requirement is also present in the 2002 NBM Recommendations. The AML Law does not require customer identification to be performed on the basis of documents and information of reliable origin, but enumerates the various pieces of information to be gathered in order to fill the form for reporting in case of transactions which are suspicious or above the threshold. The Moldovan authorities stated that verification of identification information is required for all customers and that banks are under an obligation not to establish a banking relationship until the identity of a new customer is verified (Item 6.2 of the 2002 NBM recommendations). However, the examiners have not seen, either in the AML Law or in the other regulations, apart from the account opening procedures (NBM Regulation on opening, modification and closing of accounts of 25/11/2004) a reference to the need for verification on the basis of reliable, independent source documents as required by the Criterion. It would assist if, in the AML Law or in other binding regulation of general application, it was clarified which are the precise types of documents suitable for identification purposes in respect of natural persons and how such information should be verified.

225. In practice, the examiners were advised that in the banking sector, clients opening accounts must present an identity document, documents to establish their right to conduct the activity in question, a tax registration certificate, a certificate of registration with the registration chamber, the list of persons authorised to manage the undertaking's activities, the memorandum and articles of association, the authorisation, the permission of the central bank of the country concerned in the case of a foreign bank opening an account and so on. In the case of non-cash settlements, banking policy is in principle to refuse to carry out transactions if any necessary documentation is missing. Clients are required to be physically present when opening bank accounts and electronic transactions may not be carried out without the necessary supporting documentation.

226. In the case of *bureaux de change*, Moldova's regulation no. 10018-20 on the organisation and functioning in the territory of the Republic of Moldova and exchange offices and foreign exchange bureaus by hotels has opted for identification above a certain minimum level of transactions, which is well below the one in FATF Recommendation 5 and Article 3 of the revised EU Directive. Until 2004, it was the equivalent of USD 500. It was then raised to USD 5 000. Above this level, the client must present an identity document (passport, identity card, residence permit), the details of which are recorded by the operator.

227. Registration is obligatory for all those active in the securities market. Natural persons must present themselves in person to brokers, who must require the production of an identity document, extract from the register of commerce and where appropriate a properly executed power of attorney (see article 6.3 of the Regulation on broker and dealer activities on the securities market). In the latter case, both client and agent details will be recorded – name, address, date of birth, identity document number, tax or registration code, date of issue and issuing body and the amount of the transaction.

Legal persons are required to present to the broker certifying document, address and other necessary data for identification of the legal person; document on representation (power of attorney, order, extract from the charter of the company) certified, data about legal identification (certificate on registration of legal person) and documents confirming identification of the founders of the legal person up to a degree of an establishment of the founders- physical persons (article 3.3 of the NSC regulation on preventing and combating money laundering on the securities market of 28/02/2005).

228. In the case of intermediaries, according to the National Bank representatives, only account holders, banks operating on their behalf with a duly authorised contract, persons operating with a properly notarised power of attorney and duly authorised company representatives may carry out bank account operations. According to the National Bank, lawyers may not carry out transactions on clients' behalf. It should be noted that the second round report found that the opposite was the case and that lawyers could act as agents.

Criterion 5.4

229. The AML Law requires financial institutions to verify that any person acting on behalf of the beneficiary is duly authorised to do so and to identify and verify the identity of that person (art. 4 para. 1(a)). The provision does not specify the type of beneficiaries and one can understand that this covers also legal persons (but the text is silent on the issue of legal arrangements). The 2002 NBM Recommendations (item 6.2) address this issue in a very general way, without any specific reference to requirements of both sub-criteria regarding legal arrangements.

230. With regard to 5.4 (b), the verification of the legal status of the legal person or arrangement requires, for instance, proof of incorporation or similar evidence of establishment and information on the customer's name, legal form, address, directors and provisions regulating the power to bind the legal person or arrangement. The NBM Regulation on opening, modification and closing of accounts with the authorised banks of the Republic of Moldova requires for the identification process the following information: copies of documents of establishment, copy of the certificate of the fiscal code assignment, excerpt from the State register of enterprises and organisations, copy of documents confirming the state registration or copies of the act approving the legal entity's regulation or status. It does not require any information regarding management.

231. The NSC's Regulation on preventing and combating money laundering in the securities market (of 28 February 2005) requires professional market participants to obtain, for the identification of a resident legal person of an off-shore zone, the documents certifying the managerial position of the physical person or, in the case of a collegial body, the decision regarding the selection of persons with managerial functions and the distribution of responsibilities among them. A documentary proof of registration is mandatory only in the case of identification of non-resident legal persons. However, as no legal authority in the AML prevention is provided to the NSC by the AML law or by the law on the NSC, the status of the mentioned regulation as "other enforceable means" is disputable.

232. The examiners did not receive any legal texts containing provisions on legal arrangements in the context of the essential criterion 5.4.

*Criterion 5.5**

233. Regarding the identification of the beneficial owner, it has to be noted that neither the AML Law nor the NBM regulations or any other normative acts contain a definition of "beneficial owner" within the meaning of the FATF recommendations. The examiners strongly advise to incorporate such a definition in the AML law or regulation. The same applies for the requirement to take reasonable measures to verify the identity of beneficial owner using reliable sources.

234. As indicated earlier, there is an obligation to check whether the client is acting on behalf of another person but it is not specified that all reasonable measures must be taken to obtain sufficient information to check the identity (criterion 5.5.1*). Special requirements as to the understanding of the client's structure in the case of legal persons are not dealt with in the AML Law; this act makes no distinction between categories of customers or beneficiaries. The issue is not explicitly dealt with either in the 2002 NBM Regulations although they deal more widely with "know your customer" principles.

235. The requirement to take reasonable measures to understand the ownership and control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements (criterion 5.5.2) is not addressed by Law, regulation or by enforceable means.

Criterion 5.6

236. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship, which should be required by other enforceable means and be sanctionable.

237. This criterion is not explicitly addressed in the AML Law. The 2002 NBM Recommendations deal with this issue implicitly – under the various provisions translating the "know your customer" principle (items 6.1 to 6.4) and explicitly under item 6.2, which provides that "all information necessary for adequate identification of each new customer, including purpose, nature of the business relationship should be obtained" by the banks.

238. The examiners were not, however, convinced that in general criterion 5.6 was fulfilled, as no clear provision was found of general application, either in the AML law or other regulation or elsewhere, which requires financial institutions (with the exception of banks) to inquire of all clients – both legal and physical persons - on the purpose and nature of their business relationship.

*Criterion 5.7**

239. On-going due diligence on the business relationship is not required under the preventive law. The 2002 NBM Recommendations require banks to have procedures for on-going monitoring of accounts and transactions, that are in line with the requirements of sub-criterion 5.7.1 (item 6.3).

240. Generally banks are not required to ensure that customer information, collected under CDD, is being updated, nor to undertake reviews of existing records. The NBM Regulation on the opening, modification and closure of the accounts with the authorised banks of the Republic of Moldova provides that customer accounts shall be modified when there are changes in customer data, organizational and legal form. This, however, in the view of the examiners, does not specify in which way banks are required to comply with these norms, and reflects banks' dependence on the action of customers to provide such information on their own initiative.

241. The 2005 NSC Regulation on preventing and combating money laundering in the securities market has a very general requirement for professional market participants to develop rules about understanding customer business, that should include rules and norms on collecting and keeping customer information, and monitoring customer transaction (items 3.1 and 3.2).

242. While being a positive development concerning CDD obligations in the securities market, these provisions fall short of meeting the specific requirements of criterion 5.7(*) and both sub-criteria.

243. Overall the notion of on-going due diligence is insufficiently embedded in law or Regulation.

Criterions 5.8-5.12

244. Enhanced due diligence based on higher risk is not dealt with as such in the AML Law. There is no specific requirement of general application for financial institutions across the whole financial sector to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

245. The 2002 NBM Recommendations deal in more specific terms with risk-based approaches, particularly in the following cases:

- accounts of trusts, trustees and fiduciary companies
- corporate vehicles
- introduced businesses
- client accounts opened by professional intermediaries
- politically exposed persons
- clients on the occasion of non face to face relations
- relations with correspondent banks.

246. Enhanced due diligence in such cases is limited by a requirement that the decision to enter into business relationship with high risk customers should be taken at the management level. The requirement to have adequate risk management systems in place is limited only to on-going monitoring of accounts and transactions (item 6.2). Furthermore, the examiners were informed that, in practice, legal arrangements and introduced businesses, mentioned in the 2002 NBM Recommendations as high risk customers, did not exist, and the examiners therefore questioned the utility of such a reference. It appears to have simply been put in, in case such activities develop in future in Moldova.

247. The 2002 NBM Recommendations do not offer the possibility of reduced diligence in case of lower risks. The system in place is based exclusively on an enhanced risk approach (item 6.1).

248. The article 3.3(d) of the NSC regulation on preventing and combating money laundering on the securities market requires enhanced identification for off-shore resident legal persons including disclosure of documents of that legal persons' founders needed to establish the founders- natural persons.

249. No relevant additional information on essential criteria 5.8 – 5.12 was provided by Moldovan authorities.

Criteria 5.13 - 5.16

250. The AML Law does not address the time of verification clearly. By contrast, the 2002 NBM Recommendations are quite clear (item 6.2): a banking relationship cannot be established before the identity verification. However, there is no requirement to verify the identity of a beneficial owner or of an occasional customer.

251. The 2002 NBM Recommendations are not consistent on the issue of the completion of identification after the establishment of a business relationship. This type of situation is not allowed by item 6.2, even though the last paragraph of item 6.3 seems to provide for the contrary since it addresses the issue of possible verification problems arising after the opening of an account. However, the Moldovan authorities advised that item 6.3 refers to obtaining additional information from a customer as a result of monitoring of relevant accounts and transactions and that no business relationship can be established without the prior verification of identity as provided for in item 6.2. The situation envisaged by criterion 5.14 appears not to be applicable.

252. While bearing in mind the situation regarding the identification of beneficial owner, the financial institutions are not permitted to open an account or commence business relations without completing the CDD. They are not explicitly required to refuse performing the transaction. The banks are recommended to consider making a suspicious transaction report (Item 6.3 of 2002 NBM Recommendations). Hence, in general, the financial institutions are not required to make an STR under circumstances when they are not able to comply with the requirements of criteria 5.3 to 5.5.

253. There are no explicit provisions in law or regulation or other enforceable means that satisfy the requirements of Criterion 5.16 on terminating business relationship.

Criterion 5.17

254. The AML law is silent on the application of CDD measures to existing customers. As already indicated, the 2002 NBM Recommendations, which entered into force on 2 May 2002, require the adoption of internal measures which allow for continued vigilance during the existence of the business relationship. Banks were obliged to prepare the related AML programs by 15th of July 2002 and the NBM undertook the on-site examinations of each bank from July 2002 to July 2003. Item 6.1 (customer acceptance policies) and item 6.2 (customer identification policies) explicitly refer to new customers and the NBM Recommendations do not specify the appropriate timing for conducting due diligence on existing customers. The evaluators were informed that in practice, supported by the on-site examination findings, the banks conducted CDD (as provided for by the 2002 NBM Recommendation) for existing customers according to realistic internal schedules, in the absence of which enforcement measures were applied by the NBM.

255. No additional information on the applicability of the essential criterion 5.17 or its effectiveness was provided by the Moldovan authorities.

256. The evaluators recommend that Moldovan authorities review existing enforceable guidance applicable to banks to provide for a clear obligation to apply CDD requirements to all customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. They also recommend to introduce such an obligation for the other financial institutions, where relevant.

Criterion 5.18

257. As already indicated, anonymous accounts, or accounts under fictitious names are prohibited in Moldova. The examiners were informed that numbered accounts never existed in Moldova.

Recommendation 6 – Politically exposed persons

258. There is no general legal or regulatory provision applicable to the entire financial (and non financial) sector that covers the requirements of Recommendation 6 on politically exposed persons.

259. Only the 2002 NBM Recommendations refer to the adoption of customer acceptance policies which should include a description of the types of customers that are likely to pose a higher risk to the institution and which should take into accounts factors such as the public position of the customer. However, they do not include a definition of politically exposed persons, nor do they address explicitly the various elements required according to criteria 6.2 to 6.5, even though some of them are implicitly covered. In addition, this text is only issued for banks.

260. The banking sector representatives with which the teams met confirmed the practical absence of enhanced due diligence measures regarding PEPs.

Additional elements

261. Moldova has signed the 2003 United Nations Convention against Corruption on 28 September 2004 but has not ratified it yet.

Recommendation 7 – Correspondent banking

262. The AML Law, which applies to all financial (and non financial) entities is silent on the issue of correspondent banking relationships.

263. Only the 2002 NBM Recommendations address the issue of correspondent banking relationship, but quite superficially, and the requirements of criteria 7.1 to 7.5 are not reflected in the text.

264. After the first on-site visit, the Moldovan authorities underlined that obtaining approval from senior management before establishing new correspondent relationships is taken into account in item 6.1 of the 2002 NBM Recommendations providing that decisions to enter into business relationships with higher risk customers should be taken exclusively at the management level. Item 6.2, while not specifying higher risk customers, requires financial institutions to pay attention when identifying correspondent banks. . During the on-site visit, the evaluation team was informed that all Moldovan banks were warned about the necessity to monitor correspondent banking relationships with foreign banks.

265. As indicated in other parts of this report, the NBM has asked for the cessation of relations with the banks located in Transnistria due to the absence of AML/CFT measures in that area and suspicions that these banks are involved in money laundering activities.

Recommendation 8 – New technologies and non face to face relations

266. According to the National Bank representatives, Internet transactions are now possible using the client-bank system. Clients are offered this facility in a written document that also contains their electronic signature. Detailed regulations on the use of the client-bank system were approved in October 2003 and came into force on 1 January 2004[40]. Nevertheless, Moldova still seems to be at an early stage of the application of new technology to transactions and no particular problems have so far emerged.

267. AML vigilance is required under the 2002 NBM Recommendations. The latter require banks to adopt internal measures needed to manage the information technologies risk. However, this requirement does not provide any specific obligations as provided for under criteria 8.1, 8.2 and 8.2.1. The examiners were informed by both the NBM and

[40] The examiners were advised that an NBM Regulation (no. 376) was adopted on 15/12/2005 on the use of systems providing banking services at distance.

commercial banks representatives that in practice all forms of non-face to face relations with a customer required an initial face to face identification.

268. The 2002 NSC Regulation on broker and dealer activities on the securities market (items 8.2 and 8.7) provides for certain measures required for non-face to face transactions, covering confirmation of fax orders, phone or electronic instructions, which address operational and not AML-specific risks.

3.2.2 Recommendations and comments

269. Moldova has a number of measures in place governing the identification of clients and the examiners welcome the extent to which the banking sector takes account of international standards on familiarity with clients. This should be extended to other financial sectors through amendments to the AML Law.

270. Most steps are required to increase the level of compliance with the FATF Recommendation 5 which is one of the fundamental Recommendations of the FATF.

271. It is strongly recommended to amend the AML Law (and consequently the various existing sector-specific regulations) in order to implement the various requirements of Recommendation 5, and to ensure that the following mechanisms are duly taken into account:

- Identification of beneficial owners
- "Know your customer" policies
- On-going due diligence in respect of the business relationship
- enhanced due diligence mechanisms for specific high-risk customers, including PEPs
- modalities for the verification of identification
- consequences of problems occurring during the identification process
- applicability to existing customers

272. The examiners strongly advise to include in the AML law or regulation a definition of "beneficial owner" on the basis of the glossary to the FATF Methodology. Financial institutions should take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

273. The legal status of the 2002 NBM Recommendations as a key regulation for banks should not be disputable. The Moldova authorities are advised to address this issue so as to avoid controversies and take the necessary measures to ensure that the text contains mandatory obligations for banks which are enforceable by the NBM and are fully in compliance with the FATF recommendations.

274. Turning to Recommendations 6 to 8, no specific measures are in place. There is thus a need to either amend the AML Law, or to adopt specific regulations for the banking and non-banking financial sector regarding the various requirements of

Recommendation 6 on politically exposed persons, of recommendation 7 on correspondent banking relationships, of Recommendation 8 on non face to face transactions, and to complement the NBM Recommendations on all those issues.

275. In the further development of this document, the NBM is encouraged to carefully analyse the current legislative limitations and existing practice to avoid introducing mandatory requirements for banks in situations that are prohibited in any event or are not applicable.

276. It is also recommended to extend more largely the 2002 NBM Recommendations on money laundering and the AML Law to the issue of terrorist financing regarding the due diligence mechanisms.

3.2.3 Compliance with recommendations 5 to 8

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.5	NC	• No requirement in Law or Regulation to undertake CDD measures; - when establishing business relations, - when carrying out occasional transactions above the designated threshold (15,000EUR), - that are wire transfers in the circumstances covered by the IN to SR VII., - where there is a suspicion of ML or TF - or where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. • No requirement in Law or Regulation to the need for verification on the basis of reliable independent source documents • No enforceable requirement of general application to verify the legal status of the legal persons when CDD is required • No enforceable requirement of general application to verify the legal status of the legal arrangement when CDD is required • The definition of beneficial owner as set out in the FATF recommendations in respect of the ultimate control of the customer and the natural person(s) who exercise ultimate effective control over legal persons or arrangements is missing in law or Regulation • No Law or Regulation requiring reasonable measures to be taken to verify the identity of the beneficial owner using

		relevant information or data obtained from a reliable source • The requirement to understand the control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements is missing • No clear enforceable requirement of general application to obtain information on the purpose and intended nature of the business relationship in respect of all physical and legal persons • The notion of ongoing due diligence is insufficiently embedded in law or regulation • No specific requirement of general application for financial institutions across the whole financial sector to perform enhanced due diligence • No enforceable guidance for all financial institutions covering the policy on application of CDD measures to existing customers.
R.6	NC	• There are no general legal or regulatory provisions applicable to the entire financial and non financial sectors covering the requirements of Recommendation 6 .
R.7	NC	• Lack of enforceable AML/CFT measures on the issue of correspondent banking and no provisions at all outside the sector covered by the NBM.
R.8	NC	• Despite the existence of a general requirement for banks to have internal measures needed to address the risks related to information technologies, lack of specific provisions requiring the introduction of policies and procedures on non face to face transactions and relations, and in the field of risks connected with new technologies in financial sector.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and analysis

277. Traditionally, intermediaries and others responsible for introducing business are not established institutions in the Moldovan commercial and financial communities. Moldovan financial institutions currently work directly with their clients, except in the case of duly appointed agents of companies or those operating under power of attorney.

278. That said, accepting introduced businesses is not explicitly regulated nor prohibited by the AML law and neither is the issue dealt with in other situations allowing identification reliance on third parties.

279. As noted above, item 6.2 of the 2002 NBM Recommendations directly requires banks to pay special attention to introduced businesses. During the discussions with the NBM representatives, the examiners were advised that there is no such practice, and the aforementioned provision in item 6.2 was included in anticipation of possible future developments.

280. There is nonetheless no reliance on any CDD conducted by third parties, of which the examiners are aware. As noted under Recommendation 5, the requirements under Criteria 5.2 and 5.3, regarding when and what types of CDD measures are required, are, in any event, not explicitly covered for financial institutions generally in their direct dealings with clients.

3.3.2 Recommendations and comments

281. There is no prohibition on third party reliance for CDD purposes, though given the imprecise nature of the obligations anyway on CDD measures for financial institutions generally; this appears unlikely to happen in practice currently. However, as financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, it would be advisable for the Moldovan authorities to cover all the essential criteria in respect of Recommendation 9.

3.3.3 Compliance with Recommendation 9

	Conformity assessment	Summary of reasons for the conformity assessment
R.9	NA	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

282. The AML Law is very clear on the question of professional secrecy and confidentiality and devotes a complete section, with four paragraphs, to the subject. According to articles 6.1 and 6.2:

1. "Transfer by the institutions carrying out financial transactions of relevant information (documents, materials, other data) to the intelligence service as well as to the authorities empowered to carry out tax and financial inspections, other similar bodies, criminal investigation and preliminary inquiry bodies, the prosecutor's department or judiciary bodies, in cases stipulated by the law, shall not be considered to constitute a breach of commercial or banking secrecy.

2. Provisions under the legislation on banking or commercial secrecy cannot serve as an obstacle to the receipt by the authorities specified under paragraph (1) of information

(documents, materials, other relevant data) on the economic-financial activity, transactions and deposits made into the accounts of both natural and legal persons in cases when there is indication that activities of laundering of criminal proceeds are under preparation, under way or have been carried out or of terrorist financing.."

283. This is worded in fairly broad terms and the examiners were told that there were no practical impediments to obtaining information from financial institutions, so long as the information and documents were in fact available. This also applies to the transmission of information abroad following requests from other countries' authorities.

284. The only question seems to be lawyers, whose rights of professional confidentiality are absolute, even in the case of criminal investigations that have no bearing on the defence of clients in specific cases. Since there has been no indication that lawyers play a significant part in laundering operations, this may not be too serious a problem. Nevertheless some form of dialogue with the profession is needed and the Moldovan authorities should remain vigilant, given the apparent involvement of lawyers in the world of business (the importance of their role in this respect could not be clarified by the examiners).

285. The authority of the NBM to exchange information with foreign banking supervisory agencies is explicitly provided by the NBML (article 36). The Law on the National Securities Commission (article 5) enables the latter only to cooperate with relevant international specialised institutions, while the issue of international information exchange with other foreign competent authorities is not addressed[41].

3.4.2 Recommendations and comments

286. The provisions of the AML Law are generally satisfactory and no particular problems have been reported in practice. Access to information is possible where there are indications of laundering, whether planned, currently under way or completed.

287. The question of lawyers' professional confidentiality should be reviewed.

288. The Law on the National Securities Commission should provide the NSC the explicit authority to exchange information with with other foreign competent authorities on AML/CFT issues.

289. The evaluators were not provided any additional information regarding the insurance sector. In any case, it is recommended that the law on insurance should provide similar authority on international information exchange related to AML/CFT purposes to the Ministry of Finance.

[41] This article was amended in 2007 to enable, in accordance with the legislation, the exchange of information with foreign competent authorities regarding the non-banking financial market and its participants.

3.4.3 Compliance with Recommendation 4

	Conformity assessment	Summary of reasons for the conformity assessment
R.4	PC	• The question of lawyers' professional confidentiality should be reconsidered • Law on the NSC does not allow the exchange of information with foreign competent authorities. • Insurance sector is not covered.

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

3.5.1 Description and analysis

Recommendation 10

290. Recommendation 10 provides that financial institutions should be required by law or regulation:

- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transactions (or longer if requested by a competent authority in specific cases and upon proper authority),

- to maintain records of the identification data, account files and business correspondence for at least 5 years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases and upon proper authority),

- To ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

291. Article 4(1) (f) of the AML Law requires financial and other institutions to keep customer identification registers, account archives and documents relating to suspicious financial transactions or those in excess of the above-mentioned amounts for 5 years after the transaction was carried out, and for 7 years in the case of contracts relating to currency exchange transactions. There is no requirement in the law for this information to be kept for a longer period, if requested to do so by a competent authority and upon proper authority.

292. In the first place, even though article (1) (a) seems to impose an obligation to record every transaction, the requirement to retain information of article 4(1)f only regards certain transactions, namely those that have to be notified because they are suspicious or above the limit. Furthermore, here is no explicit provision in the AML Law for

keeping copies of identification documents, such as passports, after accounts have been closed or a business relationship has ceased.

293. According to the Moldovan authorities, the need to retain data is dealt with in a quite different and more general regulation dated 22 January 1992 of the Archive State Service, on the types of documents and record keeping held by public bodies, institutions, organisations and enterprises in the Republic of Moldova and how long they should be preserved. The regulation, which applies to the whole of the public and private sectors, requires financial and other operators to retain for five years after completion of any transaction, the full legal file, including the documents produced when the account was opened and any other related documentation. Under the 1997 general regulation, all such files that have been retained must then be transferred to the national archives.

294. Item 6.4 of the 2002 NBM Recommendations provides that information maintaining and keeping procedures should include, at least, the following:

- maintenance of an identified customer registry for a period of at least 5 years (that would include at least: customer's name, fiscal code, account number, opening date, closing date);
- maintenance of all entries on financial transactions for at least 5 years after the transaction occurred;
- maintenance of files on customer identification for at least 5 years after their accounts were closed;
- specific identification of data to be kept in the file on customer identification and by each transaction.

295. The National Securities Commission regulation regarding brokerage and dealer activity on the securities market (Decision of the NSC no. 48/7 of 17.12.2002, article 12.9) requires securities market professionals to keep all documents, including registers of all transactions, for at least 5 years. In addition, article 2.3 (h) of the NSC regulation regarding prevention and combating money laundering on the securities market (28 February 2005) requires professional participants to store registers containing data on identified clients, the archive of their accounts and primary documents related to suspicious and limited transactions for a period up to 5 years from the moment when the transaction was carried out.

296. As already noted, information that has been gathered and archived can be consulted by the investigating authorities and article 6 (2) of the AML Law explicitly states that banking secrecy cannot serve as an obstacle to the receipt of information held by financial institutions on the economic-financial activity, transactions and deposits made into the accounts of both natural and legal persons in cases when there is indication that activities of laundering of criminal proceeds are under preparation, under way or have been carried out or of terrorist financing. The NSC regulation regarding brokerage and dealer activity on the security market also provides that the NSC and other authorised bodies have free access to all registers and records made.

SR.VII

297. Only banks and post offices are authorised to make money transfers. The relevant rules are consistent with those laid down in the AML Law, which also covers transfers by postal money order (the definition of financial transactions in article 4.b of the Law includes transfers of capital by means of international postal money orders). The technical aspects are covered by National Bank regulations**.** The scope of identification is thus the same as those described in paragraph 3.2 and the rules on retention of data are as set out in this section. The information supplied by Moldova indicates that financial institutions are required to retain the following information on persons issuing the orders (name, address, account number) that accompany transfers throughout the payment period for both domestic and international wire transfers.

298. However, in the absence of specific information, the examiners are not in a position to assess compliance with criteria VII.2 and VII.3 on using credit and debit cards for money transfer; VII.4, VII.5, VII.7, VII.8 and VII.9, while criterion VII.6, given the absence of minimum transaction threshold seems not to be applicable.

299. Transfers can only be made from existing accounts. This means that it is not necessary for the persons issuing the money orders to supply information since the bank concerned should already be in possession of the various items of information necessary to open an account. Information on requests for transfers (name and account number of originator of order and beneficiary, purpose of the transfer, reference of any contract linked to the transfer, identification of issuing and receiving bodies and so on) accompany those transfers. The same rules apply to batch transfers. The rule is a general one and there are no minimum limits below which it does not apply.

300. According to the CCCEC, the National Bank and the National Securities Commission representatives, the situation regarding the retention of documentation does not raise any problems in practice.

3.5.2 Recommendations and comments

301. The AML law requires financing institutions to keep information on identified customers, archive of accounts and primary documents regarding limited and suspicious financial transactions for a period of 5 years from the date when the transaction was carried out. Thus the provisions of the AML law do not cover the entire transactions carried out by financial institutions, but exclusively those regarding suspicious transactions and transactions in excess of the set amounts by the law. A general requirement to maintain all relevant records for 5 years after the termination of the account or business relationship should be established.

302. Competent authorities should be given proper powers to enable them to request, in specific cases, financial institutions to keep all necessary records for a longer period as determined these authorities.

303. Also there is no clear specific legal requirement on the financial institutions to ensure that information on customers and on all customer and transaction records are available on a timely basis to competent authorities. The AML law and sector specific legislation or regulation should clearly require financial institutions to maintain such information and data on clients and transactions so that it can be made available on a timely basis to the competent authority.

304. Legislative changes are required to address issues relevant to compliance with criteria VII.2 and VII.3 regarding use of credit and debit cards as a money transfer instrument, and with criteria VII.4, VII.5, VII.7, VII.8 and VII.9 regarding all the banking sector.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.10	PC	• Insufficient record keeping regulations for AML/CFT purposes, as general archiving regulations lack specific requirements; • registration/recording of transactions is limited to suspicious and threshold based transactions, as defined by the AML law; • no requirement in law or regulation to keep all necessary records on transactions and identification data for longer than 5 years, if requested to do so in specific cases by a competent authority; • no requirement to keep documentation after termination of relationship; • no requirement to disclose needed information on a timely basis to competent authorities.
SR.VII	NC	• no regulatory requirements on full originator information regarding the use of credit and debit cards as a payment system for both domestic and cross-border transfers; • no regulatory requirements for financial institutions to act as provided for in criteria VII.4, VII.5, VII.7, VII.8 and VII.9

Unusual or suspicious transactions

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

3.6.1 Description and analysis

305. There is a certain amount of competition in the Moldovan financial sector. As in other countries, banks and other institutions take a commercial approach to monitoring transactions and business relationships (offering new services and commercial products to their clients) as part of their market strategies.

306. The AML Law takes an indirect and limited approach to the monitoring of transactions and business relationships, within the meaning of criterion 11.1 of the methodology. There is no general obligation to pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and such an obligation should be inserted in the AML Law. The notion of "special attention" is only used in the AML Law in relation to customers/resident beneficial owners receiving funds from countries where AML standards are inadequate (see Article 4 (4)).

307. Nevertheless, many of the specific requirements of the AML Law concern large or unusual transactions. One example is the machinery for registering large transactions above a certain level, as laid down in sections 4.1.b and 5.1. In addition, the list of transactions considered to be suspicious under section 5.2 includes various types of operation, such as those in paragraphs a, b, c and f, that meet the requirements of recommendation 11:

> a. single cash transactions or several transactions of this type in circumstances that demonstrate that there is no relationship between these transactions and the client's business activity;
>
> b. the deposit of a sum in cash or a transfer to an account by an individual or legal person when there are grounds for believing that the deposit or transfer is out of proportion to the individual's or legal person's income and wealth, having regard to his or its area of activity or other circumstances;
>
> c. the transfer or withdrawal of cash by an individual or legal person who normally makes payments by cheque or other form of transfer;
>
> d. ownership of an account that has no relationship to the client's business activity and to which transfers over the reporting limit are made;
>
> f. payments into a client's account of sums declared as income but which do not reflect the client's normal pattern.

308. Clearly, if financial institutions are to be in a position to report this type of transaction, they must be aware of and monitor clients' financial and business activities.

309. As noted in section 3.5, information on complex, unusual or large transactions must be retained for five years. In any case, the information is available to the authorities since bodies covered by the legislation must transmit the relevant files.

310. The AML Law also takes into account the need for vigilance in the case of countries whose AML/CFT measures are deemed to be inadequate. Section 4.4 requires financial institutions to pay special attention to clients or resident beneficiaries that receive funds from countries identified as having inadequate or non-existent anti-money laundering regulations, and which therefore represent an enhanced risk due to a high rate of crime and corruption. The drafting is somewhat confusing as there is no clear definition of beneficiaries as opposed to clients and foreign beneficiaries do not seem to be covered. The CCCEC plays an important role because that section also requires it to gather and supply forward looking information to organisations that carry out financial operations. As noted below in 3.12.1, the CCCEC has sent out letters for this purpose. The countries concerned are the ones on the list of non cooperative countries and territories. Article 5(2) of the AML law provides for automatic reporting of transactions carried out through companies and banks from the countries which have inadequate or no anti-money laundering laws or represent enhanced risk due to high level of criminality and corruption, as well as operations with residents of these countries.

311. Further to the comments made in paragraph 305 , the notion of 'special attention' does not require financial institutions to examine transactions which lack apparent economic or visible lawful purpose, and to make written findings available to assist competent authorities.

312. Finally, it should be noted that the CCCEC, with the support of the Moldovan National Bank, has asked every financial institution to show the utmost caution in dealings with anyone operating in the economic or business field in Transnistria and to consider all transactions with this region as suspicious. This is a welcome step in view of the concerns expressed in the previous evaluation report (and discussed extensively during the current on-the-spot visit) that Transnistria represented an offshore area as far as Moldova was concerned and that it could be used for the transit of goods and capital to and from Moldova, thus avoiding the preventive and enforcement machinery established by that country.

313. The Moldovan authorities have indicated that in accordance with sections 8.d and 8.e of the AML Law, the CCCEC has supplied lists of offshore territories and countries, drug producing countries and countries lacking AML/CFT machinery. However, the evaluation team was informed by representatives from the banking sector that they lacked information about countries that could be considered to pose a risk, particularly in connection with the notion of offshore area referred to in the AML Law in the criteria on suspicious transactions[42].

[42] After the visit, the Moldovan authorities stated that the list had nevertheless been sent to the banks, the National Securities Commission and notaries. In addition, the CCCEC issued the Order no. 97 on 28.07.2006 which includes lists of countries that do not have in place AML/CFT measures or have inadequate measures in this area, countries with a high level of criminality and corruption, off-shore zones, etc.

314. Apart from the automatic transaction reporting requirement mentioned earlier, no authority has been provided to any state agency under the preventive law to apply other counter-measures against any country which does not apply or insufficiently apply FATF recommendations. There is no evidence that Moldova has taken any such counter-measures against any such country.

3.6.2 Recommendations and comments

315. It is recommended to introduce a general enforceable obligation to pay special attention to all complex and unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. Financial institutions should also be required by law, regulation or other enforceable means to examine the background and purpose of such transactions and set forth their findings in writing and make them available for competent authorities and auditors for at least 5 years.

316. A specific requirement should be introduced by Law, Regulation or other enforceable means to ensure that financial institutions proactively examine business relationships and transactions with persons from countries that do not apply or insufficiently apply FATF recommendations.

317. If transactions with persons from countries which insufficiently apply the FATF Recommendations have no apparent economic or visible lawful purpose, the background and purpose should be examined and written findings should be made available for competent authorities. This requirement should be covered by Law, Regulation or other enforceable means. A mechanism should be set up to enable a state agency to apply counter-measures if a foreign country fails to comply with FATF recommendations on a continuing basis, as well as to specify such measures.

318. The Moldovan authorities should also envisage adopting a more targeted approach to advising financial institutions on potentially problematic jurisdictions, other than the NCCT countries and territories and offshore zones, which would involve them in making their own decisions in respect of individual states. They should also provide legal measures needed for implementing additional counter-measures under criterion 21.3.

3.6.3 Compliance with Recommendations 11 and 21

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.11	PC	• Lack of general enforceable obligation to pay special attention to all complex and unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful

		purpose. • No enforceable requirement to examine the background and purpose of such transactions and set forth the findings in writing.
R.21	PC	• Lack of general enforceable obligation to examine transactions with persons from countries, that do not or insufficiently apply FATF recommendations, with no apparent economic or visible lawful purpose, and to make written findings available to assist competent authorities. • No mechanism in place to apply counter-measures apart from automatic suspicious transaction reporting.

3.7 Suspicious transaction and other reporting (R.13-14, 19, 25, SR.IV and SR IX)

3.7.1 Description and analysis [43]

The general machinery of the AML Law

319. The AML Law, as amended in December 2004, requires the institutions concerned to report transactions likely to be linked to money laundering and, henceforth, terrorist financing.

320. It should be noted at the outset that the first examination team gave some consideration to the impact of an amendment made after their onsite visit, which was incompatible with the FATF requirements and which has subsequently been repealed[44].

321. The reporting obligation under the AML Law applies to institutions "carrying out financial transactions", as defined in article 3. In practice, the current arrangements are fairly complex:

a) According to article 4.1.b, single transactions of MDL 300 000 (€ 20 000) carried out by an individual or MDL 500 000 (€ 33 000) carried out by a legal person must be reported to the CCCEC within 15 days. A similar form must be completed when the same totals are reached in multiple transactions over a thirty day period.

[43] The description of the system for reporting suspicious transactions in section 3.7 should be compared with the description of the Financial Intelligence Unit in section 2.5. The two sections should complement rather than repeat each other.

[44] An amendment was introduced after the first visit which exempted from the reporting arrangements covered by the AML Law transactions by non-residents with Moldovan financial institutions (or foreign subsidiaries), whether those transactions were included in the threshold or suspicious categories. The examiners were advised that the amendment appeared to be motivated by a desire to attract foreign clients and investors. This amendment was the subject of a separate dialogue with the Moldovan authorities under the MONEYVAL "Compliance Enhancing Procedures", and was subsequently repealed later in 2006 before the final adoption of this report.

These limits have been raised (by more than 50%) since the last evaluation, since the system was threatening to lead to complete overload of the FIU (which was previously the special section of the *Prokuratura*).

b) Section 5.1 is concerned with certain over-the-limit transactions, for which there is no deadline for reporting:

- the conversion of low nominal value bank notes into ones of high nominal value, if the sum involved exceeds MDL 50 000 (€ 3 300);
- increases in bank deposits to a level in excess of MDL 250 000 (€ 16 700), followed by their transfer to another person;
- international financial transfers in excess of MDL 65 000 (€ 4 300), with requests to pay the recipient in cash;
- several accounts opened by a client in the same financial institution with the same beneficiary and the subsequent payment through these account of sums exceeding MDL 250 000 (€ 16 700);
- transfers or receipts in excess of MDL 100 000 (€ 6 600) to or from countries where, according to the government approved list, drugs are produced illegally.

c) Presumed suspicious financial operations are covered in section 5.2, which contains an exhaustive list of 13 types of suspicious financial operations (see annex III); article 4.1.c makes it obligatory to inform the CCCEC within 24 hours of any transactions that are not suspicious as defined by article 5.2, but for which there are circumstances 'indicating the suspicious nature'.

322. The legal requirement (which needs to be covered by Law or Regulation) to make an STR is not linked in the preventive law to a suspicion that funds are the proceeds of a criminal act or of a predicate offence, as required under criterion 13.1.

323. Suspicion that funds are linked or related to, or to be used for financing of terrorism, does not constitute a basis for an STR, as required by Criterion 13.2. Moreover, article 5.2 of the preventive law (suspicious transactions) makes no reference to terrorism financing.

324. Due to the above, the scope of transactions that fall under the definition of transactions with 'the suspicious nature' (article 4.2.1) is narrower than the requirement to report all suspicious transactions, as provided by criterion 13.3. Moreover, attempted suspicious financial operations are not covered.

325. Since December 2004, suspicious transactions have included the ones carried out by companies or banks in countries with no rules to deal with money laundering or terrorist financing or whose rules are inadequate, or which are considered high risk

because of the high level of crime or corruption, together with transactions with residents of these countries (Article 5 (2)k AML Law).

326. No distinction is made between tax and non-tax related transactions so the notification requirement covers both.

327. Despite certain difficulties (detailed information was not available until after the visit)[45], the Moldovan authorities have been able to provide the following statistics on transactions reported in 2004:

Origin of reports and number of reports made – year 2004	***Transactions subject to an upper limit***	***Suspect financial operations***
Banks	240 314	25 612 (of which 23 708 concern Transnistria)
Bureaux de change	4	0
Insurance	49	2 (concern Transnistria)
Notaries	263	0
Brokers: independent recorders	59	4
Asset and product exchanges	23	0
Others	0	0

328. The above table does not include notifications made by supervisory bodies as part of the co-operative process. The examiners were told that the National Bank and the National Securities Commission did issue notifications, even though they were not obliged to by the AML Law.

329. For comparison, the following information for 2002-2003 appeared in the previous evaluation report.

Data 2002-2003	***Transactions subject to an upper limit***	***Suspect financial operations***
Banks	70 620	1 300
Notaries	1 480	16
Customs[46]	3 350	48
Securities Intermediaries	360	6
Total	***75 810***	***1 370***

330. In 2004, the great majority of reports came from banks and a significant proportion concerned transactions with Transnistrian banks. The overall number of suspicious

[45] According to the authorities, these difficulties arose in part because the data had been sent to the CCCEC on paper.

[46] The figures for the Customs are incorrectly included in the total: they should not be part of the declarations of transactions, since the information received from the Customs is not provided by virtue of an obligation to make declarations but by that of a natural obligation for authorities to work together.

financial operations fell and is currently very low compared with other transactions. The insurance sector has finally started to report transactions, as have the *bureaux de change.*

331. As already indicated in 1.1, transaction reporting calls for special forms for each sector or profession concerned. The CCCEC is responsible for drawing them up and distributing them, accompanied by a letter, thus indicating that the institutions concerned are required in practice to report transactions (see also section 4 on non-financial institutions). At the time of the first visit, forms existed for banks, solicitors/notaries, *bureaux de change* (including ones in hotels), insurance companies and intermediaries in the securities market. This is why these are the only sectors shown in the table as reporting transactions.

332. Other statistics were supplied after the first visit on action taken on reported transactions (see 2.5.1).

333. As the examiners were told, there is no computerised information system in place for reporting[47]. The CCCEC therefore accepts notifications by fax or email, or more generally by post. The examiners were assured that in the last named case, the strictest deadline – 24 hours for reporting suspicious transactions – was generally adhered to. In the other cases, the more generous deadlines are not a constraint. Modernisation of the reporting system using computer networks is desirable, to the extent that this is possible and that resources are available.

334. With regard to the security of the reporting arrangements, section 4.1.g prohibits the tipping off of third parties. Section 6.1 protects institutions covered by these requirements from being held liable for them, because the transmission of information under the AML Law cannot be considered a breach of banking or professional confidentiality.

335. A further aspect concerning physical security is that the anti-laundering office does not have separate or secure premises within the CCCEC.

336. Article 6.4, which at first sight may appear redundant, goes further by specifying that the institutions carrying out financial transactions and their employees are exempt from disciplinary, administrative, civil and criminal responsibility that might be incurred while exercising provisions under the present law, even if such exercise results in pecuniary or non-pecuniary damage. The major point of interest here is that individuals working for these institutions are also protected, which might act as a disincentive to any reprisals, for example against employees or officials who report an important client.

337. One of the problems identified in the onsite meetings was the possible vagueness of article 4.1.g, which prohibits disclosure of notifications. Certain persons met thought that this provision did not explicitly cover all possible cases of notification. The

[47] The CCCEC and banks agreed in June 2004 that financial information would henceforth be transmitted to the Centre via a secure computer link. The system became operational after the visit.

problems concerned transactions above a certain level, since the situation regarding suspicious transactions seemed to be clear. From what was said onsite it was difficult to see the problem, but the examiners understand that it arises from the dual nature of the arrangement governing transactions over a certain level, with only those covered by section 5.1 being described in the legislation with reference to such transactions.

338. Another problem is that there are no specific penalties for failure to comply with this provision. Section 10 merely states that breaches of the AML Law shall be punished in accordance with the legislation in force, which means essentially the Criminal Code (in the event of complicity) and the Code of Administrative Penalties. Discussions with banking representatives, who of all those concerned were nevertheless among the best informed on AML/CFT issues in Moldova, suggested that there were no arrangements for penalising disclosure of reports and that it was essentially an ethical matter.

The 2002 National Bank Recommendations

339. The National Bank 2002 recommendations on anti-laundering programmes for banks, in particular recommendation 8, also include a reporting requirement, though only for suspicious transactions. The official responsible for laundering matters must be notified and any problems relating to money laundering must then be passed up the internal chain of command to senior management and the internal security department. The reporting requirement only concerns these suspicious transactions. Monthly reports are submitted to the National Bank, indicating the number of transactions reported to the CCCEC.

340. Suspicious activities affecting the institution's security, stability and reputation must also be notified to the prosecuting authorities and the supervisory body.

Feedback

341. The FIU does not appear to have a policy on feedback since it considers that it cannot communicate information between institutions covered by the legislation[48].

342. In fact, feedback does not mean the transmission of information on individual cases in real time, but rather regular overviews of the situation. This would encourage the institutions concerned by showing them that their efforts were making a real contribution.

Terrorism related reporting obligation

343. The extension of the AML Law in December 2004 introduced an obligation to report suspicious transactions related to terrorism. This was however not formulated as a general obligation covering all instances of transactions being suspected to be related to

[48] The draft new AML Law contains provisions on feedback

terrorism: the list of suspicious transactions only includes one criterion (k) that covers this area and only in respect of transactions from countries which have inadequate AML/CFT Laws etc. Even supposing that the institutions concerned were to interpret the AML Law fairly broadly, the restrictive approach adopted by the legislation also tends to reduce the scope for initiative. Another factor likely to limit the number of notifications is the lack of information on which countries take insufficient AML precautions.

Cross-border cash transportation reporting [49]

344. With the NBM Regulation on foreign exchange regulation on the territory of the Republic of Moldova (13 January 1994) and the Law no. 1569-XV (20 December 2002), Moldova introduced *i.a.* a declaration system on the import and export of banknotes, coins and cheques (Moldovan or foreign). Written declaration of these values to the Customs is mandatory above a threshold of the equivalent of 10.000 €. Export of up to 50.000 € in cash or cheques is allowed if accompanied by certain attestations or documents in the form of authorisation from a commercial bank or the National Bank to export currency and/or a customs declaration confirming that the currency had previously been imported into Moldova. The specimen of the customs declaration form (supplied to the team at the border) however makes no reference to the threshold.

345. Other goods and merchandise, including high value goods such as jewellery, are also subject to declaration, but then for the purpose of the appropriate levying of import and export duties. There are no specific regulations on the cross-border transportation of bearer negotiable instruments other than cheques.

346. All relevant information is registered in an internal database that is accessible to the OPCML. Otherwise the access is limited and request based. The d-base is equipped with a "red light" programme to detect suspicious transactions. Customs report the cash declaration forms to the FIU on a monthly basis pursuant to the Order of the General Director of the Customs nr. 106 of 21 July 2003. They can demand additional information and conduct criminal investigations under the general attribution of powers according to article 268 CPC, but this only in respect of customs violations (such as smuggling and non-payment of duties - articles 248 and 249 CC).

347. In the event of false declarations and non-declared cash or values it was stated that normally, beside seizure of the assets, this would be followed by a customs investigation pursuant to their specific assignment by the Customs Code (article 203 ff.). Failure to declare or false declarations are treated as violations of articles 248 and 249 CC (smuggling and non-payment of duties) when criminal intent is proven and are punished accordingly. In lesser cases (absence of criminal intention), the administrative procedure of article 193 of the Administrative Code can be applied to confiscate (at the order of the Public Prosecutor) and/or a fine would be levied up to 400 MDL.

[49] This is a full addition to the original report following the December 2006 on-site visit.

348. When confronted with indications of criminal proceeds, the investigation is passed on to the CCCEC or other police authority under the supervision of the public prosecutor, who coordinates all joint investigations. Reporting of ML and TF suspicions to the FIU is not an obligation under the AML law but is motivated by good law enforcement co-operation taking into account the specific assignment of the Centre. It is unclear on what legal basis – if any - customs have their own authority to seize goods or values when ML or TF is suspected, outside the context of customs violations and the declaration system. The general seizure and confiscation regime applies where there is a suspicion of ML or TF in the framework of cross-border transportation. Consequently, the observations made in this respect under Sections 2.3 & 4 are also pertinent here. It is however worth noting that the UN Terrorist lists are not disseminated to the Customs.

349. As far as international co-operation is concerned, the Moldovan Customs are clearly committed. They are a member of the WCO and party to several co-operation agreements, such as with the EU and the CIS countries. The co-operation with EU countries was said to be slow, but all incoming requests had been executed.

Effectiveness

350. The following statistics were provided:

2005	- declared cash import of 22,3 million USD and 18,2 million EUR - similar export of 5,9 million USD and 6,1 million EUR. - 19 cases of non-declaration - seizure of 1.575 Pounds, 8.300 USD and 42.000 EUR
2006	- 11 cases of non-declaration - seizure of 18.565 EUR, 1.860.820 USD and 10.716 Ukr. Grivna

351. None of the declarations or non/false declarations have given cause to a criminal investigation.

3.7.2 Recommendations and comments

352. The thresholds for reporting transactions in the current "catch-all" system recently had to be revised as they were leading to an excessive number of notifications of little value, as evidenced by the very limited number of reports of suspicious transactions. Lifting certain thresholds for reporting transactions is open to debate in a country with a such a low standard of living, though it may well be justified by the lack of computing and technical facilities available for managing the resulting flow of information. It is to be hoped that over time greater emphasis will be placed on identifying all suspicious transactions and not just those identified in the Law as the existing relatively inflexible approach to what constitutes suspicious operations considerably reduces institutional discretion (though this was probably justified at the time of drafting given prevailing attitudes).

353. The banking sector representatives whom the team met also agreed that relatively more attention should be paid to suspicious transactions than to those above the reporting limit, and that the former were more important. They also pointed out that operating methods changed rapidly, which meant that the AML Law list of suspicious transactions soon became obsolete. The figures on reported transactions were in any case generally very low.

354. There is a border control system in place that should allow for an adequate screening of the cash import and export. The data are dutifully registered and forwarded to the FIU, yet without having triggered any law enforcement action. At the moment the information is only used, and only has value, as background intelligence. The potential is there, but not really put into effect. There is no evidence of the customs being actually aware of their important role in tracing criminal assets and actively looking for suspicious cash, beside contraband and evaded duties. Besides, the sanctions for failing to make a (truthful) declaration – outside the context of smuggling - seem rather low. Given the still predominantly cash driven economy and cash generating criminality in Moldova the border control should contribute more significantly to criminal asset discovery and recovery.

355. Instead of a specific and exhaustive list of suspicious transactions the preventive law should make suspicion that funds are proceeds from crime or are linked or related to, or are used for financing of terrorism the only mandatory basis for making an STR, regardless of transaction amount. The CCCEC and the supervisory authorities should be authorised to provide guidance to the reporting institutions regarding recent ML/FT typologies and transactions used to enhance the capacity of these institutions to detect suspicious transactions.

356. A fully comprehensive provision should be introduced by law or regulation requiring financial institutions to report to the FIU whenever they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism, in line with SR IV.

357. The Moldovan authorities should also clarify the situation in respect of the application and scope of Article 4. 1(g) and make it clear that it applies to all reports of operations subject to an upper limit, under both articles 4.1(b) and article 5.1(a) to (e). This would avoid the risk of confusion and non-reporting.

358. It is also recommended to clarify the issue of sanctions in the AML Law in case of non compliance with art. 4(1) (g) (prohibition of tipping off).

359. The question of a single form for reporting all transactions whatever the reporting entity should be seriously considered, and the policy whereby entities are only bound by their obligations if a form and a CCCEC instruction exist should be abandoned.

360. The declaration obligation should extend to all bearer negotiable instruments. Furthermore enhanced awareness-raising of the customs should bring a more effective focus on recovery of criminal assets.

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

	Conformity assessment	Summary of reasons for the conformity assessment
R.13	PC	• The reporting system is in place, but the concept of suspicious transaction lacks all the elements established in essential criteria 13.1, 13.2. • Attempted transactions not covered • Overall reporting system performance is still fairly ineffective
R.14	PC	The scope of Article 4.1.g should be clarified, together with the applicable sanctions
R.19	C	
R.25	NC	Absence of feedback
SR.IV	NC	• No explicit mandatory obligation for financial institutions to report STRs when it suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations and those who finance terrorism apart from transactions involving residents of countries which inadequately implement FATF standards.
SR.IX	LC	• Not all bearer negotiable instruments covered by declaration regime. • Insufficient focus on recovery of criminal proceeds (efficiency)

Internal controls and other measures

3.8 Internal controls, compliance and foreign branches (R.15 & 22)

3.8.1 Description and analysis

361. The first point to make is that Moldovan financial institutions, and more specifically banks, insurance companies and financial intermediaries, do not have foreign branches. For the situation in Transnistria, which remains an integral part of Moldova, reference should be made to the introduction and section 3.9.

362. Article 4.3 of the AML Law states that institutions carrying out financial transactions shall work out plans of action to combat money laundering which shall include minimum provisions, such as:

> a) *internal policies, procedures and measures of internal control, including appointing managerial staff to be responsible for ensuring that policies and procedures applied by the financial institution comply with requirements under their statutes and the anti-money laundering legislation and that the "know the customer" rules are strictly observed, with a view to promoting ethical and professional rules in the financial sector and preventing deliberate and non-deliberate use of the institution's facilities by criminal elements;*
>
> *b) maintaining continuous training programmes for staff and establishing strict selection criteria that ensure a high level of professionalism among staff;*
>
> *c) using audits to monitor system performance.*

363. These provisions cover the requirements of FATF recommendation 15 and effectively transpose it point by point.

364. According to the information collected by the examiners, the situation in banks and *bureaux de change* is fairly satisfactory, on account of the external supervision exercised by the National Bank. In the other financial sectors - insurance and securities intermediaries [50] – the examiners were unable to obtain assurances that the recommendation 15 measures were being implemented satisfactorily. The information was often imprecise or totally lacking, or referred mainly to the issues of identification and reporting.

3.8.2 Recommendations and comments

365. The question of the existence of internal controls in the non-banking sector affecting all AML Law obligations remains open and once responsibility for supervising the implementation of the AML Law has been clarified the Moldovan supervisory authorities must ensure that internal controls are in place in all the subject financial entities.

3.8.3 Compliance with Recommendations 15 and 22

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.15	PC	The question of effectiveness arises in financial sectors other than banking
R.22	NA	(No foreign branches)

[50] See the note on the National Securities Commission in section 3.10.

3.9 Shell banks (R.18)

3.9.1 Description and analysis

366. The law on financial institutions and the Regulation no. 23/09-01 of the NBM set out the licensing procedures for banks. Article 7(3)d of the law on financial institutions requires a bank to provide the evidence of a lease or purchase of bank premises as one of the preconditions for issuing banking license.

367. Licences to foreign bank branches are only granted if a) the foreign bank is authorized to engage in the business of receiving deposits in the foreign country where its head office is located, b) the competent foreign supervisory authority in the home country has given its written consent to the granting of the license and c) the NBM has determined that the foreign bank is adequately supervised by the foreign authority.

368. The only direct reference to shell banks is included in the Decision of the National Bank no. 279 on the approval of instructions regarding the opening of accounts abroad (of 13 November 2003, published in the Official Monitor on 21 November 2003). Section 1.8 of the decision provides that banks in the Republic of Moldova are forbidden to open accounts abroad in shell banks, as defined in the documents of the Basel Committee on Banking Supervision. At the opening account procedure, the bank in Moldova has to verify the foreign bank in relation to its physical presence and its supervision by the competent authority, and to determine the name and address of the supervisory authority.

369. However, no guidance has been issued to banks regarding compliance with the mentioned requirements.

370. Moldova has not experienced any particular problems in this domain and the representative of the state tax inspectorate has indicated that the banking and financial sectors have not been affected by the shell company phenomenon. The Moldovan authorities, and in particular its National Bank representative, indicated that they exercise great vigilance and that it would probably be now difficult to operate a bank in Moldova with no real economic function.

371. Attention should also be drawn to the authorities', and particularly the National Bank's, efforts to block transactions with unsupervised banks in Transnistria. In 2004, nine banks in the region, including former subsidiaries of regular banks, were declared illegal because they lacked the necessary National Bank authorisation. This meant that some of them might have been shell or "letterbox" banks. The National Bank has also alerted foreign banks acting as correspondents of Transnistrian banks.

3.9.2 Recommendations and comments

372. Moldova indicated that they exercise supervision over banking services in the territory under governmental control (and that shell banks are not operating in these parts). The establishment of shell banks is not permitted by the Moldovan legislation.

373. The examiners have not been shown any requirements (in law, regulation or other enforceable means) which oblige financial institutions to discontinue existing correspondent banking relationships with shell banks, if any, as required by Criterion 18.2.

374. Equally, the examiners have not been provided with sufficient information that financial institutions are required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Consequently, they recommend to insert in the law or regulation clear provisions on shell banks, covering essential criteria for recommendation 18.

3.9.3 Compliance with Recommendation 18

	Conformity assessment	Summary of reasons for the conformity assessment
R.18	PC	• There is no specific requirement for financial institutions to discontinue correspondent banking relationship with shell banks; • No legal requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

Regulation, supervision, follow up and penalties

3.10 The supervisory and oversight system - competent authorities and self-regulating organisations - Role, functions, obligations and powers (including sanctions) (R.17, 23, 29 & 30)

3.10.1 Description and analysis

375. Moldova's supervisory and oversight system is fairly complex and raised a number of doubts in the examiners' minds in the last evaluation round. Given the importance of this issue, these are repeated here[51].

[51] The last report made the following recommendation:
In order to ensure the full application of the principles in Recommendations 26 et seq. [the previous version of the 40 recommendations] of the FATF, the experts recommend that regular coordination meetings be held and that the various provisions of Article 8 make clear which supervisory bodies are being referred to and that a list of those bodies be provided in order to clarify the anti-money laundering responsibilities; the Moldovan authorities might possibly contemplate giving the FIU express powers to follow up the implementation of the

The general situation and the CCCEC

376. Section 7 of the AML Law makes the CCCEC responsible for its implementation. However, to do so, the Centre has to rely on checks carried out by the authorities entrusted to exercise control over the legitimacy of transactions carried out by financial institutions – section 8.1.a, of which it receives a copy of the results. These "control authorities" are almost certainly the sectoral supervisory bodies, but they are not listed or named in the legislation. These authorities are also responsible for education and familiarisation activities, which includes new methods of and trends in money laundering and terrorist financing. Section 8.1.a also lays down special AML/CFT supervisory obligations. These include all the obligations in section 4, such as the establishment of internal policies and appointment of AML officials, client identification and so on, even if article 8.1.a does not refer to them explicitly:

> *"1. To combat money laundering and terrorist financing, the institutions carrying out financial transactions are obliged to proceed as follows:*
>
> *a) check whether institutions carrying out financial transactions use prescribed policies, practices and procedures, including strict rules on knowing the client, with a view to promoting ethical and professional conduct within the financial sector and preventing deliberate or non-deliberate use of financial institutions by criminal elements, and whether financial institutions comply with their own policies, practices and procedures aimed at uncovering money laundering and terrorist financing."*

377. Under the AML Law, the CCCEC does not have power to ensure that this supervision is carried out. Its role is more one of general co-ordination (section 9). However, the situation in practice is more confused, since it emerged from the meetings that members of the CCCEC anti-laundering office do carry out on-the-spot inspections under the CCCEC's governing legislation. As noted under 2.5.1, all ten officials working for the section are involved in both analysis and inspections. Moreover, a major exercise apparently took place in December 2003 to check on the effectiveness of AML measures, particularly compliance with the rules on identifying clients.

378. On the other hand the CCCEC does seem to be the only authority responsible for imposing penalties for non-compliance with the AML Law. The same applies to the National Bank with regard to its own regulations, including the AML regulations. This derives from section 8.2, and from Regulation no. 111 of 15 September 2003 of the Director of the CCCEC (Rules of the Office for Prevention and Control of Money Laundering).

379. Hoverer, the scope of the AML Law is still unclear. *"In the event of failure to observe provisions set out under the present law by natural and legal persons carrying out financial transactions or when disclosing indications of illicit receipt of proceeds, the persons responsible shall bear administrative responsibility in compliance with the effective legislation and the respective materials shall be circulated, if necessary, to the*

AML Law irrespective of the sector (solving also possible issues which could arise from concomitant competences); it would then be possible to compensate for any shortcomings found in a specific sector.

Centre for the Fight against Economic Offences and Corruption." The wording does not seem to apply to obligations other than client identification and the reporting of transactions (for example, the adoption of internal procedures or the appointment of an anti-laundering official).

380. In practice, the CCCEC/FIU has already received information on irregularities identified by the National Bank and the National Securities Commission. No detailed information is available but the team was informed during the visit that these irregularities had concerned failures to report transactions to the FIU, which might tend to confirm the above suggestions that the law lacks precision.

The National Bank of Moldova

381. The National Bank was established in 1991 and is governed by Law no. 548 XIII of 21 July 1995. It has played a key role for several years.

382. It is particularly responsible for issuing operating licences to financial institutions and the general supervision of this sector, under section 44 of the NBML. As noted in previous reports, it has broad powers, including withdrawal of operating licences, but it has not made use of them to combat money laundering, even though this is one of its responsibilities in the banking sector (under section 23 of the Financial Institutions Act, no. 550 XII of 21 July 1995)[52]. The National Bank also authorises *bureaux de change* and hotels to conduct exchange activities with individuals. Licences issued to banks allow them to conduct exchange operations but they must register their foreign exchange offices three working days before they open. The National Bank monitors this sector through its Foreign Exchange Control Division .

383. The National Bank has approved a number of relevant regulations and documents since 2002: January 2002, regulation on the opening and closing of accounts in Moldova, abrogated by a new Regulation of 10.12.2004 (anonymous accounts or ones under fictitious names are prohibited); Instruction on opening accounts abroad (Decision no. 279 of 13.11.2003 of the Administrative Council of the NBM as consequently amended) as well as with modifications and completions in the Regulation no. 10018-20 on the organisation and functioning on the territory of the Republic of Moldova of foreign exchange offices and foreign exchange bureaux by hotels; April 2002, recommendations on bank anti-laundering programmes, with particular emphasis on the Basle Committee principles, including principle 15: "know your customer"; introduction and updating of a guide on on-the-spot checks of banks

[52] Section 23. Money laundering
Banks shall not conceal, convert or transfer money or other known proceeds of criminal activities with a view to concealing their illegal origin or helping any other party involved in such activities to escape the legal consequences of his or her acts.
Banks shall be deemed to be aware of the illegal origin of money or other assets where this may be inferred from objective factual circumstances.
Banks shall notify the competent authorities of any matters within their knowledge which indicate that money or other assets are of illegal origin. The provision of this information shall not be deemed to be in breach of Article 22 above (business secrecy).

carried out by National Bank staff, with the introduction in 2002 of new directives based on the AML legislation.

384. Banks were required to submit their anti-laundering programmes to the National Bank, which then made any necessary adjustments.

385. Banks also submit monthly financial reports to the National Bank. These contain a record of AML activities, including the number of transactions reported to the FIU, and activities to familiarise staff with the internal AML programme and any changes to that programme, and to train them to apply the programme.

386. In May 2004, the National Bank set up a special monitoring group to oversee the application of AML measures. This works closely with the CCCEC. Its role is to supervise the implementation of the legislation and make proposals for improvements.

387. The National Bank may impose penalties for non-compliance with the measures laid down in the 2002 NBM recommendations (as opposed to the AML Law). The legal basis for this is section 38 of the Financial Institutions Act, which includes a number of possible measures ranging from written warnings to withdrawal of licence. On-the-spot checks were carried out in 2002-2003 on the application of internal AML programmes and this led to warnings and recommendations concerning 13 commercial banks. Six warnings and 5 orders were issued in 2004. In the case of two banks in which serious irregularities were detected, concerning the identification of beneficiaries and shareholders, their authority to accept deposits was suspended. Three bank directors were also dismissed during this period.

The National Securities Commission

388. The National Securities Commission, which awards licences to carry out securities exchange transactions, is an independent public authority with five members, assisted by an administrative directorate of seven sections with a total of 75 staff. There are also three local agencies in the country's other main towns.

389. The examiners were told that general supervision of operators also took account of the AML Law, in particular how the forms were completed. Preventive checks are carried out as part of the regular supervision process and when the Commission assists enforcement agencies. When it suspects that laundering might be taking place it asks the CCCEC to investigate.

390. Under the legislation, regular checks are carried out on operators' knowledge of the system. Training/retraining courses are held every three years and take account of the AML/CFT dimension. In addition, after the most recent amendments to the AML Law that introduced the terrorism dimension the Commission held a meeting of operators to

explain the changes. No specific background documents or factsheets have been produced for this sector, apart from the practical guide published by the CCCEC[53].

391. Under the administrative penalties code, the National Securities Commission may impose sanctions directly. In 2004, 38 penalties were imposed for failure to present documents or information to shareholders or for manipulating markets. The sums involved (MDL 1 800) have been deemed inadequate and it was proposed in mid-2004 to raise them. This was still under consideration during the visit[54]. When asked which provisions of the AML Law were most frequently contravened, the Commission representatives first spoke about general breaches and then said that they had never found any breaches of the AML Law or found it necessary to impose penalties for that reason. Subsequently, the Moldovan authorities advised that the Commission detected breaches to article 4.1(b) of the AML law.

Ministry of Finance

392. The Ministry of Finance issues licences via a number of departments and agencies and is responsible for various sectors of activity.

- The treasury regulates and supervises the precious metals market. Legislation was enacted in 2004 establishing a single set of arrangements governing the trade in, circulation and use of precious metals. Items not bearing the state markings and whose origin cannot be established can now be confiscated.

- The state insurance and pension fund inspectorate has an establishment of ten posts, seven of which are filled. The team was told that it was in permanent contact by letter with the CCCEC and that any information produced by the CCCEC was circulated to insurance companies. The inspectorate has supervisory responsibilities but the Licensing Chamber is responsible for issuing licences (see below). The inspectorate may issue instructions and if an insurance company does not comply the Licensing Chamber may then withdraw its licence. The inspectorate was not involved in drawing up the CCCEC anti-laundering guide (see 3.12) and was not consulted on it.

- The savings and loans associations supervisory department issues licences to and supervises these associations. As noted in 1.3, these are financial institutions but are not covered by the Financial Institutions Act.

- Under a government regulation, the directorate general for financial control and audit monitors public purchases over a certain level and supervises institutions financed by the state, other than the most important ones, such as ministries, which are covered by the court of auditors. Its responsibilities include associations and companies.

[53] After the visit, in February 2005, following the national bank example the NSC issued a regulation on preventing and combating money laundering in the securities market.

[54] The NSC has submitted proposals to the government to amend the lesser offences code. These would make securities exchange operators responsible for failure to comply with anti-laundering legislation and regulations affecting the securities market. Fines would be set at between 500 and 800 conventional units.

393. On account of an absence of clearly defined responsibilities, certain departments of the Ministry of Finance do not consider themselves to have any authority to supervise the application of the AML Law in their respective sectors. This applies to the supervision of insurance companies, for example, where responsibility is said to devolve on the Licensing Chamber (see below), though the latter also denies that it has the necessary powers.

The Licensing Chamber

394. The Licensing Chamber, which since 2002 has been responsible for issuing licences covering 37 different types of activity, is not properly speaking a specialist supervisory authority. It was set up in the first place to make the licensing procedure more consistent and transparent and compatible with the principles of the rule of law. However, some of those whom the examiners met on the spot thought that the chamber had a role to play in the supervision and monitoring of commercial activities, particularly in the field of insurance and other designated non-financial activities and professions, since it could withdraw licences (subject to court approval) when the necessary conditions were not being met. The chamber has never in fact done this in the area covered by this report[55] and it appears that the question of its lack of resources (noted in the last round) has not yet been resolved.

395. It emerged from the team's discussions that the Licensing Chamber has never seen itself as a supervisory authority within the meaning of the AML Law (as was already the case in the previous round).

Penalties and obligations in practice

396. Although there are two sets of provisions on the subject, the question of which penalties apply to breaches of the AML Law remains confused.

397. Firstly, section 8.2 of the Act specifies that "*in the event of failure to observe provisions set out under the present law by natural and legal persons carrying out financial transactions or when disclosing indications of illicit receipt of proceeds, the persons responsible shall bear responsibility in compliance with the effective legislation while the respective materials shall be circulated, if necessary, to the CCCEC*." While bearing in mind that problems may arise from the translation, this provision raises several question marks:

- regarding the application of penalties, it simply refers to the legislation in force without specifying what that legislation is (criminal, general administrative,

[55] In the period 2004-2005, 539 licences were withdrawn, though none in connection with money laundering or terrorist financing. No such suspicions have ever been reported to the Chamber under section 19.7 of the Licensing Act.

sectoral) or classifying offences according to their gravity; in fact the applicable legislation is the Code of Administrative Penalties;

- it does not state who can be held responsible or how (the body concerned or individuals);

- a strict reading would suggest that only breaches of provisions concerning financial obligations (reporting and identifying) are penalised. The other obligations under the AML Law, such as the establishment of internal procedures, appointment of an anti-laundering official, training, ban on warnings, use of internal audit to test AML/CFT systems and so on, are not liable to sanction.

398. Concerning this last point and assuming that the interpretation is correct, it could explain why the emphasis at meetings with bodies that recognised their supervisory functions concentrated so much on the reporting and identification obligations.

399. There is also section 10 of the AML Law, entitled: "Responsibility for the infringement of the provisions set out under the present law".

"*Persons found guilty of infringing provisions set out under the present law shall bear responsibility in compliance with the effective legislation*".

400. This does not add much, other than the fact that it does not restrict the scope of the penalties, which are applicable to the entire AML Law.

Conclusion

401. Generally speaking, AML/CFT initiatives originate with the CCCEC, and in its own particular sector the National Bank. The information pertaining to the securities sector does not permit the conclusion that the National Securities Commission is sufficiently vigilant in monitoring all the relevant AML Law obligations. The same applies to the insurance sector, with the complicating factor that two bodies, the finance ministry inspectorate responsible for supervising the insurance industry and pension funds and the Licensing Chamber, share responsibility, even though the latter is not recognised, at least in practice, as a supervisory body, not to mention its lack of resources.

402. In the first place, the system lacks clearly defined penalties and reference to the relevant legislation (section 8.2) is unsatisfactory, as meetings, including ones with representatives of the bodies covered by the legislation, have confirmed. This gap may explain any difficulties in identifying and penalising failures to comply with the AML Law. It was probably necessary for the National Bank to transpose the AML Law into banking rules (the 2002 recommendations) to enable it to properly exercise its responsibilities under that legislation. However valuable such an approach, however, it does lead to a duplication of rules. Moreover, at the time of the visit the National Securities Commission appeared to be adopting the same approach as the National Bank since an internal regulation on the identification of clients and suspicious transactions was being prepared.

3.10.2 Recommendations and comments

403. Firstly, the AML Law should refer to the OPCML rather than to the Centre as regards FIU aspects.

404. Secondly, the AML Law should include a clear list of administrative penalties applicable to the different breaches of the AML Law, possibly with reference to the sanctions available in the Code of Administrative Penalties[56].

405. Thirdly, the effectiveness of the supervision system would benefit greatly from clarification. The recommendation made in this connection during the second round evaluation deserves repetition: state clearly in the various provisions of Article 8 which control bodies are being referred to, and list them in order to clarify the anti-laundering responsibilities; the Moldovan authorities might perhaps envisage providing for the anti-laundering section to have explicit powers to monitor the implementation of the AML Law whatever the sector (by settling questions which competing powers between authorities could cause); this would enable shortcomings in a given sector to be compensated for.

3.10.3 Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7 29 & 30)

	Conformity assessment	Summary of reasons (relating specifically to section 2.6) for the conformity assessment
R.17	PC	Penalties for non-compliance with the AML Law should be more clearly specified.
R.23	PC	• The allocation of responsibilities must be clarified; • the AML Law contains no list of competent authorities.
R.29	PC	The issue of powers has to be seen in relation to the allocation of responsibilities.
R.30	PC	The OPCML has insufficient resources; the National Bank and, to a certain extent, the National Securities Commission are the only bodies that are conversant with AML/CFT issues.

[56] At the time of the discussion of the report, the Moldovan authorities advised that a draft amendment to the Code was adopted in first reading by the Parliament on 4.11.2005 and that such a provision is included; it was also explained that the revised AML Law in preparation will contain a reference to the Code

3.11 Financial institutions - market entry and ownership/control (R.23)

3.11.1 Description and analysis

406. Financial institutions are subject to dual supervision, firstly from the CCCEC (at least in practice) and secondly from the National Bank (financial establishments and *bureaux de change),* the inspectorate responsible for supervising the insurance industry and pension funds or the National Securities Commission. As noted in 3.10; the CCCEC supervises the application of AML/CFT provisions. The National Bank undertakes normal supervision, but also checks on the implementation of its banking recommendations, including the April 2002 recommendation on the introduction of anti-laundering programmes in banks. The insurance industry and pension funds inspectorate and the National Securities Commission undertake regular supervision of their respective sectors. It emerges from the meetings that operators covered by the National Bank, particularly banks, have generally implemented FATF recommendations, but that monitoring efforts in other sectors have mainly focussed on client identification, transaction reporting and how the relevant forms are completed. This may reflect the apparent shortcomings in the scope of section 8.2, noted earlier.

407. Measures to prevent criminals taking control of financial institutions are covered by section 8.1 of the AML Law, which states that the authorities exercising control over the lawfulness of financial transactions shall take necessary legal and regulatory measures to prevent any possibility of control being established over such or acquisition of major interest by criminal elements.

408. The National Bank transposed this requirement in a 2001 regulation on significant shareholdings in banks, which lays down an approval system based on a scale of shareholdings (10, 25, 33 and 50% of the capital), with checks on the origin of funds once the 10% threshold is exceeded. Investors' integrity is one of the criteria applied when decisions are taken[57]. The 2001 regulation on the conditions to be met by senior banking officials, ranging from board members to chief accountants, requires an irreproachable business reputation, no previous criminal or other proceedings, no financial or administrative problems in former posts, and no prior involvement in financial fraud or tax evasion. The regulations also place great emphasis on qualifications. The National Bank exercises the same vigilance concerning *bureaux de change* unconnected to banks.

409. Under the Regulation no. 10018-20 of 6 May 1994 on the organisation and functioning on the territory of Moldova of foreign exchange offices and foreign exchange *bureaus by hotels*, as subsequently amended, the National Bank checks the professional

[57]In November 2005, the Financial Institutions Act was amended to strengthen supervision of and defences against investments and share holdings from offshore countries and areas. See nevertheless, the questions and concerns raised by the changes to the AML Law made after the visit exempting non-residents' transactions from the reporting requirement.

qualifications of the managers, deputy managers and accountants of such establishments, and ensures that they have no criminal record.

410. The National Securities Commission carries out the same checks on the origin of moneys invested and the background and qualifications of applicants, who must have no criminal record.

411. The Licensing Chamber also requires a clean criminal record before issuing insurance licences. However, the insurance legislation does not require checks to be made on the origin of money invested in insurance – as is also the case with the other areas covered by the 1994 legislation, which the Chamber representatives considered to be obsolete.

412. Transfers of funds (see also SR.VI) are undertaken by a limited number of institutions, including mainly banks and, to a lesser extent, post offices. There is no specific National Bank authorisation required by banks for this type of activity, which is covered by the general licence issued for the whole range of financial services. The Post Office according to the Moldovan legislation is not a financial institution and provides cash transfer services according to the Law on post offices no. 463-XVIII (of 18.05.1995).

3.11.2 Recommendations and comments

413. There are a number of gaps:

- Once the applicational scope of Article 8 paragraph 2 has been extended to all the AML Law requirements, the supervisory authorities should swiftly ensure that they are implemented, and not just with regard to the reporting and identification obligation (see recommendations in the preceding section);

- The licensing legislation should require a check on the origin of funds and the personal competence of persons applying for an insurer's licence (and the other entities subject to the AML Law).

3.11.3 Compliance with recommendations 23 (criteria 23.1, 23.3-23.5)

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.23	PC	No checks are made on the origin of funds and professional qualifications in the insurance sector.

3.12 AML/CFT Guidelines (R.25)

3.12.1 Description and analysis

414. So far guidelines have been approved by the CCCEC and the National Bank of Moldova (and also to a certain extent by other supervisory authorities such as the one for the insurance industry). In 2004, the CCCEC published a practical guide, which includes a general description of money laundering and information on the obligations of the institutions concerned, such as the duty of diligence towards clients and to report suspicious transactions and transactions over the minimum threshold. The guide also includes a list of indicators of suspicious transactions, sometimes illustrated by examples, for the following institutions: banks (10 pages), companies dealing in securities (4 pages), insurance companies (4 pages), casinos (1.5 pages), lawyers, notaries, accountants and auditors (3 pages), financial institutions (2 pages), *bureaux de change* (7 lines), and other establishments such as post offices, capital transfer systems and Licensing Chambers (1 page). The CCCEC has also produced letters and instructions that offer guidelines. CCCEC documents mainly concern laundering issues rather than terrorist financing. The examiners were told that the guide was scheduled for updating.

415. Moreover, as stated earlier, section 4 of the AML Law requires the CCCEC to specify countries making inadequate provision for AML/CFT, which it has mainly done through letters.

416. The National Bank has made various regulations, such as the 2002 recommendations, available on-line, and has also circulated material produced by the Basle Committee. Its legal department can be consulted on the interpretation of obligations.

417. Another problem is the lack of information available on the CCCEC internet site, such as the absence of general or sectoral reports, and the fact that published information is out of date. For example, the published version of the basic money laundering legislation does not include the numerous references to terrorist financing introduced under the December 2004 amendments. In contrast, the National Bank site includes far more useful information for the sector concerned, including general reports of activities.

418. Questions also need to be asked about the effectiveness of AML/CFT information. For example, the examiners were surprised to discover when they met one of the deputy managers of an important insurance company (admittedly one founded two years earlier) that he had never seen any of the anti-money laundering documents published by the insurance and pension funds supervision agency. Apparently, only the managing director of the company was involved in these matters, even though this particular deputy manager was responsible for general supervision of the activities of the network of agencies. Nor was it clear who in the company was responsible for anti-laundering matters. The industry and pension funds inspectorate told the examiners that the CCCEC had done nothing to familiarise this sector with its practical guide. The

inspectorate had done nothing either and seemed to rely totally on the CCCEC, perhaps reflecting its staffing problems.

419. The authorities' efforts to produce guidelines on terrorist financing seem to have focussed mainly on the banks. The National Bank has organised seminars for and issued recommendations to banks. The only steps taken by the CCCEC and its special section have been to send banks the UN list of suspicious persons and organisations. The National Securities Commission representatives also confirmed that the authorities have only circulated the list of terrorists for banks, though the recipients also include securities market operators.

420. The practical guide still does not cover terrorist financing. It is dated September 2004, whereas the reforms that extended the scope of the legislation to include terrorist financing were in December 2004. A new version was planned at the time of the visit.

421. Overall, the CCCEC acknowledges that outside the banking sector, relatively little has been done to combat terrorist financing.

3.12.2 Recommendations and comments

422. The practical guide is an excellent initiative since there were apparently no guidelines before its publication. However, it remains to be seen whether this is enough. Admittedly, information can be circulated rapidly by letter. The CCCEC/the OPCML and the various entities in charge of supervision should make a greater publication effort, bearing in mind the many sectors subject to the AML Law. Resources are apparently limited for the publication of documents on paper, but the examiners were able to observe that computerisation is making rapid progress in Moldova and it would be easy to use the CCCEC site as a documentary resource.

423. Steps should also be taken to ensure that information is properly circulated in the various sectors.

424. Furthermore, information should be provided in the sphere of financing of terrorism, without neglecting important sectors.

3.12.3 Compliance with recommendation 25 (criterion 25,1, financial institutions)

	Conformity assessment	Summary of reasons for the conformity assessment
R.25	PC	• The steps taken are inadequate and should also take account of terrorist financing; • significant doubts remain about the effectiveness of information circulation.

3.13 Ongoing supervision and monitoring (R.23, 29 & 32)

3.13.1 Description and analysis

425. These aspects have already been dealt with in the report. The supervision and monitoring of sectors covered by the National Bank, including *bureaux de change* and fund transfer services, are generally satisfactory and the relevant regulations take fairly full account of anti-laundering requirements and, to a certain extent, anti-terrorist financing. The National Securities Commission also seems to exercise a certain general oversight. This does not cover all aspects of AML/CFT and there are plans for new internal regulations, which would transpose the AML Law or at least part of it. The insurance sector remains neglected from various standpoints, mainly because there are no clearly defined supervisory responsibilities and resources are lacking.

426. The OPCML currently relies on the "competent bodies" to carry out the supervision. These are not specified in the AML Law and do not consider themselves empowered to impose penalties for non-compliance with the legislation (which is in fact the responsibility of the CCCEC). The only exception is the National Bank which has resolved these issues and the question of authority by incorporating the legislation into its banking regulations and in practice has sanctioned banks for breaches of the AML law and the related NBM recommendations.

3.13.2 Recommendations and comments

427. The problems relating to this section flow mainly from general problems in the context of Moldova; they affect the AML Law and its various shortcomings as mentioned elsewhere in this report.

428. Moldova should thus address the various shortcomings in the field of supervision and monitoring of the whole financial sector (in particular the explicit designation of the supervisory bodies, adequate powers to monitor and ensure compliance, full coverage of AML/CFT aspects in inspections of the whole financial sector, robust supervisory programme for AML/CFT purposes with proper inspection procedures etc).

429. Better statistical data should be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed. Statistics of onsite visits and use of sanctions need reviewing collectively and on a coordinated basis, in order to have a clear picture of the level of AML/CFT compliance across the financial sector.

3.13.3 Compliance with Recommendations 23 (criteria 23.4, 23.6-23.7), 29 & 32 (conformity assessment and reasons for that assessment)

	Conformity assessment	Summary of reasons (relating specifically to section 3.13) for the conformity assessment
R.23	PC	Situation only satisfactory for the banking sector
R.29	NC	Powers are not clearly conferred by the AML Law, since the supervisory bodies are not listed
R.32	LC	Only the CCCEC, the National Bank of Moldova and the National Securities Commission have statistics and these are sometimes difficult to obtain for technical reasons or because of doubts about competence.

3.14 Money or securities transfer services (alternative remittances - SR.VI)

3.14.1 Description and analysis

430. Banks and post offices are the only establishments authorised to transfer money and securities. Although the main networks - Western Union and Moneygram – are represented in Moldova alongside one or two purely Moldovan money transfer, or remittance networks, they perform wire transfers via banking channels. There is little discussion, as in other countries, of the issues raised by the involvement of businesses whose main activity has nothing to do with financial services.This type of service provided by banks is supervised by the National Bank.

431. Post offices carry out money transfers both domestically and internationally. They are monitored by the postal service directorate and the ministry to which it reports. At the meeting with representatives of this sector, money laundering and terrorist financing were not discussed.

432. Nor was the team told during the visit of any sophisticated informal or underground remittance arrangements using parallel networks, of the Hawala or Hundi variety.

3.14.2 Recommendations and comments

433. This sector does not appear to pose any particular problems, or if there are any they concern the principal activity of economic operators, or businesses, linked to remittance networks, as was the case with one of the Moldovan banks accused in 2004 of money laundering through transfers to Latvia. However, it is not impossible that remittance networks will expand in Moldova as the country develops economically and remittance companies see a commercial interest in developing their activities in the country.

434. Moldova should remain vigilant where the machinery for transferring funds, or remittances, is concerned and ensure that all operators (whether affiliated to foreign or national money transfer networks) also discharge their AML/CFT obligations in respect of funds transferred by Western Union, Moneygram or other arrangements. International experience has shown that certain criminal activities make considerable use of this type of facility. Moreover, Moldova is particularly vulnerable to some of these activities, such as drug trafficking, prostitution and human trafficking.

3.14.3 Compliance with Special Recommendation VI

	Conformity assessment	**Summary of reasons for the conformity assessment**
SR.VI	PC	• Requirements identified under R.5-11, 13-15, 21 are not implemented by the Post office and those under R.17, 24, 25 do not apply to the Post office, which is a part of this sector.

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

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

(in accordance with R. 5 to 10)

4.1.1 Description and analysis

435. In theory, the AML Law applies to all designated non-financial businesses and professions covered by FATF recommendation 12 and article 2a of the revised Community directive. Institutions carrying out financial transactions are defined in section 3 of the AML Law and paragraphs b and c list designated non-financial businesses and professions (casinos, leisure areas with gaming facilities, institutions that organise and display lotteries or games of chance, institutions registering ownership rights, bodies extending legal, notarial, accounting and financial-banking assistance, fiduciary companies, other organisations and institutions involved in receipt, transfer, alienation, conveyance, transfer, exchange or safekeeping of financial resources or assets, and any other natural and legal persons concluding transactions outside the financial-banking system).

436. As noted earlier in the report, Moldova operates a catch-all approach, as shown by the wording of the last item: "any other natural person or legal entity who, by his/her/its actions, concludes transactions outside the financial and banking system". This includes, for example, pawnbrokers.

437. These bodies are subject to the same obligations as financial institutions, since the AML Law makes no distinction between them and the definition of institutions carrying out financial transactions also includes banks and insurance companies.

438. In principle, therefore, all the bodies referred to above have to meet the obligations connected with reporting, identification, increased diligence, conservation of documents, internal programmes and procedures, appointment of anti-laundering officials and so on. Naturally, this also applies to the duty of confidentiality (non-disclosure of reporting) and the civil protection available if reporting results in damage.

439. As already noted, in practice it is generally acknowledged that the AML Law is not immediately and automatically applicable in Moldova. This is a *de facto* state of affairs, since it is not laid down in legislation, except possibly the reference in section 7 of the AML Law to the CCCEC's responsibility for implementing the act. This means that certain steps must be taken to implement the legislation in each sector or profession. In particular, in each case the CCCEC has to produce special forms for reporting relevant transactions, which must be accompanied an official instruction or letter notifying those concerned that they are now formally bound by the act.

440. The examiners were told that this allowed the CCCEC to prioritise its AML/CFT efforts according to how well developed the sector was and the problems and risks involved. It was not possible to decide from the explanations received on the spot

whether this *ad hoc* system of enforceability applied only to transaction reporting or to the whole of the AML Law, and thus as far as this section is concerned to the duty of client due diligence and record-keeping.

441. In practice, various representatives of these sectors referred to their duty of diligence, reporting and so on in connection with the relevant laws and regulations, such as those governing pawn broking activities, casinos, games of chance and lotteries. For example, casinos identify clients at the entrance from an identity card and each entrance and exit is recorded. The purchase of chips is not specifically recorded, according to the casino manager whom the team met, since the clients are known. Only wins over MDL 3000 (€ 200) are recorded. The system in place is therefore somewhat out of line with FATF recommendation 12, and with the second Community directive.

442. Auditors do not consider themselves obliged to report transactions or identify clients, even though it appears that auditors perform multiple roles, including consulting, real estate valuations and maintaining accounts.

443. The duties of vigilance and record keeping, and for that matter all other obligations, do not really apply to lawyers in Moldova since the profession is currently entitled to claim total professional confidentiality, whatever the context, even if they are acting as business lawyers or consultant lawyers, and even in cases of suspected laundering. There has not yet been any dialogue between the authorities and lawyers about AML/CFT.

444. For the time being, only notaries are officially covered by the legislation, but their duty to retain records derives automatically from their responsibilities.

445. No additional information or meaningful statistics were provided during follow-up mission by Moldova regarding preventive measures in place for DNFBPs.

4.1.2 Recommendations and comments

446. There is an urgent need, as part of a general revision of the AML Law, to list more precisely the non-financial activities and professions (abolishing the catch-all form which applies to all operators effecting transactions outside the financial system) and to take the requisite measures to bring them within this law.

447. Moldova should implement recommendations 5, 6 and 8 fully and make these measures applicable to DNFBPs. All changes regarding the CDD and record keeping requirements as mentioned earlier for financial institutions should be put in place for DNFBPs. Moldova should also adopt specific measures concerning non face to face business transactions and a general requirement to deal with the misuse of technological developments.

448. Urgent consultations are needed with the profession of lawyer in order to determine their obligations under the AML Law.

449. It is also very important to work with the different sectors to raise awareness of the relevant AML/CFT requirements and develop guidance relevant to the individual sectors.

4.1.3 Compliance with Recommendation 12

	Conformity assessment	Summary of reasons (relating specifically to section 4.1) for the conformity assessment
R.12	NC	• No DNFBPs' specific obligations on CDD and record keeping in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on CDD and record-keeping.

4.2 Monitoring of transactions and business relationships (R12 & 16)

(in accordance with R.11 and 21)

4.2.1 Description and analysis

450. As previously noted, the AML Law does not establish a general "know your customer" obligation, with all that entails in terms of vigilance and so on.

451. Nor, as seen in the last section, are designated non-financial businesses and professions other than notaries bound by it in practice. Casinos have their own policy on monitoring clients, which mainly reflects the need for commercial vigilance.

4.2.2 Recommendations and comments

452. As mentioned earlier, the requirements under the Moldovan legislation do not comply fully with the requirements set out in R. 11 and 21 regarding the monitoring of transactions and the vigilance regarding business relationships and transactions with persons from countries which do not or insufficiently apply the FATF recommendations nor to business relationships with a PEP. The Moldovan authorities thus should ensure that requirements under R. 11 and 21 apply to DNFBPs subject to the qualifications in R. 16.

4.2.3 Compliance with Recommendations 12 and 16

	Conformity assessment	Summary of reasons (relating specifically to section 4.2) for the conformity assessment
R.12	NC	• No DNFBPs' specific obligations on monitoring transactions and business relationships in the AML law; • No evidence of effectiveness of DNFPBs' compliance with

		general obligations on monitoring transactions and business relationships in the AML law.
R.16	NC	• No DNFBPs' specific obligations on special attention and other actions related to business relationship with persons from countries with insufficient level of implementation of the FATF recommendations; • No evidence of effectiveness of DNFPBs' compliance with general obligations on on special attention and other actions related to business relationship with persons from countries with insufficient level of implementation of the FATF recommendations.

4.3 Suspicious transaction reporting (R.16)

(in accordance with R. 13 and 14)

4.3.1 Description and analysis

453. At the time of the visit the only form for designated non-financial businesses and professions was for notaries. Forms were currently being drawn up for casinos and pawnbrokers[58].

454. It is not surprising therefore that for the moment only notaries report transactions (see table in 3.7.1). However, the CCCEC representatives said that establishments not formally covered by the reporting obligation had sometimes contacted the CCCEC to seek advice (for example, a lottery agent in connection with a win). The casino representative whom the team met said that she had never come across a suspicious transaction and that failure to report such a transaction was a moral rather than a legal obligation.

455. So far, no professional body has formed an intermediate body to report transactions.

4.3.2 Recommendations and comments

456. Moldova should ensure that the reporting form is available rapidly for all designated non-financial businesses and professions subject to the AML Law (at the same time as clarifying the precise list thereof). It should also take any additional measures, as relevant, to ensure that all DNFBPs comply with their reporting obligations. More outreach and guidance should be developed for all DNFBPs to explain the reporting obligation.

[58] The Moldovan authorities advised that forms were finally adopted with an Instruction of 15.12.2005 "On the way of filling in and submitting the special forms of the financial transactions".

4.3.3 Compliance with Recommendation 16

	Conformity assessment	Summary of reasons (relating specifically to section 4.3) for the conformity assessment
R.16	NC	• No DNFBPs' specific obligations on STR reporting in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on STR reporting in the AML law

4.4 Internal controls, compliance & audit (R.16)

(in accordance with R15)

4.4.1 Description and analysis

457. Nothing seems to have been done in this area, other than by notaries (a profession to which in any case it is difficult to apply recommendation 15). The chamber of notaries does not appear to have taken any special measures under the AML Law.

4.4.2 Recommendations and comments

458. Same comments as under 4.1 and 4.2 apply. The authorities should make sure that all DNFBPs are required to set up internal procedures, policies and controls to prevent ML and FT. The DNFBPs should also be required to either have a program for employee training or have some other access to (compulsory) training either provided by the orders and associations or by the authorities.

4.4.3 Compliance with Recommendation 16

	Conformity assessment	Summary of reasons (relating specifically to section 4.4) for the conformity assessment
R.16	NC	• No DNFBPs' specific obligations on internal controls, compliance, maintaining on-going employee training programme and an audit function in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on internal controls, compliance, maintaining on-going employee training programme and an audit function in the AML law;

4.5 Regulation, supervision and monitoring (R.17, 24, 25)

4.5.1 Description and analysis

459. The gaming sector (casinos, establishments offering games of chance and lotteries) is governed by the Gaming Act. It is supervised by the gaming department of the finance ministry and licences are issued by the Licensing Chamber. The gaming department does not consider itself responsible for AML/CFT supervision and the Licensing Chamber is apparently unaware of the number of operators. As noted in 4.1.1, in practice the sector applies its own regulations. The only breaches of the law referred to on the day of the visit concerned the payment of excise duties and no penalties have ever been imposed. The national lottery representative said that much stricter controls should be imposed since unreliable operators had been allowed to enter the market. These functioned manually, unlike the national lottery, which used a sophisticated computerised system.

460. The financial police, like the tax inspectorate, seemed to have reinforced their checks on casinos, with annual visits replacing unannounced ones, because of the size of their tax bill. However, the gaming department had no centralised information on the sector's turnover, which was only held by the finance ministry's regional offices.

461. The profession of lawyer was regulated by 2002 legislation, which had abolished the specific profession of legal adviser, for which a particular licence was required, and established a licensing commission in the Ministry of Justice. The profession was governed by a bar system, which included a committee on ethics and discipline. The 2002 act made it incompatible in principle for lawyers to undertake paid employment outside their legal duties. However, according to the second round report, lawyers could be directors of commercial companies, which seemed to be a conflict of interest.

462. There do not appear to be any strict regulations governing the auditing profession. As noted in 4.1, auditors offer a range of services, including financial audit, consulting, real estate valuations and maintaining accounts. The evaluation team heard a number of criticisms of auditors' lack of qualifications and professionalism.

463. The notarial profession is governed by Act 1453, which came into force on 23 February 2003. Under this act, notaries are responsible for their actions. They are supervised by the Ministry of Justice, which can impose penalties for breaches of the law. They have their own professional body – the chamber of notaries – which had a code of ethics until it was withdrawn in 1998.

464. The Licensing Chamber representative mentioned that it lacked the resources to monitor the origin of funds invested in activities licensed, for example pawnbroking.

465. All in all, self-regulatory and professional bodies do not appear to play an active part in the AML/CFT regulation of their respective professions. Nor are there any additional measures, such as guidelines, to assist the designated non-financial businesses and professions, other than those in the AML Law. Notaries have, however, received the CCCEC practical guide.

466. The issue of absence of clear sanctions was already discussed under Section 3.10.1 (see also the footnote under this Section).

4.5.2 Recommendations and comments

467. Once the various designated non-financial businesses and professions have been listed by name in the AML Law, it will again be necessary to clarify the powers of the supervisory bodies (in particular the different departments of the Ministry of Finance which are involved in controlling gaming, pawnbroking, and dealers in precious stones and metals) in order to ensure that all DNFBPs are adequately supervised for AML/CFT purposes.

468. In the case of the legal and accounting professions, their professional associations should be given an active role to play.

469. Also, Moldova should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and practical guidelines.

4.5.3 Compliance with recommendations 17 (DNFPBs), 24 and 25 (criterion 25.1)

	Conformity assessment	Summary of reasons (relating specifically to section 4.5) for the conformity assessment
R.17	NC	• There are no penalties for failure to comply with the AML Law
R.24	NC	• Casinos appear to be closely supervised by the Ministry of Finance and the finance police but there is no control on the implementation of the AML Law proper
R.25	NC	• There are no specific guidelines for designated non-financial businesses and professions, which must refer to the AML Law

4.6 Other non-financial businesses and professions - Modern and secure techniques of money management (R. 20)

4.6.1 Description and analysis

470. As noted early, the AML Law adopts a very broad definition of those covered to include "any other natural person or legal entity who, by his/her/its actions, concludes transactions outside the financial and banking system". This includes dealers in high value products and pawnbrokers. Theoretically, investment advisers are also covered (bodies extending accounting and financial-banking assistance).

471. The examiners were only able to collect a very limited a amount of information on dealers in high value products, mainly in connection with the trade in precious metals.

472. Before granting a licence to pawnbrokers, the Licensing Chamber demands proof that those concerned have no criminal record. The examiners were told that the pawnbroking sector (15 licensed firms with 50 to 60 establishments) was apparently often run by persons who had worked illegally abroad. Objects pawned were generally of low value (MDL 1000 to 2000), and only occasionally worth a lot more (such as MDL 10 000). In theory, there was nothing to prevent the undervaluation of objects deposited and then their overvaluation on redemption. There are no limits on the number of items pawned, though such a legal limit was under consideration at the time of the visit.

473. The AML Law's lack of detail about the scope of the legislation, in terms of who is covered and their obligations, has been discussed in previous sections.

474. Individuals are not currently subject to any limit on cash transactions. The only limit concerns legal persons, who cannot make cash payments in excess of MDL 15 000 (€ 1 000) per month, in accordance with the January 1992 legislation on business activities.

475. Growing use is being made of secure payment methods and more transactions are being registered. The largest Moldova notes are worth MDL 1000 (less than € 70). The number of bank accounts and payment cards is rising.

4.6.2 Recommendations and comments

476. Efforts are being made to develop modern payment methods and restrict the use of cash.

477. Nevertheless, cash is still used very widely for payments and this remains the most important issue.

478. The limit on cash payments imposed on legal entities is a positive initiative which Moldova ought to extend to payments by individuals, bearing in mind the problems specific to the country (corruption, cash-based economy, cash of sometimes suspect origin brought into Moldova, etc.).

4.6.3 Compliance with Recommendation 20

	Conformity assessment	Summary of reasons for the conformity assessment
R.20	PC	• Ineffectiveness of the preventive machinery for virtually all non-designated non-financial businesses and professions • Reduction of cash payments for individuals desirable

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

479. The establishment of the information technology department in 2001 made it much easier to identify and register individuals and legal persons, particularly with the introduction of efficient computerised central registers of the population and of legal persons (120 000 firms, non-profit making organisations and so on), which are registered by the registration chamber. The information technology department also produces modern identity documents that are difficult to forge. Some 500 administrative departments and agencies (including the relevant supervisory and monitoring bodies and the CCCEC) have round-the-clock access to information on the ownership and control of legal persons. Financial institutions must pay for access to the database. At the time of the visit, work had not yet been completed on merging all the administrative databases on legal persons. The central register will eventually offer access via a single code to all the information on legal persons and the individuals who control them.

480. The Licensing Chamber, set up in 2002, also holds centralised information on a certain number of professions and commercial activities (49 at the time of the visit), some of which are concerned by AML/CFT issues. These include auditors, savings and loans associations, pawnbrokers, the trade in precious stones and metals, operators of casinos and games of chance and certain real estate professions.

481. In the case of the two systems mentioned above, it is planned to introduce procedures for examining applications for registration using multidisciplinary committees. In principle, the names of the founders, any changes in the identity of partners and directors, and the names of persons authorised to represent the owners or the legal person itself must be registered.

482. According to article 2 of the Law on the Securities Market (no. 199-XIV of 18 November 1998), bearer securities are "*securities that do not specify the name (title) of the owner.*" Furthermore, the same article provides that "*No bearer securities registry shall be maintained; and transfer of rights in the securities and exercise of the rights do not require the identification of their owner"*. The team was advised that as the Law on Joint Stock Companies authorises such companies to issue only registered securities (see article 11), securities in bearer form are not issued by them. However, no statistical data was provided regarding the number and amount of outstanding issues of such securities in circulation, apart from comments from the authorities that these indicators must be at a low level.

483. There is no statutory provision for checking on the origin of funds. This seems to be a major gap in the procedures applicable to both registration and the licensing chambers that could reduce their effectiveness. The Licensing Chamber representatives said that they had no authority to carry out such checks and those of the registration chamber said that these were really matters for the police.

5.1.2 Recommendations and comments

484. The steps taken in recent years to make information on legal persons more transparent are very welcome. Unfortunately, the arrangements established pay insufficient attention to the origin of funds. Nor is there any audit requirement, except in the case of a few companies such as banks, to offset this shortcoming in certain cases.

485. Moldova should therefore introduce controls on the origin of funds as a preliminary to registering legal persons and issuing licences to companies presenting AML/CFT risks (insurance, gaming etc.).

486. Moldova should also consider a more general reform aimed at developing machinery for financial audit and approval of company accounts by professional auditors.

5.1.3 Compliance with Recommendation 33

	Conformity assessment	Summary of reasons for the conformity assessment
R.33	PC	Lack of general controls on origin of funds and, more generally, of auditing policy

5.2 Legal Arrangements – Access to information on beneficial ownership and control (R.34)

5.2.1 Description and analysis

487. The National Bank representatives did not exclude the possibility of the representative of one legal person acting on behalf of another one. In such cases, all those involved in the chain must be identified and appropriate information gathered.

488. The issue of 'trusts' or fiduciary arrangements in Moldova was discussed during follow-up visit. Such arrangements are sometimes cited, in the replies to the questionnaire and in the English translation of the AML law. The NSC representatives explained that trust companies were established in 1994 during the mass privatisation programme to manage the so-called 'privatization bonds', issued to the citizens, and to exchange these securities for shares of enterprises. The examiners have been advised that no other types of trusts or other legal arrangements similar to trusts exist in Moldova.

489. The term 'fiduciary company' is related to a definition of 'investment management', provided by the Law on the Securities Market (article 3), according to which: 'Investment *management is the exercise by a legal entity of fiduciary management over transferred to it under a corresponding agreement of the following: a) securities; b) cash designated for investment in securities; and c) securities and cash generated in the process of fiduciary management of securities.*' Finally, examiners were advised that there are no trusts or fiduciary companies managed by intermediaries from other professions.

490. Thus both trust companies and fiduciary companies are legal entities, registered as such according to the legislation of Moldova, and are not legal arrangements in the sense of Recommendation 34. The evaluation team was not able to gain information on whether foreign trusts operated in Moldova and it was explained to the examiners that should it be the case, they would be considered as ordinary customers to which all CDD measures which apply to Moldovan entities would be applied.

5.2.2 Recommendations and comments

491. It may be useful for Moldovan authorities to examine the issue of trusts and legal arrangements in the light of R. 34 and consider elaborating, if necessary, any relevant guidance to the financial institutions and/or investigative authorities.

5.2.3 Compliance with Recommendation 34

	Conformity assessment	Summary of reasons for the conformity assessment
R.34	NA	

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

492. At the time of follow-up visit, examiners were informed that 3740 public associations, including 250 foundations, were registered in Moldova as non-profit organisations.

493. According to the information provided, it appears that no comprehensive formal review of the laws and regulations that relate to NPOs that could be abused for the financing of terrorism has been undertaken by Moldovan authorities, nor any analysis of the TF threats posed by this sector.

494. Some measures exist and are relevant in this context. According to article 24, paragraph 2 of the Law no. 539-XV of 12 October 2001 on Terrorism Prevention, if a court has recognized an international organisation, which has been registered abroad, as a terrorist one, its activity will be forbidden on the territory of the Republic of Moldova, its office, filial will be closed and its property will be seized for the benefit of

state. The Law no. 54-XV of 21 February 2003 on combating extremist activity includes the financing of terrorism by public or religious associations under the definition of extremist activity and provides for the responsibility of these associations, for the procedures and the sanctions to be applied in such cases. The adoption of this law can be viewed as a beginning of the outreach to the NPO sector which should be further continued.

495. Furthermore, according to article 4 paragraph 1 of the Law no. 837-XIII of 17 May 1996 on Public Associations, it is not allowed to establish or conduct activity of a public association which has the purpose or which chooses to act to change through the use of violence the constitutional regime, by disrupting the territorial integrity of the Republic of Moldova, by promoting the war, the violence and the cruelty, by instigation of social, racial, national or religious hate. Paragraph 2 and 3 of the same article provide that it is prohibited to establish paramilitary public associations and armed formations, as well as public associations which are attempting at the citizens' legal rights and interests, at human's health and public morality. Non compliance with the above-mentioned provisions can lead to the liquidation of the public association by court decision.

496. However, the problem of preventing abuse of the NPOs by terrorist organisations is not adequately addressed. The review which has been undertaken concentrated mostly on prosecuting extremist activities, including the financing of terrorism.

497. The Ministry of Justice of Moldova is currently in charge of registering the public and philanthropic associations. The evaluators were not advised of any measures undertaken by the Ministry of Justice or any other competent authority, at the registration stage or further on to ensure that known terrorist organisations would not be allowed to establish a legitimate NPO or to become a part of it at a later stage. Religious associations are registered by the Service of Cults under the Government.

498. The Ministry of Justice exercises the control over the compliance of the public association's activities with the purpose and the provision in its statute, and publishes relevant reports. The financial and fiscal authorities exercise the control over the sources of income, the expenditure, the payment of taxes and other financial activities and the prosecutor's offices supervise the compliance of the public association activity with the provisions of the Constitution and of the legislation in force.

499. No information was provided with regard to effective supervision or monitoring of the NPOs with specific attention to the amount of financial resources under control of this sector and the share of the sector's international activities.

500. No measures were found in place to ensure that funds or other assets collected by NPOs are not diverted to support terrorist activities. At the same time, the Moldovan authorities informed that the CCCEC has the authority, under the law on the CCCEC, to perform specialised audits for public associations and philanthropic foundations aimed at detecting misuse of collected funds under their control and a number of such audits are being performed on a continuous basis.

501. Regarding the specific investigative and information gathering approaches, as well as special procedures to respond to international requests related to NPOs, no measures were in place.

5.3.2 Recommendations and comments

502. Moldova should implement the requirements covered by criteria VIII.1 and VIII.3.

5.3.3 Compliance with Special Recommendation VIII

	Conformity assessment	Summary of reasons for the conformity assessment
SR. VIII	PC	• No review of laws and regulations was undertaken by the authorities to establish their adequacy regarding prevention of misuse of NPO of financing of terrorism • No measures are in place to ensure that funds of other assets, collected by or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organisations

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and analysis

503. Various practical steps are taken to facilitate co-operation between the FIU, the investigating and prosecuting authorities and other competent bodies. Firstly, as a specialist section of the CCCEC, the FIU naturally co-operates with the latter, whose criminal investigation department carries out laundering inquiries. The FIU also uses the services of other CCCEC sections, such as the analysis and forecasting department. The prosecutor's department has a section specialising in financial investigations which acts as the link in laundering cases. The Information and security service (SIS) has regular contacts with the finance ministry. Since the CCCEC's foundation, it has never used joint investigation groups with the police, as indicated at the final round table.

504. However, certain *ad hoc* steps have been taken such as the bilateral agreement between the CCCEC and the SIS to look at terrorist financing issues and examine cases of this type referred by the CCCEC and its FIU[59]. The SIS also has an analysis and forecasting section producing information on, for example, criminal patterns and trends in the region, the number of screen companies and the scale of tax evasion. A joint CCCEC-SIS working group is planned to complement the activities of another recently created group. It is made up of six staff of the CCCEC, two from the Ministry of Internal Affairs and two from the prosecutor's department. The last named group will implement a joint action plan approved two to three years ago on real-time exchange of information, exchanges of experience, joint working groups to deal with particular cases, co-operation in analysing money laundering trends and so on. The action plan also lays down the division of labour, with cases being referred by the FIU to the criminal investigation department, which then works under the supervision of a seconded member of the prosecutor's department.

505. Finally, dialogue has also been established between the authorities (FIU, CCCEC and SIS) and the financial sector, via a working group on money laundering in the National Bank. This permits regular contacts and what is considered to be close co-operation.

506. Co-operation between investigating authorities seems to be generally satisfactory. However, it is difficult to assess the impact of co-ordination and information exchange arrangements. The examiners often had the impression that those involved in fighting money laundering and economic crime more generally sometimes spoke different languages, did not always have a co-ordinated view of the problems and priorities and were frequently incapable of presenting a coherent picture of the division of labour and responsibilities, or of distinguishing clearly between theory and practice. Few of the official representatives whom the team met were able to describe the situation clearly

[59]In 2005, similar agreements were reached between the CCCEC, the National Bank, the Ministry of Internal Affairs and the National Securities Commission.

and precisely. Obviously, the need to rely on translation and interpretation might have created ambiguities.

507. Much remains to be done to bring dialogue with the private sector and the other supervising agencies up to the level of co-operation between the National Bank and the banking sector, as already noted in other parts of the report. Apart from the actual scope of the AML Law, which is a structural issue, there are still certain fundamental questions to be resolved concerning various designated non-financial businesses and professions, with whom dialogue is inadequate or non-existent (see section 4).

6.1.2 Recommendations and comments

508. Greater use should be made of co-ordination machinery to clarify problems and potential policies in the AML/CFT field.

509. This would be an opportunity to obtain a more precise picture of AML/CFT responsibilities and of which sectors were being used for laundering, to ensure that these sectors were properly supervised, to consider the resources needed by the supervisory departments and agencies and to assemble more statistics.

510. Beside the importance of a dialogue with the private non-banking sector (see *supra*), the interaction with all supervisory authorities is essential as a tool for effective compliance by and guidance for the relevant sectors. The authorities appear to rely too heavily on co-operation with the banks and the National Bank, whereas many initiatives have been taken at that level and none in certain other areas where shortcomings, or even problems, seem to exist (insurance, lotteries, the legal profession etc.) and the list of subject entities is very long. Experience in other countries shows that while the banking sector is critical, once banks achieve a certain measure of success in applying AML/CFT measures and central banks start to play their full part, criminals and those who finance terrorism tend to move their assets to other sectors.

6.1.3 Compliance with Recommendation 31

	Conformity assessment	**Summary of reasons for the conformity assessment**
R.31	LC	Insufficient interaction with all supervisory authorities, impacting on efficiency.

6.2 Special UN conventions and resolutions (R. 35 & RS. I)

6.2.1 Description and analysis

511. Moldova signed the Palermo Convention (and its two protocols) on 14 December 2000 and ratified them after the visit[60]. It ratified the Vienna Convention on 15 December 1995, without reservations. The 1999 International Convention for the Suppression of the Financing of Terrorism was ratified on 18 July 2002, with two limiting declarations[61].

512. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was ratified on 30 May 2002, when Moldova lodged the following declaration concerning the Transnistria region: "The Republic of Moldova declares that the Convention will not be applied on the territory effectively controlled by the organs of the self-proclaimed Moldovan Dniestrian Republic until the final settlement of the conflict in this region."

513. The replies to the questionnaire contained no information on the implementation of UN resolutions and instruments.

514. Without going into detail on the transposition of the Vienna Convention, it is clear that some of the general issues raised in this report also apply here and in some cases represent gaps in the Convention's implementation. These include the evidence required for the offence of laundering (the need for a prior conviction for the predicate offence), the rules governing seizure and confiscation, and the use of special investigation methods, including controlled deliveries as provided for in Article 11 of the Vienna Convention, which even at best, are not allowed at the judicial investigation stage. Nevertheless, Moldova treats the fight against drug trafficking as a priority and has taken various of steps to deal with the problem.

515. The definition of the offence of terrorist financing in the Moldovan Criminal Code (articles 278-279, considered in 2.2 of this report) reflects the one in the Convention on the financing of terrorism, which only concerns terrorist acts (Article 2).

516. Moldova submitted a report to the Security Council in December 2001 concerning the latter's Resolution 1373 (2001). The measures referred to are also cited in this report. The authorities advised that they have also circulated the Security Council lists of organisations and individuals drawn up under Resolutions 1333 and 1390. The efforts seem to have concentrated exclusively on banks. Although no freezing, seizure or confiscation of assets has so far been applied to suspicious persons or organisations in

[60] The three instruments were ratified on 16 September 2005, without reservations.

[61] "1. Pursuant to article 2, paragraph 2 (a) of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Moldova declares that in the application of the Convention the treaties the Republic of Moldova is not a party to shall be deemed not to be included in the Annex of the Convention.
2. Pursuant to article 24, paragraph 2 of the International Convention for the Suppression of the Financing of Terrorism, the Republic of Moldova declares that it does not consider itself bound by the provisions of article 24, paragraph 1 of the Convention."

Moldova, inquiries have been launched in a few cases concerning offences other than terrorist financing.

517. Finally, Moldova has ratified various other Council of Europe instruments, such as the 1957 Convention on Extradition, the 1959 Convention on Mutual Assistance in Criminal Matters (and its two protocols) and the 1977 Convention on the Suppression of Terrorism.

6.2.2 Recommendations and comments

518. Given the circumstances of the evaluation, it was not possible to discuss all the provisions of all the UN conventions in detail.

519. All the same, Moldova should be given credit for ratifying not only the UN conventions but also a considerable number of Council of Europe ones. These treaties provide a basis for co-operation with other parties to them. As regards the transposition and scope of UN instruments, some of the problems mentioned earlier in the report may cause difficulties (eg. the use of special investigation techniques in judicial proceedings for purposes of co-operation with other countries). All in all, there are some formal deficiencies that need attention (see *supra* legal issues), but the main issue to be addressed is how to implement the Conventional requirements in an efficient way.

6.2.3 Compliance with Recommendation 35 and Special Recommendation VII

	Conformity assessment	Summary of reasons for the conformity assessment
R.35	PC	• Insufficiencies in effective implementation of the Conventions
SR.I	PC	• Deficient implementation of UN res. 1267 and 1373. • Efforts to identify terrorist assets in Moldova have focussed almost exclusively on banks

6.3 Mutual legal assistance (R. 32, 36-38, RS. V)

6.3.1 Description and analysis

520. The 2003 Code of Criminal Procedure has a complete chapter – IX – on international judicial assistance. Under article 536.3, requests for such assistance are sent to foreign authorities by the state prosecutor at the request of the prosecuting authorities and by the Minister of Justice when requested by a court. According to statistics supplied by the public prosecutor's office to the first evaluation team, in 2004 Moldova submitted five requests for assistance in money laundering cases, to the authorities of Russia,

Norway, Switzerland, Portugal and Latvia[62]. Subsequently, additional statistics were provided that lack sufficient detail however:

Statistic on rogatory commissions

2004 **A) Sent requests** In 2004, the criminal prosecution authorities submitted to foreign authorities 267 requests of mutual legal assistance. 43 requests related to smuggling; 36 – trafficking in human beings; 14 – fiscal evasion; 5 – money laundering.
B) Received requests In 2004 there were received 697 requests of rogatory commission. 10 requests were refused, based on the following reasons: - the request did not meet the necessary criteria; - the person whose extradition was requested was the citizen of the Republic of Moldova; About 60% of cases were executed during 1 – 2 months; 30% of cases – 3 – 4 months; 10% of cases – 4 – 9 months.
In 2005 **A) Sent requests** In 2005 there were sent 322 requests of rogatory commission. 2 requests were related to money laundering (1 was submitted to Russian Federation and 1 to Latvia). There were executed about 65% of the requests. Romania, Ukraine, Russian Federation and other CIS countries had executed the requests during 2-5 months. European countries – 4-7 months. USA – 1,5 – 2 years.
B) Received requests In 2005 : 500 requests of rogatory commission received.

521. Articles 531 ff of the Code of Criminal Procedure provide for substantial international co-operation, subject only to the normal conditions of reciprocity and dual criminality. Even where the latter condition is not met, it is still possible to supply information that is readily available, particularly in the context of police co-operation and at CCCEC

[62] Statistics on incoming requests for 2006 (until September) were subsequently provided (3.928 cases in total). These figures however do not differentiate between civil and criminal legal assistance matters, nor do they specify to what offences they relate to.

level. At all events, money laundering, terrorist financing and many other serious offences are covered by the Criminal Code.

522. Moldova has also made great efforts to subscribe to conventions that form the basis for co-operation, such as the 1990 Strasbourg Convention, the 1959 Convention on Mutual Assistance and the Palermo Convention.

523. Under Article 532 of the Code of Criminal Procedure, requests for judicial assistance pass through the Ministry of Justice or the public prosecutor's department. If the applicant country so requests or the reciprocity principle is concerned, diplomatic channels are used. Applications for seizure and other procedural formalities are authorized by the investigating judge at the request of the prosecutor. Execution of foreign court orders or judgments pertaining to confiscation is possible according to articles 533.7 and 559 CPC (*exequatur* procedure). There are no indications of specific problems with executing requests, which normally takes about 1 to 3 months.

524. The legal grounds for refusal listed in article 534 CPC are founded and universally accepted. No specific problems or undue obstacles have been reported in that respect. Moreover Moldova does not refuse to grant assistance in cases involving taxation matters or if the legal definition of the offence is not completely the same in both countries. What matters is the substance of the criminal behavior should be punishable in both countries.

525. In the case of international co-operation, Moldova authorises assistance under the same conditions as for domestic prosecutions and proceedings, which means that mutual assistance is possible in such traditional areas as supply of documents, searches and the questioning of persons. In cases of laundering or terrorist financing, such assistance is generally fairly broad ranging.

526. In theory at least, there are still the domestic weaknesses already observed, such as the controversy on the use of special investigation methods in mutual assistance procedures, and the partial absence of corporate criminal liability. Lawyers' right to absolute professional confidentiality could also be a problem, for example in the event of a request for an interview with or information from a member of the profession.

527. Finally, Moldova does not have a special fund into which confiscated assets can be paid (they go into the general state treasury after being auctioned off) or provisions governing the distribution of assets. Even though Moldova does not recognise the common law principle of civil confiscation (or the sharing or reversal of the burden of proof in criminal cases), the examiners were told that, in principle, there was nothing to prevent Moldova from executing a foreign judicial decision in this area. Nothing was said about examples of co-ordination with regard to seizure or confiscation.

6.3.2 Recommendations and comments

528. Although there are no incidents recorded that give a concrete indication of the existence of legal obstacles jeopardizing an effective mutual legal assistance provision, the identified domestic legal shortcomings should be remedied – in particular with

regard to the ML and TF offences and special investigation techniques including controlled delivery (see *supra*) – to ensure that full assistance can be given.

6.3.3 Compliance with recommendations 32, 36 to 38, and special recommendation V

	Conformity assessment	Summary of reasons (relating specifically to section 6.3) for the conformity assessment
R.32	LC	• Statistics insufficiently detailed (nature of request, granted or refused, time required to respond)
R.36	LC	• Co-operation could potentially be inhibited by legal uncertainties (self-laundering, corporate criminal liability)
R.37	C	
R.38	LC	• no information on coordination arrangements for seizure and confiscation.
SR.V	LC	• Co-operation risks to be hampered by the legal inadequacies as to the offence of terrorist financing and corporate criminal liability

6.4 Extradition (R. 32, 37 & 39, RS. V)

6.4.1 Description and analysis

529. As noted in 6.2.1, Moldova has ratified the Council of Europe Convention on Extradition and its two protocols.

530. The extradition procedure is dealt with in articles 541 to 550 of the Code of Criminal Procedure. Extradition is granted in accordance with bilateral and multilateral international treaties to which Moldova is party, including the Convention on Extradition and its two protocols, or on the basis of reciprocity where such an agreement does not exist. Moldova refuses to grant extradition for offences committed on its territory. The other reasons for refusing extradition are the classic ones including the circumstance that the individual has already been prosecuted (and has been convicted, acquitted or discharged), the time limit for the offence has been exceeded, and the offence is a political or the person benefits from political asylum.

531. Moldova does not extradite its own citizens (article 546 CPC). The examiners were told that such persons would be prosecuted in Moldova. The principle is based on art. 533.5 CPC and art. 6 of the European Convention on extradition, with the Prosecutor

General as the authority to decide on taking over the prosecution[63] and coordinating with the requesting foreign authority. Transfer of criminal assets, proceeds and other evidential material is provided for in article 550 CPC.

532. According to the legislation, to justify the granting of or a request for the extradition of foreign nationals, the offences for which they are being prosecuted must carry a maximum sentence of at least one year's imprisonment. Shorter periods apply to persons who are already convicted. This means that foreign nationals involved in money laundering, terrorism or terrorist financing cases can be extradited.

533. There are no reports of unreasonable delays in the procedure. The procedure is bound to strict deadlines when involving the arrest of the extraditable person (article 547 CPC). Article 545 lays down a simplified extradition procedure with the consent of the individual concerned, if the consent has been validated by a court.

534. It is difficult for the examiners to assess how extradition works in practice. According to the questionnaire, there has never been an extradition to or from Moldova[64], which is likely in the AML/CFT context, since money laundering and terrorist financing have only recently become offences. However, one of the persons whom the evaluation team met said that there had been four cases in the past, but there was no more information available on the types of case or how the arrangements had worked in practice (time scales, problems, and son on). The following statistics were subsequently provided, however not sufficiently detailed:

I. Statistics on cases of extradition from the Ministry of Justice **2003** – 52 cases; **2004** – 193 cases; **2005** – 152 cases Most of them are cases of extradition requested by the national authorities. There are only 4 cases in which a foreign state requested the extradition from the Republic of Moldova (2 requests are from Russian Federation and 2 from Romania).
II. Statistics on extradition cases from the General Prosecutor's Office **In 2003** there were submitted to foreign authorities, by the General Prosecutor's Office – 352 extradition requests. **2004** ***A) Sent extradition requests*** **In 2004** there were submitted to foreign authorities, by the General Prosecutor's Office – 243 extradition requests. For comparison:

[63] An exception to this rule is proposed in a draft law providing for the possibility to extradite Moldovan nationals to an international criminal court on treaty basis.

[64] **In 2006 there were 294 extradition cases.** None of them concerned laundering or terrorist financing.

- in 2002 – 321 requests;
- in 2001 – 202 requests;
- in 2000 – 147 requests.

21 of the requests were related to abstraction in big proportion;
6 - illegal activity of drug trafficking;
4 – smuggling;
3 - trafficking in human beings.

B) Received extradition requests

In 2004 the General Prosecutor's Office received 32 extradition documents and requests. There were accepted only 15 requests. In 2 cases, the extradition requests were refused for the following reasons:
- the person whose extradition was requested was not on the territory of the Republic of Moldova at the moment of receiving the request;
- the delay of the extradition request

2005

A) Sent extradition requests

There have been sent 170 requests of extradition.
Only 120 requests have been accepted, 17 requests have been refused, based on the following reasons:
- The lack of dual criminality;
- The expiration of the prescription term, etc.

The examination of 28 requests was suspended.

The CSI states have executed the requests within a term of 2-4 months.
The European states – 1,5- 2 years.

B) Received extradition requests

There have been received 18 information documents and requests on extradition. Only 6 of them have been accepted.

6.4.2 Recommendations and comments

535. On the basis of the available information, the current system does not seem to pose problems. In theory, it allows Moldova to co-operate in extradition matters. Lack of detailed statistical information makes it difficult to ascertain how the system works, whether or not in an AML/CFT context. There are the legal uncertainties (see *supra* on the ML and TF offence) that might interfere with the extradition possibilities, such as the dual criminality requirement. This should not be a major problem however since the deficiencies in the formal qualification of the offences do not necessarily have the same negative impact in extradition procedures, where the criminal conduct as such prevails over the formal text. Anyway, it is important to have a clear and undisputed legal basis to avoid unnecessary controversy and interpretation problems.

536. Moldova should keep accurate, detailed and up-to-date statistics on extradition, both on ingoing and outgoing requests.

6.4.3 Compliance with recommendations 32, 37 and 39, and special recommendation V

	Conformity assessment	Summary of reasons (relating specifically to section 6.4) for the conformity assessment
R.32	LC	• Insufficient accurate, detailed and up-to-date information and statistics
R.37	C	
R.39	LC	• Legal imperfections may negatively affect the extradition possibilities
SR. V	LC	• Legal imperfections may negatively affect the extradition possibilities

6.5 Other forms of international co-operation (R. 32 & 40, RS.V)

6.5.1 Description and analysis

537. Naturally Moldova co-operates with neighbouring countries such as Russia, Ukraine and Romania, with which it has a number of agreements, including multilateral ones. Experience of formal requests for mutual assistance regarding west European countries varies from department to department.

538. Moldova also takes part in regional arrangements, such as the Bucharest-based centre for combating cross-border crime, under the Southeast Europe Cooperative Initiative (SECI), to which it has appointed police and customs liaison staff. In 2004, following a Russian proposal, a regional FATF-type group was set up. Moldova is a member of this group, which promotes operational co-operation through a computerised network for exchanging AML/CFT information and data.

539. As noted in 2.5, the special anti-laundering section of the CCCEC, which acts as the FIU, is not authorised to exchange information directly with foreign counterparts or conclude agreements for that purpose. This power rests with the CCCEC. Co-operation with other countries in the region is also the responsibility of the CCCEC, while the anti-laundering section exchanges information with the FIUs of Romania, Russia, Ukraine and so on. The anti-laundering section has recently recruited an official with a good command of other languages. This enables the section to communicate directly in English, which will facilitate co-operation when it joins the Egmont Group. There are few statistics on CCCEC co-operation with other countries.[65]

[65] Order no. 18-1 of 10/02/2006 delegated to the head of the OPCML the power to sign the correspondence with foreign FIUs, followed by Order no. 113-1 of 08/09/2006 which provides that the Head of the Office

540. It should be noted that the Public Prosecutor's Office has been designated as the central authority for the purposes of co-operation under the 1990 Strasbourg Convention.

541. The National Bank has an external relations division as part of its foreign exchange operations and external relations department. It is not a member of the Bank for International Settlements or of the Basle Committee, though it does keep in close touch with the latter's activities.

542. The National Securities Commission established an international co-operation department in 2004 and two agreements have been concluded with foreign counterparts[66].

543. The customs service has close relations with neighbouring countries, particularly for the purposes of comparing data to keep check of movements. In this context, particular attention is paid to problems generated by Transnistria.

544. The registrations chamber maintains contact with Interpol to check on individuals' identity when issuing identity papers and on applicants/investors when registering legal persons.

545. The information and security service (SIS), which in principle is responsible for terrorism-related matters[67], may also exchange information on an informal basis with other police forces and Interpol.

6.5.2 Recommendations and comments

546. Available information suggests that serious crime in Moldova is very often international in scale, whether in terms of information or proven or alleged risks. The capacity of the financial supervision bodies (including the National Securities Commission and the supervisory entities of the Ministry of Finance and the Licensing Chamber) to exchange information and cooperate with their foreign counterparts should therefore be enhanced; this would also make it possible to provide Moldovan operators with channels of intelligence about foreign customers.

547. As part of the reinforcement of its organisational autonomy, the OPCML should be able to exchange information directly with its foreign counterparts, and if possible enter into agreements itself for this purpose (see also section 2.5).

6.5.3 Compliance with recommendations 32 and 40 and special recommendation V

	Conformity assessment	**Summary of reasons (relating specifically to section 6.5) for the conformity assessment**

cooperates and promotes bilateral agreements with similar services from abroad and realises, on the basis of reciprocity, conventions, treaties and agreements, information exchange with similar subdivisions abroad.

[66] Since the visit, two additional agreements have been signed, with Italy and Hungary.

[67] As noted earlier, its investigating powers in this area were transferred in 2005 to the CCCEC.

R.32	PC	• There are few statistics available on CCCEC international co-operation
R.40	PC	• The absence of autonomous status of the FIU restraints its capacity for direct international co-operation • Gaps in the framework enabling financial supervisory bodies to exchange information and cooperate with foreign counterparts
SR.V	LC	• In principle, the SIS has authority, but various formalities have to be completed before information that might be of use to the anti-laundering section can be passed on.

7 OTHER ISSUES

7.1 Other relevant AML/CFT measures and issues

548. This report has tried to pinpoint the strengths and weaknesses of Moldova's AML/CFT arrangements. It raises fundamental issues concerning several institutions, thus calling for a concerted strategy to which all the different supervisory and monitoring authorities and agencies, and as far as possible the private sector, will contribute. Any dialogue with the National Bank should consider the compatibility of the AML Law with the 2002 anti-laundering recommendations.

549. An overall AML/CFT strategy should be adopted, to make it possible to:

- analyse the money laundering phenomenon and trends in Moldova;
- strengthen policies to combat this risk (with a view to identifying sectors requiring closer attention);
- apply the AML Law with immediate and full effect without the need to modify it to take account of shortcomings and lack of precision in particular areas (absence of penalties, absence of clearly designated supervisory authorities, absence of a clear list of subject entities, problem of forms not yet adopted, problem of the effectiveness of all the measure apart from those relating to identification and reporting etc.); as matters now stand, the AML Law is often perceived as being purely declaratory;
- improve the arrangements for communicating reports to encourage reporting and ensure that urgent measures (suspension of transactions, freezing of assets etc.) can be applied.

550. The machinery for regular, broader consultation (also involving the private sector) would help to alleviate the difficulties which arise in practice.

7.2 General structure of the AML/CFT system (see also 1.1)

551. The integrity and continuity of institutions is even more important than the question of resources. Efforts to combat money laundering and terrorist financing, and to track the proceeds of crime more generally, are largely dependent on the key prevention and

enforcement agencies, namely the police, the CCCEC, the public prosecutor's department and the courts.

552. Major efforts have been made in recent years to ensure that these institutions operate effectively. Nevertheless, there is still a real risk of malfunctioning and corruption, as shown by the problems encountered by the management of the CCCEC and the possible consequences of a lack of physical and manpower resources in the courts.

553. Moldova should step up its efforts to make its institutions corruption-proof and implement the recommendations of the relevant international bodies (eg. the Group of States against Corruption – GRECO). In particular, it should attach particular importance to the central authorities (police, customs, prosecuting authorities, courts) but also to the bodies which play an important part in AML/CFT supervision or detecting cases of money laundering, including the various administrative supervision services. Repeated administrative or police checks on subject entities should be a risk indicator (extortion, corruption, etc.).

TABLES

Table 1: Assessment of compliance with FATF Recommendations
Table 2: Recommended action plan to improve the AML/CFT system
Table 3: Authorities' response to the evaluation (where appropriate)

8 TABLE 1: ASSESSMENT OF COMPLIANCE WITH FATF RECOMMENDATIONS

Conformity with the FATF recommendations should be assessed in terms of the four levels of conformity set out in the 2004 Methodology: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non Compliant (NC); in exceptional cases, Not applicable (NA) should be entered.

Forty recommendations	Conformity assessment	Summary of reasons for the conformity assessment
Legal systems		
1. The offence of money laundering	PC	• Coverage of self laundering raises doubts; • insider trading is not covered as predicate offence; • the issue of foreign predicate offences needs to be further clarified; • low effectiveness needs to be addressed.
2. The offence of money laundering – element of intention and responsibility of legal entities	LC	• The scope of corporate criminal liability is limited to commercial legal entities
3. Confiscation and interim measures	PC	• Confiscation of laundered money in stand alone money laundering prosecution not unequivocally covered; • Idem for the funds related to the terrorism financing offence; • insufficient bona fide third party protection; • inconsistent application and insufficient effective use of the current seizure and confiscation provisions.
Preventive measures		
4. Laws on professional confidentiality compatible with recommendations	PC	• The question of lawyers' professional confidentiality should be reconsidered • The Law on the NSC does not allow the exchange of information with foreign

		competent authorities • Insurance sector is not covered
5. Duty of vigilance vis-à-vis clients	NC	• No requirement in Law or Regulation to undertake CDD measures; - when establishing business relations, - when carrying out occasional transactions above the designated threshold (15,000EUR), - that are wire transfers in the circumstances covered by the IN to SR.VII, - where there is a suspicion of ML or TF - or where the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. • No requirement in Law or Regulation to the need for verification on the basis of reliable independent source documents • No enforceable requirement of general application to verify the legal status of the legal persons when CDD is required • No enforceable requirement of general application to verify the legal status of the legal arrangement when CDD is required • The definition of beneficial owner as set out in the FATF recommendations in respect of the ultimate control of the customer and the natural person(s) who exercise ultimate effective control over legal persons or arrangements is missing in law or Regulation • No Law or Regulation requiring reasonable measures to be taken to verify the identity of the beneficial owner using relevant information or data obtained from a reliable source • The requirement to understand the control structure and determine the ultimate beneficiaries of customers that are legal persons or legal arrangements is missing • No clear enforceable requirement of general application to obtain information

		on the purpose and intended nature of the business relationship in respect of all physical and legal persons • The notion of ongoing due diligence is insufficiently embedded in law or regulation • No specific requirement of general application for financial institutions across the whole financial sector to perform enhanced due diligence • No enforceable guidance for all financial institutions covering the policy on application of CDD measures to existing customers.
6. Politically exposed persons	NC	• There are no general legal or regulatory provisions applicable to the entire financial and non financial sectors covering the requirements of Recommendation 6.
7. Banking correspondent relations	NC	• Lack of enforceable AML/CFT measures on the issue of correspondent banking and no provisions at all outside the sector covered by the NBM.
8. New technologies and remote business relationships	NC	• Despite the existence of a general requirement for banks to have internal measures needed to address the risks related to information technologies, lack of specific provisions requiring the introduction of policies and procedures on non face to face transactions and relations, and in the field of risks connected with new technologies in financial sector
9. Third parties and business generators	NA	
10. Keeping of documents	PC	• Insufficient record keeping regulations for AML/CFT purposes, as general archiving regulations lack specific requirements; • registration/recording of transactions is limited to suspicious and threshold based transactions, as defined by the AML law; • no explicit application to inquiries into terrorist financing; • no requirement in law or regulation to keep all necessary records on

		transactions and identification data for longer than 5 years, if requested to do so in specific cases by a competent authority; • no requirement to keep documentation after termination of relationship; • no requirement to disclose needed information on a timely basis to competent authorities.
11. Unusual transactions	PC	• Lack of general enforceable obligation to pay special attention to all complex and unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. • No enforceable requirement to examine the background and purpose of such transactions and set forth the findings in writing.
12. Designated non-financial businesses and professions – R.5, 6, 8-11	NC	• No DNFBPs' specific obligations on CDD and record keeping in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on CDD and record-keeping. • No DNFBPs' specific obligations on monitoring transactions and business relationships in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on monitoring transactions and business relationships in the AML law
13. Declarations of suspect operations	PC	• The reporting system is in place, but the concept of suspicious transaction lacks all the elements established in essential criteria 13.1, 13.2. • Attempted transactions not covered • Overall reporting system performance is still fairly ineffective
14. Protection and prohibition of tipping off	PC	The scope of Article 4.1.g should be clarified, together with the applicable sanctions
15. Internal controls and compliance	PC	The question of effectiveness arises in financial sectors other than banking

16. Designated non-financial companies and professions – R. 13-15 & 21	NC	• No DNFBPs' specific obligations on special attention and other actions related to business relationship with persons from countries with insufficient level of implementation of the FATF recommendations; • No evidence of effectiveness of DNFPBs' compliance with general obligations on special attention and other actions related to business relationship with persons from countries with insufficient level of implementation of the FATF recommendations; • No DNFBPs' specific obligations on STR reporting in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on STR reporting in the AML law; • No DNFBPs' specific obligations on internal controls, compliance, maintaining on-going employee training programme and an audit function in the AML law; • No evidence of effectiveness of DNFPBs' compliance with general obligations on internal controls, compliance, maintaining on-going employee training programme and an audit function in the AML law
17. Sanctions	NC	Penalties for non-compliance with the AML Law should be more clearly specified *DNFBPS*: There are no penalties for failure to comply with the AML Law
18. Shell banks	PC	• There is no specific requirement for financial institutions to discontinue correspondent banking relationship with shell banks; • No legal requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of declaration	C	
20. Other non-financial companies	PC	• Ineffectiveness of the preventive

and professions and secure fund management techniques		machinery for virtually all non-designated non-financial businesses and professions • Reduction of cash payments for individuals desirable
21. Particular attention to higher-risk countries	PC	• Lack of general enforceable obligation to examine transactions with persons from countries, that do not or insufficiently apply FATF recommendations, with no apparent economic or visible lawful purpose, and to make written findings available to assist competent authorities. • No mechanism in place to apply counter-measures apart from automatic suspicious transaction reporting.
22. Foreign branches and subsidiaries	NA	
23. Regulation, control and monitoring	PC	*Market entry* • The allocation of responsibilities must be clarified; • the AML Law contains no list of competent authorities. *Supervisory programme and procedures* • No checks are made on the origin of funds and professional qualifications in the insurance sector.
24. Designated non-financial businesses and professions – regulation, control and monitoring	NC	Casinos appear to be closely supervised by the Ministry of Finance and the finance police but there is no control on the implementation of the AML Law proper
25. Guidelines and feedback	NC	*Rec 25* • There are no specific guidelines for DNFBPs which must refer to the AML law. • Absence of feedback *AML/CFT Guidelines* • The steps taken are inadequate and should also take account of terrorist financing; • significant doubts remain about the effectiveness of information circulation.
Institutional and other measures		
26. The FIU	PC	• Generally, the autonomy and powers of the FIU need reviewing and the identity of the FIU should be established clearly in legislation;

		• Reporting forms and procedures have not been issued for all reporting entities; • Insufficient physical and electronic security systems to securely protect the information held by the FIU; • No periodic reports issued by the FIU with statistics, typologies, trends and information on its activities; • In practice real issues as to whether the Egmont Principles are applied in relation to security of information, thus impacting on effective co-operation. • Low turnover in terms of cases forwarded to prosecution (efficiency)
27. Criminal prosecution authorities	PC	• Limited information and data available to assess the efficiency of the ML/FT investigation and prosecution process ; • no legislative or other measures that allow competent authorities to postpone or waive the arrest of suspected persons and/or the seizure of money for the purpose of identifying persons involved in such activities or for evidence gathering; • more focus on the investigation of the financial aspects of crime to achieve more effective asset recovery.
28. Powers and competent authorities	C	
29. Supervisory authorities	NC	The issue of powers has to be seen in relation to the allocation of responsibilities. Powers are not clearly conferred by the AML Law, since the supervisory bodies are not listed
30. Resources, integrity and training	PC	*The FIU* • The OPCML's resources (bearing in mind the scale of its tasks) and technical means are insufficient *Law enforcement and prosecution* • the authorities designated as responsible for AML/CFT need further resourcing; • Training needs to be developed in the fields of finance, use of financial analysis, use of computer techniques, evidential requirements and asset recovery. *Supervisory authorities* • The OPCML has insufficient resources; the National Bank and, to a certain extent,

		the National Securities Commission are the only bodies that are conversant with AML/CFT issues.
31. Co-operation at national level	LC	Insufficient interaction with all supervisory authorities, impacting on efficiency.
32. Statistics	PC	*Regarding the FIU* • Effectiveness: statistics are not available rapidly and in a detailed, accurate, reliable way. *Regarding law enforcement and prosecution* • It is difficult to obtain statistics on seizures and confiscations *On-going supervision and monitoring* • Only the CCCEC, the National Bank of Moldova and the National Securities Commission have statistics and there are sometimes difficult to obtain for technical reasons or because of doubts about competence. *Regarding mutual legal assistance* • Statistics insufficiently detailed (nature of request, granted or refused, time required to respond) *Extradition* • Insufficient accurate, detailed and up-to-date information and statistics *Other forms of international co-operation* • There are few statistics available on CCCEC international co-operation
33. Legal entities – actual beneficiaries	PC	Lack of general controls on origin of funds and, more generally, of auditing policy
34. Legal constructions – actual beneficiaries	N/A	
International co-operation		
35. Conventions	PC	Insufficiencies in effective implementation of the Conventions
36. Mutual judicial assistance	LC	Co-operation could potentially be inhibited by legal uncertainties (self-laundering, corporate criminal liability)
37. Double criminalisation	C	
38. Mutual assistance in confiscation and freezing	LC	• No information on co-ordination arrangements for seizure and confiscation.
39. Extradition	LC	Legal imperfections may negatively affect the extradition possibilities
40. Other forms of co-operation	PC	• The absence of autonomous status of the FIU restraints its capacity for direct

		international co-operation • Gaps in the framework enabling financial supervisory bodies to exchange information and cooperate with foreign counterparts
Nine Special Recommendations	**Conformity assessment**	**Summary of reasons for the conformity assessment**
SR.I Application of UN instruments	PC	• Deficient implementation of UN res. 1267 and 1373. • Efforts to identify terrorist assets in Moldova have focussed almost exclusively on banks
SR.II Criminalisation of the financing of terrorism	PC	• The financing of terrorists and terrorist organisations as such, unrelated to the actual perpetration, attempt or preparation of terrorist activities, is not covered; • The TF offence should expressly refer to and cover all offences, defined as terrorist offences in the Annex of the TF Convention; • The criminal liability of legal persons does not apply to the financing of terrorism and terrorism.
SR.III Freezing and confiscation of terrorist funds	NC	• No clear legal structure for the conversion of designations into Moldovan law under UNSCR 1267 and 1373 or under procedures initiated by third countries; • No designating authority in place for UNSCR 1373; • No effective and publicly known procedures in place for, or guidance relating to, considering de-listing and unfreezing, authorising access to frozen funds for necessary expenses and for challenging such measures; • No clear guidance to all financial and non-financial sector ; • Insufficient bona fide third party protection; • Practice appears to be limited and so does the monitoring of compliance.
SR.IV Declaration of suspect operations	NC	No explicit mandatory obligation for financial institutions to report STRs when it suspects or

		has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations and those who finance terrorism apart from transactions involving residents of countries which inadequately implement FATF standards.
SR.V International co-operation	LC	*Mutual legal assistance* • Co-operation risks to be hampered by the legal inadequacies as to the offence of terrorist financing and corporate criminal liability *Extradition* • Legal imperfections may negatively affect the extradition possibilities *Other forms of international co-operation* • In principle, the SIS has authority, but various formalities have to be completed before information that might be of use to the anti-laundering section can be passed on.
SR.VI AML/CFT obligations applicable to agencies transferring moneys or securities	PC	Requirements identified under R.5-11, 13-15, 21 are not implemented by the Post office and those under R.17, 24, 25 do not apply to the Post office, which is a part of this sector.
SR.VII Rules applicable to electronic transfers	NC	• no regulatory requirements on full originator information regarding the use of credit and debit cards as a payment system for both domestic and cross-border transfers; • no regulatory requirements for financial institutions to act as provided for in criteria VII.4, VII.5, VII.7, VII.8 and VII.9
SR.VIII Non-profit making bodies	PC	• No review of laws and regulations was undertaken by the authorities to establish their adequacy regarding prevention of misuse of NPO of financing of terrorism • No measures are in place to ensure that funds of other assets, collected by or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organisations
SR. IX Cross Border declaration and disclosure	LC	• Not all bearer negotiable instruments covered by declaration regime.

		• Insufficient focus on recovery of criminal proceeds (efficiency)

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT system	Recommended action (in order of priority)
1. General	
2. Legal system and other related measures	
Criminalisation of Money Laundering (R.1 & 2)	• The text of Article 243 should formally cover the laundering by the author of the predicate offence. • The issue of the foreign predicates to money laundering (subject to dual criminality or not) could also be further addressed, either in law or by way of creating jurisprudence. This would help to clarify the wording and avoid possible interpretations at variance with current accepted opinion. • It should also make it clear what evidence is required concerning the associated offence and criminal intent. • The corporate criminal liability under article 21(3) CC should apply beyond the commercial legal entities, to include non-commercial and non-profit legal persons. • A serious effort needs to be made to increase the effectiveness of the system, particularly in the judiciary phase. The implementation aspect is presently quite unsatisfactory, however, and needs to be addressed by a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements. • Such measures should be accompanied by awareness-raising and information aimed at police officers, prosecutors and judges (publications, internal memoranda, guidelines, instructions, training courses etc.) which would also emphasize the need to prevent abuses of the plea bargaining system in cases of money laundering or serious crime. The revision process should be used to reconsider overall consistency (include a general reference to financial assets, property and income and the links between aggravating circumstances).
Criminalisation of Terrorist Financing (SR.II)	The examiners recommend taking legislative and other steps that prove necessary to ensure that: • the financing of terrorism under Article 279 (in conjunction with Article 278) also covers

	organisations and persons recognised as engaging in terrorist activities, even in the absence of (preparation of) a specific terrorist act; • the terrorist acts provided for in Articles 278 and 279 include the acts provided for in the international conventions to which the 1999 Convention refers; • the form of support given includes all types of funds whether material or non-material; • the scope of Article 21 (corporate criminal liability) is extended to make it applicable to Articles 278 and 279.
Confiscation, freezing and seizure of proceeds of crime (R.3)	• The confiscation of the body (" corpus") of the offence should be unequivocally provided for, both in (stand-alone) money laundering and in terrorism financing cases; • Further develop the full protection of the interests of the *bona fide* third party within the context of the criminal proceeds confiscation proceedings; • Steps are taken to solve the practical problems sometimes *caused* by freezing and seizure (administration of assets pending confiscation, application to less tangible products such as company shares – appointment of a civil administrator, conversion to stable financial products, etc.) • The anti-laundering office is encouraged to make more frequent requests under its own powers for transactions to be suspended. • More efforts are made to familiarise law enforcement and judiciary authorities with these measures. • To consider reducing the burden of proof by reversing (or sharing) it following conviction and for purposes of confiscation.
Freezing of funds used to finance terrorism (SR.III)	• It is recommended to urgently adopt the various measures required by SR.III and the United Nations Security Council Resolutions (clear legal structure for the conversion of designations under RES 1267 and RES 1373, national authority to consider requests for designations under 1373, procedures for systematically checking whether designated persons have funds or other assets – as defined in the IN Note to SR.III with a view to freezing them without delay - procedures for listing and de-listing, procedure to follow up on foreign freezing decisions, procedures to challenge a listing decision and to release part of the frozen assets for

	legitimate purposes, etc). • It is recommended that clear guidance to all financial and non financial sector operators and adequate official awareness and information measures are developed on those measures and for detecting terrorist assets. • It is also recommended to ensure that adequate monitoring of compliance with SR.III. is taking place in practice.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• The examiners recommend that within the CCCEC, the identity and independence of the OPCML are strengthened to bring it more into convergence with the criteria for and characteristics of FIUs generally, concentrating on the prevention of money laundering, and that it is given sufficient resources to discharge its main tasks, ie. the analysis of financial intelligence. • For this purpose, the FIU should have a secure computer system and specific databases and be directly accorded the same powers as those usually accorded to an FIU, in particular those of exchanging information without prior agreement, signing co-operation memoranda under its own name, and asking for operations to be suspended without the intervention of the CCCEC director. • The OPCML's identity should also be established more clearly in legislation, in particular in the AML Law, which refers only to the CCCEC. • Once that identity is established, the other relevant standards must be implemented as a whole, in particular: - protection of information held by the FIU (confidentiality) - the elaboration of periodical reports, which include statistics, typologies and trends as well as information regarding its activities - giving guidance to the subjected entities on the reporting procedure. • It is also recommended that the OPCML's powers be reviewed. In addition to its analytical tasks, it might benefit from a general power of supervision on compliance with the obligations laid down in the AML law. The latter does not make express provision for this, and this supervisory power seems to derive from the powers of the CCCEC.
Criminal prosecution and investigation authorities or other competent authorities	• There should be more in-depth analysis of the phenomenon of and trends in money laundering

(R.27, 27, 30 & 32)	and its institutional framework, including sectors which are not universally regarded as vulnerable to laundering but about which the examiners sometimes heard fairly firm risk allegations (gaming, outside as well as within casinos, real estate, insurance, pawnbrokers etc.); • The results of investigation and intelligence work on the financing of terrorism should be more fully shared between the SIS and the CCCEC, which also has preventive powers in the field; • Detailed statistics should be kept on money laundering and terrorist financing investigations, prosecutions and convictions, as well as on seizures and confiscation; in particular, this would make it possible to assess the practice of the authorities in this sphere and ensure that a policy exists on the proceeds of crime; • Moldova may consider to review, as a matter of urgency, the legal framework for the use of special investigation techniques and examine if the Code of Criminal Procedure should be amended to extend the use of special investigation techniques, including controlled deliveries, to a wider range of offences associated with AML/CFT; • Training must be developed/continued, with an emphasis on systematic recourse to financial investigations, the culture of the business world, the use of investigation techniques in a modern legal framework, analysis and use of computer techniques (involving in particular, but not only, the anti-laundering office).
3. Preventive measures – financial institutions	
Risk of money laundering or terrorist financing	
Secrecy or confidentiality of financial institutions (R.4)	• The question of lawyers' professional confidentiality should be reviewed. • The Law on the National Securities Commission should provide the NSC the explicit authority to exchange information with with other foreign competent authorities on AML/CFT issues. • The evaluators were not provided any additional information regarding the insurance sector. In any case, it is recommended that the law on insurance should provide similar authority on international information exchange related to AML/CFT purposes to the Ministry of Finance.

Duty of vigilance, including stronger or reduced identification measures (R.5 to 8)	Most steps are required to increase the level of compliance with the FATF Recommendation 5 which is one of the fundamental Recommendations of the FATF. The examiners advise that obligations in the AML/CFT methodology marked with an asterisk are put in the AML Law.
	• It is strongly recommended to amend the AML Law (and consequently the various existing sector-specific regulations) in order to implement the various requirements of Recommendation 5, and to ensure that the following mechanisms are duly taken into account:
	  • Identification of beneficial owners
	  • "Know your customer" policies
	  • On-going due diligence in respect of the business relationship
	  • enhanced due diligence mechanisms for specific high-risk customers, including PEPs
	  • modalities for the verification of identification
	  • consequences of problems occurring during the identification process
	  • applicability to existing customers
	• The examiners strongly advise to include in the AML law or regulation a definition of "beneficial owner" on the basis of the glossary to the FATF Methodology. Financial institutions should take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.
	• The legal status of the 2002 NBM Recommendations as a key regulation for banks should not be disputable. The Moldova authorities are advised to address this issue so as to avoid controversies and take the necessary measures to ensure that the text contains mandatory obligations for banks which are enforceable by the NBM and are fully in compliance with the FATF recommendations.
	• Turning to Recommendations 6 to 8, no specific measures are in place. There is thus a need to either amend the AML Law, or to adopt specific regulations for the banking and non-banking financial sector regarding the various requirements

	of Recommendation 6 on politically exposed persons, of recommendation 7 on correspondent banking relationships, of Recommendation 8 on non face to face transactions, and to complement the NBM Recommendations on all those issues. • In the further development of the NBM recommendations, the NBM is encouraged to carefully analyse the current legislative limitations and existing practice to avoid introducing mandatory requirements for banks in situations that are prohibited in any event or are not applicable. • It is also recommended to extend more largely the 2002 NBM Recommendations on money laundering and the AML Law to the issue of terrorist financing regarding the due diligence mechanisms.
Third parties and business generators	N/A
Record keeping and wire transfer rules (R.10 & SR.VII)	• The AML law requires financing institutions to keep information on identified customers, archive of accounts and primary documents regarding limited and suspicious financial transactions for a period of 5 years from the date when the transaction was carried out. The provisions of the AML law should cover the entire transactions carried out by financial institutions, and not exclusively those regarding suspicious transactions and transactions in excess of the set amounts by the law. • A general requirement to maintain all relevant records for 5 years after the termination of the account or business relationship should be established. • Competent authorities should be given proper powers to enable them to request, in specific cases, financial institutions to keep all necessary records for a longer period as determined these authorities. • The AML law and sector specific legislation or regulation should clearly require financial institutions to maintain such information and data on clients and transactions so that it can be made available on a timely basis to the competent authority. • Legislative changes are required to address issues relevant to compliance with criteria VII.2 and VII.3 regarding use of credit and debit cards as a money transfer instrument, and with criteria VII.4, VII.5, VII.7, VII.8 and VII.9 regarding all the banking

	sector.
Monitoring of transactions and business relationships (R11 & 21)	• It is recommended to introduce a general enforceable obligation to pay special attention to all complex and unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. • Financial institutions should also be required by law, regulation or other enforceable means to examine the background and purpose of such transactions and set forth their findings in writing and make them available for competent authorities and auditors for at least 5 years. • A specific requirement should be introduced by Law, Regulation or other enforceable means to ensure that financial institutions proactively examine business relationships and transactions with persons from countries that do not apply or insufficiently apply FATF recommendations. • If transactions with persons from countries which insufficiently apply the FATF Recommendations have no apparent economic or visible lawful purpose, the background and purpose should be examined and written findings should be made available for competent authorities. This requirement should be covered by Law, Regulation or other enforceable means. • A mechanism should be set up to enable a state agency to apply counter-measures if a foreign country fails to comply with FATF recommendations on a continuing basis, as well as to specify such measures. • The Moldovan authorities should also envisage adopting a more targeted approach to advising financial institutions on potentially problematic jurisdictions, other than the NCCT countries and territories and offshore zones, which would involve them in making their own decisions in respect of individual states. They should also provide legal measures needed for implementing additional counter-measures under criterion 21.3.
Suspicious transaction and other reporting (R.13-14, 19, 25 & SR.IV & SR IX)	• Instead of a specific and exhaustive list of suspicious transactions, the preventive law should make suspicion that funds are proceeds from crime or are linked or related to, or are used for financing of terrorism the only mandatory basis for making an STR, regardless of transaction amount. • The CCCEC and the supervisory authorities should

	be authorised to provide guidance to the reporting institutions regarding recent ML/FT typologies and transactions used to enhance the capacity of these institutions to detect suspicious transactions. • A fully comprehensive provision should be introduced by law or regulation requiring financial institutions to report to the FIU whenever they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism, in line with SR IV. • The Moldovan authorities should also clarify the situation in respect of the application and scope of Article 4. 1(g) and make it clear that it applies to all reports of operations subject to an upper limit, under both articles 4.1(b) and article 5.1(a) to (e). This would avoid the risk of confusion and non-reporting. • It is also recommended to clarify the issue of sanctions in the AML Law in case of non compliance with art. 4(1) (g) (prohibition of tipping off). • The question of a single form for reporting all transactions whatever the reporting entity should be seriously considered, and the policy whereby entities are only bound by their obligations if a form and a CCCEC instruction exist should be abandoned. • The declaration obligation should extend to all bearer negotiable instruments. Furthermore enhanced awareness-raising of the customs should bring a more effective focus on recovery of criminal assets.
Internal controls, compliance and foreign branches (R.15 & 22)	• The question of the existence of internal controls in the non-banking sector affecting all AML Law obligations remains open and once responsibility for supervising the implementation of the AML Law has been clarified, the Moldovan supervisory authorities must ensure that internal controls are in place in all reporting financial entities.
Fictitious banks (R. 18)	• There should be explicit requirements (in law, regulation or other enforceable means) which oblige financial institutions to discontinue existing correspondent banking relationships with shell banks, if any, as required by Criterion 18.2,; • The examiners have not been provided with sufficient information that financial institutions are

	required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks and consequently, they recommend to insert in the law or regulation clear provisions on shell banks, covering essential criteria for recommendation 18.
The supervisory and oversight system - competent authorities and self-regulating organisations (R. 17, 23, 29 & 30).	• Firstly, the AML Law should refer to the OPCML rather than to the Centre as regards FIU aspects. • Secondly, the AML Law should include a clear list of administrative penalties applicable to the different breaches of the AML Law, possibly with reference to the sanctions available in the Code of Administrative Penalties. • Thirdly, the effectiveness of the supervision system would benefit greatly from clarification. The recommendation made in this connection during the second round evaluation deserves repetition: state clearly in the various provisions of Article 8 which control bodies are being referred to, and list them in order to clarify the anti-laundering responsibilities; the Moldovan authorities might perhaps envisage providing for the anti-laundering section to have explicit powers to monitor the implementation of the AML Law whatever the sector (by settling questions which competing powers between authorities could cause); this would enable shortcomings in a given sector to be compensated for.
Financial institutions - market entry and ownership/control (R.23)	• Once the applicational scope of Article 8 paragraph 2 has been extended to all the AML Law requirements, the supervisory authorities should swiftly ensure that they are implemented, and not just with regard to the reporting and identification obligation (see recommendations in the preceding section); • The licensing legislation should require a check on the origin of funds and the personal competence of persons applying for an insurer's licence (and the other entities subject to the AML Law).
AML/CFT Guidelines (R.25)	• The CCCEC/the OPCML and the various entities in charge of supervision should make a greater publication effort, bearing in mind the many sectors subject to the AML Law. Resources are apparently limited for the publication of documents on paper, but the examiners were able to observe that computerisation is making rapid progress in Moldova and it would be easy to use

	the CCCEC site as a documentary resource. • Steps should also be taken to ensure that information is properly circulated in the various sectors. • Furthermore, information should be provided in the sphere of financing of terrorism, without neglecting important sectors.
Ongoing supervision and monitoring (R.23, 29 & 32)	• Moldova should address the various shortcomings in the field of supervision and monitoring of the whole financial sector (in particular the explicit designation of the supervisory bodies, adequate powers to monitor and ensure compliance, full coverage of AML/CFT aspects in inspections of the whole financial sector, robust supervisory programme for AML/CFT purposes with proper inspection procedures etc). • Better statistical data should be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed. Statistics of onsite visits and use of sanctions need reviewing collectively and on a coordinated basis, in order to have a clear picture of the level of AML/CFT compliance across the financial sector.
Money or securities transfer services (SR.VI)	• Moldova should remain vigilant where the machinery for transferring funds, or remittances, is concerned and ensure that all operators (whether affiliated to foreign or national money transfer networks) also discharge their AML/CFT obligations in respect of funds transferred by Western Union, Moneygram or other arrangements. • Requirements identified under R.5-11, 13-15, 21 are not implemented by the Post office and those under R.17, 24, 25 do not apply to the Post office, which is a part of this sector. Measures should be taken to address adequately these requirements.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Duty of vigilance and keeping of documents (R. 12)	• First of all, Moldova should take steps to clarify the drafting of the AML law by listing more precisely the non-financial activities and professions (abolishing the catch-all form which applies to all operators effecting transactions outside the financial system). • Urgent consultations are needed with the

	profession of lawyer in order to determine their obligations under the AML Law. • All changes regarding the CDD and record keeping requirements for financial institutions should be put in place for DNFBPs. • Clear and direct obligations as defined in recommendation 6 should be expressly adopted. • Moldova should adopt specific measures concerning non face to face business transactions and a general requirement to deal with the misuse of technological developments. • Relevant authorities should take urgent steps to raise awareness of the relevant provisions of the AML Law as they apply to the DNFBPs they supervise, and to develop guidance relevant to the individual sectors.
Monitoring of transactions and business relationships (R12 & 16)	• Moldova should ensure that requirements under Recommendation 11 and 21 apply to DNFBPs, subject to the qualifications in Recommendation 16.
Declaration of suspect operations (R. 16)	• Moldova should ensure that the reporting form is available rapidly for all designated non-financial businesses and professions subject to the AML Law (at the same time as clarifying the precise list thereof). • Additional measures should be taken to ensure that all DNFBPs comply with their reporting obligations. • More outreach and guidance is developed for all DNFBPs to explain the reporting obligation.
Internal controls, compliance & audit (R.16)	• The authorities should make sure that all DNFBPs are required to set up internal procedures, policies and controls to prevent ML and FT. The DNFBPs should also be required to either have a program for employee training or have some other access to (compulsory) training either provided by the orders and associations or by the authorities.
Regulation, supervision and monitoring (R.17, 24-25)	• Once the various designated non-financial businesses and professions have been listed by name in the AML Law, it will again be necessary to clarify the powers of the supervisory bodies (in particular the different departments of the Ministry of Finance which are involved in controlling gaming, pawnbrokers, and dealers in precious stones and metals) in order to ensure that all DNFBPs are adequately supervised for AML/CFT purposes.

	• In the case of the legal and accounting professions, their professional associations should be given an active role to play. • Moldova should provide more specific, timely and systematic feedback to reporting entities and should develop further its effort to raise AML/CFT awareness within the DNFBPs, especially through sectoral and practical guidelines.
Other non-financial businesses and professions (R.20)	• The limit on cash payments imposed on legal entities is a positive initiative which Moldova ought to extend to payments by individuals, bearing in mind the problems specific to the country (corruption, cash-based economy, cash of sometimes suspect origin brought into Moldova, etc.).
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• Moldova should introduce controls on the origin of funds as a preliminary to registering legal persons and issuing licences to companies presenting AML/CFT risks (insurance, gaming etc.). • Moldova should also consider a more general reform aimed at developing machinery for financial audit and approval of company accounts by professional auditors.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	Not applicable
Non-profit organisations (SR.VIII)	• Moldova should implement the requirements covered by criteria VIII.1 and VIII.3.
6. National and International Co-operation	
National co-operation and coordination (R.31)	• Greater use should be made of co-ordination machinery to clarify problems and potential policies in the AML/CFT field. • This would be an opportunity to obtain a more precise picture of AML/CFT responsibilities and of which sectors were being used for laundering, to ensure that these sectors were properly supervised, to consider the resources needed by the supervisory departments and agencies and to assemble more statistics. • Beside the importance of a dialogue with the private non-banking sector (see *supra*), the interaction with all supervisory authorities is essential as a tool for effective compliance by and guidance for the relevant sectors.

Special UN conventions and resolutions (R. 35 & SR. I)	• As regards the transposition and scope of UN instruments, some of the problems mentioned earlier in the report may cause difficulties (eg. the use of special investigation techniques in judicial proceedings for purposes of co-operation with other countries). All in all, there are some formal deficiencies that need attention (see *supra* legal issues), but the main issue to be addressed is how to implement the Conventional requirements in an efficient way.
Mutual legal assistance (R. 32, 36-38, SR. V)	• Although there are no incidents recorded that give a concrete indication of the existence of legal obstacles jeopardizing an effective mutual legal assistance provision, the identified domestic legal shortcomings should be remedied – in particular with regard to the ML and TF offences and special investigation techniques including controlled delivery (see *supra*) – to ensure that full assistance can be given.
Extradition (R. 32, 37 & 39, SR. V)	• Certain legal uncertainties (see *supra* on the ML and TF offence) might interfere with the extradition possibilities, such as the dual criminality requirement. Though this should not be a major problem however since the deficiencies in the formal qualification of the offences do not necessarily have the same negative impact in extradition procedures, where the criminal conduct as such prevails over the formal text, it is important to have a clear and undisputed legal basis to avoid unnecessary controversy and interpretation problems. • Moldova should keep accurate, detailed and up-to-date statistics on extradition, both on ingoing and outgoing requests.
Other forms of co-operation (R. 32 & 40, RV.V)	• The capacity of the financial supervision bodies (including the National Securities Commission and the supervisory entities of the Ministry of Finance and the Licensing Chamber) to exchange information and cooperate with their foreign counterparts should therefore be enhanced; • As part of the reinforcement of its organisational autonomy, the OPCML should be able to exchange information directly with its foreign counterparts, and if possible enter into agreements itself for this purpose .
7. Other issues	
Other relevant measures and issues in the	• An overall AML/CFT strategy should be adopted,

AML/CFT framework	to make it possible to: - analyse the money laundering phenomenon and trends in Moldova; - strengthen policies to combat this risk (with a view to identifying sectors requiring closer attention); - apply the AML Law with immediate and full effect without the need to modify it to take account of shortcomings and lack of precision in particular areas (absence of penalties, absence of clearly designated supervisory authorities, absence of a clear list of subject entities, problem of forms not yet adopted, problem of the effectiveness of all the measure apart from those relating to identification and reporting etc.); as matters now stand, the AML Law is often perceived as being purely declaratory; - improve the arrangements for communicating reports to encourage reporting and ensure that urgent measures (suspension of transactions, freezing of assets etc.) can be applied. • Machinery for regular, broader consultation (also involving the private sector) would help to alleviate the difficulties which arise in practice. • As financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, it would be advisable for the Moldovan authorities to cover all the essential criteria in respect of recommendation 9. • It may be useful for Moldovan authorities to examine the issue of trusts and legal arrangements in the light of R. 34 and consider elaborating, if necessary, any relevant guidance to financial institutions and/or investigative authorities.
General structure of the AML/CFT system – structural elements	• Moldova should step up its efforts to make its institutions corruption-proof and implement the recommendations of the relevant international bodies (eg. the Group of States against Corruption – GRECO). In particular, it should attach particular importance to the central authorities (police, customs, prosecuting authorities, courts) but also to the bodies which play an important part in AML/CFT supervision or detecting cases of money laundering, including the various administrative supervision services. Repeated administrative or police checks on subject entities should be a risk indicator (extortion, corruption, etc.).

ANNEXES

10 ANNEX I: DETAILS OF ALL BODIES MET ON THE ON-SITE MISSIONS : MINISTRIES, OTHER GOVERNMENT AUTHORITIES BODIES, PRIVATE SECTOR REPRESENTATIVES AND OTHER

- Centre for Combating Economic Crimes and Corruption (CCCEC), including the office for prevention and control of money laundering, the analysis and forecasting department and the criminal investigation department
- National Bank of Moldova (supervisory, legal, international relations, budget and finance departments, the Governor and his deputies)
- General Prosecutor's Office
- Information and Security Service (economic security department)
- Ministry of Internal Affairs.
- National Securities Commission and register representatives
- Customs (criminal inquiries, international relations and protocol, anti-smuggling, intelligence, prosecution and investigation and risks departments and sections)
- Ministry of Justice (international legal assistance and administration of courts departments) and judges
- Ministry of Finance (treasury, state tax inspectorate, inspectorate responsible for supervising the insurance industry and pension funds, savings and loans associations supervisory department, financial control directorate, legal directorate and the supervision of treasury accounts department)
- Ministry of Foreign Affairs
- Licensing Chamber
- Department of Information Technology, including the State Registration Chamber

The evaluation team also met members and representatives of the following professions:

- independent brokers
- lawyers/advocates (an official of the students' office in the law faculty took part in the discussions concerning this profession), legal consultants, accountants
- insurance companies
- banking associations, banks (compliance officers)
- NGOs (centre for the analysis and prevention of corruption)
- audit companies
- casinos
- national lottery
- fiduciary companies

11 ANNEX II: LIST OF ALL LAWS, REGULATIONS AND OTHER MATERIAL RECEIVED

Laws

- Civil Code (article 1398)
- Criminal Code of the Republic of Moldova
- Criminal Procedure Code
- Law no. 416-XII of 18 December 1990 on police
- Law no. 45-XIII of 1994 on operative investigation
- Law no. 548-XIII of 21 July 1995 on the National Bank of Moldova
- Law no. 550-XIII of 21 July 1995 on Financial Institutions
- Law no. 837 - XIII of 17 May 1996 on Public Associations (excerpts)
- Law no. 910-XIII of 5 July 1996 on Joint Stock Companies
- Law no. 192-XIV of 12 November 1998 on the National Securities Commission
- Law no. 199-XIV of 18 November 1998 on the Securities Market
- Law no. 581 of 30 July 1999 on Foundations (excerpts)
- Law no. 451-XV of 30 July 2001 on licensing some type of activities
- Law no. 633-XV of 15 November 2001 on preventing and combating money laundering and the financing of terrorism
- Law no. 539-XV of 12 October 2001 on combating terrorism
- Law no. 1104-XV of 6 June 2002 on instituting the Center for combating economic crimes and corruption
- Law no. 1264-XV of 19 July 2002 on declaration and control over the incomes and property of the state dignitaries, judges, prosecutors, public servants and certain persons vested with managerial functions
- Law no. 1569-XV of 20 December 2002 on the modes on introduction and taking out of the goods of the territory of the Republic of Moldova by natural persons
- Law no. 1569 of 20 December 2002 on taking in and out cash from customs
- Law no. 118-XV of 14 March 2003 on the public prosecutor's office

Decisions

Parliament

- Decision no. 464-XV of 27 September 2001 on terrorism combating

Government

- Government Decision no. 1295 of 13 November 2006 regarding the anti-terror Office of Information and Security

Regulations

National Bank

- Regulation on foreign exchange regulation on the territory of the Republic of Moldova (Decision of the Administrative Council of the National Bank of Moldova, Minutes no. 2 of January 13, 2004)
- Regulation no. 10018-20 on the organization and functioning on the territory of the Republic of Moldova of foreign exchange offices and foreign exchange bureaus by hotels (Decision of the Administrative Council of the National Bank of Moldova, Minutes no. 22 of May 6, 1994).

- Instruction on opening accounts abroad (Decision no. 279 of 13 November 2003 of the Administrative Council of the National Bank of Moldova)".
- Regulation on cash operations in banks in the RM (Decision no. 47 of 25 February 2000 of the Administrative Council of the National Bank of Moldova)
- Regulation regarding the use of documents for payments on the territory of the RM (Decision no. 150 of 26 June 2003 of the Council of Administration of the National Bank of Moldova) (*abrogated from 21.04.2006)*
- Regulation regarding the use of systems client-bank (Decision no. 240 of 2 October 2003 of the National Bank) (abrogated in 2006)
- Regulation on opening, modification and closing of accounts in authorized banks of RM (Decision no. 297 of 25 November 2004 of the National Bank)
- Regulation on credit transfer (Decision no. 373 of 15 December 2005 of the Council of Administration of the National Bank of Moldova)
- Regulation on direct debiting (Decision no. 374 of 15 December 2005 of the Council of Administration of the National Bank of Moldova)
- Regulation on transaction suspension, sequestration and incontestable collection of money funds from banking accounts (Decision no. 375 of 15 December 2005 of the Council of Administration of the National Bank of Moldova)
- Regulation on the use of E-banking systems (Decision no. 376 of 15 December 2005 of the Council of Administration of the National Bank of Moldova)
- Regulation on automated interbank payment system (Decision no. 53 of 2 March 2006 of the Council of Administration of the National Bank of Moldova)

National Securities Commission

- Regulation no. 12/1 of 28 October 1999 on the issuance and withdrawal of licenses for activities on the securities market
- Regulation no. 48/7 of 17 December 2002 regarding broker and dealer activities on the securities market
- Regulation about the attestation of professional participants' specialists on the securities market and elaboration of qualification certificates with the right to activate on the securities market (Excerpts)
- Regulation concerning the way of execution of participants' activity controls on the securities market (Excerpts)
- Regulation concerning the way of granting and withdrawal of license for performing the activity on the securities market (Excerpts)
- Regulation regarding shareholders register and register of bonds owners of the joint stock company (Excerpts)
- Regulation regarding shareholder registers and bonds possessors of the joint stock company (From National Securities Commission) (Romanian Version Only)

Orders

Ministry of Finance

- Order no. 29 of 1 March 2003 on the approval and implementation of the Code on professional conduct of auditors and accountants of the Republic of Moldova

CCCEC (orders of the Director of the CCCEC)

- Order no. 64 of 17 June 2003 on Forms
- Order no.193 of 15 December 2005 on the special forms for financial transactions and their modality of submission

- Order no. 18-1 of 10 February 2006 on delegation of responsibilities to the Chief of the OPCML and specialists
- Order no. 97 of 28 July 2006 on certain measures for the implementation of the provisions of the law on the prevention and combating of money laundering and financing of terrorism
- Order no. 113-1 of 8 September 2006 on the approval of the Regulation on the Office of prevention and control of money laundering
- Order no. 187 of 1 December 2006 concerning the lists of persons suspected of terrorism financing

Recommendations and guidance

- Recommendations on internal control systems within banks of the Republic of Moldova (Decision no. 330 of 9 November 1998 of the Administrative Council of the National Bank of Moldova)
- Recommendations on developing programs by the banks of the Republic of Moldova on prevention and combat of money laundering and terrorism financing (Decision no. 94 of 25 April 2002 of the Administrative Council of the National Bank of Moldova)

Co-operation Agreements and other

- Agreement of 24 June 2005 on cooperation between the CCECC and the National Bank of Moldova
- List of bilateral agreements in the customs area

Jurisprudence

- Decision of the Supreme Court no. 40 of 27 December 1999 (Excerpts – on the practice of enforcement by the courts of the legal provisions regarding property confiscation)

Other relevant documents

- CCECC Report on prevention and control of money laundering and terrorism financing (2005)
- United Nations/ Security Council: S/2002/33 - report on the actions taken by the Government of the Republic of Moldova to implement UNSC RES1373(2001) of 26 December 2001
- United Nations/ Security Council: S/2002/1044 - Supplementary report to the CTC of 5 September 2002
- United Nations/ Security Council: S/2003/978 - Second supplementary report to the CTC of 6 October 2003
- United Nations/ Security Council: S/2006/34 - Fourth report of the Republic of Moldova on the implementation of the UNSC RES1373 (2001) of 17 January 2006

12 ANNEX III: COPIES OF KEY LAWS, REGULATIONS AND OTHER MEASURES

(unofficial translations)

1. Law of the Republic of Moldova of Anti Money Laundering and Combating Financing of Terrorism (No. 633-XV of 15.11.2001)
2. Constitution (article 46)
3. Criminal Code (excerpts)
4. Civil Code (excerpts)
5. Criminal Procedure Code (excerpts)
6. Decision of the Supreme Court of Justice no. 40 of 27 December 1999 (excerpts)
7. Extract from the minutes of the meeting from the Ministry of Finance of the Republic of Moldova
8. Law on licensing some types of activities (No. 451-XV of 30.07.2001 as amended)
9. Law on the National Bank of Moldova No 548-XIII of 21 July 1995 (excerpt)
10. Law on the Securities Market (No. 199-XIV of 18.11.1998)
11. Law on the National Securities Commission (No. 192-XIV of 12.11.1998)
12. Regulation regarding prevention and combating money laundering on the securities market (Decision of the NSC no. 11/1 of 28.02.2005) (excerpts)
13. Regulation concerning the way of granting and withdrawal of license for performing the activity on the securities market (Decision of the NSC No. 12/1 of 28.10.1999) (excerpts)
14. Law on joint stock companies (No. 910-XIII of 5 July 1996) (excerpt)
15. Law on operative investigation (No. 45-XIII of 12.04.1994)
16. The Law on instituting the CCCEC (No. 1104-XV of 06.06.2002)
17. Order of the Director of the CCCEC on Rules of the Office for Prevention and Control of Money Laundering (No. 111 of 15.09.2003)
18. Order of the Director of the CCCEC On the approval of the Regulation of the Office for prevention and control of money laundering (No. 113-1 of 08.09.2006)
19. Recommendations of the National Bank of Moldova on developing programmes for money laundering prevention and combating by the banks of the Republic of Moldova (decision no. 94 of 25.04.2002 as amended in 2003)
20. Organizational structure of the banking supervisory authority
21. Examples of sanctions applied by the NBM for non compliance (in relation to the criteria under FATF R. 5)

Law of the Republic of Moldova of Anti Money Laundering and Combating Financing of Terrorism (No. 633-XV of 15.11.2001)

Official gazette (Monitorul oficial) of the Republic of Moldova
No. 139-140/1084 of 15.11.2001

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Note: Pursuant to the law No. 197-XV dated May 15, 2003 (effective as of May 31, 2003) and for the purpose of the present law [with exception of Article 4 para (1) (d) and Article 6 para (1), the syntagm "Procuracy General" is to be replaced with the syntagm "Centre for combating Economic Crimes and Corruption".

The Parliament adopts the present organic law.

Chapter I
GENERAL PROVISIONS

Article 1. Scope of the Law
The scope pursued by the present law is to prevent and counteract money laundering and combat financing of terrorism.
[Article 1 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]

Article 2. Effect of the law
The effect of the present law covers money laundering and financing of terrorism offences committed by the citizens of the Republic of Moldova, foreign citizens, stateless persons, and legal entities, both residents and non-residents, in the territory of the Republic of Moldova as well as such committed by the residents, individuals and/or legal entities outside of its territory and complies with the international agreements ratified by the Republic of Moldova.

[Article 2 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]
[Article 2 amended through the law No. 1150-XV dated June 21, 2002]

Article 3. Basic definitions

The following definitions are used for the purpose of the present law:

Money laundering is a process whereby the origin of funds generated by illegal means is concealed by attributing legal aspect to the sources and origin of financial means, assets or proceeds illegally obtained as a result of commission of crimes, or at concealment, disguise of any information with respect to the true nature, origin, movement, location or ownership of these financial means, assets or proceeds, knowing that such property was proceeds of crime; the acquisition, possession or use of property, knowing that such property were proceeds of crime, participation in any association or conspiracy by aiding or counselling the commission of any of such actions.

Financing of terrorism is defined as unlawful and wilful offering or rising funds or assets by use of direct or indirect methods in the knowledge that such funds are to be used to carry out acts of terrorism.

Illegally obtained income is defined as the national or foreign currency, assets, and patrimonial rights, intellectual or other types of property, provided for by the civil legislation, obtained from criminal act.

Financial operations are defined as transactions and other such operations conducted by the individuals or legal entities by using financial resources or assets, regardless of the form of property and method of operations aiming at transfer of ownership, including operations bound to the use of financial means to settle for the following:

a) import into the Republic of Moldova, export and shipment out of the Republic of Moldova, as well as cargo conveyance and transiting through the territory of the Republic of Moldova;
b) international postal remittances;
c) receipt and disbursement of financial loans;
d) transfer of interests, dividends and other proceeds gained on deposits, investments, credits and other transactions bound to capital turnover in and out of the Republic of Moldova as well as in its territory;
e) non-commercial transfers in and out of the Republic of Moldova, including amounts earmarked for paying salaries, pensions, alimony, transactions involving successor's assets, as well as other such operations;
f) contributions to the charter capital of a company with the scope of acquiring income and the participating right in company's administration;
g) acquisition of stock exchange securities;
h) transfers done with the scope of obtaining ownership right into the premises, buildings and other assets, including soil and mineral resources referred by the law to real estate values as well as other proprietary rights onto the assets;
i) transactions and activities of individuals or legal entities, regardless of the form and method of these transactions and activities for the purpose of receipt, alienation, payment, transmission, transportation, forwarding, transfer, exchange or saving financial means or assets, as well as identification or record of such transactions and activities.

Institutions eligible to deal in financial operations:

a) banks, branches of foreign banks other financial institutions and their branches,
b) stock exchanges, other exchanges, investment funds, insurance companies, trust companies, dealers and brokers commercial offices, other enterprises, organisations and institutions, (hereinafter referred to as the institutions) eligible to receive, transmit, alienate, transport, transfer, exchange or keep financial resources or assets; institutions that legalize or register the ownership rights, agencies providing legal, notary, accounting, financial and banking services, and other individuals and legal entities conducting their transactions outside financial and banking system;
c) casinos, leisure centres having gambling equipment, facilities offering lotteries or gambling games.

Financial means are defined as bank notes and coins, foreign currency, bonds or securities, checks and deposits or deposit certificates, savings books, stocks, credit cards, and other documents related to

the receipt, alienation, transfer, exchange or keeping such that serve to certify the ownership right and that can be used as produced only;
Assets are defined as any type of assets, tangible or intangible, real estate or exchange securities, as well as legal acts and other documents certifying the ownership right onto such.

[Article 3 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]

[Article 3 amended through the law No. 1150-XV dated June 21, 2002]

Chapter II
ANTI MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM

[Chapter title amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]

Article 4. The procedure of data recording pertaining to limited or suspicious financial operations

1. The institutions dealing in financial operations are obliged to proceed as follows:
   a) collect, assess and record data on their customers by soliciting for the purpose identity documents of the individuals or legal entities; obtain information proving identity data of the individuals in whose name an account was opened or on whose behalf a transaction was conducted, should there be any doubts as to whether these customers are acting on their own behalf; verify credentials of any person purporting to act on behalf of the customers and identify such person;
   b) fill in a special blank-form for each operation conducted by an individual if the amount exceeds Mdl. 300,000 and for each operation conducted by legal entity if the amount exceeds Mdl. 500,000. Within 15 days from the date of filling in, the blank-form should be submitted to the Centre for Combating Economic Crimes and Corruption. The report form should also be filed if the total amount of operations conducted during one month by an individual or by legal entity, or on their behalf exceeds the afore specified value;
   c) notify the Centre for Combating Economic Crimes and Corruption within 24 hours, should any circumstance be disclosed indicating the suspicious nature of prepared, running or already commenced financial operations;
   d) based on the General Prosecutor's Office decision or court ruling proceed to suspend any suspicious or limited financial operations for the time period appearing in the decision but for not more than 5 days;
   e) upon written request lodged by the Centre for Combating Economic Crimes and Corruption provide available information, documents, and materials on the conduct of suspicious or limited financial operations;
   f) maintain registry of the identified customers, archive of the accounts and primary documents concerning limited and suspicious financial operations with expiry term of 5 years from the date when such operation was conducted, and also keep for a period of 7 years all the contracts dealing with foreign exchange transactions;
   g) abstain from disclosure to the third parties information on filing the information on the limited or suspicious financial operations with the Centre for Combating Economic Crimes and Corruption unless provisions for disclosure are explicitly stipulated by the Law.
2. Financial institutions shall not be entitled to maintain anonymous accounts or accounts opened in the sham names. When opening any account the financial institution shall solicit from its customer to produce his identity card or duly certified power of attorney and enter all the relevant data. Same procedure applies in case of renting safe deposit boxes.

3.The institutions conducting financial operations shall develop anti money laundering set of measures, including but not limited to the following:
   a) have internal policies, procedures and controls in place, including appointment of the managerial level officers that would be responsible for ensuring compliance of the policies and procedures applied by the institutions conducting financial operations with the statutory requirements and legal AML/CFT regulations, strict compliance with "Know-Your-Customer" rules that promote high ethical and professional standards in the financial sector a and prevent the institution from being used, intentionally or unintentionally, by criminal elements;
   b) ensure an ongoing personnel training program, applying strict screening to hiring employees so as to ensure their high professional profile;
   c) apply auditing so as to exercise system control function.

4. The institutions conducting financial operations shall pay special attention to their customers and resident beneficial owners receiving funds sourced from the countries identified as having inadequate or none anti-money laundering and terrorist financing standards or from such featuring enhanced risk due to high level of criminality and corruption. The Centre for Combating Economic Crimes and Corruption shall be in charge of collecting and supplying respective information to all the institutions conducting financial operations.

5. The suspicious and limited financial operations shall be recorded in a special blank-form showing data of the respective operation and having on it the signature of an employee in charge of conducting said financial operation. Included into the blank-form should be the following information:
   a) series, number, and date of issue of the identity document, address and other data required for identification of the person who conducted respective financial operation;
   b) address and other data required for identification of the person in whose name the financial operation was conducted;
   c) address and other data required for identification of the beneficiary of the financial operation;
   d) legal identity data and accounts of the customers performing financial operation;
   e) type of the financial operation;
   f) data about the institution conducting financial operation;
   g) date, time and value of operation;
   h) name and position of the person that has registered respective financial operation.

6. There is no need to fill in blank-form on the State Treasury servicing operations.

7. The specimen of the blank-form and procedure of data transfer shall be developed by the Centre for Combating Economic Crimes and Corruption.

[Article 4 amended through the law No. 255-XVI dated October 27, 2005, made effective as of November 25, 2005]

[Article 4 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]

[Article 4 amended through the law No. 225-XV dated July 07, 2004, made effective as of July 23, 2004]

[Article 4 amended through the law No. 1150-XV dated June 21, 2002]

Article 5. Limited and suspicious financial operations

1. The following are presumed to be limited financial operations:
   a) one-time exchange of small face value bank notes for the bigger face value ones in the amount exceeding Mdl. 50,000;
   b) an increase of deposits up to the amount exceeding Mdl. 250,000 followed by their subsequent transfer to another person;
   c) international money transfer in the amount exceeding Mdl. 65,000, requesting that the payment to the beneficiary is done in cash;

d) opening by the customer of a number of accounts of similar destination in the same financial institutions accompanied by subsequent transfer of the amounts exceeding Mdl. 250,000 to each of these accounts;
e) wiring or receipt of an amount exceeding Mdl. 100,000 Lei from a country in which according to the list approved by the Government of the Republic of Moldova there takes place illegal production of drugs.

2. The following are presumed to be suspicious financial operations:
a) one time or numerous operations involving financial means under circumstances when there is no apparent link between these actions and customer's economic activity;
b) cash deposit or transfer made by an individual or legal entity under circumstances giving all grounds to consider that the deposited or transferred amount is a mismatch with the size of individual's or legal entity's revenues and property ownership;
c) transfer and receipt of cash by an individual or legal entity that usually make payments by check or by non-cash settlements;
d) cases when the customer maintains an account that has no apparent link to his immediate business and when cash transfers are made through this account in the amounts exceeding the reporting limit;
e) money transfer to customer's account, paid in checks by various legal entities or individuals with whom the customer has no contractual or production relations;
f) deposits declared as income that do not happen to be the usual source of income for the given customer;
g) purchasing/selling exchange securities under circumstances indicating suspicious nature of the financial operation;
h) purchase of exchange securities by legal entities with payments made in cash;
i) operations involving checks and other payment instruments issued to the bearer;
j) operations in which one party is an offshore resident or operations are conducted through offshore bank accounts;
k) operations carried out though companies or banks from the countries which have inadequate or no anti-money laundering laws or represent enhanced risk due to high level of criminality and corruption, as well as operations with the residents of these countries;
l) request for a credit secured by a document certifying deposits in foreign banks, if there is information about the suspicious nature of deposits;
m) request for a credit secured by an application or document confirming existence of some deposits in a foreign bank or in another bank, in case there is information on the suspicious nature of such deposits.

3. Data on suspicious or limited financial operations, submitted to the Centre for Combating Economic Crimes and Corruption.

4. Data concerning persons in regard to which established were the exceptions mentioned in paragraph (3) shall be submitted to the respective competent authorities of other countries in strict conformity with the provisions set forth by the international treaties to which the Republic of Moldova is a cosignatory.

5. In the event of appearance of new technologies the Centre for Combating Economic Crimes and Corruption shall submit to the Government its proposals regarding establishment of other criteria of identifying limited or suspicious financial operations.

[Article 5 amended through the law No. 255-XVI dated October 27, 2005, made effective as of November 25, 2005]
[Article 5 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]
[Article 5 amended through the law No. 197-XV dated May 15, 2003, made effective as of May 31, 2003]
[Article 5 amended in the wording of the law No. 1150-XV dated June 21, 2002]

Article 6. Limitation of the effect of commercial secret

1. Information (documents, materials, other data) submitted by the institutions conducting financial operations to the Intelligence Service, law enforcement authorities, tax and financial control agencies, other similar state agencies, or criminal investigation authorities, preliminary investigation agencies, Prosecutor's offices or court, in cases provided by the legislation, shall not be qualified as disclosure of the commercial secret.

2. Legislative provisions regarding commercial secrecy cannot impede the agencies indicated in paragraph (1) of the present Article from receiving the information (documents, materials, other data) about financial and economic activities, operations and deposits to the accounts of individuals or legal entities, in cases when there is indication that activities of laundering of criminal proceeds are under preparation, under way or have been carried out or of terrorist financing.

3. The Centre for Combating Economic Crimes and Corruption as well as responsible officials from the given office shall bear responsibility, including full pecuniary liability for breakage in accordance with the legislation in force for the damages caused as a result of illegal disclosure of data received while exercising their job duties.

4. Organizations that carry out financial operations and its employees shall be exempt from civil, disciplinary, administrative and criminal liability as a result of compliance with the provisions of the given law, even though it resulted in causing moral or material damages.

[Article 6 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]
[Article 6 amended through the law No. 206-XV dated May 29, 2003, made effective as of July 18, 2003]
[Article 6 amended through the law No. 1150-XV dated June 21, 2002]

Chapter III
COMPETENCIES OF THE AUTHORITIES RESPONSIBLE FOR AML/CFT

[Chapter title amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]

Article 7. The authority vested with responsibility for the enforcement of the present law
The responsibility for the enforcement of the present law lies with the Centre for Combating Economic Crimes and Corruption for which purpose a special subdivision shall be created within the Centre.
[Article 7 amended through the law No. 197-XV dated May 15, 2003, made effective as of May 31, 2003]
[Article 7 amended in the wording of the law No. 1150-XV dated June 21, 2002]

Article 8. Competencies of the authorities controlling the legitimacy of operations conducted by the financial institutions
1. In order to combat money laundering and financing of terrorism the authorities controlling the legitimacy of operations conducted by the financial institutions shall proceed as follows:
   1) determine whether the institutions that carry out financial operations apply written policies, practices and procedures, including strict "Know-Your-Customer" rules that promote high ethical and professional standards in the financial sector a and prevent the institution from being used, intentionally or unintentionally, by criminal elements; determine whether financial institutions

comply with their own policies, practices and procedures targeted towards detection of money laundering and financing of terrorism;

2) submit to the Centre for Combating Economic Crimes and Corruption information (documents, materials, and other data) regarding individuals or legal entities practising money laundering activities. This information is based upon operations where the financial organisations know or should have known about the illegal origin of income, this information can be inferred from objective factual circumstances;

3) provide to the Centre for Combating Economic Crimes and Corruption, criminal investigation authorities, preliminary investigation, prosecution authorities and the courts information (documents, materials, and other data) about the results of their check-up of individuals and legal entities on the matter of receipt of illegal monies or assets, as well as provide the required support to the above mentioned authorities in the process of examination of the criminal investigation materials;

4) provide information on money laundering activities to the institutions that carry out financial operations, including new methods and trends in money laundering and financing of terrorism;

5) identify possible money laundering and financing of terrorism by shell corporations, undertake whatever additional measures are required to prevent unlawful use of such corporations and inform the institutions conducting financial operations of these potential abuses.

2. In case of identifying cases of non-observance of the present law when conducting financial operations by either individuals or legal entities, or should there be any signs of illegally gained income, the responsible persons shall bear administrative responsibility in conformity with the requirements set forth by the effective legislation, and the respective materials shall be referred to, if necessary, to the Centre for Combating Economic Crimes and Corruption.
3. The Centre for Combating Economic Crimes and Corruption, following the established procedure, shall duly submit to the criminal prosecution authorities and other competent bodies information (documents, materials, and other data) on the individuals and legal entities charged with or involved into money laundering and financing of terrorism.
4. The authorities exercising control over the compliance of financial operations shall take all necessary legal or regulatory measures as not to admit circumstances under which the criminal elements could take control over the institutions conducting financial operations or acquire controlling interest in such.

[Article 8 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]
[Article 8 amended through the law No. 3-XV dated February 05, 2004, made effective as of March 12, 2004]
[Article 8 amended through the law No. 206-XV dated May 29, 2003, made effective as of July 18, 2003]
[Article 8 amended through the law No. 197-XV dated May 15, 2003, made effective as of May 31, 2003]
[Article 8 amended through the law No. 1150-XV dated June 21, 2002]

Article 9. Coordination of ALM/CFT activity

The Centre for Combating Economic Crimes and Corruption shall coordinate activities conducted by the AML/CFT authorities as well as the international cooperation in this domain.
[Article 9 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]

Article 10. Responsibility for violation of the provisions set out by the present law

Charges as per effective legislation shall be brought against the persons found guilty of violation of the requirements set forth by the present law.

CHAPTER IV
INTERNATIONAL CO-OPERATION

Article 11. Legal framework

Cooperation of control and law enforcement authorities of the Republic of Moldova with similar organisations of other states in the field of prevention, detection, counteraction and investigation of money laundering actions, as well as confiscation and extradition of the monies, shall be carried out in conformity with the legislation of the Republic of Moldova on the basis of International Conventions or bilateral agreements ratified by the Republic of Moldova.

[Article 11 amended through the law No. 436-XV dated December 24, 2004, made effective as of January 07, 2005]
[Article 11 amended through the law No. 3-XV dated February 05, 2004, made effective as of March 12, 2004]

CHAPTER V
FINAL PROVISIONS

Article 12. Government obligations

The Government, within 2 months after the publication of the present Law, shall bring its normative acts in full conformity with the present law.

Chairwoman of the Parliament
Eugenia Ostapciuc

Chisinau, November 15, 2001
No. 633-XV

Constitution (article 46)

Article 46. The Right of Private Property and Its Protection

(1) The right to possess private property and the debts incurred by the State are guaranteed.
(2) No one may be expropriated except for reasons dictated by public necessity, as established by law and against just and appropriate compensation made in advance.
(3) No assets legally acquired may be confiscated. The effective presumption is that of legal acquirement.
(4) Goods destined for, used or resulted from crimes or offenses may be confiscated only as established by law.
(5) The right of private property carries with it the duty to observe the roles regarding the protection of the environment, the maintenance of good neighbourly relations and the observance of all the other duties that have to be fulfilled by owners of private property under the law.
(6) The right to inherit private property is guaranteed.

Criminal Code (excerpts)

Article 21. The subject of the crime
(1) Physical responsible persons who, in the moment when a serious crime, extremely serious crime or

a heinous crime was committed were at least 14 years old, or, in the moment when a minor offence or a less serious crime was committed were at least 16 years old, as well as legal entities, can be held criminally liable.

(2) A legal entity which carries on entrepreneurial activity is held criminally responsible for an act provided by the Criminal Law under the existence of one of following conditions:

a) the legal entity is guilty for the failure to accomplish or for the inappropriate accomplishment of the direct provision of the law that establishes obligations or interdictions in the carrying out of an activity;

b) the legal entity is guilty for carrying out of an activity that does not correspond to its foundation documents or to the declared aims;

c) the act that creates the real danger or cause considerable damages to a person, to the society or to the State, was committed for the benefit of that legal entity or was accepted, sanctioned, approved, used by the organ or the person who has the function to manage the legal entity.

(3) The legal entity, which carries on entrepreneurial activities, is criminally liable for the crimes provided by the articles 218-218, 221, 223-246, 248-251, 257, 259-261.

(4) Criminal responsibility of a legal entity, which carries on entrepreneurial activities, does not exclude the responsibility of the physical person for the committed crime.

Article 27. Crime attempt

A deliberate act or failure to act, directly meant to the commission of a crime, if, due to causes independent of the perpetrator's will, it did not produce any effect, is to be considered a crime attempt.

Article 41. Participation

Participation is considered to be the deliberate cooperation of two or more persons to the commission of a deliberate crime.

Article 43. Forms of participation

Depending on the degree of coordination of the participants' actions, forms of participation are as follows:

a) simple participation;
b) complex participation;
c) organized criminal group;
d) criminal organization (association).

Article 44. Simple participation

The crime is considered to be committed in simple participation, if two or more persons took part in it jointly, as co-authors, each of them accomplishing the objective side of the crime.

Article 45. Complex participation

A crime is considered to be committed in complex participation, if to its accomplishment participants had contributed as authors, organizers, instigators or accomplices.

The objective side of the complex participation crime may be accomplished:

by a single author;

by two or more authors.

Article 46. The organized criminal group

An organized criminal group is a stable reunion of persons who had organized in order to commit one or more crimes.

Article 47. Criminal organization (association)

1) The criminal organization (association) is a reunion of organized criminal groups into a stable community, whose activity is based on the division among the members of the organization and its

structures of the administration functions, assurance and execution of the criminal intentions of this organization for the purpose of influencing or control in other ways, the economic or other activity of legal and physical entities or to control with a view to obtain profit and achieve economic, financial or political interests.

2) The crime is considered to be committed by a criminal organization if it was committed by its member for the interest of organization, or by a person who is not a member of the criminal organization, but who was charged by the respective organization.
3) The person who created the criminal organization or who conducts it, is to be considered the organizer or the leader of the organization.
4) The organizer and leader of the criminal organization are liable for all the crimes committed by the criminal organization.
5) A member of the criminal organization shall be held responsible only for crimes in which he participated in preparation or commission.
6) A member of criminal organization may be exempted from criminal responsibility when he voluntarily declared about the existence of the criminal organization and helped to discover the crimes committed by this organization or contributed to the exposure of leaders of the criminal organization or of its members.

Article 49. Favors

The previously not promised favors of the criminal, as well as the hiding of the means and devices by which the crime had been committed, of its traces or of the criminally obtained goods, is liable to criminal responsibility only in cases provided by Article 323 of the present Code[68].

Article 63. Categories of punishments for legal entities which carry on entrepreneurial activity

(1) On legal entities, the following punishments can be applied:
   a) fine;
   b) interdiction of the right to exercise a certain activity;
   c) liquidation.
(2) Fine is to be applied as a main punishment.
(3) Depriving of the right to exercise a certain activity, liquidation of the legal entity which carries on entrepreneurial activities can be applied both as main punishments and complementary punishments.

Article 64. Fine

(1) Fine is a pecuniary sanction that will be applied by the court in cases and within the limits provided by the present Code.
(2) The fine is established in conventional units. The conventional unit of fine equals to 20 lei.
(3) The amount of the fine for physical entities will be established depending on the character and the seriousness of the committed crime, taking into account the financial situation of the guilty person, between 150 and 1.000 conventional units, and for crimes committed for profit purposes, up to 5.000 conventional units, taking as a basis the amount of conventional unit at the moment when the crime was committed.
(4) In cases provided by paragraph (2) of Article 21 of the present Code, the amount of the fine for

[68] Article 323. Favors of crimes
(1) Not promised, preliminary favors of committing a serious, exceptionally serious or heinous crime,-
Is to be punished with a fine in the amount of two hundred up to five hundred conventional units or by imprisonment up to three years.
(2) The husband or the close relatives of the person who committed a crime are not criminally liable for the facilitation .

legal entities will be established depending on the character and the seriousness of the committed crime, the amount of caused damage, taking into account the economic and financial situation of the legal entity, between 500 and 10.000 conventional units. In case of ill-will elusion of a legal entity from paying the established fine, the court can replace the non-paid amount of the fine by suing the real estate for damages.

(5) In case of ill - will elusion of the convict from paying the established amount of the fine as a main or as complementary punishment, the court can replace the non-paid amount by arrest or by jail within the terms provided by Articles 68 or 70 of the present Code. The amount of the fine will be replaced with arrest or jail, one month of arrest or in jail being equivalent with 50 conventional units.

(6) Fine as a complementary punishment can be applied only in cases where it is provided as such for the corresponding crime.

(7) In case of impossibility of the convict to pay the amount of fine established as a main or as complementary punishment, the court can replace the non-paid amount of fine with a non-paid work in the benefit of the community, according to the provisions of articles 67 of the present Code, 60 hours of work in the benefit of community being equivalent with 50 conventional units.

Article 81. Application of a punishment for an unconcluded crime

(1) Within the application of the punishment for an unconcluded crime, circumstances under which the crime was not accomplished are taken into account.

(2) The punishment for the preparation of a crime that is not a relapse cannot be more than a half of the maximum term of the highest punishment provided by the corresponding article of the Criminal Law for the concluded crime.

(3) The punishment for a crime attempt that is not a relapse cannot be more than three fourths of the maximum term of the highest punishment provided by the corresponding article of the Criminal Law for the concluded crime.

(4) Life detention will not be applied for the preparation of a crime and for a crime attempt.

Article 83. Application of the punishment for participation.

The organizer of, the instigator and the accomplice to a deliberately committed crime provided by the Criminal Law, will be sanctioned with the same punishment provided for the author. At establishing of the punishment, each individual contribution to the commission of the crime will be taken into consideration, as well as provisions of Article 75.

Article 126. Damages on an especially large, large, considerable, essential and small scale

(1) Damage is the value, estimated in money, of the seized, obtained, received, destroyed material goods or the amount of the damage inflicted by a person or a group of persons. Damages on an especially large scale are damages which value in the moment of crime perpetration exceeds the fine amount of 1500 conventional units; damages on a large scale – exceeds 500 units; considerable damages – 250 units; essential damages – exceeds 5 units and for damages on a small scale this value does not exceed the amount of 5 conventional units of fine.

(2) In accordance with the Labor Code when establishing the value of the inflicted damage, only the direct real damage is to be taken into consideration, if the inflicted damage is related to non-fulfillment of the labor obligations, in other cases according to the Civil Code of the Republic of Moldova, lost profit is to be added to the direct real damage.

(3) Damages inflicted by the seizure or illegal traffic of narcotic and psychotropic substances are to be estimated in accordance with the definition of small and large amount of these, approved by the Drugs Control Permanent Committee.

Civil Code (excerpts)

Article 1053. Contract of fiduciary management
(1) Under contract of fiduciary management one party (founder of management) transfers property in fiduciary management to other party (fiduciary managing director), and fiduciary managing director undertakes to operate property in interests of founder of management.
(2) In contract can be appointed as beneficiary of third party who can show claims to fiduciary managing director.
(3) Bodies of public authority cannot represent itself as fiduciary managing director.
(4) Fiduciary managing director cannot be beneficiary.
(5) In case of an establishment of fiduciary management of property on bases founder right management stipulated by law belong to body of trusteeship and guardianship or other person specified in law.

Article 1055. Subject of fiduciary management
(1) In fiduciary management any things (including property set), both conclusions of contract existing at the moment, and got in the future, including things got by fiduciary managing director at execution of contract can be transferred.
(2) Property transferred in fiduciary management, includes also things which take a place original as their equivalent or as a result of fulfillment of transactions.
(3) Money resources cannot be transferred separately in fiduciary management, except for cases stipulated by the law.
4) Property transferred in fiduciary management, stands apart from other property of management founder, and also from property of fiduciary managing director.

Article 1056. Rights and duties of fiduciary managing director
(1) Fiduciary managing director is obliged to dispose property entrusted to it on its own behalf, but on risk and due to principal.
(2) In attitudes with third parties trust managing director possesses prerogatives of proprietor. If it does not show diligence shown in own transactions concerning interests of management founder, it is obliged to compensate caused in this connection losses.
(3) Fiduciary managing director is obliged to promulgate fact of isolation of property transferred in fiduciary management, from property and to keep publicity of such isolation. Fiduciary managing director answers before founder of management for inconveniences, losses and losses caused owing to mixture of property of two persons.
(4) Fiduciary managing director can dispose of real estate only in cases stipulated by law or contract of fiduciary management.
(5) Rights received by fiduciary managing director as a result of realization of confidential management, join in structure of property transferred in fiduciary management if contract does not stipulate a duty of their transfer to founder of management or beneficiary.
(6) Duties following from activity of trust managing director are executed due to property which is being fiduciary management.

Article 1398. Grounds and general conditions of the penalty responsibilities
(1) A person acting illegally in respect to another shall be obligated to repair the patrimonial prejudice, and in cases provided by the law, also the moral prejudice caused by action or omission.
(2) The prejudice caused by illegal actions must be repaired in cases expressly provided by legislation.
(3) A person, other from the author of the prejudice, shall be obligated to repair the prejudice only in cases expressly provided by legislation.
(4) The prejudice shall not be repaired if it was caused upon the request or with the approval of the person harmed and the action of the author does not contradict the ethical – moral norms of society.

Criminal Procedure Code (excerpts)

Article 55. The criminal prosecution body and its responsibilities

(1) Criminal prosecution will be carried out by criminal prosecution officers of the criminal prosecution bodies provided by Article 56.

(2) Criminal prosecution bodies have the responsibility to carry out the operational investigation activities, including the use of audio and video recordings, filming, taking photographs, and other actions of criminal prosecution provided by the present Code for the purpose of discovering evidence of the crime and the persons who committed it, establishing facts, procedurally securing these actions, that can be used as evidence in the criminal case after checking them according to the criminal procedure legislation.

(3) The criminal prosecution body has also the obligation to take all necessary measures to prevent and stop the crime.

(4) If signs of crime exist, the criminal prosecution body, in parallel with the registration of the notification, will initiate the criminal prosecution procedure, guided by the provisions of the present Code, carries out activities of criminal prosecution to discover the crime and identify the evidence that confirm or deny the commission of the crime, takes measures in order to assure the civil action or an eventual seizure of the goods illegally obtained.

(5) The criminal investigation body will immediately announce the prosecutor of the committed crime and on the initiation of the criminal prosecution actions.

Article 56. The head of the criminal prosecution body and his responsibilities

(1) In criminal cases, the responsibilities of the head of the criminal prosecution body will be executed by the criminal prosecution officer of the Ministry of Internal Affairs, the Service of Information and Security of the Republic of Moldova, the Customs Department, the Centre for Combating Economic Crimes and Corruption, assigned in the established way and who acts within the limits of his/her competence.

(2) The head of the criminal prosecution body exercises the control on the carrying out in time of crime prevention and discovery actions, takes measures for the criminal prosecution to be carried out in an objective and complete way, under all aspects and to assure the registration in the established way of notifications on the commission of crimes.

Article 57. The criminal prosecution officer and his responsibilities

(1) The criminal prosecution officer is the official who, on behalf of the state, within the limits of his/her competence, carries out the criminal prosecution in a criminal case.

(2) The criminal prosecution officer has the following responsibilities:

1) assures the registration of the crime in the established order, suggests to the prosecutor the cessation of a criminal case or not to initiate the criminal prosecution lacking the signs of a crime;

2) recommends a criminal case for criminal prosecution according to the competence of another criminal prosecution body;

3) has the entire responsibility for the carrying out legally and in due time of the criminal prosecution;

4) makes recommendations to the prosecutor to submit requests to the court in order to get the authorization to search, to levy sequester upon goods, mail and telegraphic correspondence and to seize them, to intercept the telephone conversations and other kind of communication, to provisionally suspend the accused from his/her duty, to seize objects and documents from third parties, to physically and electronically watch the person, to forcedly take samples of saliva, blood, hair, nails, to exhume the body, to carry out video and audio surveillance of the room, to install audio and video recording equipment in the room, to check the information transmissions to suspect;

5) summons and hears the suspect, the damaged party and the witnesses;

6) investigates and secures in the established way the place of commission of the crime, carries out searches in case of crimes in progress or urgent case, picks up objects and documents, carries out other actions on the scene, according to the law;
7) requests documents and materials that contain data on the crime and on the persons who committed it;
8) disposes documents revision, inventory, department expertise and other actions;
9) from the moment when the socially dangerous deed was registered, leads operational investigation actions in order to identify the crime, to look for the missing persons, as well as for the goods lost as a consequence of the commission of the crime;
10) disposes other criminal prosecution bodies to carry out criminal prosecution actions;
11) gives dispositions to the police bodies on apprehension, forced bringing in, arrest and other procedure actions, as well as on providing help in carrying out the criminal prosecution actions;
12) identifies persons as a damaged party, civil party and a civilly accountable party;
13) takes measures provided by the law in order to ensure the restitution of the material damage caused by a crime;
14) through the Bar, assures the assignment of a *ex officio* defense counsel in a criminal case, in cases provided by the present Code;
15) settles the challenging of the interpreter, the translator, the specialist, the expert;
16) adopts ordinances regarding applications of the people participating in the criminal case;
17) recommends the selection, prolongation, modification, or cancellation of the preventive measures, the release of the suspect until the arrest is authorized by the court;
18) executes written orders given by the prosecutor;
19) raises objections, in the way provided by the present Code, the orders of the prosecutor regarding the carrying out of some legal acts;
20) offers written explanations, at the prosecutor's request;
21) presents evidence accumulated in the case, necessary for the pressing the charge, to the prosecutor.

(3) In the criminal proceeding, the criminal prosecution officer has also other prerogatives provided by the present Code.
(4) The criminal prosecution officer will be independent and, in exercising his/her prerogatives s/he will comply with the provisions of the present Code, with written order of the prosecutor and the head of the criminal prosecution body.
(5) The criminal investigation officer has the obligation to ensure the protection of human right and freedoms, according to the criminal procedure law.
(6) Challenging of the criminal prosecution officer will be made in compliance with Article 54, and the prosecutor will settle it.

Article 126. Grounds for seizing objects or documents

(1) Criminal prosecution body has the right to seize objects and documents that are important for the criminal case, should the accumulated evidence or information from the on going investigation show the exact location and the person who possess these things.
(2) Seizing of objects carrying information that constitutes a state secret, trade or banking secret, as well as seizing the information regarding the telephone conversations is done only with the authorisation of the instruction judge.
(3) Seizing of objects and documents is done based on an explained and motivated ordinance issued by the criminal prosecution body.

Article 127. Persons present during search and seizing of objects

(1) During a search and seizing of the objects and documents, if necessary, the interpreter and the specialist may be present.
(2) Presence of the person who is the subject of search and seizing, or of some adult members of her family, or presence of the persons representing the interests of the respective person. Should the

presence of these persons be impossible, then representatives of the executive authority of the local public administration are invited.

(3) Seizing and search in institution premises, enterprises, organisations and military units is done in the presence of the respective representative.

(4) Persons subject of search or seizing, as well as specialists, interpreters, representatives and defence counsels have the right to attend all actions of the criminal investigation body and to make objections and statements in this respect that will be entered into the minutes.

Article 128. The procedure of performing the search or the seizing of objects and documents

(1) With the exception of *flagrante delicto* cases, it is forbidden to seize objects or documents or to make searches during night time.

(2) Based on search or seizing of the objects or documents ordinance with the authorization of the instruction judge the person carrying out the criminal prosecution has the right to get access into domicile or in other premises.

(3) Before starting to do a search or seizing of the objects or documents the criminal prosecution body is obliged to hand over a copy of the respective ordinance to the person who is subject to a search or a seizing. The person will sign to confirm his/her being acquainted with the ordinance.

(4) During the seizing of objects and documents, after submitting the ordinance, the representative of the criminal prosecution body will requests the handing over of objects or documents that need to be sequestrated. Should this request be refused, the criminal prosecution agent proceeds to forced seizing. Should the objects or documents that need to be sequestrated be absent in the place indicated in the ordinance, the criminal prosecution agent has the right to do the search, justifying the necessity of carrying this action.

(5) During the search, the representative of the criminal prosecution body, after s/he had submitted the search ordinance, requests the objects and documents mentioned in the ordinance to be handed over to him/her. Should these things be handed over voluntarily, the criminal prosecution agent may be satisfied with the seizing of objects or documents handed over, without proceeding to other investigations.

(6) All seized objects and documents are showed to all persons present during the search or seizing. Objects and documents, discovered during the search and seizing, the circulation of which is forbidden by law, need to be sequestrated irrespective on the fact whether they are connected or not to the criminal case.

(7) During search or seizing of objects and documents, the criminal prosecution representative has the right to open locked rooms and storehouses in case the owner refuses to open them voluntarily. S/he will nevertheless avoid breaking unjustifiably the goods.

(8) During the search technical means may be used, a fact that needs to be mentioned in the respective minutes.

(9)The criminal prosecution body is obliged to take measures to ensure that circumstances noticed during the search or seizing, which are connected to the private life of the person are not disclosed to the public.

(10) The person who carries out the criminal prosecution has the right to forbid to persons found in that particular room or place where search is carried out, as well as to the persons that entered the room or came to this place, to leave the place or to communicate with each other or with other persons until the search is over. In case of necessity, the room, or the place where the search is done may be put under guard.

Article 129. The search and seizing procedure carried out in premises of the diplomatic representatives

(1) Within the premises of diplomatic representatives, as well as in places where members of diplomatic missions and their families live, search or seizing may be done only at the request or with the consent of the chief of the respective diplomatic mission. The consent from the chief of

the diplomatic mission for the permit to do a search or a seizing is requested through the Ministry of Foreign Affairs of the Republic of Moldova.

(2) During search and seizing in the premises mentioned in paragraph (1) the presence of the prosecutor is obligatory and of a representative of the Ministry of Foreign Affairs of the Republic of Moldova.

(3) The search and seizing of objects and documents in the premises of the diplomatic missions will be carried out in conformity to provisions of the present code.

Article 130. Corporal search and seizing

(1) In cases when there are grounds to do search and seizing inside premises, the representative of the criminal prosecution body may seize objects and documents that are important for the criminal case, which are located in clothes, things or on the body of the person subject to the criminal prosecution actions.

(2) The corporal search may be carried out without the issuance of the ordinance and without authorisation from the instruction judge in the following cases:

1) When a suspect, accused, defendant is apprehended;

2) When the preventive arrest measures are applied to the suspect, accused and defendant;

3) When there already exist sufficient grounds to presume that the person present inside the premises, where the search or seizing is being done, may wear in his/her cloths documents and objects which might be important as evidence in the criminal case;

(3) Corporal search and seizing of objects may be carried out by the representative of the criminal prosecution body with the participation, according to the case, of the specialist of the same sex to the searched person.

Article 131. Minutes of the search and seizing

(1) The representative of the criminal prosecution body, who carries out the search and seizing of objects and documents, draws out the minutes in conformity to provisions of articles 260 and 261. Should also a special list of sequestered objects and documents be drawn, the list will be annexed to the minutes. The minutes of the search and seizing need to contain a statement specifying that the people present were explained their rights and obligations stipulated in the present Code. It should also include the statements made by these persons.

(2) Regarding documents and objects that need to be sequestered it is necessary to mention whether they have been handed over voluntarily or were seized with force. The place and circumstances where these objects were discovered will be also specified. All seized objects and documents need to be enumerated in the minutes or in the annexed list, indicating the exact number, the size, quantity, characteristic elements and, to the possible extent, their value.

(3) Should actions violating the order be committed by persons subject to search or seizing or by other persons, or should attempts to destroy or hide the objects, and documents be made, then the representative of the criminal prosecution body is supposed to mention these facts in the minutes along with measures taken by him/her in response.

(4) The minutes drawn in connection with the search and seizing is brought to the cognisance of all participants and persons present during this procedural action, fact that is confirmed by signature of each of them.

(5) Seized objects and documents need to the possible extent to be packed and sealed immediately on the place where they are seized or searched, fact that is stated in the minutes. The sealed packs will be signed by the person who carried out the search or seizing.

Article 132. Obligatory submission of copies of the minutes drawn in connection with the search and seizing

(1) A copy of the minutes of the search and seizing is handed over to persons, subject to such actions of criminal proceeding, or to an adult member of their family. Should these persons be absent, then the copies will be handed over to the representative of the executive authority of the local

public administration body, and his rights and challenging of these procedural actions will be explained. The signatures of relevant persons will confirm the handing over of the copies.

(2) Whenever the search or the seizing is done within the premises of an enterprise, institution, organisation or military unit, then the copy of the minutes is handed over to the representatives of the respective bodies

Article 158. Real evidence

(1) Real evidence shall be considered the objects in those cases when reasons exist to presume that they have served for committing the criminal offence, bear the traces of these actions on them or have constituted the objects of these actions, as well as money or other valuables, objects and documents that may serve as means to discover a criminal offence, to ascertain circumstances, to identify guilty persons or on the contrary, to reject an accusation or to render the criminal liability more lenient.

(2) An object shall be acknowledged as real evidence (exhibit) based of an ordinance issued by the penal pursuit body or based on a court order and shall be attached to the file.

(3) An object shall be acknowledged as real evidence provided that:

1) by its detailed description, by sealing, as well as by other actions undertaken immediately after finding it, there was no possibility to replace or to essentially modify the particularities and the signs or the traces left on it;

2) it was acquired by one of the following probative procedures: search on the crime scene, search, collection of objects, as well as if submitted by the trial participants, with their preliminary hearing.

Article 159. Storage of real evidence and of other objects

(1) Real evidence shall be attached and stored in a file or shall be stored in another way prescribed by the law. The objects which, due to their dimensions or due to other reasons, cannot be stored together with the file shall be photographed and their pictures shall be attached to the respective verbatim record. Large objects, after having been photographed, may be sealed and sent for storage to natural persons or legal entities. Should this be the case, this needs be mentioned in the file.

(2) Explosive substances and objects which are dangerous for human life and health and due to this reason cannot be stored as real evidence, circumstance confirmed by the specialists in the area, based on an ordinance of the penal pursuit body duly authorized by the instruction judge, shall be destroyed following the respective methods.

(3) Immediately after having been examined or seized, the precious metals, stones and pearls, national and foreign currency, cards, check books, securities, bonds, which may be considered as real evidence, shall be sent for storage to the National Bank institutions.

(4) Whenever they contain individual traces resulted from the crime, the foreign currency, national cash amounts, bonds, seized during a penal pursuit action shall be stored within the file.

(5) The real evidence and other seized objects shall be stored, until their fate is solved through a final decision issued by the penal pursuit body or by the court. In cases provided under the present Code, issues related to real evidence body of evidence may be solved before the end of the penal proceedings.

(6) In cases of conflict regarding ownership of an object considered body of evidence, the conflict is solved within civil proceedings and this object is preserved until the judgment delivered in civil proceedings becomes final.

Article 160. Securing the storage of real evidence and of other objects during the criminal proceeding

(1) Storing real evidence and other objects, submitting them to an examination or to a technical scientific or legal medical investigation, or when transferring them to another penal pursuit body

or court, measures need to be taken to avoid their loss, deterioration, alteration, contact between them, mixture of real evidence or of other objects.

(2) When a case is being transferred to another institution, the accompanying letter, the annexes to this letter and the information annexed to the indictment will contain indication of all real evidence and other objects that have been annexed to the file and accompany it, as well as their storage place, should they not be annexed to the file.

(3) During the transfer of a case containing real evidence, the body receiving the case file shall visually verify the presence of objects attached to the file according to the information mentioned in the accompanying document. The results of this verification shall be mentioned in the accompanying document.

Article 161. Decisions regarding real evidence adopted before the settlement of the criminal case

(1) Before the settlement of the criminal file, the prosecutor, during the penal pursuit or, if the case, the court may order the restitution to the owner or to the legal possessor of the following assets:

1) Products easily alterable;

2) Objects necessary for every day life;

3) Domestic animals, poultry and other animals that need permanent care;

4) The car or other vehicle provided it was not sequestrated to insure the civil action during the criminal proceeding or the possible special confiscation of assets.

(2) Large real evidence, requiring special storage conditions and which do not bear traces of the criminal offence, as well as other real evidence, save for that having served during the commission of the criminal offence or that bearing traces of the criminal offence, shall be sent to State Tax Institutions to be used, stored, maintained and traded with.

(3) When the owner or legal possessor of the real evidence mentioned under para.(2) is not known, or should their restitution be impossible due to other reasons, it shall be sent to the respective tax institutions to decide upon their use, storage, maintenance, or trade, by transferring the acquired money on the deposit account of the prosecutor's office or of the court.

Article 162. Decision on real evidence adopted during the examination of the criminal case

(1) During the examination of the merits of the case, there shall be decided upon the real evidence. In this event:

1) the tools that were used to commit the offence are confiscated and given to the respective institutions or are destroyed;

2) the objects, the circulation of which is forbidden, are submitted to the respective institution or are destroyed;

3) the things of no value and that can not be used are to be destroyed, or can be returned to interested persons or institutions, upon their request;

4) the money and other valuables acquired by criminal actions, or which were the object of the criminal offence, relying on the court ruling, shall be transferred as state revenues. All other objects are returned to their legal owners, and should the latter not be identified, the objects become state property. In case of a conflict related to the ownership of these objects, the conflict shall be solved in civil proceedings;

5) the documents that constitute real evidence are kept in the file during its entire storage duration, or, if requested are delivered to interested persons;

6) the objects seized by the penal pursuit body that were not qualified as real evidence are returned to persons from whom they were seized.

(2) The cost of objects altered, deteriorated or lost as a result of performing an expert examination and other legal actions, shall be covered by trial expenses. If these objects have belonged to the suspect, indicted, defendant or the person civilly accountable, their cost shall not be compensated. If these objects have belonged to other persons, their cost shall be compensated by the court

sentences, from the state budget and may be cashed from the convicted person or from the person civilly accountable.

(3) In case of a person's acquittal, or in case that a case is definitely filed and disposed of, based on rehabilitation grounds, the cost of objects lost or deteriorated during examination process or during other legal actions shall be compensated to the owner or the legal possessor from the state budget, irrespective on his/her standing in the criminal proceedings.

(4) When real evidence has been sent in conformity to their destination under the terms of paragraph 3 of Article 161, the owner or, if applicable, the legal possessor is restituted objects of the same kind and quality or is paid their value, assessed according to free market prices valid at the moment of compensation.

Article 203. Placing under sequester

(1) The placement under sequester of assets, i.e. of material values, herein included the bank accounts and bank deposits, shall be a procedural coercive measure, implying the inventory of material assets and prohibiting their owner or their possessor to dispose of them, and if necessary, to use them. After the placement under sequestration of bank accounts and deposits, all operations concerning them shall be stalled.

(2) The placement of assets under sequester shall be performed in order to secure the reparation of the damage inflicted by the criminal offence, to secure the civil action and the eventual confiscation of assets to be used, used and resulted from committing the criminal offence.

Article 204. Assets susceptible of sequester

(1) Under sequester may be placed the assets of the suspect, of the indicted, of the defendant, as well as the assets of the civilly accountable party, in the cases prescribed under the law, notwithstanding the nature of these assets and where they are located.

(2) The sequester may be placed upon the assets constituting the share of the suspect, of the indicted, of the defendant from the joint spouses' or family ownership. In the event there are sufficient evidence that the joint ownership is acquired or increased by criminal ways, then the entire spouses' or family ownership or its largest part may be placed under sequester.

(3) Food stuff necessary to the owner, to the assets possessor and to their family members, the fuel, the specialized literature and the professional labour tools, the dishes and kitchen tools used permanently and which are not expensive, as well as first need objects and assets, even if eventually may be subject of confiscation, shall not be placed under sequester.

(4) The assets of companies, organizations and institutions, save for the share acquired illegally from the collective ownership which may be separated without prejudicing the economic activity, shall not be placed under sequester.

Article 205. Grounds for the placement under sequester

(1) The placement of assets under sequester may be performed by the penal pursuit body or by the court only in the cases when the accumulated evidence enable reasonably to allege that the suspect, the indicted, the defendant or other persons, holding the pursued assets, may hide, deteriorate or waste them. The assets shall not be placed under sequester if in the criminal proceedings has not been lodged a civil action and if the respective committed criminal offence does not entail their particular confiscation.

(2) The placement of assets under sequester shall be applied relying on the ordinance of the penal pursuit body, with the authorization of the instruction judge or, if applicable, by a court order. The prosecutor, *ex officio* or at the request of the civil party, may address the instruction judge a request, accompanied by the ordinance of the penal pursuit body concerning the placement of assets under sequester. The instruction judge shall authorize by means of a resolution the placement of assets under sequestration, and the court shall decide upon the request of the civil or any other party, if sufficient evidence shall be submitted in order to confirm the circumstances set under paragraph (1).

(3) The ordinance of the penal pursuit body or, if applicable, the court order on the placement of assets under sequestration shall indicate the material assets subject to sequester, to the extent they are established in the criminal proceedings, as well as the value of necessary and sufficient assets to secure the civil action.
(4) In the event there are doubts about the voluntary submission of assets for their placement under sequester, the instruction judge or, if applicable, the court, shall authorize the performance of search simultaneously with the placement of material assets under sequester.
(5) In case of *flagrante delicte* or in cases susceptible of no delay, the penal pursuit body shall be entitled to place assets under sequester relying on its own ordinance, without the authorization of the instruction judge, communicating mandatory such circumstances to the instruction judge immediately, but not later than 24 hours from when this procedural act has been performed. Receiving the respective information, he instruction judge shall verify the lawfulness of the placement under sequester, shall confirm its results or shall declare its failure of validity. In the event the sequester is found unlawful or ill-founded, the instruction judge shall order the total or partial exemption of assets placed under sequester.

Article 206. Assessment of the value of assets to be placed under sequester
(1) The value of assets to be placed under sequester shall be assessed according to average market prices from the respective location, without using any quotient.
(2) The value of assets to be placed under sequester, with the purpose to secure the civil action lodged by the civil party or by the prosecutor, shall not exceed the value of the civil action.
(3) While determining the share from the assets to be placed under sequester of each from several indicted persons, defendants or several persons accountable for their actions, one shall take due consideration of their participation degree to the commission of the criminal offence. In order to secure the civil action, sequester may be placed upon the entire ownership of one of these persons.

Article 207. Manner of enforcing the ordinance or the order to place assets under sequester
(1) The representative of the penal pursuit bodies shall hand over, certified by signature, to the owner or to the assets possessor the copy from the ordinance or the order to place assets under sequester and shall request their transmission. In the event if refusal to enforce voluntarily this request, the placement of assets under sequester shall be performed in a coercive manner. If there are any grounds to assume that assets are hidden by the owner or by the possessor, the penal pursuit body, being lawfully vested with prerogatives, shall be entitled to perform a search.
(2) The placement of assets under sequester by a court order, issued after the termination of the respective penal pursuit, shall be performed by the judicial bailiff.
(3) A commercial specialist may be involved to participate at the placement of assets under sequester, in order to determine the approximate value of material assets, inasmuch as to exclude any sequestration of assets, the value of which does not correspond to the value indicated in the ordinance of the penal pursuit body or in the court order.
(4) The owner or the assets possessor, being present at the action of placement under sequester, shall be entitled to indicate which material assets may be initially placed under sequester in order to cover the amount indicated in the ordinance of the penal pursuit body or in the court order.
(5) The representative of the penal pursuit body shall draw up a verbatim record under the terms of Article 260 and Article 261, reflecting the placement of assets under sequester, and the judicial bailiff shall draw up an inventory list. The verbatim record and, if applicable, the inventory list, particularly shall:
1) list all material assets placed under sequester, indicating their number, their dimensions, their weight, the material they are made of and other elements individualizing them, and, to the largest possible extent, their value.
2) indicate what material assets have been taken from their location and which are left for storage in the same location

3) contain the declarations of present persons and of other persons, concerning the ownership upon the assets placed under sequester.

(6) The copy of the verbatim record or of the inventory list shall be transmitted, certified by signature, to the owner or to the possessor of assets placed under sequester, and if the latter is absent – to an adult family member or to the representative of the local public executive administration. Having placed under sequester the assets located on the area of a company, organization or institution, the copy of the verbatim record or of the inventory list shall be handed over, certified by signature, to the administration representative.

Article 208. Maintenance of assets placed under sequestration

(1) The assets placed under sequester as a rule shall be taken from their initial location, save for real estate and for large objects.

(2) Precious metals and stones, pearls, foreign currency, securities, bonds shall be transmitted for storage in the institutions of the National Bank; the amounts of money shall be placed on the deposit account of the court competent to consider the respective criminal case; other taken objects shall be sealed and stored by the body at the request of which the respective assets have been placed under sequester or shall be transmitted for storage to the representative of the local public administration executive authority.

(3) The assets placed under sequester, that have not been taken from their location, shall be sealed and left for storage to their owner or possessor or an adult family member, who has been explained the liability prescribed under Article 251 of the Criminal Code, for disposing of, alienating, replacing or hiding these assets and concerning which the respective person has undertaken a written commitment.

Article 209. Challenging the placement of assets under sequester

(1) The placement of assets under sequester may be challenged in the order prescribed by the present Code, and the lodged complaint or the appeal shall not suspend the enforcement of this action.

(2) The persons other than the suspect, indicted, defendant, who find the placement of assets under sequester to have been performed illegally or is ill-founded shall be entitled to request the penal pursuit body or the court to remove the sequester from the assets. In the event, they refuse to satisfy the request or have not communicated to the person that has lodged the petition an answer during 10 days from the moment of its reception, the person shall be entitled to solicit the removal of the sequester from upon the assets following the civil proceedings. The court judgment ruling upon the civil case on the removal of the sequester from upon the assets may be challenged by the prosecutor before the hierarchically superior court with an appeal in cassation during 10 days, but, after its entry in force, it shall be binding for penal pursuit bodies and for the court examining the criminal case to the extent to which the assets of what person need to be confiscated or, if applicable, pursued.

Article 210. Removal of the sequester from upon assets within criminal proceedings

(1) The sequester shall be removed from under the sequester by the decision of the penal pursuit body or of the court if, following the withdrawal of the civil action, the modification of the legal qualification of the criminal offence concerning the suspect, the indicted, the defendant, or due to other reasons, there has disappeared the need to maintain the sequester upon the assets. The court, the instruction judge or the prosecutor, within the ambit of their competence, shall remove the sequester from upon the assets, and in the event when the unlawfulness of their placement under sequester has been ascertained, the sequester shall be removed by penal pursuit bodies without the respective authorization.

(2) Following the request of the civil party or of other interested persons, requiring the reparation of the material damage within civil proceedings, the penal pursuit body or the court shall be entitled to maintain the assets under sequester even after the termination of the criminal proceedings, after

the exemption of the person from penal pursuit or the acquittal of the person, during one month from the entry in force of the respective decision.

Article 270. Competence of the prosecutor in the criminal prosecution

(1) The prosecutor will carry out the criminal prosecution exclusively in the following cases:

1) crimes committed by:

a) President of the country;

b) members of the Parliament;

c) members of the Government;

d) judges;

e) prosecutors;

f) generals;

g) criminal prosecution officers;

2) attempt on the police officers', criminal investigation officers', prosecutors', judges' or the members of their families life, in case the attempt is related to their activity;

3) crimes committed by the Prosecutor General.

(2) The prosecutor carries out the supervision of the criminal prosecution actions carried out by the criminal prosecution body.

(3) The prosecutor is competent to carry out the criminal prosecution in the cases provided by paragraph (1) and to exercise supervision of the criminal prosecution activity of the prosecutor from the prosecutor's office of the same level, jointly with the court which, according to the law, is examining the case in first instance. The prosecutor from the hierarchically superior prosecutor's office may carry out the criminal prosecution and supervision over the criminal prosecution actions in these cases if it is necessary in the interest of the criminal prosecution.

(4) The hierarchically superior prosecutor may order through the motivated ordinance the carrying out of the criminal prosecution by the prosecutor from another prosecutor's office of the same level, in the case provided by the paragraph (1) of this article.

(5) The General Prosecutor may order the carrying out of the criminal prosecution in the case provided by the paragraph (1) by a prosecutor from the General Prosecutor's Office through a motivated ordinance.

(6) The prosecutor or a group of prosecutors assigned by the Parliament at the proposal of the President of the Parliament are competent to carry out the criminal prosecution in case provided by point 3) of paragraph (1).

(7) If the case is rather complicated and big, the hierarchically superior prosecutor in whose competence is given the criminal prosecution of the case may order through a motivated ordinance the criminal prosecution by a group of prosecutors and criminal prosecution officers, indicating the prosecutor who will be carrying out the criminal prosecution actions.

Chapter III
PLEA BARGAIN PROCEDURE

Article 504. General notions

(1) Plea bargain is a transaction concluded between the prosecutor and the indicted or, upon the case, defendant who had consented to plead guilty for a reduced sentence.

(2) Plea bargain shall be drawn up in written with the obligatory participation of the defense counsel, indicted or defendant in case of insignificant, less severe and severe crimes.

(3) The court shall be prohibited to participate in the discussions of plea bargain.

(4) The court shall be obliged to establish whether the plea bargain has been lawfully concluded, in a voluntary manner, with the participation of the defense counsel and whether there is enough evidence to confirm the conviction. Depending on these circumstances the court may accept or refuse the plea bargain.

(5) The plea bargain may be initiated by the prosecutor or by the indicted, defendant and his defense counsel.
(6) The plea bargain may be concluded at any time from the moment of bringing forward the charges until the beginning of the judicial investigation.

Article 505. Conditions of initiation and conclusion of the plea bargain procedure

(1) Upon initiation of the plea bargain, the prosecutor shall take into consideration one or more of the following circumstances:
1) the will of the indicted to cooperate at the conduction of the criminal prosecution or at the charging of other persons;
2) the attitude of the indicted towards his criminal activity and criminal antecedents;
3) nature and severity of the charges;
4) sincere regrets of the indicted and his readiness to assume responsibility for the committed acts;
5) free and benevolent will of the indicted to plead guilty as promptly as possible and to accept an abbreviated procedure;
6) probability of obtaining the conviction in the respective case;
7) the public interest of obtaining a faster trial with reduced expenses.
(2) If the prosecutor initiates the plea bargain procedure, he shall address to the defense counsel of and the indicted with this initiative. The defense counsel, shall discusses in confidentiality with the indicted, defendant:
1) all his procedural rights, including:
a) the right to a complete, fast and public hearing and that during this hearing he shall benefit of the presumption of innocence unless his guilt is legally proven, securing him all the necessary guaranties for his defense;
b) the right to bring evidence in his favor;
c) the right to require the hearing of the prosecution's witnesses in the same conditions as the defense's witnesses;
d) the right to preserve silence and the right against self-incrimination;
e) the right to make depositions, to conclude such a plea bargain and to waive his statement of guilt acknowledgement;
2) all the aspects of the case, including the ordinance of pressing criminal charges or, upon the case, indictment;
3) all the possibilities of defense, which he should benefit from in the respective case;
4) the maximal and minimal punishment which can be applied in case of plea bargain;
5) in case of concluding a plea bargain, the indicted, defendant's obligation to swear in front of the court that he will make truthful statements regarding the prosecuted crime and that this statements can be used against him in case of his giving false statements;
6) that the plea bargain is not a result of some violent acts and threats.
(3) The conditions of the plea bargain shall be signed by the prosecutor, indicted or defendant and defense counsel so that their signatures are present on each page of the plea bargain document.
(4) The plea bargain concluded by the prosecutor has to be approved by the hierarchically superior prosecutor who is verifying the observance of law at its conclusion.
(5) The defense counsel shall separately certify in written that the plea bargain by the indicted or defendant has been personally examined and that the procedure of its conclusion provided by the present article has been respected and that the plea bargain made by the defendant results from their previous confidential agreement.
(6) Before submitting the case with a plea bargain to trial, the indicted and his defense counsel shall be presented the materials of the file in order for them to take knowledge of it, according to the provisions of the articles 293 and 294, as well as they shall be handed the indictment act.

Article 506. Examination made by the court of the plea bargain

(1) The examination made by the court of the plea bargain shall be made in a public hearing, except for the cases when the law provides for the possibility of having a closed hearing.
(2) The court's hearing shall start with the observance of the provisions of the articles 354, 356 and 361.
(3) The court shall establish and register in the minutes of the hearing, besides the data provided in art.336 which shall be applied accordingly, also, the following:
1) whether there exists the statement given by the defense counsel on the willingness of the indicted to conclude the plea bargain;
2) whether the position of the defense counsel is in compliance with the position of the indicted;
3) the fact that the court requires the defendant to give the to give the oath in written, under the conditions of art.108, as well as to make statements, whether the indicted accepts the oath;
4) the indicted is questioned in the following respects:
a) whether he is aware of being under oath and that whether he will make false statements these could be used against him in another trial for giving false statements;
b) last name, first name, date, month, year of birth, domicile, family condition and other investigation data provided in the article 358;
c) whether he has been recently subjected to medical treatment due to mental disorder or drug addiction, or alcoholism. In case of an affirmative answer to this question, it shall be clarified by asking the defense counsel and the indicted whether the indicted is capable of expressing and adopting his own position;
d) whether he is not under the influence of drugs, medicines or alcoholic beverages of any kind at present. In case of an affirmative answer to this question, it shall be proceeded similarly to as it is provided in letter c);
e) whether he has received the ordinance of bringing criminal charges and the indictment and whether he had discussed them with his defense counsel;
f) whether he is satisfied with the quality of the legal assistance granted by his defense counsel;
g) whether the indicted wishes to adopt the plea bargain after the discussions held with his defense counsel.
5) while examining the agreement the court shall also establish:
a) whether the indicted has had the possibility to read and discuss with his defense counsel the bargain regarding his position signing it;
b) whether this bargain fully represents the agreement between the indicted and the state;
c) whether the indicted understands the conditions of the agreement referring to his position;
d) whether nobody else had made promises and given guaranties of any other kind to the indicted to influence him to adopt the position of pleading guilty in the respective case;
e) whether anybody had tried to force somehow the indicted to make him adopt the position of pleading guilty in the respective case;
f) whether the indicted pleads guilty on his own wish, because he is guilty;
g) if the plea bargain addresses to a severe crime, whether the indicted is aware that he is pleading guilty for the committing of a severe offence;
h) whether he had taken knowledge of the respective materials and gathered evidence of the case;
6) the court shall inform the indicted on the following:
a) maximal possible sanction prescribed by law and any minimal obligatory sanction prescribed for the respective crime;
b) if a conditional punishment is applied and if he violates these conditions, then the real punishment will be executed;
c) the court is entitled to decide that the indicted has to compensate the caused damage to the damaged party and the judicial expenses;
d) if the bargain is accepted, the indicted will be able to challenge the sentence only regarding the established punishment and the procedural violations;

e) the fact that, by concluding the plea bargain the indicted deprives himself of the right to a trial according to the complete procedure with the observance of the presumption of innocence principle - rights provided by the art.66.

(4) After the fulfillment of this article's provisions, the court shall ask the defendant whether he supports the position of pleading guilty or not. If the answer of the indicted is in favor of supporting to plead guilty, he shall state in the court what he had committed related to the brought charges and his attitude about the evidence attached to the file. If the defendant does not support the plea bargain, he shall be entitled to waive his statement regarding the prosecuted crime. In this case the court shall order the trying of the case according to the complete procedure.

(5) The minutes of the court's hearing held according to the conditions of the present article shall be counter-signed by the defendant on all the pages, and his statement regarding the committed perpetration by him and regarding the evidence attached to the file shall be counter-signed according to the provisions of the article 337.

Article 507. Solution of the court at the examination of the plea bargain

(1) If the court is convinced of the truthfulness of the answers given by the defendant in the court hearing and it reaches the conclusion that the defendant decided to plead guilty in a free, benevolent manner, being aware, without pressure or fear, the court shall accept the plea bargain and admit the facts of the crime recognized by the defendant as being guilty of.

(2) The solution of the court shall be consigned in the minutes by an order.

(3) If the court does not accept the plea bargain, the court order regarding the refusal to accept the plea bargain may be challenged by the prosecutor in recourse within 24 hours, of which he shall declare immediately after the delivery of the court order. If the prosecutor, after the delivery of the court order, declares that he will not challenge the respective court order, the court shall dispose the trial of the case according to the complete procedure, based on the provisions of this Code. If the witnesses have shown up in court according to the summoning and if the trial may take place, the court shall proceed to the trial of the case immediately.

Article 508. Judicial debates in case of acceptance of the plea bargain

If the court adopts an order through which it accepts the plea bargain, the court shall proceed to the judicial debates on the punishment measure. The judicial debates shall be composed of the speeches of the prosecutor, defense counsel and defendant and, being entitled to take the floor once more to give their reply.

Article 509. The sentence delivered in case of plea bargain

(1) The sentence in case of plea bargain shall be adopted under the conditions of the present Code, considering the exceptions provided by this article.

(2) The introductory part of the sentence shall include, besides the data provided in the article 393, the mention about the trial of the case taking place through the plea bargain procedure.

(3) The descriptive part of the sentence shall include:

1) the description of the criminal perpetration recognized by the defendant, considered as proven, indicating the means of its commission, the type and degree of guilt, the motives and the consequences of the crime;

2) the evidence presented by the prosecutor and accepted by the defendant, on which the sentence is founded;

3) indications on the circumstances mitigating and aggravating liability;

4) legal qualification of the perpetration for which the defendant is convicted;

5) motivation of the established punishment;

6) settlement of the issues related to conviction with conditional suspension of the execution of punishment, if it be the case;

7) reasons on which the judgement of the court is founded regarding the civil action or to the compensation of the material damages caused by the crime, as well as regarding the judicial expenses.

(4) The resolution of the sentence shall include the mentions provided in the art.395 which shall be applied accordingly.

(5) At the adoption of the sentence, the court has to solve the issues mentioned in the art.397 and 398.

(6) The sentence adopted under the conditions of this article may be appealed in recourse procedure, where only the procedural errors and the severity of the established punishment may be invoked.

Chapter IX
INTERNATIONAL LEGAL ASSISTANCE IN THE CRIMINAL MATTERS

Section 1
General provisions and the rogatory commission

Article 531. Legal regulation of international legal assistance

(1) The relationships with foreign countries or international courts regarding the legal assistance in criminal matters shall be regulated by the present Chapter. The provisions of international treaties to which the Republic of Moldova is a party to as well other international commitments of the Republic of Moldova shall have priority in relation with the provisions of this Chapter.

(2) If the Republic of Moldova is a party to several international acts of legal assistance and the foreign state from which legal assistance is solicited or which solicits it, and if there are divergences or incompatibilities between the provisions of these acts, than the provisions of the treaty which ensures a better protection of the human rights and freedoms shall be applied.

(3) The admissibility of granting international legal assistance shall be decided by the competent court. The Ministry of Justice may decide the non-execution of a judgment regarding the admission of granting international legal assistance when the fundamental national interests are at stake.

Article 532. Manner of transmission of the legal assistance' addressing

Addressing concerning international legal assistance in the criminal maters shall be made through the mediation of the Ministry of Justice, of the General Prosecutor's Office directly and/or through the mediation of the Ministry of External Affairs of the Republic of Moldova, except for the cases when on the basis of mutuality another manner of addressing is provided.

Article 533. Extent of legal assistance

(1) International legal assistance may be solicited or granted at the execution of certain procedural activities provided by the criminal procedure law of the Republic of Moldova and of the respective foreign state, namely in:

1) transmission of acts to natural persons or legal entities which are abroad the borders of the country;

2) hearing of persons as witnesses or experts;

3) execution of the investigation, search, seizure of objects and documents and their transmission abroad, conduction of expert examination;

4) summoning of the persons from abroad to present voluntary in front of the criminal prosecution or of the court for hearing or confrontation, as well as forced bringing of the persons in detention at that moment;

5) conduction of criminal prosecution upon the denunciation made by a foreign state;

6) search and extradition of the persons who had committed crimes or for the execution of the imprisonment sentence;

7) recognition and execution of the foreign sentences;

8) transfer of the convicted persons;
9) other actions which do not contravene to the present Code.

(2) Taking of the preventive measures shall not be an object of the international legal assistance.

Article 534. Refusal of international legal assistance

(1) International legal assistance may be refused, if:
1) the request refers to crimes considered in the Republic of Moldova as being political or connected crimes to such political crimes. The refusal shall be inadmissible if the person is suspected, accused or convicted for the commission of perpetration provided in art.5-8 of the Rome Status of the International Court of Criminal Justice;
2) the request refers to a perpetration which constitutes exclusively a violation of the military discipline;
3) the criminal prosecution body or court which is solicited to grant legal assistance considers that its execution may violate the sovereignty, security or public order of the country;
4) the are founded grounds to believe that the suspect is prosecuted or punished for reasons of race, religion, nationality, membership of a certain group or for sharing certain political beliefs, or if his situation is even more aggravated due to the listed reasons;
5) the respective perpetration is punished with death according to the legislation of the soliciting state and the soliciting state offers no guarantee of non-application of the capital punishment
6) according to the Criminal code of the Republic of Moldova the perpetration invoked in the request does not represent a criminal offence;
7) according to the domestic legislation the person can not be held criminally liable.

(2) Refusal of international legal assistance shall be motivated if this obligation flows from the treaty the Republic of Moldova is a party to.

Article 535. Expenses related to granting legal assistance

Expenses related to granting legal assistance shall be covered by the soliciting party from the territory of its country if another way of covering the expenses in the conditions of mutuality or in an international treaty is not established.

Article 536. Addressing with a rogatory commission

(1) If the criminal prosecution body or the court considers necessary taking a procedural action on the territory of a foreign state it shall address with a rogatory commission to the respective criminal prosecution body or court from the respective state or to an international criminal court, according to the provisions of the international treaty to which the Republic of Moldova is a party to or under mutuality conditions.

(2) Mutuality conditions shall be confirmed by a letter through which the Minister of Justice or the General Prosecutor of the Republic of Moldova undertakes in the name of the Republic of Moldova to grant legal assistance to the foreign state or to the international criminal court in taking some procedural actions with securing of procedural rights provided by the domestic law concerning whom the assistance is granted..

(3) The rogatory commission in the Republic of Moldova shall be submitted by the criminal prosecution body to the Prosecutor General, and by the court - to the Minister of Justice in order to be transmitted for execution to the respective foreign state.

(4) The rogatory commission request and the documents attached to it shall be translated in the official language of that state or of that international criminal court to which it addresses.

Article 537. Content and form of request on rogatory commission

(1) Request on the rogatory commission shall be made in written and shall include the following data:
1) name of the body to which addresses the request;
2) name and address, if known, of the institution to which the request is sent;
3) international treaty or agreement of mutuality based on which assistance is requested;

4) indication of the criminal case in which it is solicited granting of legal assistance, information on the circumstances of the facts in which the actions had been committed and their legal qualification, the text of the respective article from the Criminal Code of the Republic of Moldova and data on the caused damage by the respective crime;

5) data on the persons regarding whom the rogatory commission is requested, including information on their procedural capacity, their date and place of birth, nationality, domicile, occupation, for the legal entities - name and premises, as well as the names and addresses of the representatives of this person when it is the case;

6) object of the request and necessary data for its fulfillment with the statement of the circumstances to be found, the list of the documents, *corpus delicti* and of other proofs requested, the circumstances in relation to which the evidence has to be administrated, as well as the questions to the asked the persons to be heard.

(2) Request on the rogatory commission and the documents attached to it shall be signed and authenticated with the official stamp of the competent soliciting institution.

Article 538. Validity of the procedural act

The procedural act drawn up in a foreign country according to the legal provisions of that country shall be valid before the criminal prosecution bodies and courts from the Republic of Moldova, when its execution is performed according to the procedure provided by the present Code.

Article 539. Summoning of the witness or expert who is outside the borders of the Republic of Moldova

(1) The witness or the expert may be summoned by the body conducting the criminal prosecution for the execution of certain procedural actions on the territory of the Republic of Moldova in case of their acceptance to show up in front of the soliciting body.

(2) Summoning of the witness or expert shall be made under the conditions provided by art.536, par.(3) and (4).

(3) Procedural actions with the participation of the persons summoned according to the provisions of this article shall be taken in compliance with the present Code.

(4) The witness or the expert, regardless nationality, who has presented himself after being summoned as provided by this article in front of the soliciting body, may not prosecuted, detained or subjected to any individual freedom limitation on the territory of the Republic of Moldova for perpetrations or convictions prior to crossing the Republic of Moldova's borders.

(5) The immunity provided by par.(4) ends if the witness or expert has not left the territory of the Republic of Moldova within 15 days from the date when he was called and communicated by the respective body that his presence is not necessary any more, or when he came back later on in the Republic of Moldova. This term does not include the period of time when the witness or expert was not able to leave the territory of the Republic of Moldova because on reasons independent from his will.

(6) The summoning of the detained person in a foreign state shall be made according to the provisions of this article with the condition that the person temporary transferred on the territory of the Republic of Moldova by the respective body from the foreign state in order to take the actions indicated in the request on his transfer shall be returned in the time indicated in the request. The transfer conditions or its refusal shall be regulated by the international treaties to which the Republic of Moldova and the solicited state are parties to or on the grounds of written obligations in mutuality conditions.

Article 540. Execution of the rogatory commission requested by foreign bodies in the Republic of Moldova

(1) Criminal prosecution body or the court shall perform rogatory commissions requested by the respective foreign bodies on the basis of the international treaties to which the Republic of

Moldova and the foreign soliciting state are parties to or in mutuality conditions confirmed according to the provisions of art.536, par.(2).

(2) The request for the performance of the rogatory commission shall be sent by the Prosecutor General to the criminal prosecution body or, upon the case, by the Minister of Justice to the court at the place where the solicited procedural action will be taken.

(3) The request on hearing the witness or the expert shall be executed in all the cases by the instruction judge.

(4) At the execution of the rogatory commission the provisions of the present Code shall be applicable, but, upon the request of the soliciting party a special procedure provided by the legislation of the foreign state may be applied, in compliance with the respective international treaty or with the observance of the mutuality conditions if this complies with the domestic legislation and with the international obligations undertaken by the Republic of Moldova.

(5) Representatives of the foreign state or of the international instance may assist at the execution of the rogatory commission, if this is provided by the respective international treaty or by an obligation provided in written by the mutuality conditions. In such a case, upon the request of the soliciting party, the body which has to execute the rogatory commission shall inform the soliciting party on the time, place and term of the rogatory commission's execution in order for the interested party to be able to assist.

(6) If the address of the person, with respect to whom the rogatory commission is solicited, is indicated mistakenly, the body charged with execution shall take the respective measures for finding the address. If the finding of the address is not possible, the soliciting party shall be announced.

(7) If the rogatory commission may not be performed, the received documents shall be restituted to the soliciting party through the mediation of the institution from which the documents have been received, with the indication of the reasons which have impeded the execution. The request on the rogatory commission and the attached documents shall be restituted in the refusal cases as well, on the grounds provided by the article 534.

Section 2
Extradition

Article 541. Addressing of an extradition request

(1) The Republic of Moldova may address to a foreign state with a request on extradition of a person who is being prosecuted for crimes for which the criminal law provides the minimal punishment of 1 year of imprisonment or another severer punishment or the person regarding whom there was adopted a sentence of conviction to an imprisonment punishment for the duration of at least 6 months in case of extradition for execution, if the international treaties do not provide otherwise.

(2) Extradition request shall be made on the basis of the international treaty to which the Republic of Moldova and the solicited state are parties to or on the grounds of written obligations undertaken in mutuality conditions.

(3) In case of necessity to request the extradition of the non-convicted person in the conditions provided by par.(1) and (2), all the necessary materials shall be submitted to the Prosecutor General for settling the issues related to submission of the extradition request to the respective institution of the foreign state. The issue of submission of the extradition request of the convicted persons shall be handled by the Ministry of Justice.

(4) The extradition request shall include:

1) the name and address of the soliciting institution;

2) the name of the solicited institution;

3) the international treaty or agreement of mutuality based on which extradition is requested;

4) the last name, first name and patronymic of the person whose extradition is requested, date and place of birth, information on the nationality, domicile, place to be found as well as other data on

the person, as well as, to the extent it is possible, the description of the exterior aspect, picture and other materials which may help identify the person;

5) a description of the perpetration committed by the person whose extradition is being requested, the legal qualification of the committed perpetration, information on the damage caused by the crime, as well as the text of the national law which provides the criminal liability for this perpetration and the obligatory indication of the sanction;

6) an information on the place and date of adoption of the sentence into force or of the ordinance on bringing forward charges with the attached authenticated copies from the originals of these documents.

(5) The conclusion of the instruction judge or, upon the case, of the court regarding the authorization of the pretrial arrest shall be attached to the extradition request. Also, data on the unexecuted part of the punishment, besides the copy of the sentence into force, shall be attached to the request on extradition of the convicted person.

Article 542. Extradition documents

(1) Extradition shall be granted only if, as a result of the perpetration commission, the arrest warrant or another document of an appropriate legal force, or the enforceable decision of the competent authority of the soliciting state which orders the detention, as well as the description of the applicable legislation are provided. If extradition is requested for the prosecution of several crimes, instead of the arrest warrant or another document of an appropriate legal force, another document, issued by the competent authorities of the soliciting state, characterizing the charges brought to the person whose extradition is requested shall be sufficient.

(2) If there are special circumstances justifying the verification of the existence of reasonable grounds to believe that the accused has committed the crime he is charged with, the extradition shall be granted only upon the presentation of evidence confirming the probability of the crime commission.

(3) Extradition for the purpose of executing a sentence or another punishment established by a third state, shall be granted only upon the provision of:

1) the enforceable decision of imprisonment and a document from the third state containing the consent of the state that has taken over the execution to execute it;

2) a document from the behalf of the competent authority of the state which has taken over the execution, confirming that the sentence or another sanction is enforceable on the territory of that state.

3) applicable legal provisions.

Article 543. Specialty rule

(1) The person who was extradited by a foreign state may not be held criminally liable and convicted, as well as transmitted to a third state for to be punished for the crime committed by him before the extradition, for which he was not extradited, if regarding this case the consent of the foreign state that extradited him is missing.

(2) Extradition shall be granted only if the following guarantees are secured:

1) the person will not be punished in the soliciting state without the consent of the Republic of Moldova for a reason that appeared before his handing, except for the crimes for which extradition is granted, and his personal liberty will not be limited, and he will not be persecuted through measures which can be taken in his absence;

2) the person will not be handed, transferred or deported to a third state without the consent of the Republic of Moldova; as well as

3) the person will be able to leave the territory of the soliciting state after the closure of the procedure for which his extradition was granted.

(3) The soliciting state may waive the observance of the specialty rule only if:

1) the Republic of Moldova expressed its approval to carry out the criminal prosecution or to enforce the sentence execution or another sanction regarding a facultative crime or to hand, transfer or deport to another state;

2) the person did not leave the territory of the soliciting state for 45 days since the closure of the procedure for which his extradition was granted, although he had the possibility to do so;

3) the person, after leaving the territory of the soliciting state, returned or was sent back by a third state;

4) simplified extradition is granted.

(4) The provisions of this article shall not apply to cases of crimes committed by the extradited person after his extradition.

Article 544. Execution of the extradition request of the persons who are on the territory of the Republic of Moldova

(1) The foreign citizen or stateless person who is criminally prosecuted or who was convicted in a foreign state for the commission of a perpetration which is criminally punishable in that state may be extradited to this foreign state at the request of the competent authorities, for the purpose of prosecution or execution of a sentence delivered for a committed perpetration or for the purpose of delivering a new sentence.

(2) The foreign citizen or stateless person who was convicted in a foreign state for the commission of a criminally punishable perpetration in that state may be extradited to the foreign state, that has taken over the execution, at the request of the competent authorities of the state, for the purpose of execution of a sentence delivered for a committed perpetration or for the purpose of delivering a new sentence.

(3) Extradition for the purpose of criminal prosecution shall be granted only if the perpetration is punishable under the legislation of the Republic of Moldova and the maximum punishment is of at least one year imprisonment or if, after a similar inversion of things, the perpetration would be, under the legislation of the Republic of Moldova, punishable in such a way.

(4) Extradition for the purpose of execution of the sentence shall be granted only if the extradition under par.(3) were admissible and if an imprisonment punishment is to be executed. Extradition shall be granted if the term of detention which is to be executed or the cumulating of the detention terms which are to be executed, is of at least 6 months, if the international treaty does not provide otherwise.

(5) If the extradition of a person is requested in concurrence by several states, either for the same perpetration or even for different ones, the Republic of Moldova shall decide the extradition, taking into account all the circumstances, including the seriousness and place of commission of crimes, the nationality of the solicited person and the possibility of a further extradition to another state.

(6) If the General Prosecutor or, upon the case, the Minister of Justice considers that the solicited person by the foreign state or international instance may not be extradited , he refuses extradition through a motivated decision and if he considers that the person may be extradited he makes submits a request to the court from the territorial jurisdiction where the Ministry of Justice is located, to which he attaches the request and the documents of the soliciting state.

(7) The court shall solve the request on extradition with the participation of the prosecutor, of the person whose extradition is requested and his counsel. If the person who is solicited for extradition does not have his chosen counsel, he shall be provided with an *ex officio* counsel. The request on extradition of an arrested person shall be solved in emergency and priority order. Examination of the request on extradition shall be made according to the provisions of the articles 471-472, which shall be applied accordingly. The court order, which has become final, shall be sent to the Prosecutor General or to the Minister of Justice for execution or for the information of the soliciting state.

Article 545. Simplified extradition procedure

(1) At the request of the competent authority of the foreign state regarding the extradition or provisional arrest of a person for extradition, there may be granted the extradition of a foreign citizen or stateless person, in whose respect an arrest warrant was issued for extradition, without following the formal extradition procedure, if the person agrees to such a simplified extradition and his consent is confirmed by a court.

(2) The requirements of art.543 shall not be invoked if the foreign citizen or stateless person, after he was informed of his rights, expressly waives his right to application of the specialty rule and this fact is confirmed by a court.

(3) The instruction judge from the competent court shall inform the foreign citizen or the stateless person of the possibility to apply the simplified extradition procedure and its legal consequences and that he shall consign his statement.

(4) The consent given under par.(1) or (2) may not be invoked if it was confirmed by the court.

(5) The consent of the solicited person, provided under par.(1), shall be given in the presence of the counsel after the instruction judge has examined the identification data of this person, informing him of his right to a complete procedure provided by the present section.

Article 546. Refusal of extradition

(1) The Republic of Moldova shall not extradite its own citizens and the persons it has granted the right to asylum.

(2) Extradition will be also refused, if:

1) the crime had been committed on the territory of the Republic of Moldova;

2) regarding the respective person a domestic court or a court of a third state had already delivered a sentence of conviction, acquittal or dismissal of the criminal trial for the crime for which extradition is requested, or if the criminal prosecution body had issued an ordinance on the dismissal of the criminal proceeding or if the national bodies are prosecuting the commission of this perpetration;

3) the term of limitations for holding criminally liable for that kind of crime has expired, according to the national legislation or, in case of amnesty act's intervention;

4) according to the law, criminal prosecution may be started only on the basis of the preliminary complaint of the victim and such a complaint is missing;

5) the crime for which extradition of the person is solicited is considered by the domestic law as a political or connected to it;

6) The Prosecutor General, the Minister of Justice or the court examining the extradition case have well-founded reasons to believe that:

a) the request on extradition has been lodged with the aim to prosecute or punish a person for race, religion, sex, nationality, ethnical origins or political opinions considerations;

b) the situation of this person risks to worsen for one of the reasons mentioned at the letter a);

c) in case that the person will be extradited he will be subjected to torture, inhuman or degrading treatment in the soliciting state.

7) the requested person was granted the status of political refugee;

8) the state soliciting extradition does ensure mutuality in the field of extradition.

(3) If the deed for which extradition is requested is punished by the legislation of the soliciting state with capital punishment, extradition of the person may be refused, unless the soliciting party gives enough guaranties that the capital punishment will not be executed regarding the extradited person.

Article 547. Arrest of the person for extradition

(1) After receiving the request on extradition the Prosecutor General or, upon the case, the Minister of Justice will take immediately measures under the conditions of the present Code for the arrest of the person whose extradition is requested.

(2) In case of emergency, the person whose arrest is requested may be arrested based on an arrest warrant issued for a term of 18 days, but this term in any case shall not exceed 45 days, and before reception of the extradition request if the foreign state or the international court have solicited the arrest and if the solicitation contains data on the arrest warrant or on the adopted final judgment regarding this person and a the assurance of the fact that the extradition request will be sent afterwards. In the solicitation there shall be indicated the crime for which extradition will be requested, the date and place where it had been committed and, as much as possible, the distinctive features of the searched person. Solicitation of arrest may be done through mail, telegraph, telex, fax or through any mean which conveys written messages. The soliciting authority shall be briefed in the shortest time possible about the course given to its solicitation.
(3) The person arrested under the conditions of the par.(2) shall be released if within 18 days from his arrest the court which has to decide on the admissibility of the person's arrest does not receive the extradition request and the necessary respective documents. This term may be prolonged upon the solicitation of the foreign state or international court, unless it is not going beyond 40 days from the moment of arrest. Given all this, the provisional release is possible at anytime, under the condition that other measures for avoiding the person's absconding from prosecution may be applied with respect to the solicited person.
(4) The decision regarding the extradition admissibility shall be motivated. The Prosecutor General, the person whose extradition is requested and his counsel shall be sent a copy of the respective decision.
(5) The release of the arrested person under the conditions of this article shall not obstacle a new arrest and extradition, if a request on extradition is received later.

Article 548. Postponing of extradition and conditional extradition
(1) If the person, whose extradition is asked in the Republic of Moldova is charged during a criminal prosecution, trial or if this person had been convicted for another crime than the one for which extradition is requested, the execution of extradition may be postponed until the termination of the criminal proceeding or until the complete execution of the punishment established by the national court, or until the final release before the expiration of the punishment term.
(2) If postponing of extradition may entail the expiration of the criminal action's term of limitation or may cause considerable damage for the finding of the facts, the person may be extradited temporarily on the basis of a motivated request, under the conditions agreed on in common with the soliciting party.
(3) The temporarily extradited person has to be retroceded immediately after the procedural actions for which he was extradited were taken.

Article 549. Handing of the extradited person
(1) If the extradition of a person is accepted by the court, after its judgment comes into force, the Prosecutor General or, upon the case, the Minister of Justice shall brief the soliciting state or the international court on the date and place of the extradited person's handing, as well as on the duration of the executed detention in view of his extradition.
(2) If the soliciting party does not receive the extradited person at the established date for his handing and if postponing was not solicited, the person may be set free at the expiration of the 15 days term from this date and shall be anyway set free after the expiration of the 30 days term calculated from the established date of handing, if the bilateral treaty does not provide for more favorable conditions for this person.
(3) Extradition of the person for the same perpetration after the expiration of the terms mentioned in this article may be refused.

Article 550. Transmission of objects
(1) At the request of the soliciting party, according to the provisions of this chapter, there may be apprehended and transmitted, as far as the national legislation allows:

1) objects which may be relevant as evidence in the criminal case for which extradition was requested; as well as

2) proceeds, resulted from the crime for which extradition is requested and the objects in the possession of the person at the moment of arrest or which had been discovered afterwards.

(2) Objects and proceeds provided by the par.(1) may be transmitted even if extradition of the person may not take place due to his decease or absconding from trial.

(3) If the claimed objects are necessary as evidence in another national criminal case, their transmission may be postponed until the termination of the respective trial or these may be handed temporarily under the condition of being later restituted.

(4) The rights over these objects or valuables shall be reserved to the Republic of Moldova and they will be transmitted to the soliciting party, under the condition of termination of the criminal trial as soon as possible and without expenses, being restituted afterwards.

Section 3
Transfer of the convicted persons

Article 551. Grounds for transfer of the convicted person

(1) The transfer of the convicted persons shall be made on the basis of an international treaty to which the Republic of Moldova and the respective state are parties to or on the basis of mutuality conditions fixed in a written agreement between the Minister of Justice of the Republic of Moldova and the respective institution from the foreign state.

(2) The grounds for the transfer of the convicted persons may be:

1) the application of the person convicted to imprisonment by a court from the Republic of Moldova to be transferred for the execution of his sentence in another state;

2) the application of the person convicted to imprisonment by a court from another state to be transferred for the execution of his sentence in the Republic of Moldova;

3) the application of transfer lodged either by the state of conviction or by the state of execution.

Article 552. Conditions of transfer

(1) The transfer may take place in the following conditions:

1) the convicted has to be the citizen of the state of execution or with permanent domicile on its territory;

2) the conviction sentence has to be final;

3) the duration of the liberty deprivation punishment which the convicted has still to execute has to be of at least 6 months from the date when the transfer application was received or to be undetermined;

4) the transfer is made with the consent of the convict, and if due to his age, physical or mental condition of the convict, one of the two states considers the transfer necessary – by the convict's legal representative;

5) the perpetration for which the person was convicted represents a crime according to the Criminal Code of the country of nationality of the convicted;

6) both states - parties have agreed on the transfer;

(2) The consent of the person concerning whom the sentence was delivered is not required for the transfer of the sentence execution if the person concerning whom the sentence was delivered:

1) has fled from the state were the sentence was delivered;

2) is the subject of an expulsion or deportation order.

(3) In exceptional cases the parties may agree on transfer even if the duration of punishment which has still to be executed is less than 6 months.

Article 553. Communication of information

(1) Each convict to whom the provisions of the present chapter are applicable shall be informed by the competent authority of the state of conviction about his right to obtain his transfer for the execution of punishment in the state of his nationality.
(2) If the convicted has expressed to the state of conviction his wish of being transferred, this state shall inform the state of nationality of the convicted about this as soon as possible after the court's decision has become final.
(3) The information shall contain:
1) the name, date and place of birth of the convict and, if possible, the address from his state of nationality;
2) the description of the committed perpetration which had led to conviction;
3) the nature, duration and date when the execution of the sentence has started.
(4) The convicted shall be briefed in written about any decision on the application of transfer taken by one of the two states.

Article 554. Application of transfer, additional documents and the answer to them
(1) The application on transfer shall be lodged in written.
(2) The application shall be attached:
1) an act which confirms that the convict is the citizen of the state of execution or has his domicile there;
2) the written statement of the convict regarding his consent for transfer;
3) a certified copy of the conviction sentence with the mention that it is final, as well the copy of the texts from the law which were applied in the respective case;
4) the certificate indicating the duration of the already executed punishment and of the pretrial arrest, as well as the duration of the punishment which still has to be executed.
(3) The application shall be addressed by the Minister of Justice of the soliciting state to the Minister of Justice of the solicited state.
(4) The state of execution, by a court judgment adopted in conditions of art.551, shall mention in its answer whether it accepts or not the transfer of the convicted person and in case of acceptance it shall to attach to the answer a copy of its lawful dispositions from which it is clear that the perpetration which led to the person's conviction constitute a criminal offence, if it had happened on its territory.
(5) If one of the two states considers necessary, additional documents or information may be requested.

Article 555. Consent for transfer
(1) The convict has to give his consent for voluntary transfer, being fully aware of the legal consequences resulting from this according to the procedural law of the state of conviction.
(2) The state of conviction shall give to the state of execution the possibility to check whether the consent for transfer was given with the observance of the conditions provided by the par.(1) of this article.

Article 556. Solution of the transfer application
(1) If the transfer is accepted, the transfer application of the citizens of the Republic of Moldova convicted in another country shall be transmitted by the Minister of Justice together with his request for solution to the court of the same level as the court from the state of conviction, the judgment of which is to be executed. If the judgment of the state of conviction is adopted by a court of the same level, the request of the Minister of Justice and the transfer application shall be addressed to the court from the territorial jurisdiction of the Ministry of Justice, and if the court of the state of conviction is of the court of appeal’s level - the respective application and request shall be addressed to the court of appeal of Chisinau municipality.
(2) The request of the Minister of Justice shall be solved by a judge in a court hearing *in absentia* of the convicted person according to the provisions of the present Code for the solution of the issues

related to the execution of punishment, but with the participation of the representative of the Minister of Justice and of the convict's defense counsel. If the convicted does not have a chosen defense counsel, his defense counsel shall be appointed *ex officio*.

(3) While solving the request on the transfer, the court shall verify whether the conditions for transfer provided by this chapter, as well as the ones provided by the international treaty or mutuality agreement on the basis of which the transfer is requested are observed.

(4) After having solved the request, the court shall adopts an order, in which it mentions:

1) the name of the foreign state's court, date and place of the sentence adoption;

2) information on the last domicile in the Republic of Moldova of the convict and on his occupation;

3) the legal qualification of the crime for which the person had been convicted;

4) the criminal law of the Republic of Moldova which provides liability for a similar crime to that one committed by the convict;

5) its judgment regarding the acceptance or, if the case, rejection of the requested transfer;

6) in case of acceptance of the requested transfer, the court shall indicate which execution procedure it will choose: continuation of the sentence execution or the amendment of the conviction.

(5) The copy of the court's judgment shall be transmitted to Ministry of Justice in order to be forwarded to the state of conviction and to the convict.

Article 557. Continuation of the punishment execution and the amendment of the conviction

(1) If the state of conviction accepts the transfer of the convict, the court shall decide on the following:

1) if by the decision taken under the conditions of art.551, the procedure of the continuation of the sentence execution was indicated, the court shall set the term of the unexecuted punishment which is to be executed, the type of the penitentiary where the punishment shall be executed;

2) if by the decision taken under the conditions of art.551, the procedure of the amendment of the conviction was indicated, the court shall indicate:

a) the legal qualification of the crime for which the person was convicted;

b) the criminal law of the Republic of Moldova which provides liability for a similar crime to one committed by the convict;

c) the category and term of the main and complementary punishments established, the term of the punishment to be executed in the Republic of Moldova, the type of the penitentiary and the manner of compensation of the damage in case of a civil action.

(2) In case that the type or duration of the delivered punishment in the state of conviction does not comply with the criminal law of the Republic of Moldova, the court, by its judgment, may adapt it to the punishment provided by the domestic law by crimes of the same type. This punishment shall be as adequate as possible to the imposed punishment by the judgment of the state of conviction. By its nature or duration, this punishment may neither be severer than the one delivered in the state of conviction, nor to exceed the maximum limit provided by the domestic law.

(3) The part of the punishment that was executed in the state of conviction shall be deduced from the duration of the punishment established by the national court, if the punishments are of the same type. If the national court establishes another type of punishment than the imposed by the judgment of the state of conviction, upon the determination of its type and duration, consideration shall be given to part of the executed punishment.

(4) The complementary punishment delivered by the judgment delivered by the state of conviction shall be executed to the extent it is provided by the law of the republic of Moldova and was not executed in the state of conviction.

(5) The court order regarding the enforcement of the sentence execution may be challenged under the conditions of art.472.

(6) The copy of the court order regarding the enforcement of the sentence execution that came into force shall be transmitted by the Minister of Justice of the Republic of Moldova to the Minister of Justice of the state of conviction.
(7) In case of cassation or amendment of conviction of the state of conviction, as well as in case of application of an amnesty or pardon act, adopted by the state of conviction regarding the person executing the punishment in the Republic of Moldova, the issue of execution of the revised sentence, as well as of the application of an amnesty or pardon act, shall be settled in the conditions of the present article.

Section 4
Acknowledgement of criminal judgments of the foreign courts

Article 558. Cases and conditions of acknowledgement of criminal judgements
(1) Final judgments delivered by foreign courts as well as those, which, by their nature may produce, according to the criminal law of the Republic of Moldova, legal effects, may be acknowledged by the national court upon the request of the Minister of Justice or of the Prosecutor General, based on the international treaty of mutuality agreement.
(2) A criminal judgment delivered by a foreign state's court may be acknowledged only if the following conditions are respected:
1) the decision was delivered by a competent court;
2) the decision does not contravene the public order of the Republic of Moldova;
3) the decision may produce legal effects in the country according to the domestic criminal law.

Article 559. Procedure of acknowledgement of judgements delivered by foreign courts
(1) The request of the Minister of Justice or of the Prosecutor General on the acknowledgement of the foreign court's judgment shall be motivated and solved by the court of the same level with the court from the state of conviction, the judgment of which shall be acknowledged. If the judgment of the state of conviction is adopted by a court of the same level, the request of the Minister of Justice or of the Prosecutor General shall be solved by the court from the territorial jurisdiction of the Ministry of Justice, and if the court of the state of conviction is of the court of appeal's level - the request shall be solved by the court of appeals from the Chisinau municipality.
(2) The representative of the Minister of Justice or, upon the case, of the Prosecutor General, the convict and his defense counsel shall participate in the solution of the request.
(3) The decision of the foreign state together with its accompanying documents translated in the state official language and in a language understood by the convict shall be communicated to the convict.
(4) The court shall hear the opinions of those present and, on the basis of the materials attached to the request, if it finds that the requirements of the law are met, shall acknowledge the judgment given by a foreign court. In case the punishment requested by the foreign court was not executed or was executed only partly, the court shall substitute the non-executed punishment or the rest of the punishment with a respective punishment according to the provisions of the art.557, par.(1), item.1).
(5) The execution of the civil dispositions from a foreign judgment given in a criminal cases shall be made according to the rules provided for the execution of the foreign civil judgments.

Decision of the Supreme Court of Justice no. 40 of 27 December 1999 (excerpts)

On the practice of enforcement by the courts of the legal provisions regarding property confiscation

6. Proceeds are goods obtained by performing an action which represent the material element of the committed offence.

Proceeds represent any economic gain obtained as a result of committing a criminal offence. The economic gain can consists in goods of any nature, corporeal or incorporeal, movable or immovable, as well as the legal acts or documents which confirms a title *(for example: title deed)* or a right over a property.

Proceeds can be classified in several categories:

- Goods produced by committing a crime which consists of goods which did not exist before committing the crime, being obtained by criminal activity (for example: coins, money, documents, securities, false titles of credit, production of arms, substances with strong effect or toxic substances, counterfeit food or drinks, etc.).
- Goods obtained by means of a crime which had existed before the committing the crime and which came, directly or indirectly, into the possession of the convicted person, by committing the crime. Usually, goods obtained by means of a crime are returned to the damaged party. In case that the owner of these goods is unknown or he/she died without successors or, based on other considerations, there are no declarations regarding these goods, proceeds are confiscable.
- Proceeds are considered also goods which have obtained, by committing the crime, a *de facto* quality or a position which could not be obtained otherwise than through illegal ways (for example: goods entered into the country by smuggling, medicines (drugs) containing an increased dose of stupefying substances which are prepared according to an abusive medical prescription, etc).
- Sums obtained by trafficking of goods mentioned at this point, in case they are proved, can be considered also proceeds and can be confiscated.

Goods or sums which represent the equivalent value of the goods produced illicitly cannot be confiscated, because these goods have been created by a social work performed by the perpetrator. Thus, there can not be confiscated goods resulting from the illegal practice of the entrepreneurial activity, because these goods are the result of the work performed by the perpetrator and not of the culpable omission to obtain the necessary authorization, or to get a fiscal code, etc. Such goods can be confiscated only in cases in which the law prohibits producing such goods or they present a social risk, danger, threat ….

7. The profit obtained using the proceeds is goods which took the place of the goods obtained initially by committing a crime (for example: money obtained by selling the stolen goods, goods purchased by money obtained by selling the proceeds, using illicitly obtained materials at the houses and villas building, etc.), which are as like illicit as the goods and the money from which they result and these goods follow to be confiscated. Thus, the following can be confiscated: the houses, the automobiles and other goods which have been purchased using the proceeds.

<u>Extract from the minutes of the meeting from the Ministry of Finance of the Republic of Moldova</u>

4 December 2001

nr. 28/6

About the execution of the necessary measures, seizure of the financial sources of the persons suspected in the organisation of terrorist attack

The College of the Ministry of Finance , examining the information received by the Ministry of Foreign Affairs on prevention and combating terrorism and the execution of the necessary measures on seizing the financial resources of the persons suspected in the organisation of the terrorist acts mentioned that in the framework of the Ministry of Finance, convened the corresponding departments for the presentation of the information linked with the transfer of the financial sources aiming to finance terrorist operations or/and investment of the sources deriving from terrorist activities.
In these regard was established that until now was not recorded any transfer effectuated by the public institution to a terrorist organisation or persons, which are indicated in the information received from the UN Council.

The College of the Ministry of Finance decides:
1. to take as an act the information presented by the Vice Minister of Finance Mrs. Mariana Durleşteanu regarding to the examination of the information distributed by the Ministry of Foreign Affairs on prevention and combating of international terrorism as well as the execution of the necessary measures on seizing the financial resources of the persons suspected in organisation of the terrorism activity.
2. that the Ministry of Finance will effectuate the permanent supervisory of the non permission of the effectuation of the transfers, managed by the Government of the Republic of Moldova for the financing of the terrorist activity , terrorist organisation or persons suspected in organising terrorist activity.
3. Mrs. L. Casenco, Director of the State Treasury Departement will monitor the transfer effectuated by the public institution in order to not permit the transfer of the budget sources to the organisation suspected in terrorist activity.
4. Mr. M. Pop, head of the State Principal Fiscal Inspectorate, Mr. I. Bolbocianu, General director of the Control and Revision department – inform the Ministry of Finance if will find out any transactions linked with terrorist activity or persons suspected in the organisation of the terrorist acts.
4. To delegate the responsible persons for the execution of the supervisory of the mentioned decision the Viceminister of Finance – Mrs. Mariana Durleşteanu.
The president of the College
Minister of Finance
Mihail Manoli.

Law on licensing some types of activities (No. 451-XV of 30.07.2001 as amended)

Official Monitor of the Republic of Moldova No. 108-109/836 of September 6, 2001

The Parliament adopts this organic law.

Article 1. Application and Scope of this Law
(1) This Law determines legal, organizational, and economic framework for licensing some types of activities, establishes types of activities subject to licensing, and aims at ensuring state control over compliance with requirements and conditions fulfillment of which is necessary for performing such types of activities.
(2) The manner of licensing established hereby shall not apply to licensing the activities of financial institutions, professional participants in the securities market, in the energy sector, telecommunications, informatics, television or radio, which are licensed in compliance with laws governing relations in those areas.

Article 2. Main notions
For the purposes of this Law the following main notions shall be used:

License – an official document issued by the licensing authority, certifying the right of the licensee to engage in the type of activity specified therein during an established period in compliance with the license conditions on a compulsory basis;
Applicant – a natural person or legal entity duly registered in the Republic of Moldova as an enterprise, regardless of its ownership form or organizational or legal form, which filed with the licensing authority an application and necessary documents in order to get a license;
Licensee - an enterprise, organization, natural person who obtained a license;
License conditions – totality of set requirements and conditions compliance with which is compulsory for any licensee when carrying out a licensed activity;
Licensing – totality of actions related to issuance, re-registration, suspension, renewal, and revocation of
licenses, issuance of license copies and counterparts, maintenance of license files and license registries, control over compliance with the license conditions by the licensees, and issuance of instructions to eliminate violations of license conditions;
License registry – aggregate data about issued, re-registered, suspended, renewed, and revoked licenses; **License suspension** – depriving a licensee of the right to engage in a certain type of activity for a certain period;
License revocation – depriving a licensee of the right to engage in a certain type of activity.
(Art. 2 as amended by Law # 1179-XV of 28.06.2002)

Article 3. Underlying Licensing Principles
The underlying licensing principles are as follows:
a) ensuring equal rights and legitimate interests of all enterprises, organizations, natural persons;
b) applicant's confirmation of its/his/her ability to engage in a certain type of activity on its/his/her own responsibility;
c) protection of rights, legitimate interests, and public health, environmental protection, and ensuring national security;
d) establishing a uniform manner of licensing in the territory of the Republic of Moldova;
e) transparency of licensing.
(Art. 2 as amended by Law # 1179-XV of 28.06.2002)

Article 4. Criteria for Determining Licensed Types of Activities
Licensed activities include those types of activities which, if carried out improperly, may prejudice rights, legitimate interests, or health of individuals, environment, or national security, and which cannot be regulated other than through licensing.

Article 5. Participants in the Licensing Process
The following shall be the licensing process participants:
a) Licensing Chamber
b) National Bank of Moldova
c) National Securities Commission
d) National Agency for Energy Sector Regulation
e) National Agency for Telecommunications and Informatics Regulation
f) Television and Radio Steering Council
g) local public authorities, empowered authority of the Executive Committee of Gagauzia
h) central relevant public authorities
i) applicants
j) licensees.
(Art. 5 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 5 as amended by Law # 203-XV of 15.05.03, in effect 06.06.03)
(Art. 5 as amended by Law # 1179-XV of 28.06.2002)

Article 6. Licensing Authorities

(1) The Licensing Chamber is entitled to license types of activities specified in Article 8(1), except items (43)-(55).

(2) Local public authorities of the second level, those of the city of Balti and the empowered authority of the Executive Committee of Gagauzia are entitled to license types of activities specified in items (53)-(55) of Article 8(1). They shall carry out the licensing in compliance with this Law based on the regulations approved by appropriate representative body of the local government.

(Art. 6 as amended by Law # 262-XVI of 27.10.05, in effect 25.11.05)
(Art. 6 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 6 as amended by Law # 250-XV of 19.06.03, in effect 18.07.03)
(Art. 6 as amended by Law # 203-XV of 15.05.03, in effect 06.06.03)
(Art. 6 as amended by Law # 1265-XV of 19.07.2002))
(Art. 6 as amended by Law # 1179-XV of 28.06.2002)

Article 7. Licensing Chamber

(1) The Licensing Chamber (hereinafter "Chamber") shall have the status of a legal entity and a stamp with the national coat of arms and its name. The Chamber shall carry out its activity based on the regulations approved by the Government.

(2) The Chamber shall have the following powers:

a) pursue the government policy and enforce licensing legislation;

b) issue, re-register, suspend, renew, revoke, invalidate licenses, issue copies and counterparts of licenses;

c) jointly with central sectoral public authorities and in coordination with the Ministry of Economy
establish license conditions for specific types of activities and prepare a list of additional documents to be submitted by the applicant certifying its/his/her ability to engage in a specific type of activity;

d) organize control over compliance with license conditions by the licensees;

e) orders and keeps the license forms, keeps the record of the forms, distributes them to the licensing authorities, specified under art.5 item.b)-f) and controls their utilisation

f) issue instructions on elimination of violations of license conditions;

g) maintain license files and a uniform license registry;

h) generalize licensing experience and make proposals to improve it.

(3) Decisions of the Chamber may be appealed in court.

(Art. 6 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 5 as amended by Law # 1179-XV of 28.06.2002)

Article 8. Types of Activities Subject to Licensing

(1) The following types of activities shall be subject to licensing:

1) audit activities;

2) activities related to the evaluation of real estate and/or of merchandise expertise evaluation

3) stock exchange activity

4) insurance activities; activity relayed to the administration of the assets of the non-governmental pensions funds;

5) activity of associations of savings and loans of the citizens;

6) activity related to precious metals and gems; pawnshops functioning

7) activities related to gambling: organization and carrying out lotteries, running casinos, operating cash slot machines, sweep-stakes during sports competitions;

8) import of ethyl alcohol, import and/or wholesale of imported alcohol products and beer;

9) production of ethyl alcohol, alcohol products, and beer and/or storage and wholesale of ethyl alcohol, alcohol products, and beer;

10) import of tobacco products; import and/or processing of tobacco; production of tobacco products and/or wholesale of tobacco products and of fermented tobacco;
11) designing of fruit-growing, baccae and wine-growing plantations, production and/or wholesale of planting materials and seeds;
12) production, storage and marketing of biological breeding material (animals, semen material, embryos, ovules, fish spaun larvae, bird and silkworms eggs) designed for reproduction;
13) veterinary and pharmaceutical activities and/or veterinary care (except activity carried out by the
state veterinary service);
14) import and/or marketing of products designed for phyto-sanitarian purposes and crop growth stimulators;
15) auto transportation of passengers for public purposes; international auto transportation of merchandise;
16) activity related to the design of all types of structures, town planning and/or engineering facilities and networks, reconstruction and restoration work;
17) construction of buildings and/or engineering facilities and networks, reconstructions, reinforcements, restorations;
18) extraction of mineral deposits and/or production and bottling of mineral and natural drinking water
19) drilling works (except technical surveying in construction);
20) topographic, geodesic, and cartographic activities;
21)collection, storage, processing, marketing, export of remnants and wastes of ferrous and non-ferrous metals, of used storage batteries, inclusively processed;
22) activity related to the import, export, utilization, transportation, maintenance and storage of sources of ionizing radiations and of radioactive materials (inclusively of radioactive wastes)and to the measuring of the ionizing radiation fields;
23) import and/or producing, storage, wholesale marketing of toxic chemical substances and materials, of chemical housekeeping materials and products; production, import and/or export, repeated export of substances harmful to the ozone stratus, as well as of equipment and products containing such substances;
24) manufacturing and destruction of seals;
25)private detective or security ensuring activity;
26)assembling and/or adjusting, technical assistance of automated systems of fire signalization and extinction, as well buildings smoke protection and of fire alert;
27) import and/or export, marketing of weapons and munitions, repairs of organic, sports and/or hunting, target shooting, decoration, collection and self-defense guns;
28) import, storage and/or use of explosives (inclusively pyrotechnical materials), carrying out explosive works;
29) import, export, elaboration, production and marketing of cryptographic and technical means of information protection, of special technical devices for hidden information gathering, service rendering in the field of cryptographic and technical protection of information (except for the activity carried out by public authorities empowered with this right by law);
30) activity related to insolvency administration;
31) pharmaceutical activity, including with use of narcotics and/or psychotropic remedies, carried out by private pharmaceutical enterprises and institutions; import and/or production of perfumery and cosmetics products;
32)production, marketing, technical assistance, reparation and verification of medical technique and optics products;
33) medical care provided by private medico-sanitary institutions;
34) activity in the area of genetics, microbiology and activities included in risk classes III and IV, carried put with genetically modified organisms;
35) employment of citizens in the country and/or abroad;

36) tourism activity;
37) activities of private educational institutions of all levels, stages, and forms of training; complementary education (extra-curriculum) and/or for adults, except for those financed from the state budget and local budgets;
38) activity of financial institutions and of currency exchange units;
39) activities of professional participants in the securities market;
40)import and/or wholesale or retail trade in gasoline, diesel fuel, or liquefied gas;
41) production and/or supply, transmission, and distribution of electric power;
42) supply and/or transportation and distribution of natural gas;
43) rendering local and/or long-distance and/or international fixed telephone services;
44) providing cellular and/or satellite mobile telephone services;
45) informatics service rendering;
46) construction and/or maintenance, operation, and creation of television and radio stations and cable networks;
47) activity in the area of television and radio broadcasting;
48) retail trade in alcoholic beverages and/or in beer;
49)retail trade in tobacco products;
50) grain storage activity, involving the issuance of grain storage certificates;

(2) License for the activity specified under par. (1) item 21) is issued according to the Law #787-XIII of March, 26, 1996 on secondary material resources.
(3) Types of activities not included in paragraph (1) shall be carried out without a license.
(4) Licenses for other types of activities may only be introduced by introducing amendments and additions to the list of activities subject to licensing as set in paragraph (1).

(Art. 8 as amended by Law # 34-XVI of 24.02.06, in effect 25.11.05)
(Art. 8 as amended by Law # 154-XVI of 21.07.05, in effect 01.01.06)
(Art. 8 as amended by Law # 262-XVI of 27.10.05, in effect 25.11.05)
(Art. 8 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 8 as amended by Law # 87-XV of 25.03.04, in effect 23.04.04)
(Art. 8 as amended by Law # 333-XV of 24.07.03, in effect 19.09.03)
(Art. 8 as amended by Law # 250-XV of 19.06.03, in effect 18.07.03)
(Art. 8 as amended by Law # 203-XV of 15.05.03, in effect 06.06.03)
(Art. 8 as amended by Law # 1265-XV of 19.07.2002)
(Art. 8 as amended by Law # 1179-XV of 28.06.2002)
(Art. 8 as amended by Law # 1114-XV of 06.06.2002

Article 9. License Contents

1. License forms are documents subject to strict accounting. The forms designed according to a single sample have accounting serial numbers and through numbers. The license form formats and annexes thereto shall be approved by the Government.
2. The license shall specify the following:
a) name of the licensing authority;
b) license serial number, number, and issue date;
c) licensee's name, organizational and legal form, legal address, enterprise or organization, legal or natural person or the first name, the last name and the address of the licensee natural person;
d) enterprise's state registration date and number, fiscal code or series and number of the identity document, fiscal code of the natural person;
e) type of activity (full or partial) for which the license is issued;
f) license duration;
g) signature of the Chamber head or his/her deputy certified by the seal of such authority.
3. The annex to the license is a constituent part and shall specify all license conditions.
(Art. 9 as amended by Law # 1179-XV of 28.06.2002)

Article 10. Documents Necessary to Obtain a License

(1) In order to obtain a license, an enterprise manager or his/her authorized person or directly the natural person shall file with the Chamber an application in the established format, specifying the following:

a) enterprise's name, organizational and legal form, legal address, residence, fiscal code of the enterprise or of the organization or the name, the surname and the fiscal code of the natural person;

b) type of activity (full or partial) for which the applicant intends to obtain a license;

c) location of branches and other stand-alone divisions of the enterprise or the organization, which will carry out the activity under a license;

d) applicant's confirmation of his/her ability to engage, on his/her responsibility, in a certain type of activity and authenticity of filed documents.

(2) The following shall be attached to the license application:

a) copy of the enterprise's or organization's certificate of state registration or of the identity document of the natural person;

b) additional documents, as per the list stipulated by Article 7 par.(2) it.(c). Original documents or copies with the presentation of originals for verification, shall be submitted. Copies on electronic carriers can support the documents.

(3) No other documents, except those specified by this Article, may be requested.

(4) License application and documents attached thereto shall be accepted based on an inventory, a copy of which specifying documents receipt date and certified by the signature of a responsible person shall be forwarded (handed in) to the applicant..

(5) The license application shall not be considered in the following events:

a) the application was submitted or signed by a person without appropriate authorization;

b) documents are executed in violation of the requirements set forth in this Article.

(6) The applicant shall receive written notice of non-consideration of the license application specifying grounds for it and within the time frame envisioned for license issuance.

(7) Following the elimination of reasons that served as the grounds for non-consideration of the license application, the applicant may submit a new license application, which shall be considered in the established manner.

(Art.10 modified by Law #214- XV of 24.06.04, in effect 06.08.04)

(Art.10 modified by Law #1179- XV of 28.06.2002)

Article 11. Decision to Issue a License or Deny its Issue

(1) The Chamber shall make a decision to issue a license or deny its issue within not more than fifteen business days from the license application and all attached documents filing date.

(2) Written notice of license issuance decision (specifying bank particulars and license fee), or license deny decision shall be forwarded (handed in) to the applicant within not more than three business days from the decision date.

(3) The following shall serve as grounds for denying license issuance:

a) unauthentic data in the documents filed by the applicant;

b) applicant's failure to comply, according to the documents filed, with the license conditions.

(4) If license issuance is denied on the grounds of detected unauthentic data in the documents filed by the applicant, the applicant may file another license application not earlier that three months from the license denial decision date.

(5) If license issuance is denied on the grounds of the applicant's failure to comply with the license conditions, the applicant may file another license application following the elimination of reasons which served as grounds for license issue denial.

Article 12. License Scope

(1) Licenses issued by the Chamber shall be valid in the entire territory of the Republic of Moldova.

(2) Licenses issued by local public authorities shall be valid in the territory within their jurisdiction.

(3) Licenses obtained in the Republic of Moldova shall also be valid outside of the Republic of Moldova in accordance with the international agreements to which the Republic of Moldova is a party.
(4) Licenses issued by licensing authorities from abroad are valid on the territory of the Republic of Moldova also, in accordance with the international agreements to which the Republic of Moldova is a party.
(Art. 12 as amended by Law #1542-XV of 13.12.2002, in effect 31.12.2002)

Article 13. License Term of Validity
(1) License shall be issued for five years with exceptions envisioned by paragraph (2).
(2) For types of activities provided for in Article 8 par.(1) it. 7), 8), 10), 48) and 49) license shall be issued for one year, and for types of activity specified in Article 8 par.(1) it. 9), license shall be issued for three years, with annual specification in its contents of the term for which the license fee was paid, and for types of activity specified in art.8 par.1 it.41 and 42 – for up to 25 years.
(Art. 13 as amended by Law # 262-XVI of 27.10.2005, in effect 25.11.2005)
(Art. 13 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 13 as amended by Law # 454-XV of 14.11.03, in effect 06.02.04)
(Art. 13 as amended by Law # 250-XV of 19.06.03, in effect 18.07.03)
(Art. 13 as amended by Law # 149-XV of 27.03.03, in effect 25.04.03)
(Art. 13 as amended by Law # 1179-XV of 28.06.2002)

Article 14. License Issuance
(1) License shall be executed within three business days from the day of receipt of a document confirming the license fee payment. A mark on the receipt date of the document confirming the license fee payment shall be made on the inventory of documents accepted from the applicant.
(2) If the applicant fails to file the document confirming the license fee payment or fails to request the executed license within thirty days from the date the notice of the license issuance decision was sent (handed in), the Chamber is entitled to repeal the license issuance decision or invalidate such license.
(3) For each branch office and any other stand-alone division of the licensee where the activity will be carried out under the obtained license, authorized copies of the license shall be issued to the licensee. The license copies shall confirm the right of the branch office or any other stand-alone division of the licensee to engage in activities under the obtained license.
(4) If the licensee establishes a new branch office or other stand-alone division that will carry out the activity as per the obtained license, the licensee is obliged to file with the Chamber an application for a license copy and the documents envisioned by Article 10(2)(b).
(5) In the event of liquidation of a branch office or other stand-alone division of the licensee that carried out its activity as per the obtained license, or if they terminate such activity, the licensee is obliged to submit a respective written notice to the Chamber within seven business days from the liquidation or activity termination date. Appropriate amendments shall be introduced in the license registry not later than the next business day following the date of such notice.
(6) If the licensee intends to carry out the type of activity indicated in the license following its expiry, it/he/she is obliged to obtain a new license in the manner established by this law. The new license shall be issued not earlier than the last business day of validity of the previous license.
(7) The licensee may not transfer the license or its copy to another party.

Article 15. License Re-registration
(1) Change in licensee's name or other data contained in the license shall serve as grounds for license reregistration.
(2) If grounds arise to re-register the license, within ten business days the licensee is obliged to file with the Chamber an application for license re-registration along with the license subject to re-

registration and the documents (or their copies, accompanied by originals for verification) confirming such changes.

(3) Within ten business days from the license re-registration application and attached documents filing date, the Chamber shall adopt a decision regarding the re-registration o f the license, and in case of finding violations specified in art.20, par. (1) and art.21, par. (1) and (2) – the decision regarding the suspension of the license or its revocation. The re-registered license is issued on the same form, or, as necessary, on a new form, taking into account the modifications specified in the application; at the same time are issued necessary copied of the license.

(4) The duration of re-registered license may not exceed the duration indicated in the previous license.

(5) In the event of license re-registration, when the re-registered license is issued on a new form, the Chamber shall make a decision to invalidate the previous license and introduce respective amendments to the license registry not later than the following business day after the decision date.

(6) During review of the license re-registration application the licensee may continue its/his/her activity based on the certificate issued by the Chamber.

(7) License which was not re-registered within a due period shall be invalid.

(Art. 15 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)

Article 16. Changes in Data Specified in the Documents Attached to the License Application

(1) The licensee is obliged to notify the Chamber about all changes in data specified in the documents attached to the license application. The notice shall be submitted in writing within ten business days following the change, along with original documents or copies, with the presentation of the originals for verification, confirming such changes.

(2) Based on documents submitted the Chamber may make a decision to suspend the license.

(Art. 16 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)

Article 17. License Counterpart Issuance

(1) License loss or damage shall serve as the grounds for issuing a license counterpart.

(2) If the license is lost, the licensee shall file with the Chamber, within 15 working days, an application for license counterpart.

(3) If the license is damaged and cannot be used, the licensee shall file with the Chamber an application for license counterpart together with the damaged license.

(4) The Chamber is obliged to issue a license counterpart within three business days from the filing date of the license counterpart application.

(5) The validity term of license counterpart may not exceed the validity term specified in the lost or damaged license.

(6) If the license counterpart is issued, the Chamber shall make a decision to invalidate lost or damaged license and enter respective amendments to the license registry not later than the next business day following the decision.

(7) During review of the license counterpart application the licensee may continue its/his/her activity based on the certificate issued by the Chamber.

(Art. 17 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)

Article 18. License Fee

(1) The license fee is Mdl 2,500, with exceptions envisioned by paragraphs (2), (3), (6), (7). License fee for pharmaceutical units in rural locations is Mdl 1,800.

(2) For license applicants registered up to one year before the date of filling the application of license issue, the fee is 50% from the fee specified under par. (1).

(3) The license fee for types of activities provided for in Article 8 par.(1) it. 48) and 49) is Mdl 1200.

(4) The license fee for types of activity specified under art. 8, par. (1), it. 7)-10) and 40) shall be paid annually , according to the annex to the present law.

(5) The license fee for types of activity specified under art. 8, par. (1), it. 7)-10) and 40) shall be paid separately for each component of the type of activity, according to the fees set by the annex to the present law.
(6) The license fee for mobile telephone services and long-distance and/or international fixed telephone services is set by the Government and shall be not less than a cash equivalent of US$ 1 mln. The decision of the National Regulatory Agency in Telecommunications and Informatics to issue such a license shall be published in the Official Gazette of the Republic of Moldova.
(7) The license fee for the type of activity specified under art.8, par.(1), it.50 shall not be collected.
(8) The license fee for types of activity specified under art. 8, par. (1), it.9 is paid separately for each year of license validity: upon the issuing of the license and upon the expiration of each year from the date of license issue, according to the annual fee set under it.2 in the annex. In the same manner is paid the fee for the license copy confirming the right of the branch office or any other stand-alone division of the licensee to engage in activities under the obtained license.
(9) License re-registration and license copy fee shall be set at 10 percent, but not more than Mdl 450 , and license counterpart fee – Mdl 450.
(10) License re-registration and license copy fee shall not be collected when including units of transportation in and/or exclusion of these from the annex to the license for the type of activity specified under art.8 par.(1), it.15).
(11) The license fees sums shall be transferred to the state budget, exception for the types of activity specified under art.8 par.(1) it. 48) and 49), for which the license fees sums are transferred to local budget of first-level administrative-territorial units, on the territory of which the licensee resides, and the sums of the fees for the issuance of authorized copies of these licenses are transferred to local budgets of first-level administrative-territorial units, on the territory of which branches or other stand-alone subdivisions of the licensee reside, where will be carried out the activity under the obtained license.

(Art. 18 as amended by Law # 291-XVI of 06.10.2006, in effect 27.10.2006)
(Art. 18 as amended by Law # 34-XVI of 24.02.06, in effect 19.05.06)
(Art. 18 as amended by Law # 154-XVI of 21.07.05, in effect 01.01.06)
(Art. 18 as amended by Law # 262-XVI of 27.10.05, in effect 25.11.05)
(Art. 18 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 18 as amended by Law # 454-XV of 14.11.03, in effect 06.02.04)
(Art. 18 as amended by Law # 430-XV of 31.10.03, in effect 01.01.04)
(Art. 18 as amended by Law # 250-XV of 19.06.03, in effect 18.07.03)
(Art. 18 as amended by Law # 149-XV of 27.03.03, in effect 25.04.03)
(Art. 18 as amended by Law # 1265-XV of 19.07.02)
(Art. 18 as amended by Law # 1179-XV of 28.06.2002)

Article 19. Licensing Control

(1) Scheduled controls (not more than once per calendar year) over compliance with the license conditions by the licensees shall be exercised by the Chamber jointly with central sectoral public authorities, unscheduled controls – by the Chamber and, as necessary, jointly with the mentioned authorities.
(2) Unscheduled controls shall only be carried out on the grounds of written statements of license conditions violation by the licensee or with a view to examining fulfillment of the instructions to eliminate license conditions violations.
(3) When compliance with license conditions is examined the licensee shall submit all necessary information and documents and ensure conditions for effecting the control.
(4) Based on the control results, a control act shall be drafted in two originals, of which one shall be forwarded (handed in) to the licensee and the other shall be kept at the Chamber. In case of disagreement with the results of the control, the licensee, within 5 business days from the date of the control act, can provide written explanation of his disagreement, attaching the relevant documents.

(5) If license conditions violations are detected, within 15 business days from the control act date the Chamber shall issue instructions to eliminate the violations and a warning about possible suspension or revocation of the license if detected violations are not eliminated within a set deadline.
(6) The licensee that received instructions to eliminate the license conditions violations shall submit to the Chamber information about elimination of the violations within the deadline set by the instructions.
(7) State control authorities, sectoral central public authorities, as well as local public authorities, in case of detection of violation of licensing conditions, are obliged to notify the Chamber, providing the relevant documents. The Chamber, on the basis of the provided documents, issues within 15 business days, instructions to eliminate the violations of the licensing conditions, and in case of detection of violations specified under ert.20 par.(1) and art.21 par. (1) and (2), suspends or revokes the license.

(Art. 19 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)

Article 20. License Suspension and Renewal

(1) The following shall serve as grounds for license suspension:
a) licensee's failure to fulfill the instructions to eliminate license conditions violations within a set deadline;
b) licensee's partial or temporary loss of ability to carry out licensed type of activity;
(2) The Chamber shall make a decision to suspend the license within three business days and notify the licensee thereof not later than three business days following the decision. The license suspensio period may not exceed six months.
(3) The licensee is obliged to inform the Chamber in writing about elimination of circumstances that entailed the license suspension.
(4) The Chamber shall make a decision to renew a license within three business days and notify the licensee thereof not later than three business days following the receipt of the respective notice and verification of the elimination of circumstances that entailed the license suspension.
(5) The license duration shall not be extended by its suspension period.

(Art. 20 as amended by Law # 1179-XV of 28.06.2002)

Article 21. License revocation

(1) The following shall serve as grounds for license cancellation:
a) licensee's application for license revocation;
b) decision to cancel state registration of licensee enterprise;
c) the failure of the licensee to discharge its/his/her obligation to the consolidated budget and to the budget of state social insurances;
d) unauthentic data was detected in the documents filed for license issuance;
e) detection of the fact of transferring the license or its copy to another party with a view to carrying out the licensed type of activity;
f) detected failure to submit within a set deadline a notice of changes in data specified in the documents attached to the license application;
g) failure to eliminate within a set deadline the circumstances that entailed license suspension;
h) repeated failure to fulfill the instructions to eliminate license conditions violations.
i) failure of annual or three-months fee payment, within a set deadline;
j) illicit carrying out by the licensee of other activity/activities subject to licensing, without holding the relevant license;
k) carrying out by the branch and/or other stand-alone subdivision of the licensee of the activity under license without the authorized license copy;
l) failure of the licensee, within the set deadline, to submit application for counterpart issuance of lost or damaged license;
(2) The license shall also be revoked in other events envisioned by laws.

(3) The Chamber shall make a decision on license revocation within 15 business days from the date the grounds for doing so were established and bring it to the licensee's notice specifying grounds for revocation not later than three business days following the decision date.
(4) An entry on the license cancellation decision date and number shall be made in the license registry not later than the next business day after the decision date.
(5) The license fee shall not be reimbursed if the license is revoked.
(6) The licensee whose license was revoked can submit another license issuance application for the same type of activity only upon expiration of 6 months from the date the revoked license was submitted to the Chamber, except for the cases stipulated by other legislative acts.
(7) For the violation specified under par. (1) it. J), the licensee will be subject to the revocation of all hold licenses;
(8) The procedure set under art.19, par.5 is not applicable in case of license revocation on the grounds of violations stipulated under par. (1), it. A)-f) and j)- l), as well as in case the licenses were revoked on the grounds of par. (2) of the present article.
(9) The licensee is obliged, within 10 business days form the revocation decision date, to submit the revoked license to the Chamber.
(Art. 21 as amended by Law # 262-XVI of 27.10.2005, in effect 25.11.05)
(Art. 21 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 21 as amended by Law # 176-XV of 03.06.04, in effect 09.07.04)
(Art. 21 as amended by Law # 454-XV of 14.11.03, in effect 06.02.04)
(Art. 21 as amended by Law # 1179-XV of 28.06.02)

Article 22. Licensing-Related Clerical Work
(1) The Chamber shall create a license file for each enterprise, organization, natural person applying for a license and maintain applications and issued licenses registry for each licensed type of activity.
(2) All documents received from the licensee and copies of Chamber's decisions and instructions regarding the licensee shall be kept in the licensing file.
(3) Applications and issued licenses registry shall specify data about the applicant, documents receipt date, the Chamber's decisions date and number, license issuance date and signature of the person that received the license.
(4) The Chamber shall create and maintain a single license registry for each licensed type of activity.
(5) The following shall be entered in the single license registry:
a) name of licensing authority;
b) licensee data;
c) type of licensed activity;
d) license issuance decision date and number;
e) license serial number, number, and issuance date;
f) license term of validity;
g) information about license re-registration, copies, and counterparts;
h) grounds for and date and number of instructions to eliminate license conditions violations;
i) grounds for and date and number of license suspension and renewal decision;
j) grounds for and date and number of license revocation decision;
k) grounds for and date and number of license invalidation decision.
(6) Licensing authorities shall maintain their license registries and provide to the Chamber information to ensure maintenance of a single license registry.
(7) The information contained in license registries shall be transparent. Extracts from the registry shall be issued for a Mdl 50 fee payable to the state budget.
(8) Public authorities shall be exempt from the license registry user fee.
(Art. 22 as amended by Law # 1179-XV of 28.06.02)

Article 23. Final and Transitional Provisions

(1) This Law shall take effect six months from its publication date.
(2) Within six months the Government shall:
- submit to the Parliament proposals on bringing current legislation in line with this Law;
- bring its normative acts in compliance with this Law;
- ensure revision and cancellation by ministries and departments of their normative acts that conflict with this Law;
- adopt normative acts necessary for implementation of this Law.

(3) Licenses issued prior to effectiveness of this Law shall be considered valid until their expiry.
(4) Licenses for types of activities not envisioned by this Law shall be deemed invalid.
(5) From the effective date of this Law, Law on Licensing Some Types of Activities No. 332-XIV of March 26, 1999 shall be deemed repealed.
(6) Temporarily, till December 31 2003, the date of complete liberalization of the telecommunication market, local fixed telephone services, stipulated under art. 8, par. (1) it. 51), shall be rendered by operators throughout the country, except for Chisinau and centers of raions, reserved to the national telecommunication operator – Joint stock company "Moldtelecom",
(7) The Government shall revise the licensing conditions and the list of additional documents necessary for license obtaining for types of activity that were modified.

(Art. 23 as amended by Law # 214-XV of 24.06.04, in effect 06.08.04)
(Art. 23 as amended by Law # 482-XV of 04.12.03, in effect 01.01.04)
(Art. 23 as amended by Law # 250-XV of 19.06.03, in effect 18.07.03)
(Art. 23 as amended by Law # 149-XV of 27.03.03, in effect 25.04.03)
(Art. 23 as amended by Law # 1044-XV of 08.05.2002)

Eugenia Ostapciuc
Chairperson of Parliament
Chisinau, July 30, 2001
No. 451-XV

Law on the National Bank of Moldova No 548-XIII of 21 July 1995 (excerpt)

Article 36. Secrecy

(1) No person who serves or has served as a member of the Council of Administration or staff, shall, in a manner unauthorized by Law:
a) permit access to, disclose, or publicize non-public material information which he or she obtained in the performance of his or her National Bank duties;
b) use such information, or allow such information to be used, for personal gain.
(2) Persons described in paragraph (1) may disclose non-public material information outside the National Bank but only if:
a) in accordance with the express or implied consent of the person about whom the information relates;
b) in performance of a duty to the public to make disclosure, including on the order of a court or other person of competent authority if provided by the Law;
c) to the external auditors;
d) to the demand of the Court of Accounts;
e) to foreign financial institution supervisory authorities;
f) where the interest of the National Bank itself in legal proceedings requires disclosure.

Law on the Securities Market (No. 199-XIV of 18.11.1998)

The Parliament of the Republic of Moldova adopts this Law.

SECTION I. GENERAL PROVISIONS

Chapter 1. Relations Governed by this Law

Article 1. Jurisdiction of this Law

(1) This Law shall govern relations arising from the issuance and circulation of securities within the territory of the Republic of Moldova, establish general provisions on professional activity in the securities markets, stipulate measures for protection of investors' interests, and determine liability for violations in the securities markets.

(2) Subjects of the present Law are:

(a) National Commission for Securities, here-and-after referred to as the National Commission, which is an authority of the public administration, authorized to administrate the securities market and to implement the present Law. It acts pursuant to the Law on the National Securities Commission;

(b) issuers, participants, including professional participants of the securities market.

Article 2. Scope of this Law

(1) This Law shall apply to any securities that concurrently have all of the following characteristics:

a) are placed by issues;

b) belong to a certain class;

c) have equal terms of exercising the rights certified thereby within a single class irrespective of the security issue and time of their acquisition; and

d) can circulate in the securities markets pursuant to stipulations of the present law.

(2) Terms and manner of securities issuance in form of deposit certificate, economy certificates, promissory notes are regulated by the present law, by other normative acts and is established by the National Bank of Moldova.

Article 3. Major Definitions

For the purposes of this Law, the following terms shall be used:

Exchange activity in the securities markets (hereinafter referred to as exchange activity) is an organization of trading in the securities markets by means of creating the infrastructure (premises, equipment, systems and devises) and providing services which directly contribute to performing the civil and legal transactions in securities among the securities market participants. The exchange activity shall be carried out by the Stock Exchange.

Investment management is the exercise by a legal entity of fiduciary management over transferred to it under a corresponding agreement of the following:

a) securities;

b) cash designated for investment in securities; and

c) securities and cash generated in the process of fiduciary management of securities.

Brokerage activity means conducting buy-sell transactions in securities as a trustee or a commissioner acting under a trust agreement or a commission agreement, and under a proxy for engaging in such transactions in the event that no reference to the powers of the trustee or commissioner are made in the agreement.

Clearing activity is activity undertaken by professional participant on the securities market, that is, collection, comparison, and adjustment of information on buy-sell securities transactions and

preparing the documentation for transactions execution, as well as accounting of mutual obligations on delivery of securities and settlement thereof.

Dealer activity means dealing in purchasing securities on one's own behalf and at one's expense for their further resale for profit-generating purposes.

Depository activity means providing services on safekeeping of security certificates and/or registration of depositors' rights to securities.

Maintenance of security owner registry is collection, registration, processing, storage, and submission of data representing the system of maintenance of the registry of security owners.

Underwriting activity is activity carried out on behalf of an issuer on initial public offering and placement of issuer's securities.

Cancellation of securities is a set of the issuer's actions on redemption and/or destruction of securities in the manner established in this Law and other regulations.

Securities circulation is a transfer and registration of the ownership right in the securities which results from the conclusion of a transaction of their buy-sale, exchange, gifting, inheritance, loan, and other civil and legal transactions.

Class of securities is the aggregate of securities of one issuer and of one type providing equal amount of rights to their owners and having the same distinguishing characteristics (preferences and restrictions). All securities of one class irrespective of their issue shall have one state registration number.

Securities consolidation is replacement of all the securities of a given class with a smaller number of securities with a pro rata decrease in the number of all owners' securities. If securities have a nominal value, its proportional increase shall ensue from the consolidation .

Model-contract - model of contract approved by the National Commission for basic services provided to the securities market participants. Terms of the contract are compulsory for contract parties and may be added other terms, which do not contradict the stipulated rules;

Securities conversion is withdrawal from the circulation and cancellation by an issuer of all the securities of one class by exchanging them for securities of another class of the issuer in question (provided this is stipulated in the decision on issuance of the securities) or other issuer's securities (in the event of the issuer reorganization).

Securities denomination is a change in the nominal value of all securities of a class in question. Split or consolidation of securities may ensue from the denomination.

Depositor - a person who benefits from depository services;

Holder of nominal securities (here-and-after referred to as the nominal holder) - professional participant on securities market, which holds, on its name, securities at request of the securities owner or other nominal holders, not being the owner of the given securities;

Information disclosure in the securities market (here-and-after — disclosure) is ensuring access to it of all interested persons in a manner which guarantees finding and obtaining the information regardless of one's purposes.

Transfer instruction is an instruction of a registered person or another person stipulated in the legislation (in the event of gifting, bequeathing securities, transferring the ownership rights in securities in the manner of fulfilling the obligations secured with the securities collateral, and in other cases stipulated in the legislation) on transfer of ownership right in securities to another person(s), and in the event of securities placement - an instruction of the issuer or its underwriter on the securities transfer to their original owners.

Securities issuance are the actions established by this Law that the issuer undertakes with the aim of placing the securities.

Issuer is a legal person or a public authority which issues securities and bears on its behalf obligations to the security owners with regard to exercise of the rights verified by the securities.

Extract from a share registry system of security owners (here-and-after referred to as a registry extract) is a document issued by a registry keeper to a registered person or a person acting on its behalf with the indication of a registered person, number of its personal account, number of securities of each

class in the account as of the moment of issuing the extract, facts of their incumbrance with liabilities, and other information relevant for the securities registered in the system as of the day of issuing the share registry extract.

Split of securities is issuance of an additional number of securities of a class in question and their free placement on a pro rata basis among all the owners. If securities have a nominal value their split shall be accompanied by its proportional decrease (split with denomination).

Inside information is information about the issuer and securities issued thereby which places the persons that have such information in an advantageous position compared to other subjects of the securities markets or which can affect the market price of the securities.

Insiders are persons that have access to the issuer's inside information.

Manipulation in the securities markets is creating a semblance of active trading in the securities market by means of buying and/or selling securities or using other means and facilities for the purpose of increasing or decreasing, supporting or de-stabilizing the market price (rate) of securities.

State registration number is a letter-and-digit code that identifies a specific class of securities and is assigned by the National Commission in the manner established thereby.

Public offering of securities is an offering of securities of a certain class carried out in at least one of the following manners:

a) publication of an announcement in mass media addressed to an unidentified number of persons;

b) a proposal to transfer the ownership in securities of a given class addressed to more than 100 persons; and

c) transfer of ownership in securities of a given class to more than 50 persons.

Tender offer is an offer made by a person (here-and-after - tenderer) and sent out to the owners of voting shares of a joint-stock company on purchase from them not less than 25 per cent of the total number of shares or the number of shares which will allow the tenderer to gain control over the company. The offer shall be made by means of mass media, mail, or other means of mass communication with the shareholders.

Self-regulatory organization of professional participants in the securities market (here-and-after - self-regulatory organization) is a voluntary amalgamation of professional securities market participants operating in compliance with the legislation and on principles of a non-profit organization, in compliance with the present law and other normative acts.

Professional securities market participants are the undertakings (legal entities) that are engaged in one or several kinds of professional activities in the securities market.

Registered person is an owner of a registered security registered in the system of registry maintenance for owners of registered securities.

Affiliated persons of an individual or a legal entity:

a) members of a nuclear and extended family of an individual;

b) members of the Surveillance Council, Board of Directors, management, auditing commission, or other similar bodies of the undertaking (individual or a legal entity), and its other officers;

c) persons controlling this individual or legal entity;

d) undertakings controlled by the individual or the legal entity;

e) persons who, together with this individual or legal entity, are controlled by a third person.

f) persons acting on behalf of this individual or the legal entity

g) persons on whose behalf this individual or legal entity acts; and

h) undertakings whose affiliation is demonstrated by the National Commission or a legal body;

Securities market - market where issuance, placement and circulation of securities takes place;

Primary securities market is a market at which securities are placed.

Secondary securities market is a market at which securities circulate.

Placement of securities is the alienation of securities by the issuer to their original owners.

Control is ability to have a decisive influence on the decisions of a certain individual or a legal entity. Any person owning more than 25 percent of the voting shares (stake) of an enterprise, is considered to

be the person controlling this enterprise unless the named person proves otherwise. Any person who owns not more than 25 percent of the voting shares (stakes) of the enterprise is considered to be a person not controlling the enterprise unless the National Commission or court proves otherwise.

Public offering prospectus is an issuer's document enabling an investor to obtain the information necessary for making a decision on purchase of issuer's securities placed by means of public offering.

Moldovan depository receipt is a derivative security issued by an issuer registered in the Republic of Moldova and certifying the ownership right of its owner in one or several foreign securities.

State securities registry is a registry of securities to which a state registration number is assigned, is executed by the National Commission pursuant its stipulations;

Registry of registered security owners (here-and-after — registry) is a list of registered persons with a number of securities registered in their name made up as of any date separately for each class of securities and allowing to identify the persons and the number and class of securities they own, which performs for the following functions:

a) identification of registered persons;

b) registration of rights of registered persons in securities registered in their name;

c) execution of transfer instructions;

d) obtaining from the registered persons and sending them information, including extracts from the registry maintenance system;

e) collection and keeping of information (within the set deadline) on all the facts and documents necessitating changes in the registry maintenance system, and on all the registry keeper's actions on introducing the amendments; and

f) describing the class of securities for which the registry of their owners is maintained.

Type of securities is the aggregate of securities (shares, bonds, etc.) authorizing one type of proprietary rights and personal non-proprietary rights related thereto.

Security means a document verifying the proprietary and related thereto personal non-proprietary rights of one person with respect to another which may not be exercised or delegated without presentation of a specified document or without having an appropriate entry in the registry of security owners or in the records of a nominee of the securities.

Derivative securities are securities the value of which depends on the value of other securities or instruments related to securities.

Government securities is a form of government debt in the form of a short- or long-term loan agreement in the national or other legal currency between the Republic of Moldova acting as a borrower and physical persons and legal entities acting as a lender.

Bearer securities are securities which do not specify the name (title) of the owner. No bearer securities registry shall be maintained; and transfer of rights in the securities and exercise of the rights do not require the identification of their owner.

Materialized securities are securities existing in the form of isolated material documents (security certificates). The materialized securities owner is identified by presentation of a duly drawn-up security certificate, or on the basis of an entry in the records of a nominee in the event that the securities are transferred to the latter.

Dematerialized securities are securities existing in the form of an entry in accounts. The owner of dematerialized securities shall be identified on the basis of an entry in the share registry maintenance system of their owners, or in the records of a nominee in the event that the securities are transferred to the latter.

Registered securities are securities which contain the name (title) of their owner. Transfer of rights in the securities and exercise of rights verified by them require the identification of their owner on a mandatory basis.

Foreign securities are securities of the issuers registered in other states.

SECTION II. SECURITIES

Chapter 2. Fundamental Provisions on Securities

Article 4. Form of Securities

(1) Securities shall be issued in the following forms:
   a) materialized registered securities;
   b) materialized bearer securities; and
   c) dematerialized registered securities.

(2) Securities of joint-stock companies and derivatives there from can be only registered ones.

(3) Securities of one class shall be issued in one form.

(4) The form of securities shall be decided upon by the issuer and specified in the decision on the securities issuance, and in the cases envisioned in the legislation, also in the public offering prospectus. and/or in the statutory documents of the issuer.

(5) The form of securities can be changed as decided by issuer's management body which passed the resolution on the securities issuance, and it can be done only with consent of majority of the owners of the securities of this class and only after the registration of this decision with the National Commission.

(6) Any proprietary or related there to personal non-proprietary rights certified in the materialized or dematerialized form, irrespective of their names shall be recognized as securities which are subject to the regulation by this Law, provided the terms and conditions of their issuance and circulation meet the set of characteristics of a security specified in Article 2 line (1) of this Law.

Article 5. Materialized Securities

(1) Materialized securities shall be released into circulation in the form of certificates which are the instruments confirming the rights verified by a security.

(2) A security certificate shall contain the following mandatory requisites:
   a) full name of the issuer and its legal address;
   b) type and class of securities certified by the certificate;
   c) state registration number of the security;
   d) restrictions on the alienation of securities (if any);
   e) the issuer's obligation to ensure the owner's rights provided the owner complies with the legislation;
   f) number of securities certified by the certificate;
   g) reference as to whether the securities are registered or bearer ones;
   h) full name of the owner (for the certificates of registered securities);
   i) certificate ordinal number;
   j) issuer's stamp;
   k) signatures (facsimiles of the signatures) of the issuers' managers and the signature of the person who has issued the certificate; and
   1) other information envisioned by the legislation for a specific type of securities.

(3) One certificate can certify the right in one, several or all the materialized securities of one class. However, one materialized security can be certified by one certificate only.

(4) The total number of securities specified in all the certificates released into circulation by the issuer shall not exceed the number of securities specified in the decision on the securities issuance.

(5) The issuer shall be held responsible for inconsistency of the information contained in the security certificate with the information specified in the decision on the securities issuance as set forth in law.

(6) Materialized securities include at least 10 levels of adulteration protection, certified by the Central Laboratory of Scientific Research in Legal Expertise within the Ministry of Justice.

Article 6. Dematerialized registered securities

(1) Dematerialized registered securities represent the entries on personal accounts of registered persons, including on mediums.

(2) For dematerialized registered securities the documents, which confirm their right, certified by securities is the decision on the securities issuance and extract from a registry.

Article 7. Registry

(1) Issuer of registered securities shall ensure the maintenance of the registry of their owners from the day of the securities placement opening, and in the event of the securities issuance in the process of the issuer foundation, within a month from the day of the issuer's state registration.

(2) Issuers with more than 50 registered holders registered in the registry of registered security owners of a certain class shall delegate the maintenance of the registry to an independent registrar by entering into an appropriate agreement therewith.

(3) Transfer of the registry maintenance to an independent registrar does not relieve the issuer from the responsibility for its maintenance and storage.

(4) The issuer is prohibited from transferring the registry maintenance to several independent registrars at a time.

(5) Changes in the registry maintenance system reflecting the transfer of ownership rights in securities shall be entered by the registry keeper on the basis of a transfer instruction. When materialized securities are issued a security certificate shall be also presented.

(6) Refusal to make entries in the share registry maintenance system or evasion from making such entries can be appealed against in the court.

(7) At the first request the registry keeper shall provide the following:

a) to the registered person or the person acting on its behalf extract from a registry, pursuant to the procedure stipulated by the National Commission; and

b) registered person or person acting on behalf of it and holds at least 25% securities - data on name (surname) and addresses of persons registered in the registry for the class of securities they belong to. This data is presented pursuant to a written request and exclusively with the aim of convening shareholders or securities holders meeting of a specific class or with the aim to present tender offering pursuant to the present law.

(8) Extract from a registry shall be issued by a registry keeper:

a) gratis — when introducing amendments in the registry maintenance system in the manner set forth by this Law; and

b) for a fee — in other cases.

(9) Extract from a registry on a personal account of a registered person shall be provided when amendments are introduced in the registry maintenance system (the account is set up), and later on -- at the request of the person within five days.

(10) A registry extract is not a security and its transfer from one person to another does not entail the transfer of ownership rights in securities.

(11) Losses caused by improper use of data specified in paragraph 7(b) shall be reimbursed for in the manner stipulated in civil law by a person to which the data was provided by the registry keeper.

(12) A legal action for damage reimbursement can be brought against a person who has violated the maintenance procedure of the registry system, the procedure of drawing up and submitting the reports (to the issuer, an independent registrar, or a nominee), including for lost profit resulting from impossibility to exercise the rights certified by the securities.

(13) The maintenance procedure, requirements to the registry maintenance system, as well as the format of the transfer instruction and the extract from the registry shall be set forth by the National Commission.

Article 8. Nominee Owner

(1) A depository (with the securities of its depositors), a broker and an investment manager (with the securities of its customers) can act as a nominee.

(2) Data on the nominee and the securities held thereby shall be entered by the registry keeper into the registry maintenance system upon the instruction of the owner or another nominee provided they are registered in this registry maintenance system.

(3) Entering data on the nominee into the registry maintenance system and re-registration of securities in the name of the nominee does not entail the transfer of ownership rights in securities.

(4) A nominee, with respect to the securities it holds at the instruction of its clients, shall:

a) perform all the actions necessary to ensure that the client will receive all payments due on these securities;

b) perform transactions with these securities exclusively upon the instruction of clients and in accordance with agreements concluded with them;

- undertake necessary actions with the aim to provide receiving of payments by the clients pursuant

to securities;

- implement securities transactions exclusively on behalf of the clients;

- provide securities book-keeping;

- maintain clients' interests.

(5) A nominee is entitled to exercise the rights certified by a security only if it was authorized to do so by its owner.

(6) The securities of the nominee's clients may not be subject to the claims on the nominee's liabilities.

(7) Securities transactions between the clients of the same nominee shall not be reflected by a registry keeper or another nominee the client of which the former nominee is.

(8) The sample of a modal contract concluded among nominal holder and its clients is approved by the National Commission.

Chapter 3. Issuance of Securities

Article 9. Stages of Securities Issuance

(1) Issuance of securities can be carried out by means of public offering (public issuance) or without it (private issuance).

(2) Public issuance of securities shall include the following stages:

a) the issuer makes a decision on securities issuance;

b) the issuer prepares and approves the public offering prospectus for securities of this issue;

c) in the event of the first public issuance of registered securities — the agreement on share registry maintenance is entered into with an independent registrar;

d) registration of the public offering of securities with the National Commission;

e) issuer's opening of a temporary account for the funds generated as a result of securities placement;

f) manufacturing of securities certificates — for the issuers which issue materialized securities;

g) disclosure of information contained in the public offering prospectus as set forth in this Law;

h) placement of securities;

I) entering the information on the owners of securities into the registry (in the event that registered securities are issued), issuance of certificates (in the event that materialized securities are issued) or extracts from the registries (in the event that dematerialized securities are issued) to the original owners of securities;

j) issuer's approval of the report on the results of the public issuance;

k) registration of the report on the results of the public issuance with the National Commission and acknowledgment of the respective issuance as valid or invalid;

1) closure of the temporary account and transfer of the funds from the respective account to the settlement account of the issuer in the event that the National Commission deems the public issuance of securities as valid.

m) entering to the charter the amendments and additions related to the results of the issuance and their state registration — for the joint-stock companies the public issuance of which has been deemed valid by the National Commission; and

(3) Private issuance of shares shall consist of the following stages:

a) the issuer makes a decision on the issuance of securities;

b) placement of securities;

c) approval by the issuer of the report on issuance results;

d) registration by the National Commission of the report on issuance results and qualification by the National Commission as implemented or non-implemented;

e) operation of modifications in the issuer's Statutes and completing determined by the result of the issuance;

f) introduction of data on securities holders in the registry and extracts issuance from the registry.

(4) A state registration number shall be assigned to securities placed under private issuance as set forth by the National Commission.

(5) An issuer is obliged to terminate placement of the securities issued thereby a year following the beginning of their placement, unless a shorter period of time is set forth in the legislation, in the public offering prospectus (for public issuance), or decision on the issuance (for private issuance).

(6) Payment in installments for securities during their placement is prohibited.

(7) The number of securities being placed shall not exceed the number specified in the public offering prospectus (for public issuance) or in the decision on issuance of these securities (for private issuance).

(8) Issuance is considered valid if there had been securities placed at a number not less than the number stipulated by the issuer and coordinated with the National Commission in public offering prospectus or in resolution on securities issuance, depending on the aim of issuance. In the event of a smaller number of placed securities than stipulated by the issuer, the issuance is considered invalid.

(9) The issuer is entitled to terminate the issuance ahead of time in the following cases:

a) complete placement of securities;

b) issuer's decision to refuse to complete the issuance and to reimburse the investors for their payments for securities provided the option to make such decision is stipulated in the public offering prospectus (for public issuance) or in the decision on the issuance (for private issuance).

(10) In the event securities issuance is suspended due to a violation of the stipulations of the present article, its renewal is made pursuant to the National Commission resolution, after violations are recovered. In this case, term of securities placement, stipulated by a public offering prospectus (for public issuance) or by resolution on securities issuance (for closed issuance), is not prolonged.

(11) In the event securities issuance was qualified as non-implemented or invalid by the National Commission, all securities of this issuance are returned to the issuer to be cancelled. Cash received by the issuer in the result of securities placement is to be paid to investors pursuant to the procedure stipulated by the National Commission. At the same time, the issuer returns benefit received in the result of cash involved in securities placement process or lost income, in the event issuance terms include the following stipulation.

(12) A11 expenses related to securities qualification as non-implemented or invalid and to repayment of cash to investors are beard by the issuer.

(13) Particularities of securities issuance related to their conversion are stipulated by the National Commission.

(14) In the event it is stated that securities issuance is implemented by violation of stipulations of the present article or used some manipulations, the issuer bears responsibility pursuant to the legislation.

Article 10. Decision on Securities Issuance

(1) A separate decision on issuance shall be made for each security issue of a given class.

(2) The decision on securities issuance shall contain:

a) issuer's identification data;

b) date and number of state registration of the issuer except for issuance of shares at the foundation of a joint-stock company;

c) date of the decision on securities issuance;

d) name of the issuer's authorized body that made the decision on securities issuance;

e) type of securities;

f) class of securities;

g) ordinal number of the securities issue of a given class;

h) number of securities in this issue;

I) total number of securities of a given class (the issue included);

j) form of securities, and in case of materialized form of the securities issue - description or a sample of the security certificate;

k) description of rights certified by the security of a given class and its other unique characteristics (privileges and restrictions);

1) procedure for securities issuance (public or private);

m) beginning and termination of placement of securities of a given class;

n) signature of the issuer's manager, his last name and position and the issuer's stamp; and

o) other information envisioned in the legislation for this type of securities.

(3) The issuer is not entitled to modify the decision on securities issuance with regard to the volume of rights granted by one security set forth in this decision.

Article 11. Issuance of the state securities

State securities are issued by the Government through Ministry of Finance. Placement of the first issuance of the state securities of a specific class is preceded by the agreement of the National Commission at presentation of the Ministry of Finance of the state registration number of the class.

Chapter 4. Public Offering of Securities

Article 12. General Provisions

(1) Public offering of securities can be carried out both upon securities issuance (initial public offering) and during the process of their circulation (public offering in the secondary market).

(2) Affiliated persons, owners of 10 and more percent of the issuer's securities and issuer's underwriters are entitled at its consent to include the issuer's securities they own in the initial public offering.

(3) The terms and conditions of securities issuance and circulation through public offering may not place some investors in advantageous position in comparison with the other during the purchase of securities.

(4) Provisions of paragraph (3) shall not be applied in the event of:

a) the shareholders of the joint-stock companies are vested with a preemptive right to purchase securities of a new issue in the amount proportional to the number of shares they own as of the moment of making the decision on the issuance; and

b) legislation or the issuer impose restrictions to security purchase by non-residents.

(5) Terms of the public issuance of securities may limit the range of their original owners:

a) in the event of share issue for the purpose of dividend payment therewith on previously issued shares of the joint-stock company in the manner stipulated in the legislation on joint-stock companies;

b) in the event of share issue related to their split, consolidation, denomination and conversion; and

c) in other cases stipulated in the legislation.

Article 13. General Requirements to the Public Offering Prospectus.

(1) The form of the public offering prospectus shall be set by the National Commission, and for banks and other financial institutions — by the National Bank of Moldova in coordination with the National Commission.

(2) The public offering prospectus shall contain:

a) general information about the issuer;

b) data on the financial standing of the issuer;

c) information on the pending securities issue; and

d) investment declaration.

(3) General information about the issuer shall include:

a) full and abbreviated name of the issuer;

b) legal address of the issuer;

c) legal form of the issuer;

d) date and number of state registration of the issuer as a legal entity, name of the registering body;

e) information on the members of the Surveillance Council, the Board of Directors, the management, auditing commission, and other similar management bodies of the issuer;

f) information on the persons who own 5 or more percent of the total number of the issuer's voting shares;

g) list of all branches and representative offices of the issuer; and

h) list of all enterprises in which the issuer has 5 and more percent of the statutory capital (net assets).

(4) Information on financial standing of the issuer shall be verified by an independent auditor and shall include:

a) information on the statutory capital and net assets of the issuer;

b) annual balance sheets and the issuer's income and loss statements over the last three completed fiscal years, or for each complete fiscal year from the moment of establishment if this period of time is less than three years;

c) issuer's balance sheet as of the end of the last quarter before the decision on securities issuance is made;

d) size of the issuer's past due debt to creditors and arrears to the corresponding budget;

e) report on formation and uses of funds from the reserve fund over the last three years or for each completed year from the moment of formation if the period of time is less than three years;

f) structure of taxes, fees and duties paid by the issuer;

g) report on previous security issues of the issuer; and

h) information on the long-term economic arrangements that can significantly affect financial standing of the issuer.

(5) Information on the securities being issued shall contain:

a) general information on the securities issue;

b) description of rights certified by the security of the given class and its other unique characteristics (privileges and restrictions);

c) opening and closing securities placement;

d) information on prices and procedure for payment for securities;

e) information on restrictions to securities purchase or indication that there are none;

f) information on the procedure and terms of receiving income on securities;

g) description of factors that make the purchase of these securities risky;

h) information on underwriters of specified securities;

i) information on an independent registrar that maintains the registry of the owners of the specified securities.

(6) Investment declaration shall contain the information on uses of raised funds. The volume of this information shall be set forth by the National Commission, depending on the specific features of the issuer and security type.

(7) The public offering prospectus shall be compiled in the form of a separate brochure and be available at the issuer's legal address and at the selling sites of securities. The prospectus shall also be distributed by the issuer or its underwriter free of charge at the request of a potential buyer of securities.

Article 14. Registration of Public Offering

(1) The procedure of public offering registration of securities is stipulated by the National Commission

(2) For the purpose of registration of the public offering of securities the issuer shall submit to the National Commission the following documents:

a) registration application;

b) copies of the issuer's foundation documents with all the changes and amendments thereto;

c) extract from the State Commercial Register or other document evidencing the fact of state registration of the issuer;

d) decision on the securities issuance;

e) public offering prospectus;

f) samples security certificates - for issuers issuing materialized securities;

g) permission of the Ministry of Economy and Reform in cases stipulated by the anti-monopoly legislation;

h) permission of the National Bank of Moldova to carry out the public offering of securities for issuers operating as financial institutions;

I) a copy of the agreement on the maintenance of registry of security owners entered into with an independent registrar; and

j) copies of payment documents evidencing payment of taxes and charges levied in accordance with the legislation on registration of public offering.

(3) The National Commission shall register the public offering of securities or make a motivated decision to decline registration not later than 30 days following the receipt of all the documents stipulated in paragraph (2).

(4) A state registration number shall be assigned to the class of securities at the registration of the public offering of the first issuance of securities of the class in question.

(5) The National Commission shall notify the National Bank of Moldova of a registration or a refusal to register the offering.

(6) The issuer of securities and its underwriter shall be held responsible for information provided in the public offering prospectus and other documents submitted for the public offering registration in compliance with the terms and conditions of the underwriting agreement.

Article 15. Grounds to Decline Public Offering Registration

(1) The following can serve as grounds to decline the public offering registration:

a) incompliance of the filed documents, information contained therein, or procedures of their approval with the requirements of the legislation;

b) the documents contain information which allows to conclude that the terms and conditions of securities issuance and circulation contradict the legislation; and

c) including in the public offering prospectus, in the decision on issuance of securities or other documents serving as a ground to register the securities issuance false information or unauthenticated (unreliable) information.

(2) Refusal to register a public offering of securities for reasons of inexpediency shall not be permitted.

(3) A decision to decline the public offering registration shall be sent by the National Commission tthe issuer within 5 days following the moment the decision has been made with the grounds for the decline stated therein.

(4) The decision to refuse to register a public offering of securities can be appealed against in court.

Article 16. Introducing Amendments and Additions to the Public Offering Prospectus

Pursuant to the procedure and term stipulated by the National Commission in the process of implementation of the primary securities public offering, the issuer is to operate modifications and necessary completing to the process of public offering and to other documents presented for public offering registration (in case it is stated that the respective documents contradict stipulations of the legislation), is to register modifications and completing at the National Commission and to inform securities holders on operating modifications and completing pursuant to the legislation.

Article 17. Specific Features of Executing the Initial Public Offering of Securities

(1) The issuer is entitled to initiate the initial public offering only after its registration with the National Commission. Placement of securities may not start earlier than two weeks after all potential investors were given access to the information contained in the prospectus. Information on the placement price can be disclosed on the day the placement beginning.

(2) Securities placement may be launched not earlier than 2 weeks after providing access to information included in public offering prospectus to all potential investors.

(3) Information on price of placed securities is distributed from the first day of securities placement.

(4)The initial public offering of securities may also be executed by underwriters on behalf of the issuer.

Article 18. Report on the Public Issuance Results

(1) The report on the public issuance results shall be filed by the issuer to the National Commission within 15 days following the day of the placement end.

(2) The format of the report shall be set by the National Commission.

(3) The issue shall be held responsible for the data contained in the report.

(4) The National Commission shall review the report on the public issuance results within 30 days, and in case there are no violations with regard to the securities issuance shall register it.

(5) In the event there are violations pointed out in implementation of securities public issuance, the National Commission refuses to register the report and qualifies the issuance as non-implemented. Within 3 days the National Commission informs the issuer in written form. Within 15 days the National Commission publishes the resolution and undertakes actions stipulated by the legislation.

(6) Financial institutions shall file with the National Commission reports on the public issuance results upon obtaining the appropriate conclusion of the National Bank of Moldova. The report format and the deadline for submitting it shall be set by the National Bank of Moldova in coordination with the National Commission. The National Commission shall inform the National Bank of Moldova of the registration or the refusal to register the named reports with specifying the reasons therefor.

Article 19. Public Offering Procedure in the Secondary Market

(1) Public offerings of securities in the secondary market shall be made provided all of the following conditions are met:

a) the initial public offering of these securities had been previously registered in the established manner;

b) the issue of these securities was deemed valid; and

c) the issue of these securities was not deemed invalid.

(2) The public offering of securities in the secondary market shall be executed without registration of this offering with the National Commission.

Article 20. Changes in Information about Securities Placed by means of the Public Offering

If the issuer makes a decision which entails any changes in the information about securities the public offering of which had been previously registered by the National Commission the issuer shall register the decision within 5 days following its date in the manner set forth by the National Commission.

Chapter 5. Tender Offers

Article 21. General Requirements to Tender Offers

(1) A tender offer shall contain the following conditions:

a) name and location of the tenderer;

b) date of making and the term of validity of the offer;

c) name and location of the issuer of the shares which the tenderer intends to purchase;

d) the amount and the type of the specified shares, offered purchase price;

e) the procedure in compliance with which the shareholders who accept this offer submit their orders to sell their shares to the tenderer, as well the manner of revocation of these orders;

f) name and location of the depository where the shares specified in the orders are deposited;

g) terms and conditions of execution of the commitments by the tenderer with regard to the offer;

h) name and location of the bank or other entity which guaranties the implementation of the settlement obligations by the tenderer in compliance with this offer in the event that the obligation cost exceeds the value of the tenderer's assets; and

I) other conditions which do not contradict the legislation.

(2) Proposals for shares sale made by their holders are registered for free by the registry holder or by the issuer's depository, drafting a list of persons accepting the tender offering.

(3) The term of validity of a tender offer shall be not less than 30 days.

(4) The purchase price of the shares specified in the tender offer shall be no lower than the weighted average purchase price of these shares over the last six months preceding the date of the offer announcement.

(5) Conditions offender offering are to be equal for all securities holders of this kind.

(6) Any information presented by an issuer to a bidder is to be presented without delay in the same volume to other bidders.

(7) The manner of submission to the tenderer of the information from the share registry of the corresponding joint-stock company and which is necessary for preparation of the tender offer shall be set by the National Commission.

(8) A person which independently or jointly with its affiliated person(-s) purchased more than 50 percent of circulating shares with the voting right of an open-end joint-stock company no later than 6 months after the purchase shall make a tender offer to remainder of the company shareholders to buy up their voting shares of the company, pursuant to stipulations of Article 84 paragraph 5 from the Law on joint stock companies.

(9) The action of standards of the present Article related to shares - subject of tender offering, is applied on any securities that can be converted into shares.

Article 22. Tender Offer Registration

(1) Any tender offer is subject to mandatory registration with the National Commission.

(2) It is prohibited to make a tender offer, to purchase or negotiate the purchase of securities on the basis of the tender offer, as well as to advertise this offer prior to its registration with the National Commission.
(3) The manner of processing and registration, as well as additional requirements to the conditions of the tender offers, shall be set by the National Commission.

Article 23. Execution of Tender Offers
(1) A registered tender offer shall be forwarded in writing to all the shareholders who own these shares, and/or it shall be published in a mass media publication equally accessible to all the shareholders.
(2) A shareholder who accepts the tender offer shall forward the order to sell his shares to the tenderer and deposit these shares in the depository indicated in the tender offer.
(3) A shareholder who has made this order is entitled to revoke it without hindrance during the whole period of validity of the tender offer. The depository shall without delay return to the shareholder the shares deposited by him.
(4) In the event that within the term set by the tender offer the depository has received the orders to sell a number of shares which is equal to or exceeds the number indicated in the tender offer, the tenderer shall buy up these shares in the amount no less than the one specified in the tender offer by satisfying all these orders in full or on a pro rata basis.
(5) In the event that within the term set in the tender offer the depository has received orders to sell a lower number of shares than it was specified in the tender offer, the tenderer is entitled either to refuse to fulfil his liabilities on the offer, or to purchase these shares by satisfying all the orders.
(6) Shares deposited in the depository in compliance with the conditions of the tender offer and not purchased by the tenderer are subject to immediate return to their owners within 5 days.
(7) Within the entire term of validity of the tender offer the tenderer and its affiliated persons shall not:
a) by any means other than the tender offer, directly or indirectly purchase or negotiate the purchase of shares which are the subject of this tender offer, or securities which can be converted (exchanged) into the specified shares; and
b) sell any securities of the joint-stock company specified in the tender offer.

Chapter 6. Circulation of Securities

Article 24. Security Transactions
(1) Security transactions shall be executed in compliance with legislation and specific features set forth in this Law.
(2) Upon transfer of the ownership right in a security, the buyer shall acquire all the rights certified by this security.
(3) In the events stipulated in the anti-monopoly legislation securities in the process of their circulation shall be alienated and purchased only with preliminary consent of the Ministry of Economy and Reform.
(4) Buy-sell, exchange and pledge transactions shall be allowed only after the securities issue has been deemed as valid.

Article 25. Transfer of Ownership Rights in Bearer Securities
The ownership right in a bearer security shall be transferred to the buyer:
a) in the event that the certificate is with the owner, at the moment of transfer of the certificate to the buyer if the agreement does not say otherwise; and
b) in the event that certificates of bearer securities are stored with the nominee and/or that the buyer's ownership rights in these securities are recorded by the nominee, upon entering an entry in the personal account of the buyer in the records of the nominee.

Article 26. Transfer of Ownership Rights in Registered Securities

(1) Transfer of ownership rights in registered securities is carried out in the manner determined for cession.

(2) Transfer of ownership right in a registered security from one person to another is carried out by means of a transfer instruction (in the event of ownership rights registration in the registry maintenance system) or by means of an instruction to a nominee registered in the manner established by the National Commission (in the event of the ownership rights registration with a nominee).

(3) Transfer instruction shall be signed by the registered person who transfers securities, or by another person in compliance with existing legislation, and in the event of the securities transfer as a result of the transaction concluded at the Stock Exchange, also by the authorized person of the Stock Exchange.

(4) Signatures of individuals on the transfer instructions and instructions to a nominee shall be certified by a notary or by professional securities market participants whose clients are private persons. A person which certifies the signature shall bear a proprietary responsibility for the damage caused by the violation of the signature verification requirements.

(5) Ownership right in a registered dematerialized security shall be transferred to the buyer upon making an entry in the buyer's personal account in the registry maintenance system (in the event that the rights in securities are recorded in the registry maintenance system), or in the records of the nominee holder (in the event that the rights in securities are recorded by the nominee).

(6) The ownership right in a registered materialized security shall be transferred to the buyer:

a) upon handing to him the security certificate after an entry in the buyer's personal account is made, in the event that the buyer's rights in securities are recorded in the registry maintenance system;

and

b) in the event that the buyer's rights in securities are recorded by the nominee, at the moment when the entry is made in the personal account of the buyer after the nominee holder of the buyer received the security certificate.

Article 27. Exercise of Rights Certified by Securities

(1) The rights certified by registered securities shall be exercised:

a) upon presentation by the owner or his authorized person of the certificate of these securities, with regard to the person specified in the securities certificate, in the event that the rights in the materialized securities are recorded in the registry maintenance system. If the materialized securities are encumbered with any liability, the rights certified by these securities shall be exercised with regard to the persons specified in the registry maintenance system without presentation of certificates of these securities;

b) in the event that the rights in dematerialized securities are recorded in the registry maintenance system, with regard to the persons specified in the registry maintenance system; and

c) in the event that the rights in these securities are recorded by the nominee, with regard to the persons specified in the records of the nominee.

(2) If the registry keeper (in the event that the rights are recorded in the registry maintenance system) or the nominee (in the event that the rights are recorded by the nominee) is not informed about the new owner of the registered securities by the moment the registry is closed, so that the issuer can fulfil its obligations with regard to securities, the obligations shall be fulfilled with regard to the person registered in the registry or the one specified in the records of the nominee keeper when the registry is closed. The buyer of the security shall bear responsibility for the timely notification of the registry keeper.

(3) The rights certified by bearer securities shall be exercised by their owners upon presentation of certificates of these securities by the owner or his authorized person.

(4) In the event that bearer securities are stored with the depository the rights certified by the securities shall be exercised by their owner upon the depository's presentation of a list of the stored securities' owners. The issuer is authorized to request that the depository present the certificates of stored securities.
(5) Exercise of rights certified by shares shall be allowed only after the share issuance has been deemed as held.
(6) In the event of registry blocking of personal accounts, right of security holder to alienate securities is suspended till unblocking.

Article 28. Encumbering Securities with Liabilities

(1) Securities can be encumbered by pledge or other liabilities stipulated in the legislation.
(2) Agreement on pledge concluded in writing shall serve as a basis for the securities pledge.
(3) Agreement on pledge of registered securities shall be valid only if an entry on restriction on the alienation of pledged securities is made in the registry maintenance system and registration of a transfer instruction by a pledger (registered person) and handing the instruction to the pledgee; in the event of pledge of materialized registered securities a securities certificate shall be handed to the pledgee.
(4) The agreement on pledge of registered securities shall be deemed concluded upon entering the corresponding entry into the registry system under the agreement and upon transfer of the documents specified in paragraph (3) to the pledgee.
(5) Failure to observe the specified rules of pledging registered securities shall invalidate the agreement on pledge and entail the consequences envisioned by the legislation.
6) Upon termination of the pledge of registered securities due to the fulfillment of the obligations by the pledger, the pledgee shall return to the pledger the transfer instruction completed in his name. In the event of the pledge of materialized securities, the pledgee shall return security certificates. At the same time an entry on lifting the restriction to alienate the pledged securities shall be entered into the registry.
(7) In the event that the pledge of securities is terminated due to the failure of the pledger to fulfil his obligations according to the pledge, the ownership rights in the securities which are subject to the pledge agreement shall be transferred to the pledgee or another person by means of a corresponding entry made in the registry maintenance system on the basis of the instruction kept by the pledgee.
(8) The encumbrance of bearer securities with liabilities shall be carried out according to the procedure envisioned in the legislation.

Article 29. Specific Features of Placement and Circulation of Foreign Securities in the Republic of Moldova

(1) Public offering of foreign securities in the territory of the Republic of Moldova shall be carried out only in the form ofMoldovan depository receipts in these securities.
(2) The provisions set forth by this Law with regard to securities of the issuer registered in the Republic of Moldova shall apply to the registration and public offering of Moldovan depository receipts. The National Commission shall register the initial public offering of Moldovan depository receipts only upon obtaining the appropriate authorization of the National Bank of Moldova which is issued depending on the balance of payments of the Republic and economic feasibility of capital export.
(3) Placement and circulation of foreign securities in the territory of the Republic of Moldova carried out without public offering do not require special registration with the National Commission.

Article 30. Alienation of Securities to Foreign Investors

Foreign investors are entitled to purchase securities of the issuers registered in the Republic of Moldova in the manner and under the terms and conditions set forth by the Law on Foreign Investments, this Law and other legislative acts.

Article 31. Split, Consolidation, Denomination, Conversion and Cancellation of Securities

(1) Split and consolidation of securities:

a) do not entail changes in the amount of funds raised by the issuer at the securities placement;

b) do not serve as a ground for paying out to the security owners the value of securities withdrawn therefrom; and

c) shall be carried out without additional expenses to the owners.

(2) Issuer's decisions on the split, consolidation, denomination, or conversion of previously placed securities shall be subject to registration with the National Commission.

(3) Other issues with regard to split, consolidation, denomination, and conversion of securities. including in order to prevent the existence of fractional securities, shall be resolved in the manner stipulated by the National Commission.

(4) Cancellation of securities shall be executed at the decision of:

a) an issuer, in the event of split, consolidation, or denomination of securities, conversion of securities, termination of the issuer's activity at the decision of its participants, reduction of the statutory capital, and in other cases envisioned in the legislation on securities;

b) the National Commission, in the event that the public issuance of securities is recognized invalid;

and

c) court, in the event that the issuance of securities is deemed invalid or in the event that the activity of the issuer is terminated as a result of a judicial procedure.

(5) In the event of cancellation of previously placed securities, the National Commission shall make appropriate entries in the state share registry.

(6) Information on cancellation of previously placed securities is subject to publication within 10 days following the day of making the appropriate entry in the state share registry.

(7) No circulation of securities shall be permitted from the moment of publication of information on the securities cancellation. Security transaction effected after the set day shall be deemed invalid.

(8) Securities shall be canceled after publication of information on their cancellation within the deadline stipulated in the legislation.

(9) Withdrawal of securities from circulation and their cancellation shall be permitted only after all legal claims of their owners have been satisfied.

(10) The procedures and the terms of securities withdrawal from circulation and their cancellation are set forth by the National Commission in compliance with the legislation.

SECTION III. PROFESSIONAL PARTICIPANTS IN THE SECURITIES MARKETS

Chapter 7. Professional Activities in the Securities Markets

Article 32. Types of professional activities in the securities market

The following types of professional activities can be carried out in the securities market:

a) brokerage activity;

b) dealer activities, except for cases stipulated in paragraph (2) of Article 33;

c) underwriting;

d) investment management;

e) registry maintenance;

f) depository activity;

g) clearing activity; and
h) other.

Article 33. Brokerage Activity

(1) Brokerage activity is carried out by a broker who is a professional securities market participant.
(2) Rights and duties of a broker and his client shall be stipulated in the agreement on brokerage services and in the instructions given to the broker by the client in accordance with this agreement.
(3) Mandatory requirements to the agreement on brokerage services shall be set by the National Commission.
(4) Brokers shall transfer the power of attorney for carrying out transactions only to brokers. The transfer is allowed if it is stipulated in the brokerage services agreement or in cases when a broker is forced to do so in order to protect the interests of his client with the notification of the latter.
(5) Transfer of power of attorney shall be carried out in compliance with legislation.
(6) The broker shall execute clients' instructions in good faith and on terms favorable for the client and in the order in which they were received, unless the agreement with the client or his instruction envisions otherwise.
(7) Security transactions executed by the broker upon the clients' instruction should be executed with priority over the dealer transactions of the broker, in case these two types of activity are combined, or over transactions executed by the broker upon instruction of its affiliated persons.
(8) In the event that the broker has an interest which prevents him from executing the client's instruction on the terms most beneficial for the client, the broker shall immediately notify the latter of such an interest.
(9) In the event that a conflict of interests between the broker and his client, of which the client was not notified before the broker received the respective instruction, led to execution of the instruction to the detriment of the client's interests, the broker is obliged to compensate for the losses from his own account as set forth in civil legislation.
(10) The broker shall compensate in full for the losses incurred by a client as a result of non-execution or improper execution by the broker of his obligations under the agreement on brokerage services.
(11) In the event that the broker is deemed insolvent (bankrupt), the property that he holds under agreements on brokerage services and which belongs to his clients shall not be included in tender stock.

Article 34. Dealer Activity

(1) Professional participant in securities market who carries out dealer activity shall be called dealer.
(2) Announcing the price, the dealer is committed to announce other essential conditions of the buy-sell contract of securities: minimum and maximum number of securities subject to purchase and/or sale, as well as the term of announced prices validity.
(3) A person is not considered a dealer making securities transactions in unsystematical manner and the sum charged from securities transactions, pursuant to the results of reporting semester, constitutes less than 35% out of the total sum obtained from production distribution (workers, services).

Article 35. Underwriting Activity

(1) Professional participant in securities market who carries out underwriting activity shall be called underwriter.
(2) Underwriters shall act on the basis of the underwriting agreement concluded with the issuer.
(3) The sample of modal-contract on underwriter is stipulated by the National Commission.

Article 36. Investment Management

(1) Investment management is carried out by an investment manager who is a professional securities market participant.
(2) The investment management procedures, the rights and obligations of an investment manager shall be set forth by legislation and agreements on investment management.
(3) The sample of modal-contract on investment management is stipulated by the National Commission.
(4) In conformity with the investment management agreement, one party (management founder) shall transfer to another party (investment manager) property for fiduciary management for a certain period of time, and another party shall assume the obligation to manage this property in the interests of the management founder or the person specified thereby (beneficiary).
(5) Transfer of securities into fiduciary management shall not result in the transfer of ownership rights therein to the investment manager.
(6) Activity of the investment fund manager is considered as activity of investment administration.
(7) Investment manager shall indicate that it acts as a fiduciary manager while carrying out its activity.
(8) In the event that a conflict of interests between an investment manager and its client or different clients of one investment manager, of which all the parties had not been notified in advance, resulted in such actions of the manager that have caused damage to a client, the manager shall compensate losses from his own account in conformity with the procedure set forth in the legislation.

Article 37. Registry Maintenance

(1) Registry maintenance shall be performed by a registry keeper who can either be an issuer or an independent registrar who carries out registry maintenance on the basis of an agreement on registry maintenance entered into with the issuer.
(2) Mandatory requirements to the registry maintenance agreement and the maximum amount of remuneration for the registry keeper services on entering the data into the registry and issuing extracts from the registry shall be set by the National Commission.
(3) A registry keeper shall:

a) comply with the established registry maintenance procedures;

b) open a personal account in the registry maintenance system for each registered person on the basis of the transfer instruction;

c) enter all necessary changes and additions into the registry maintenance system;

d) perform transactions in the personal accounts of registered persons at their instruction;

e) deliver to the registered persons information provided by the issuer;

f) inform registered persons of the rights certified by the securities and of the ways and methods of exercising these rights;

g) send a respective notice to the Stock Exchange in cases when the number of registered holders of a certain class of issuer's securities exceeds 50;

h) comply with the established procedure of transfer of the registry maintenance system in the event of termination of the agreement with the issuer; and

I) perform other activities as set forth in this Law.

(4) The registry keeper is not entitled to impose other requirements upon making changes in the system of registry maintenance of security owners besides those set in conformity with this Law.
(5) Independent registrar is prohibited from carrying out transactions with the securities of issuers with which it signed the registry maintenance agreement.
(6) The registry keeper shall be held responsible for the information contained in the registry extracts issued thereby.

Article 38. Depository Activlty

(1) Depository activity is carried out by a depository who is a professional securities market participant.

(2) Depository acts on the basis of the contract on providing depository services concluded with the depositor.

(3) The sample of modal-contract on providing depository services is set forth by the National Commission.

(4) Conclusion of the depository agreement shall not entail the transfer of ownership rights in the depositor's securities to the depository.

(5) Depository is committed to keep records of securities, included rights granted by these, as well as securities encumbering with obligations in the compliance with the present law and contract concluded with securities holder.

(6) In compliance with the depository agreement, a depository is entitled to get registered in the registry maintenance system of the securities holders or with another depository as a nominee owner.

(7) Depository has no right to dispose of depositor's securities unless he is authorized to do so by the legislation.

(8) No claims related to the depository's obligations may be attached to the securities of its depositors.

(9) In compliance with the legislation, a depository shall be held liable for disclosure of confidential information obtained by it as a result of fulfilling its obligations under the depository agreement, for loss and destruction of security certificates deposited with it, as well as for failure to execute or improper execution of its obligations with respect to accounting of rights in the securities, including for unauthentic and untimely entries in the DEPO accounts.

Article 39. Clearing Activity

(1) Clearing activity is held by clearing organizations, professional participant on securities market.

(2) In connection with settlements on securities transactions clearing organizations shall accept for execution accounting documents, whose form and nomenclature are set forth by the National Commission, prepared upon determination of mutual obligations, on the basis of agreements with participants of the securities markets for which the respective settlements are performed.

(3) Clearing organizations are also entitled to settle security trades by means of transferring money and delivering securities to the trade participants.

(4) Clearing organizations which settle security trades shall create special funds with the aim of reducing the risk of security trade failure. The minimum size of these special funds for clearing organizations shall be set by the National Commission.

Article 40. Other Types of Professional Activity in Securities Markets

(1) Other types of professional activity with securities shall include exchange activity, investment activity in the securities market, investment consulting, auditing of securities transactions, evaluation of securities and assets related thereto, information services for the securities markets, training and retraining of professional participants at the securities market.

(2) Requirements towards the types of professional activity on the securities market, mentioned in paragraph (1), except exchange activity, are set forth by the National Commission.

(3) Investment activity in the securities market shall be performed by investment funds in accordance with the legislation on investment funds, with the present law and other normative acts of the National Commission.

Article 41. Cumulation of types of professional activity on the security market

(1) Brokerage activity, as a basic activity of a professional participant of securities market, may be cumulated only with dealer, underwriting, investment consulting activity and investment management.
(2) Dealer activity, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of brokerage, underwriting, investment consulting and investment management.
(3) Activity of investment management, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of dealer, brokerage, underwriting and investment consulting.
(4) Activity of registry maintaining, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of depository and clearing.
(5) Depository activity, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of registry maintenance, exchange and clearing activity.
(6) Clearing activity, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of depository activity.
(7) Exchange activity, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of depository or clearing.
(8) Investment consulting activity, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of securities and their assets estimation, providing informational services to securities market, training and re-training of professional participants at securities market.
(9) Activity of securities and their assets estimation, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of investment consulting activity and providing informational services to securities market.
(10) Activity of providing informational services to securities market, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of investment consulting, training and re-training of professional participants of the securities market.
(11) Activity on training and re-training of professional participants of securities market,, as a basic activity of a professional participant of the securities market, may be cumulated only with the activity of investment consulting activity and providing informational services to securities market.

Article 42. Suspension of activity and liquidation of professional participants on securities market

1) The activity of the professional participant on securities market is suspended, pursuant to the resolution of a court body or the National Commission, in the even the violation of the present law or other normative acts regulating the activity on securities market is stated. Within the period of suspension of professional participant's activity on securities market, all actions of the administrative bodies of the professional participant are coordinated with the National Commission.
(2) Liquidation of a professional participant on securities market:
   a) pursuant to the resolution of its administrative body;
   b) pursuant to the decision of court body;
   c) in the event of license recalling issued by the National Commission;
(3) In all cases, resolution on liquidation of professional participant on securities market on its own initiative is approved through in advance agreement with the National Commission, which appoints a representative as a member of liquidation commission.
(4) In the event of license recalling issued by the National Commission, it appoints an administrator from the office which liquidates the professional participant on securities market pursuant to the procedure stipulated by the National Commission.

(5) Decision of the National Commission on suspension of activity and liquidation of the professional participant on securities market may be examined by court bodies.

Article 43. Particularities of bank and other financial institutions activity on securities market

(1) Banks and other financial institutions have the right to undertake those types of activity on securities market, which are stipulated by financial activity authorization, issued by the National Bank of Moldova.

(2) The notion of "control position" stipulated by the present law is applicable for banks and other financial institutions pursuant to the Law on financial institutions.

Chapter 8. Stock Exchange

Article 44. General provisions

(1) The Stock Exchange shall be set up and function as a closed-end joint-stock company in compliance with the legislation on joint-stock companies with the statutory capital not less than 500 thousand lei. The National Commission has the right to ask the stock exchange to increase the statutory capital.

(2) Founders and members of the stock exchange may be only brokers and dealers.

(3)The stock exchange acts pursuant statutes approved by general shareholders meeting, coordinated with the National Commission.

(4) Members of the stock exchange hold an equal number of the stock exchange shares and each of them holds no more than 5% of the placed shares.

(5) Members of the stock exchange quitting the activity of broker and dealer, as the result of license recalling by the National Commission or other reasons, lose their exchange membership, and are to sell their shares to other brokers and dealers, at the agreement of exchange.

(6) The stock exchange is a non-commercial organization without the right to distribute income out of its activity, in any form, among the exchange members.

(7) Stock Exchange can create only non-commercial organizations and may take part in the activity of non-commercial organizations.

(8) The stock exchange can not issue other securities than simple nominal of a single class.

(9) The stock exchange gets a statutes of a self-regulatory organization pursuant to the procedure stipulated by the present law.

Article 45. Stock Exchange Members

(1) Members of the Stock Exchange must have a license for brokerage and/or dealer who meet qualification requirements to solvency, activity organization and staff members set by the Stock Exchange.

(2) Any person who meets the requirements specified in paragraph (1) and who agrees to comply with the Charter and the rules of the Exchange may not be declined membership in the Stock Exchange.

(3) Membership in the Stock Exchange shall terminate in the event of:

a) voluntary withdrawal from the Exchange membership;

b) cancellation of all the licenses issued to the Exchange member specified in paragraph (1);

c) revocation of membership in the Exchange at the decision of the Exchange Board in cases when the member fails to meet membership qualification requirements or in the event of gross violation of the Exchange rules; and

d) liquidation of the Stock Exchange.

(4) The manner of joining, withdrawal and revocation of the membership in the Stock Exchange shall be determined by internal documents of the Stock Exchange.

Article 46. Management and Employees of the Stock Exchange

(1) Management bodies of the Stock Exchange are:

a) general assembly meeting;

b) Exchange Board of Directors; and

c) executive bodies which run the day-to-day activities of the Stock Exchange.

(2) No less than one representative of investors and no less than one representative of issuers shall be the on the Exchange Board. The Exchange members and their affiliated persons cannot act as these representatives.

(3) Affiliated persons of the Stock Exchange members cannot constitute the majority of the members of the Exchange Council.

(4) Members of the National Commission can take part in the sittings of Exchange Board of Directors.

(5) Powers of the auditing commission of the Stock Exchange shall be delegated to an independent auditor licensed to audit security transactions, pursuant to the contract concluded with the Exchange Board.

(6) Employees of the Stock Exchange and their close relations are not entitled to own shares (stock) of professional security market participants.

Article 47. Stock Exchange Rules

(1) The Stock Exchange shall draft and adopt exchange rules which set forth the terms and conditions and the manner of:

a) securities admission to the circulation at the exchange, listing and delisting;

b) conclusion, registration, matching, confirmation and execution of the exchange transactions;

c) transactions which ensure trade in securities (clearing and/or settlement);

d) processing and record-keeping of the documents used by the Exchange members during conclusion of the exchange transactions;

e) restrictions on price manipulation;

f) providing exchange services;

g) providing the information about the demand and supply prices, and about the prices and volumes of securities transactions concluded by the Exchange members;

1) resolving disputes among the members of the Exchange which may arise in the process of concluding securities transactions and their settlements including by cash;

j) introducing amendments and additions to the Exchange rules; and

k) regulating other issues with regard to the Exchange operation as set forth by the National Commission.

(2) The Stock Exchange rules shall take effect upon their approval by the National Commission.

(3) The Stock Exchange shall independently set the amount of and the procedure for charging:

a) contributions to the Stock Exchange from the remuneration received by the Exchange members for participation in the exchange trades;

b) contributions, fees and other payments made by the Exchange members and third parties for the services provided by the Stock Exchange;

c) contributions of the Exchange members to the guaranty fund of the Stock Exchange; and

d) fines paid for the violation of the requirements of the Exchange Charter, rules of the exchange trading and other internal documents of the Stock Exchange.

(4) The Stock Exchange shall ensure the public character of trades by informing all its members about the time and the place of the trades, about the list and quotation of securities admitted for circulation in the Exchange, about the results of the trading sessions, and also provide disclosure of other information envisioned by this Law.

(5) The Stock Exchange is not entitled to establish the amount of remuneration for the execution of the Exchange transaction paid by the clients to the Exchange members.

Article 48. Manner of Securities Admission to Circulation at the Exchange

(1) The following securities shall be admitted to circulation at the Stock Exchange:

a) securities the public offering of which was registered in the manner stipulated in this Law, except for shares of mutual investment funds;

b) government securities; and

c) other securities and financial instruments in compliance with the legislation.

(2) Issuers with more than 50 persons registered in the registry of security owners of a certain class are obliged to register the class of securities with the Stock Exchange. The requirement shall not apply to the mutual investment funds.

(3) The Stock Exchange is prohibited from rejecting the admission to the Stock Exchange of the following:

a) securities mentioned in paragraph (2) which shall be included in the list of securities circulating at the Exchange based on the appropriate account of the issuer, registry keeper, or the National Commission;

b) government securities included in the list of securities circulating at the Exchange at the proposal of the Ministry of Finance; and

c) other securities and financial instruments complying with the Exchange rules.

(4) Securities not included in the list of securities circulating at the Stock Exchange may not be involved in the Exchange transactions.

Article 49. Terms and Conditions for the Stock Exchange Operation

(1) Only members of the Exchange are entitled to participate in the Stock Exchange trades. The Stock Exchange itself can participate in its trades with the aim of repurchasing and selling securities under the transaction not performed by the Exchange member. Other securities market participants can execute transactions at the Exchange exclusively with the assistance of intermediary service of the Exchange member.

(2) The Exchange Council shall determine the amount of the Stock Exchange revenue required for financing its activity on the annual basis.

(3) The revenue of the Stock Exchange are comprised of:

a) the deductions from the remuneration received by the Stock Exchange,

b) contributions, fees and other payments made by the members of the Exchange and third parties in the Exchange trades for the services provided by the Exchange;

c) fines paid for the violations of the requirements of the internal documents of the Stock Exchange, and

d) other revenue resulting from the Stock Exchange operation.

(4) The Stock Exchange revenue shall be channeled to cover expenses connected with the Stock Exchange personnel expenses, organization, expansion .improvement of the Exchange activity and at the creation of the guarantee fund, which value is stipulated by the exchange statutes.

(5) The guaranty fund of the Stock Exchange members cannot be utilized to cover debts for the obligations of the Stock Exchange member with the exception of cases determined by the exchange rules, or in the event of termination of the membership in the Exchange, liquidation of the Exchange member and/or a claim to its assets in the event of bankruptcy. In these cases the Stock Exchange has a prior claim to cover debts for the obligations of a member connected with Exchange activity.

(6) In compliance with the Stock Exchange rules the President (Executive Director) of the Stock Exchange is entitled to temporarily suspend a member from participation in the exchange transactions.

(8) The National Commission has the rights to suspend the right of exchange members to participate in exchange transactions. Such resolution of the National Commission can be examined by a court body.

Chapter 9. Self-Regulatory Organizations of Professional Participants in Securities Markets

Article 50. Requirements to a Self-Regulatory Organization

(1) A self-regulatory organization shall be established by professional securities market participants which carry out homogeneous professional activities in the securities market and is registered by the National Commission pursuant to the stipulated procedure.

(2) The National Commission has the right to issue licenses to a self-regulatory organization for one type of activity on the securities market.

(3) Self-regulatory organization shall be set up for:

a) creating the environment for professional activities for professional participants in the securities market;

b) meeting the standards of business conduct in the securities market;

c) protecting the interests of security owners and other clients of professional participants in the securities market which are members of a self-regulatory organization;

d) establishing rights and standards for securities transactions which ensure efficient operation in the
securities market.

(4) All revenues of a self-regulatory organization shall be used exclusively for providing the fulfillment of the objectives specified in the charter and shall not be subject to distribution among its members.

(5) A self-regulatory organization is entitled:

a) in conformity with this Law, to draft and introduce the rules of professional activities in the securities markets, operational standards of securities transactions which are binding upon all members, and to enforce these rules;

b) execute supervision and check-up of the rules' implementation and the mentioned standards;

c) to receive information on the results of the compliance examinations of its members carried out in the manner established by the National Commission;

d) in accordance with the qualification requirements of the National Commission, to develop training programs and plans, and to train staff for participants in the securities markets; and

e) execute other rights provided by the license.

Article 51. Rules and Standards of a Self-Regulatory Organization

(1) The rules and standards of a self-regulatory organization shall contain the following requirements set for the self-regulatory organization and its members with respect to:

a) personnel's professional qualification (except for technical personnel);

b) rules and standards of professional activities;

c) rules restricting price manipulation;

d) documentation, record-keeping and reports;

e) minimum amount of their own capital;

f) rules of joining, withdrawing and expulsion from the organization of a professional participant in securities markets;

g) equal rights of representation in elections to the organization management and participation in running the organization;

h) protection of clients' rights, including the procedure of reviewing claims and complaints of the clients of the organization members;

i) obligations of its members to clients and other persons to compensate for the damages resulting from errors or omissions committed by a member of the organization in the course of his professional activity, as well as unlawful actions of its member, officers, or staff members;

j) compliance with the procedure for reviewing claims and complaints of the organization members;

k) procedures for inspecting the organization members' compliance with the established rules and standards, including the establishment of a controlling body and a procedure for reviewing the results of inspections by other members of the organization;

1) requirements to the information transparency for inspections conducted at the initiative of the organization; and

m) measures applied to the members of the organization, their officers, and staff members, the recording and application procedure, and enforcement thereof.

(2) Rules and standards of a self-regulatory organization shall not provide for any of the following:

a) a possibility of discrimination against clients using the services of the organization members;

b) unmotivated discrimination against the organization members;

c) ungrounded restrictions enjoining and withdrawing from the organization;

d) restrictions impeding the development of competition among professional participants in the securities markets including regulation of fees and revenues from professional activity of the organization members;

e) regulation of issues beyond the scope of concern and those inconsistent with the operational objectives of the self-regulatory organization; and

f) providing false or incomplete information.

(3) Rules and standards of a self-regulatory organization shall take effect upon their approval by the National Commission.

(4) Ungrounded refusal to approve the rules and standards of a self-regulatory organization may be appealed against in court in the manner stipulated in the legislation.

Chapter 10. Regulating the Activity of Professional Participants in the Securities Markets

Article 52. Licensing of the Activity of Professional Participants in the Securities Markets

(1) Stock Exchanges, depositories, clearing organizations, investment funds, and self-regulatory organizations shall carry out their activity on the basis of the license issued by the National Commission.

(2) Other types of professional activity in the securities markets specified in Chapter 7 of this Law, except for cases stipulated in paragraph (3) of this Article and paragraph (3) of Article 33, shall be performed on the basis of the license issued by the National Commission or organizations authorized thereby.

(3) Issuers, pursuant to the legislation, have the right to maintain the registry independently, having the license from the National Commission.

(4) The National Commission or license-issuing organizations shall supervise the operation of professional participants in the securities markets and make decisions on revoking the license in the event of violation of the securities legislation.

(5) The National Commission shall send to the National Bank of Moldova notices in writing on the facts of issuing licenses to banks and other financial institutions, and on suspension and revocation of the licenses.

(6) Procedures for issuing licenses and for license suspension and revocation shall be set forth by the National Commission or organizations authorized thereby in compliance with the legislation.

Article 53. Requirements to Professional Participants in the Securities Markets

(1) In cases stipulated by the legislation, professional participants in the securities markets, except for financial institutions and issuers acting as single-entity registrars in cases stipulated in this Law shall conduct professional activity in the securities markets as an exclusive one.

(2) Professional participants in the securities markets shall comply with the mandatory own capital adequacy requirements established by the National Commission and other indicators (norms) restricting the risk of dealing in securities. The norms for banks and other financial institutions

shall be established by the National Commission in coordination with the National Bank of Moldova.

(3) Brokers, market-makers, and dealers licensed by the National Commission or authorized organizations are obliged to become members of the Stock Exchange in compliance with procedures set out in this Law.

(4) Professional participants in the securities markets are prohibited from performing the over-the-counter transactions in securities of such classes the registers of which registered more than 50 persons.

(5) Other requirements to professional participants in the securities markets, including requirements to their officers and employees shall be set by the National Commission.

SECTION IV. PROTECTION OF INVESTORS' INTERESTS IN THE SECURITIES MARKETS

Chapter 11. Disclosure of Information on Securities

Article 54. Disclosure of Information by the Issuer

(1) The issuer of securities placed by means of public offering shall be obliged to disclose information about its securities and financial and economic operation in the following forms:

a) annual report for securities;

b) reports on all substantial events and actions affecting the issuer's financial and economic operation;

c) public offering prospectus; and

d) report on the results of the public issuance of securities.

(2) The quarterly report on securities shall include on the mandatory basis the following:

a) information about the issuer, including:

- list of issuer's insiders, information on securities circulation of the issuer, which belong to them;
- list of persons included in the issuer's management bodies, and the amount of their participation in the issuer's statutory capital, list of the issuer's affiliated persons;
- list of shareholders owning no less than 5 percent of the total amount of the voting shares placed by the issuer;
- list of legal entities where the issuer owns no less than 25 percent of the statutory capital;
- list of the issuer's branches and representative offices;
- information about the issuer's reorganization or the reorganization of its affiliated persons; and minutes of the general meetings of the security holders of the issuer in the event that the meetings were held during the reporting quarter;

b) information about the issuer's financial and economic operation, including:

- balance sheets, profit and loss accounts;
- information on statutory capital;
- facts about the issuer's transactions the size of which or the value of property on which makes up no less than 25 percent of the issuer's assets as of the transaction day;

c) information on the issuer's securities, including:

- number of issued securities, their classes;
- number of purchased and re-purchased securities;
- information about dividends and interest accrued on the issuer's securities.

(3) The National Commission can set forth, as necessary, additional requirements to the quarterly reports.

(4) The annual report shall be compiled upon the results of the year. It shall be approved by the issuer's authorized body and filed with the National Commission no later than March, 15 of following year.

(5) The annual report shall be drawn up on the basis of the results for each reporting year. It shall be certified by the issuer's authorized body, verified by an independent auditor and filed with the National Commission and published in the mass media publication no later than March 15 following the reporting year. It shall be also presented to the owners of securities at their request for a fee not exceeding the cost of printing a copy of the report.

(6) Considerable events and actions affecting the financial and economic activities of the issuer are the following:

a) reorganization of the issuer and its affiliated persons;

b) a decision of the issuer's authorized body to hold an issuance of securities, registration of the public offering with the National Commission, initiation and termination of securities placement, approval of a report on the public issuance results and its registration with the National Commission, and acknowledging the issuance as valid or invalid;

c) accrual and/or payment of yield on issuer's securities;

d) emergence in the issuer's registry of a person owning no less than 5 percent of its voting shares of any class;

e) days of closing the registry, the deadline of fulfilling the issuer's obligations to holders, terms of convening and holding the general meetings;

f) decisions of the general meetings;

g) facts of replacing the independent registrar or an independent auditor of an issuer;

h) facts of the issuer's one-time transactions the size or amount of property on which makes up 25 or more percent of the issuer's assets as of the date of the transactions; and

k) other events and actions referred to the considerable ones in the normative acts of the National Commission.

(7) Reports on considerable events and actions affecting the issuer's financial and economic operation shall be published by the issuer in mass media press and forwarded by it to the National Commission or an authorized body within five days after the events or actions have taken place.

(8) Procedure of the information disclosure contained in the issue prospectus and the report on the results of the public issuance of securities and the format of the annual report shall be established by the National Commission.

(9) Standards of information disclosure by the issuers that are banks or other financial institutions shall be set by the National Commission in coordination with the National Bank of Moldova.

Article 55. Disclosure by Professional Securities Market Participants

(1) Professional participants in the securities markets shall disclose information about their security transactions in the following cases:

a) the professional participant in the securities markets has performed transactions with the same type of securities of a single issuer within one quarter provided that the number of securities under these transactions was no less than 100 percent of the total number of these securities; and

b) the professional participant in the securities markets has performed a one-time transaction with the same type of securities of a single issuer provided that the number of securities under this transaction was no less than 5 percent of the total amount of these securities.

(2) Professional participants in the securities markets shall disclose the specified information containing:

a) the name of the professional participant in the securities markets,

b) the type of securities;

c) their state registration number,

d)the name of the issuer,

e)minimum and maximum price of one security,

f)the number of securities.

g)data of transaction execution.

(3) Professional participant in the securities market disclosures information no later than five days after the expiry of the appropriate quarter, during which the transaction has been executed, or after the appropriate one-time transaction pursuant to paragraph (1) by notifying the National Commission.

(4) Upon offering and/or announcement of the purchase and/or sale prices of securities the professional participant shall disclose the public information disclosed by the issuer of these securities or announce that it does not have this information.

(5) Professional participants in the securities markets shall also disclose other information on its activity in the volume and in the manner envisioned by this Law and the legislation regulating this activity.

Article 56. Disclosure by Stock Exchanges

(1) The Stock Exchange shall disclose the following information:

a) Stock Exchange rules and the statutes;

b) list of persons comprising the management bodies of the Stock Exchange;

c) list of the Stock Exchange members;

d) list of securities admitted for circulation in the Stock Exchange; and

e) for every transaction effected at the Stock Exchange - the date and the time of the transaction, the type and the state registration number of the securities which are the subject of the transaction, price per security and the number of securities in the transaction.

(2) The stock exchange shall publish the following information in the exchange bulletin or in other mass media periodicals:

a) no less frequently than once a month, the information on securities admitted to circulation at the exchange; and

b) as a result of each trading session, the information on transactions effected at the exchange.

Article 57. Disclosure by Self-Regulatory Organisations

(1) Self-regulatory organization shall disclose the following information:

a) rules and standards of a self-regulatory organization;

b) list of persons comprising the management bodies of a self-regulatory organization;

c) list of members of a self-regulatory organization;

d) list of persons which obtained the qualification certificates and licenses for various types of professional activities in the securities markets issued by the self-regulatory organization, and terms of obtaining the above-mentioned certificates and licenses — in the event that a self-regulatory organization is vested with the rights in compliance with the terms and conditions of the general license issued by the National Commission; and

e) information on taking measures to members of a self-regulatory organization, their officers, and personnel.

(2) Self-regulatory organization shall disclose other information on its operation in the manner and volume stipulated by the National Commission.

Article 58. Disclosure by Securities Owners

(1) The owner of securities purchasing 5 per cent and more than total number of securities of one issuer shall inform the issuer and the National Commission within 10 days from the day of purchase. The same requirements are to be followed by the holder at further purchase of 5 per cent securities of the issuer.

(2) The owner shall disclose the following information about his/her specified securities:

a) name of the owner;

b) class of securities;

c) their state registration number;

d) name of the issuer of the securities ;

e) number of securities belonging to them; and

f) relative share of securities belonging to the owner in their total amount.

Chapter 12. Use of Inside Information in the Securities Markets

Article 59. Issuer's Insiders

(1) The issuer's insiders shall include:

a) officers of the issuer, including the members of the Surveillance Committee, the Board of Directors, management, the Auditing Commission and other similar bodies of the issuer's management;

b) persons that control the issuer;

c) persons that by virtue of their position, or under an agreement, or due to the confidence of the issuer or other its insider have access to the inside information of the specified issuer; and

d) individuals who within the last six months held a position or were otherwise affected by subparagraphs a), b), or c) of this paragraph.

(2) Insiders of the issuer are obliged to submit to the National Commission a report on the number of the issuer's securities whose shares it owns, on all changes in the ownership rights on its securities which happened during the month, and on all transactions with the issuer's securities. The reports shall be filed with the National Commission no later than the tenth day of the month following the reporting one.

Article 60. Transactions Performed with Use of Ins i fie Information

1) The issuer's insider is prohibited from conducting transactions with the issuer's securities with securities of a third party with use of inside information if the third party is involved in the transaction with the issuer or intends to participate in the transaction the insider is informed about, and to affect the transactions with the securities conducted by a third party.

(2) The issuer's insider is prohibited from disclosing insider information to any person who can use the information for the purpose of conducting the securities transactions stipulated in paragraph (1).

(3) Any person who has violated the aforementioned requirements shall reimburse the damaged party for its losses, including lost profit.

(4) The provisions of this Article shall also apply to any persons who obtain the issuer's inside information from an insider or otherwise with the aim of performing a transaction with securities of this issuer.

Chapter 13. Advertising in Securities Markets

Article 61. Requirements to Advertising

(1) Any advertisement in the securities markets shall contain the name of the advertiser.

(2) Any advertiser who is a professional participant in the securities markets shall include in the advertisement the information on the types of activities it is engaged in the securities markets according to the advertisement.

(3) Advertisers shall not:

a) advertise unauthenticated or misleading information about their activity and about the securities offered for purchase and sale or other transactions, the conditions of these transactions, and the issuers of securities;

b) advertise the expected amount of yield on securities (except for securities with fixed income set in the public offering prospectus) and forecasts of price increase;

c) guarantee in public or otherwise inform potential investors of the collateral on a security in question compared to other securities or financial instruments;

d) use advertising for unfair competition by referring to the shortcomings of professional participants in the securities markets involved in the similar activity or of the issuers of similar securities; and

e) refer in the advertising on the advertiser's performance evaluation made by the National Commission or other public authority.

(4) Should any of the circumstances defined in paragraph (3) be found in an advertisement, it shall be deemed done in bad faith.

(5) The advertiser shall be held responsible for any damage caused by the advertisement in bad faith in conformity with the legislation.

(6) In the event that the advertising is acknowledged to be in bad faith, the contracts of the advertiser with the advertising agent shall be invalid.

(7) The advertiser shall submit to the National Commission a copy of an advertisement within 10 days following its publication.

Article 62. Information that is Not an Advertisement in Securities Markets

(1) Generally available information about securities and issuers specified in this Law as well as the information submitted to authorized bodies in connection with their securities market regulation function in compliance with legislation shall not be considered an advertising in securities markets.

(2) Information about the issuance of securities by the issuer and accrued and/or paid dividends is an advertising.

Article 63. Ban on Securities Advertisement

(1) Securities shall not be advertised:

a) prior to the registration of public offerings or tender offers in compliance with this Law; and

b) during suspension of the issuance.

(2) Contracts on securities advertisement shall be deemed invalid in the cases specified in subparagraph a) of paragraph (1).

(3) The National Commission is entitled to file a suit for the damage caused to investors as a result of failure to observe the requirements of this Article.

Article 64. Additional Grounds for Termination of the Contracts on Securities Advertisement

(1) Deeming the securities issuance invalid or their issue defective shall serve as the additional ground for termination of the contract on securities advertisement.

(2) A contract on securities advertisement the issuance of which is deemed invalid or the issue of which is deemed defective is terminated upon notification of the advertising agent by the advertiser.

(3) Advertising agent is entitled to request from an advertiser reimbursement for losses caused as a result of terminating the contract on advertisement.

Chapter 14. Responsibilities for Violations in the Securities Markets

Article 65. Manipulations in the Securities Markets

(1) Manipulation in the securities markets shall be banned.

(2) Manipulations in the securities market is considered:

a) false or other misleading statements, including promises, forecasts, or other similar announcements, including advertisement addressed to other persons; and

b) use by professional participants in the securities market of by its collaborators of confidential information violating the legislation at the execution of transactions with securities, as well as influence of transactions by third parties;

c) violation, non-execution or non-adequate dishonest execution of the requirements by the brokers, stipulated by the legislation and the contract, other stipulations of the legislation and other normative acts of the National Commission;

d) refusal of the dealer to execute securities transactions pursuant to essential reasons announced by it, in the event of lack of the essential reasons in the dealer's announcement - pursuant to conditions proposed by the client or pursuant to the legislation requirements.

(3) The fact of manipulations in the securities market is qualified by the National Commission, whose decision may be examined in the court.

(4) Any person involved in manipulation in the securities markets, including sale or purchases of securities by means stipulated in paragraphs (3) of this Article is obligated to reimburse the damaged party for losses, including lost profit, unless the person proved that the damaged party had been aware about the manipulation or use of the mentioned means.

(5) A professional participant bears responsibility, pursuant to the legislation, for manipulations in the securities market..

Article 66. Other Violations in the Securities Markets

Violations in the securities markets also include:

a) carrying out unregistered public or tender offer;

b) failure to introduce during the initial public offering appropriate amendments and additions to the public offering prospectus and other documents submitted for the registration of the public offering in the event that it was discovered that they are inconsistent with the legislation requirements;

c) providing false information or concealing actual information requested by the National Commission during licensing or registration;

d) violation of the registry maintenance requirements, and maintenance of the registry with violation of the established rules;

e) failure to meet by issuers, professional participants in the securities markets and their self-regulatory organizations the standards for reporting, publication in the open press and their submitial to the National Commission as set forth in the legislation;

f) failure to meet by professional participants in the securities markets the requirement to the clients' access to the available information about their activities; and

g) other violations stipulated in the legislation and normative acts issued by the National Commission.

Article 67. Responsibility/or Violations in the Securities Markets

(1) Persons who violated this Law and other legislation on securities shall be held responsible in the manner stipulated in the civil, administrative and criminal legislation.

(2) Damage caused as a result of the violations of the legislation on securities is subject to reimbursement in the manner envisioned in the civil legislation of the Republic of Moldova.

Chapter 15. Final and Interim Provisions

Article 68. Taking effect of the present Law

(1) The Law shall take effect upon its publication.

(2) Issuers of securities:

- which are in the process of securities issuance as of the moment of effectiveness of this Law, shall complete the issuance in the manner valid before the Law has taken effect; and

- before January 1, 2001, shall introduce amendments and additions resulting from this Law in their foundation documents and compliance manuals.

(3) Before January 1, 2001, professional participants in the securities markets, except for trust companies and privatization investment funds shall

- bring their foundation documents in compliance with this Law;
- submit to the National Commission documents for obtaining a license for professional activities in the securities markets.

(4) In the event the professional participant in the securities market is refused to be issued the license, it is liquidated pursuant to the procedure stipulated by the legislation in force.

(5) Before July 1, 2000 self-regulatory organizations shall:

- bring their statutory documents in compliance with the requirements of this Law
- submit to the National Commission the documents on obtaining a license of a self-regulatory organization.

(6) Within 3 months after present law takes effect, the stock exchange will bring its foundation acts into the compliance with this law. Persons, which pursuant to the present law, lost their membership of the stock exchange are obliged to sell their shares, pursuant to the stipulations of Article 44 paragraph 5.

(7) Applications for a license for professional activities in the securities markets, for registration of the securities issuance, and a permit to hold open subscription to securities, being reviewed by the National Commission at the moment the Law takes effect, shall be returned to the applicants for bringing them and the attached documents in compliance with this Law.

(8) Stipulations of the present law are not applicable for issuance and state securities circulation before January 1, 2000.

(9) The National Commission shall enforce the compliance of issuers, professional participants in the securities markets, and self-regulatory organizations with provisions of this Article.

(10) Within 3 months the Government shall:

- submit the Parliament for examination proposals related to bringing this law into compliance with the legislation, including draft low on trust management and fiduciary companies in the securities market;
- will bring its normative acts into the compliance with the present law.

(11) The following documents shall be deemed invalid:

Law on Securities Circulation and Stock Exchanges No.427-XIII of May 18, 1993 (Monitorul Parlamentului Republicii Moldova, 1993, No.7, Art.204);

Parliamentary Decree on Implementation of the Law on Securities Circulation and Stock Exchanges No.l428-XIII of May 18, 1993 (Monitorul Parlamentului Republicii Moldova, 1993, No.7, Art.205);

Law on Introduction of Amendments and Additions to the Law on Securities Circulation and Stock Exchanges No.491-XIII of June 8, 1995 (Monitorul Oficial al Republicii Moldova, 1995, No.58, Art.638);

Article XIX of Law on Amendments and Additions to Some Legal Acts No.788-XIII of March 26. 1996 (Monitorul Oficial al Republicii Moldova, 1996, No.40-41, Art.367); and

Article IV of Law on Amendments and Additions to Some Legal Acts No.827-XIII of May 3, 1996 (Monitorul Oficial al Republicii Moldova, 1996, No.46-47, Art.413).

Law on the National Securities Commission (No. 192-XIV of 12.11.1998)

The Parliament approves the present organic law

Chapter 1

GENERAL PROVISIONS

Article 1.

(1) The National Securities Commission (here-and-after referred to as the National Commission) is a body of public administration, undertaking regulating, supervision, monitoring of the capital market and activity of its participants. It is in force to make decisions, grant benefits, interfere, monitor, put under a ban, impose administrative and disciplinary penalties pursuant to the legislation.

(2) The National Commission is a legal person, has a stamp with the State Emblem and its name. Authority of the National Commission is in force throughout the Republic of Moldova.

(3) The location of the National Commission is Chisinau municipality.

Article 2.

(1) The National Commission undertakes its activity pursuant to the requirements of the Constitution, present law, other normative acts, stipulations of its regulation and is independent when implementing its plenary powers.

(2) Annually the National Commission presents to the Parliament, the President of the Republic of Moldova and the Government a report on its activity and operation of the capital market.

Article 3.

(1) The main assignments of the National Commission are:

a) organization and implementation of capital market development policy;
b) regulating, supervision and monitoring of the capital market;
c) maintain the rights of investors and public;
d) inform the securities owners and public on supply and demand, on issue and circulation of the securities;
e) determine the standards of professional activity on the capital market.

Article 4.

While implementing its plenary powers the National Commission interacts with public authorities with the aim to provide the maintenance of investors' and public's interests, as well as to provide transparency on the capital market.

Article 5.

The National Commission has the right to cooperate with the corresponding specialized international organizations and be their member.

Article 6.

(1) The budget of the National Commission is formed from:

a) dues, paid for issuance of any permits, licenses, for benefits granting, certification, registration, authorization, for making modifications to any of the above mentioned documents;
b) penalties, imposed pursuant to the legislation.

(2) Financial incomes, mentioned in part (1), are accumulated on a special treasury account and are stipulated in a specific article of the state budget. Withdrawal of these incomes are not allowed.

(3) At the end of financial year the excess of the National Commission budget is to be transferred to the state budget. In the event of insufficiency of income, the deficit is covered from the state budget by means of credit pursuant to the main interest rate of the National Bank of Moldova.

Article 7.

The Government, the National Bank of Moldova, ministries and departments, other bodies of public administration are to coordinate the draft projects of the normative acts, related to the function of the capital market and corporate management, with the National Commission.

Chapter II

FUNCTIONS AND RIGHTS OF THE NATIONAL COMMISSION

Article 8.

For implementation of the tasks, stipulated by the present law, the National Commission:

a) regulates the capital market;
b) issues licenses on professional activity with securities and on activity of self- regulating organizations;
c) supervises and monitors the implementation of the stipulations of the laws and other normative acts on securities;
d) determines the order and conducts the registration of public and tender offers, related to securities, as well as registers the results of public offers implementation;
e) stipulates the manner of allocation and circulation of the foreign securities on the capital market of the RM;
f) drafts and approves the rules on professional activity with securities, including standards of insurance and granting other guarantees for the capital market;
g) establishes compulsory requirements for securities operations, including provided with the real estate, for accounting and depository activity of the professional participants of the capital market, for registry on the shareholders;
h) together with the Ministry of Finance drafts and approves standards and rules of accounting system, as well as for specialized reporting system of the professional participants on the capital market, issuers and self-managing organizations;
i) provides creation of the public informational base on issuers, owners of licenses and function of the capital market;
j) approves qualification requirements for professional participants of the capital market, establishes the manner on testing the above mentioned persons;
k) keeps the state registry on securities, registry on professional participants of the capital market, licensing on professional activity at the capital market, certificates on operations with securities;
l) in collaboration with the body of public administration, undertaking the antimonopoly regulation, monitors the following of the antimonopoly legislation on the capital market;
m) registers the issuance of the securities of the issuers from the RM and issues the permits on circulation of the securities abroad;
n) informs the public on its activity, on development of the capital market, including monthly publishing of the securities prices, which are in the circulation out of the Stock Exchange, determines periodic press where the professional participants of the capital market and issuers are to publish the information, which should be open pursuant to the legislation;
o) undertakes other plenary powers, stipulated by the legislation on securities, on joint stock companies and regulations of the commission.

Article 9.

(1) The National Commission has the right to:

a) qualify securities (determine their kinds) pursuant to the legislation on securities;

b) in cases, stipulated by the legislation, suspend the issuance of securities or cancel the specific issuance of securities;

c) impose restraints on activity of securities market participants, namely, suspend bank operations on their accounts;

d) send directions to securities market participants for further compulsory implementation, including directions on holding general shareholders meetings, require presentation of accounting and other documents, oral and written explanations;

e) request and examine reports on activity of securities market participants periodically, pursuant to the stipulations of the legislation;

f) for professional participants of securities market establish compulsory standards of net assets, limiting risks on securities operations;

g) appoint independent registrar. The issuer, who violated the stipulated order of keeping the registry on securities shareholders, is to conclude a contract on keeping the registry on securities shareholders with the registrar;

h) in cases of securities legislation violation, with the aim to maintain the interests of investors and public suspend the placement and circulation of securities at the stock exchange and secondary market, clearing and counting on transactions;

i) suspend any activity on the securities market, which contradicts legislation, as well as activity, not stipulated by the legislation;

j) in the event of violation of the securities legislation, undertake measures towards individuals - participants of the capital market;

k) examine materials on administrative violations in the sphere of capital market and impose administrative penalties, pursuant to the legislation;

1) establish requirements on protection of materialized securities forms and in collaboration with the respective bodies monitor the implementation of the requirements;

m) monitor the circulation of securities in the RM;

n) appoint administrators in the event professional participants on the capital market are liquidated;

o) pursuant to the legislation on securities, qualify the activity of securities market participants as manipulation on the capital market.

(2) The National Commission has the right to provide paid services, related to the operation of the capital market, if these services are not its duties, stipulated by the legislation. The list of services and prices are determined by the regulation of the Commission.

Chapter III

MEMBERSHIP OF THE NATIONAL COMMISSION AND ITS BODIES

Article 10.
The National Commission is a corporate body and has five members, including the chairman and the deputy chairman.

Article 11.
All members of the National Commission are appointed by the Parliament for a period of seven years according to the proposal of the Speaker of the Parliament. The condition is that the parliament commissions on rights, appointments and immunity, on economy, industry and privatization submitted positive decisions. Each members of the National Commission has the right to be reelected.

Article 12.
Members of the National Commission may be appointed citizens of the RM, having experience in the sphere of finance, economy and bank system for not less than 10 years.

Article 13.

(1) Appointment of the members of the Commission is made by consent of the candidates, proved in written form.

(2) If the candidate to the National Commission is a member of any party or other public organization, he should stop his membership in the party or any public organization.

Article 14.

The plenary powers of the member of the National Commission are suspended in cases when:

a) the term of appointment has expired;

b) the Parliament recalls members in the event of unsatisfactory implementation of its duties or violation of legislation;

c) replaces members, in the event of non-implementation of the duties;

d) dismisses.

Article 15.

(1) The structure of the executive body of the National Commission, which is formed of departments and sections, its schedule, wages and expenses are established by the regulation of the Commission.

(2) The National Commission creates its own territorial agencies and approves regulations on them.

Article 16.

There may be created an advisory body within the National Commission - Expert Board. The National Commission appoints its organization, membership and its plenary powers.

Article 17.

The National Commission has the right to attract scientists and practice-specialists for conducting consultations, audit and examinations, paying their services, pursuant to the legislation;

Chapter IV

DECISIONS OF THE NATIONAL COMMISSION

AND THE PROCEDURE OF THEIR APPROVAL

Article 18.

(1) The Decisions of the National Commission are made within the sittings, which may be ordinary or special. Minutes of the sittings are signed by the Chairman of the Commission. Ordinary sittings are called when necessary, but no less than two times a month, special meetings - on the initiative of the Chairman or not less than two members of the National Commission.

(2) The sittings of the National Commission may be opened or closed. Closed sittings are held when there is a danger to cause damages to the capital market or its members. Decision on a closed sitting holding is made by voting.

Article 19.

(1) The sitting of the National Commission is authorized when not less than four members are present.

(2) The decisions of the National Commission are approved by the majority of voting present at the sitting. In the event of equal votes, the vote of the Chairman or, in his absence, of his Deputy is considered the casting vote.

(3) Members of the National Commission have the right to express special opinion on specific questions and register it in the Minutes, enclosing the corresponding materials.

Article 20.
The National Commission makes decisions in form of resolution or decrees. Resolutions are signed by the Chairman or, in his absence, by his Deputy; decrees - by the Chairman or his Deputy, or by one of the authorized member of the Commission.

Article 21.
(1) Resolutions of the National Commission may stipulate creation and liquidation of different institutions, including territorial agencies; issuance and cancellation of permits, licenses; approval and cancellation of documents; approval and modification of normative acts on regulation of the capital market; approval of regulations on capital market institutions; granting and recalling of plenary powers; putting under a ban.
(2) Decrees of the National Commission stipulate the requirements on presenting information and documents, check-up and examination are conducted pursuant to the decrees.

Article 22.
(1) Resolutions and decrees of the National Commission are published in "Official Monitor of the Republic of Moldova".
(2) Resolutions of the National Commission come into force from the day of publication, if there are no other terms stipulated.
(3) Decrees of the National Commission come into force from the day of publication.

Article 23.
Decisions of the National Commission may be appealed in court.

Chapter V

RIGHTS AND COMMITMENTS OF MEMBERS

AND EXECUTIVES OF THE NATIONAL COMMISSION

Article 24.
Members of the National Commission are independent in implementation of their duties and comply with legislation.

Article 25.
(1) The Chairman of the National Commission:
a) manages the activity of the National Commission, responds to the Parliament on implementation of the assignments, stipulated by the present Law and regulation of the Commission;
b) represents the National Commission in relations with public bodies, as well as in specific international organizations;
c) calls the sittings of the National Commission, presides and provides the implementation of the approved decisions;
d) distributes the duties and plenary powers of the National Commission members, approved through the Commission's decree;

e) organizers holding of tenders on vacancies in the executive body and territorial agencies of the National Commission;

f) appoints and fires employees of the National Commission and territorial agencies. If it is necessary, imposes disciplinary penalties, pursuant to the regulation;

g) signs conclusions, reports, official answers and other mail.

(2) In the absence of the Chairman of the National Commission the functions, stipulated in part (1), are undertaken by his Deputy.

Article 26.

The Chairman of the National Commission takes part in the sittings of the Parliament and the Government, with the agenda related to regulation and function of the capital market.

Article 27.

(1) Members and executives of the National Commission are to:

a) keep the confidentiality of the information, received within the process of implementation of the functions;

b) abstain from any activity or actions incompatible with the activity as a member or executive of the National Commission.

(2) Members of the National Commission may not:

a) be a close relative or be in close relations with the President of the Republic of Moldova, the Speaker of the Parliament, the Prime-Minister, the President of the National Bank of Moldova;

b) have previous convictions;

c) undertake any other paid activity, with the exception of scientific, teaching and art activity;

d) be members of administrative boards, board of directors, managing committee, inspection commission and other managing bodies of legal persons, which are subject of supervision on behalf of the National Commission;

e) hold more than 0,5% shares (participation share) or other securities of the professional participants and issuers;

f) use their plenary powers in advertising.

(3) Executives of the National Commission have no right to:

a) undertake any other paid activity, with the exception of scientific, teaching and art activity;

b) be members of administrative boards, board of directors, managing committee, inspection commission and other managing bodies of legal persons, which are subject of supervision on behalf of the National Commission;

c) hold more than 0,5% shares (participation share) or other securities of issuers and license owners;

d) use their plenary powers in advertising.

Article 28.

Members and executives of the National Commission undertake administrative and criminal liability in the event of violation of the stipulations of Article 27.

Article 29.

Members of the National Commission and its authorized members are authorized to request any documents, oral or written explanations, necessary for implementation of control functions of the National Commission, from capital market participants.

Article 30.

Members and executives of the National Commission are not authorized to pass their plenary powers to other persons.

Chapter VI

FINAL AND TRANSITIONAL PROVISIONS

Article 31.
The present law comes into force from the day of publication.

Article 32.
Within two months period from the day of publication of the present law, pursuant to the legislation, the State Commission for Securities Market changes into the State Commission for Securities, which is a successor of the State Commission for Securities Market.

Article 33.
The first membership of the National Commission is appointed by mandate with different duration. Every year the duration of a member's mandate will expire. The Chairman is appointed for seven years, the Deputy Chairman - six years, one of the members - five years, one member - four years, one member — three years.

Article 34.
(1) Within two months from the date of application submission, the Government, or the authorized local administrative body, is to pass all necessary real estate (plots and buildings) to the National Commission and its territorial agencies, which are on the balance of the above-mentioned bodies.
(2) Within two months period the Government together with the National Commission is to:
submit to the Government for examination:
- draft Law on formation of Fund on compensation of investors' expenses;
- proposals on bringing the legislation into compliance with the present Law;
bring its normative acts into compliance with the present Law.

Speaker of the Parliament Dumitru Diacov

Regulation regarding prevention and combating money laundering on the securities market (Decision of the NSC no. 11/1 of 28.02.2005) (excerpts)

Published in Monitorul Oficial R.Moldova nr.36-38/121 of 04.03.2005

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(2.1) Professional participants are obliged to develop programs on struggle against the money-laundering, following measures including:
a) Use of certain methods, procedures and measures of internal control which would provide conformity of internal policy and procedures with legislative norms and requirements on struggle against money-laundering;
b) purpose of one or several persons among officials who would be responsible for supervision of execution of Law N 633-XV from 15.11.2001 about the prevention and struggle against money-laundering and financing of terrorism and for realization of methods, procedures and measures of internal control stipulated by item 2.1 of present position;
c) Use of certain methods, procedures and measures on observance of rules about client knowledge
d) Constant training of employees and realization of strict selection of staff;

e) Carrying out regular internal audit for execution control of Law N 633-XV from 15.11.2001 about the prevention and struggle against money-laundering and financing of terrorism.
(2.3) Professional participants also are obliged:
a) to collect, analyze and register data about clients on basis of certifying documents of physical and legal persons;
b) to receive information on persons, addressed to which open account or on behalf of which transaction if there are doubts concerning actions of clients on behalf of specified persons is carried out;
c) to demand any necessary documents for person check and powers of representative (persons, trying to operate on behalf of customer);
d) to fill the special data card on each operation made by physical person for sum, exceeding 300 thousand MDL, and also on each operation made by the legal person for sum, exceeding 500 thousand MDL which is a subject to a direction in 15-day's term in Center. The data card is filled and in case when sum of several operations accomplished within 30 days by physical or legal person, including under their assignment, reaches specified above the sizes;
e) in case of revealing circumstances specifying doubtfulness of prepared, made or perfect financial operations to inform on it Center within 24 hours;
f) under decision of State Office of Public Prosecutor or judicial instance to stop fulfillment of limited or doubtful financial operations for term of, specified in decision, but no more than for five days;
g) under enquiry letter of Center to represent it available information, documents, materials, concerning fulfillment of limited or doubtful financial operations;
h) to store the registers containing data on identified clients, archive of accounts, and also primary documents on perfect limited and doubtful financial operations before expiration of five years after realization of operation;
i) to not inform third parties on transfer to Center of information on fulfillment of limited or doubtful financial operations, except cases stipulated by legislation.
(2.8) The information on offshore zones and other necessary information (about countries not applying or applying insufficient measures on struggle against money-laundering or giving a high degree of risk from the point of view of a crime rate and corruption) it is periodically given to professional participants by National commission on the basis of the information received from Center.
(3.1) Professional participants are obliged to develop and apply rules about knowledge of client, with a view of prevention of use of professional participant criminal elements.
(3.2) Rules about knowledge of client should include, at least, norms and criteria:

a) about identification and acceptation of client;
b) about gathering and storage of information on client;
c) about monitoring operations which have been carried out by client.

(3.3) With a view of rules application about knowledge of client during moment of conclusion of contract between broker and legal person, a being resident of an offshore zone, legal person will present broker given information:

a) a series, number and date of delivery of certifying document, address and other necessary data for identification of representative of legal person;
b) document on representation (power of attorney, order, an extract from charter of a society, etc.), certified according to legislation which will contain a name and competence of legal person representative;
c) data about legal identification (the certificate about registration of legal person), address and other necessary data for identification of legal person;
d) documents confirming identification of legal person founders, up to a degree of an establishment of founders-physical of persons.

(5.1) Till January, 31st of each year professional participants will present to National commission report on execution within the last year Law N 633-XV from 15.11.2001 about the prevention and struggle against money-laundering and financing of terrorism.

Regulation concerning the way of granting and withdrawal of license for performing the activity on the securities market (Decision of the NSC No. 12/1 of 28.10.1999) (excerpts)

Published in Monitorul Oficial al R.Moldova nr.156/328 of 31.12.1999

(5) For reception of license for activity on a securities market applicant of license applies:

a) Enterprise registration certificate in State Registration Chamber;

b) Charter in duplicate with all changes and additions registered on date of documents representation. In charter of license competitor except banks and other financial establishments kind of activity on which license is requested should be specified;

c) Copy of certificate which has been given out by the Main State Tax Inspection about reception of a tax code;

d) Document confirming elections or purpose of an agency of license applicant;

e) Accounting balance and report on financial results, made for last registration date:

- Quarter, confirmed by a revision committee;
- Annual, confirmed by auditor examination.

In case when legal person founded up to established term for drawing up financial reports, submits application up to specified term, organization-applicant of license is obliged to present accounting balance and financial results report, made on current date. In this case period between date of drawing up of specified reports and date of submission of application cannot exceed 30 days;

f) Bank and other documents confirming formation by legal person of own capital and guarantee fund;

g) Copies of qualifying certificates of heads (manager) and experts of organization-applicant the licenses which have been given out by the National Commission, and copies of work-record cards with corresponding records;

h) Documents confirming presence of necessary conditions for realization of given kind of activity (requirement to premises, computer facilities, etc.);

i) Main State Tax Inspection certificate on absence of debts against budget and Social Fund;

j) application for acknowledgement requirements observance established by legislation and statutory acts of National Commission to order of conducting registers - in case of realization activity on conducting nominal securities owners register or clients register of nominal owner;

k) Internal rules about order and conditions of formation and use of guarantee fund;

l) Copy of National bank of Moldova license (for banks and other financial establishments);

m) Procedures and measures of internal control over maintenance of prevention and struggle against money-laundering;

n) Other documents stipulated by present position depending on features of licensed kind of activity.

Documents specified in sub items) and b) are represented in original or notarially certified copy.

The person, who signed application, bears responsibility for information reliability stated in application and documents enclosed to them.

(7.2) The basis for refusal in licensing is:

a) Presence in presented documents doubtful or deformed data;

b) Incomplete representation of documents specified in present position;

c) Discrepancy of presented documents to requirements of legislation on securities, present position and other statutory acts of the National Commission;

d) Non-observance of requirements to sufficiency of own capital and guarantee fund, and also to other obligatory specifications certain by the National commission according to legislation;

e) Absence of necessary conditions for specified kind of activity realization;

f) Absence of account system and internal reporting corresponding requirements, established by the National commission and the Ministry of Finance;
g) Procedures and measures absence of internal control over maintenance of prevention and struggle against money-laundering;
h) Revealing during licensing some facts of infringement, legislation requirements on securities and statutory acts of the National commission by organization-applicant of license.

(8.1) Basis for stay of action of license is:
a) Professional participant infringement of the National commission statutory acts positions established for licensed activity realization;
b) Default by professional participant of t requirements established by the National commission to size of own capital and guarantee fund;
c) Partial or time loss by professional participant of ability to carry out a licensed kind of activity;
d) Non-observance of terms established by the National commission for elimination of revealed infringements;
e) Untimely performance of obligatory National commission decisions about elimination of infringements of legislation on securities, present position, other statutory National commission acts;
f) terms infringement, order and forms established for representation in the National commission of reports and information, presence in reports of not confirmed or incomplete information presented to the National commission;
g) Realization by professional participant of transactions for own benefit in case of conflict interest's presence with clients;
h) Rendering of resistance at monitoring procedure of professional participant activity and default of information and documents demanded during check;
i) Reduction of experts quantity which should without fail qualifying certificate, at cancellation or expiry of qualifying certificate action term of professional participant experts, or their dismissal;
j) Person application having license about time stay of its action with instruction of reason and decision of body, authorized to make such decision;
k) Infringement of tax laws;
l) Absence of office or unmotivated restriction of access to coherent person during more than 5 days on end;
m) Non-observance of legislation positions on prevention and struggle against money-laundering.
8.8. The license is cancelled in following cases:
a) Under application of professional participant;
b) Revealing in documents of doubtful data which could not be revealed during moment of licensing;
c) Infringement by professional participant of statutory National commission positions acts established for realization of licensed activity;
d) Infringement by professional participant of National commission decisions;
e) non executing in the terms established by the National commission, infringements or their consequences formed basis for acceptance of decision about stay of action of license;
f) Repeated and-or especially heavy breaking legislation on securities requirements, present position, other statutory National commission acts;
g) Transactions realization forbidden legislation;
h) Persons rights infringement served by the professional participant.
i) Reorganization and-or liquidations legal person who are carrying out activity on a securities market;
j) Announcements of professional participant the bankrupt on basis of judicial instance decision;
k) Manipulation on a securities market;
l) Cancellation of bank license and other cases stipulated by legislation on financial establishments and legislation on a securities market (for banks and other financial establishments).

Law on joint stock companies (No. 910-XIII of 5 July 1996) (excerpt)

Chapter 2
SECURITIES OF THE COMPANY

Article 11. General Provisions

(1) The placement, circulation and cancellation of shares, bonds, and other securities of the company shall be carried out pursuant to this Law, legislation on securities and the company Charter.

(2) The company shall be entitled to place only registered securities.

(3) The company securities can be:

a) in the form of a certificate manufactured in a printing house; and

b) in the form of an entry in a personal account set up in the name of their owner or a nominee holder in the company registry of security holders.

(4) The company securities of one type can be issued only in one of the forms stipulated in paragraph (3).

(5) No payment in installments shall be allowed at placement of the company securities.

Law on operative investigation (No. 45-XIII of 12.04.1994)

Official Monitor of the Republic of Moldova No. 11-13 of 31.01.2003

Chapter II
PROCEDURE OF APPLYING OPERATIVE INVESTIGATION MEASURES

Article 6. Operative investigation measures

(1) Operative investigation measures shall apply in full compliance with the legislation in cases when there is no other ways of ensuring implementation of scopes envisaged under Article 2.

(2) With the scope of reaching herewith-specified objectives, the bodies exercising operative activity with due observance of the rules of conspiracy, shall be entitled to proceed as follows:

1) to undertake, with the authorization of the examining judge, the following operative investigation measures:

a) residence searching and installation of audio, video, photo, filming devices etc.;

b) residence supervision by usage of technical means;

c) tapping telephone wires and interception of other conversations;

d) control of telegraphic and other communications;

e) gathering of information from telecommunication institutions;

2) undertake other operative investigation measures:

a) interrogate citizens;

b) gather information;

c) apply field supervision;

d) institute proceedings and carry out factual documentation by using advanced methods and technique;

e) collect materials (evidence) for the purpose of comparative investigation;

f) carry out check up purchasing and delivery of goods found in free or restricted circulation;

g) search objects and documents;

h) identify persons;

i) search premises, buildings, land plots and transportation means;

j) check up of the mail of the convicted;

k) carry out discussions with the accused one with the use of polygraph;

l) use marking by applying chemical and other special substances;
m) operative experiment
n) infiltrate operatively into criminal organizations collaborators
of operative subdivisions and persons confidentially cooperating with the bodies carrying out operative investigation activity;
o) check up transfer of cash or other extorted material values.

(2) Operative investigation measures stipulated under items 1)and 2) lt. n) and o) shall be exercised by the Ministry of Home Affairs, Information and Security Service of the Republic of Moldova and Center for Combating Economic Crimes and Corruption on the basis of law and in cases when such are required to ensure national security, public order, economic welfare of the country, maintaining law and order and preventing offences, health care, protecting morality or to secure rights and freedoms of other persons.

(3) List of actions listed under paragraph (2) is exhaustive and can not be modified or amended unless by virtue of the law.

(4) While applying operative investigation measures use shall be made of informational systems, video, audio and camera/photography means and other advanced technical means.

(5) Official persons with the bodies exercising operative investigation activity shall be personally involved in organizing and applying operative investigation measures. If necessary, they can appeal for help to specialists in different domains as well as to citizens cooperating voluntarily (publicly or secretly) with the bodies exercising operative investigation

The Law on instituting the CCCEC (No. 1104-XV of 06.06.2002)

The Law of the Republic of Molvodova on Instituting the Center for Combating Economic Crimes and Corruption

No. 1104-XV of 06.06.2002
Official Gazette of the Republic of Moldova Nos. 91-94/668 of 27.06.2002

The Parliament adopts the present organic law.
The present law establishes legal framework, principles of activity, objectives and rights of the Center for combating economic crimes and corruption as well as conditions of passing services within its bodies.

Chapter I
GENERAL PROVISIONS

Article 1. The Center for combating economic crimes and corruption.
The Center for combating economic crimes and corruption (hereinafter referred to as the Center) is a specialized law-enforcement body designed to counteract financial-economic and tax offences as well as acts of corruption.

Article 2. Legal frameworks
The legal frameworks underlying activities displayed by the Center shall be the Constitution of the Republic of Moldova, the present law as well as other regulatory acts and international agreements to which Moldova is a party.

Article 3. Principles of activity
The Center shall carry out its activity on the basis of principles as follows:

a) legality;
b) observance of basic human rights and freedoms;
c) expediency;
d) combining public and secret methods and facilities;
e) combining undivided authority and collegiality;
f) cooperating with other public authority bodies, public institutions and individuals.

Article 4. Structure of the Center

(1) The Center is an integral centralized body encompassing central apparatus and its local level subdivisions.

(2) The structure of the Center, the number and location of its local level subdivisions and coverage area of their activity shall be approved by the Government upon such proposal as advanced by the manager of the Center.

(3) The Center and its local subdivisions are legal entities, have their independent treasury accounts and other required requisites.

(4) Allocation of local subdivisions of the Center shall not necessarily correspond to administrative-territorial division of the Republic of Moldova.

Chapter II OBJECTIVES, OBLIGATIONS AND RIGHTS OF THE CENTER

Article 5. Objectives of the Center

(1) The objectives of the Center are as follows:
a) preventing, disclosing, investigation and contend of the financial- economic and tax offences;
b) counteract corruption and protectionism;
c) counteract legalization of material values and laundering illegally gained money.
d) performing anti – corruption expertise of the Government's drafts of legislative and normative documents regarding their correspondence with state policy of prevention and countering of corruption.

(2) The objectives pursued by the Center are comprehensive and can not be modified or amended unless in virtue of the law itself.

Article 6. Obligations of the Center

In order to execute entrusted objectives the Center shall proceed as follows:
a) carry out its activity in strict compliance with the Constitution of the Republic of Moldova, the present law as well as other relevant regulatory deeds;
b) carry out, in compliance with the legislation, efficient investigation activity;
c) take measures to prevent, disclose and contend cases of corruption and protectionism, inclusively by performing anti – corruption expertise of the Government's drafts of legislative and normative documents, with observance of principles, criteria and the procedure of its effectuation;
d) carry out criminal prosecution of offences referred to its competencies;
e) carry out proceedings on administrative contravention referred to is competencies;
f) carry out examination of financial-economic activity and tax audits applying sanctions in compliance with the effective legislation;
g) take measures on restituting losses incurred to the state as a result of offenses preventing which is referred to the competencies of the Center;
h) receive and register claims, notifications, appeals and other such information on offences and carry out check ups on such in compliance with the established procedure;
i) ensure security of activity and protection of its personnel while fulfilling their service duties;
j) carry out within the frame of its competencies measures on counteracting legalization of material values and laundering illegally gained money;

k) take measures to secure preservation of mismanaged property disclosed by the Center bodies until its transfer into possession of the respective authority;

l) ensure training, retraining and refreshment of skills with engaged personnel;

m) in compliance with the effective legislation keep record of persons liable under military service passing services with the Center and making part of its staff;

n) ensure safeguard and safety of information referred to state, banking, commercial and other secrets found under legal protection and made known to the Center employees in the course of fulfilling duties entrusted to the Center. Such information can be disclosed to other public authority bodies in compliance with the law only.

Article 7. The rights of the Center

(1) With the scope of fulfilling entrusted objectives and obligations the Center enjoys the rights as follows:

a) carry out operative investigation activities, attract citizens and permanent employees to confidential cooperation, use cover up documents and dispose of provisional lock up ward for conducting investigation in compliance with the law. The regulation regarding the activity of permanent employees of the Center is approved by the government.

b) prosecuting an inquiry and preliminary investigation;

c) make out minutes on administrative contravention referred to its competency;

d) retain in compliance with the law, persons suspected of committing offences, referred to its competencies, hear out their explanations, effect personal examination , examination and confiscation of their personal effects and documents, apply other such measures as envisaged under the law;

e) appoint, in connection with examination of duly registered claims or notifications on offences referred to its competencies, prosecuting an inquiry or investigation on such offences, examining financial-economic activity and carrying out tax audits with both natural and legal persons engaged in entrepreneurial activity, irrespective of the form of property and type of activity displayed by the latter; in the course of examinations and audits to seal cash in vault, cash machines, premises and places of safe-keeping documents, cash and material values. Provisions for carrying out examinations shall be approved by the Government;

f) make use, in the course of tax audits, of rights of tax service offices and its employees - of tax officers, and charge tax liabilities due by taxpayers following the procedure set forth under tax legislation;

g) during examination of financial-economic activity and tax audits, prosecuting inquiries and conducting preliminary investigations enjoy free access, and in case of obstruction, to penetrate into premises in the territory or land plots owned by natural and legal persons engaged in entrepreneurial activity irrespective of the type of property and business or location (except for foreign diplomatic representation offices and consular institutions); to conduct in presence of the proprietor or his authorized representative and in case of his absence or refuse to attend -with participation of local public administration representatives examination of said objects, including means of transportation, check up and/or withdraw required items, material values and documents. Penetration into residence against the will of its inhabitants shall be done in cases when executing sanction of arrest or court rulings;

h) suspend transactions carried out by both natural and legal persons engaged in entrepreneurial activity and bound to accounts held with the banks and other banking institutions and seize cash, material values, accounts receivable and other assets owned by these persons in case of revealing involvement of the latter in illegal economical activity or dodging from making contributions to the budget;

i) receive from public authority bodies, financial institutions, economic agents and natural persons required information and documents;

j) carry out criminality and other kind of expertise, as well as researches according to its competence, attract experts engaged by public authority bodies, state enterprises, organizations and institutions to carrying out examinations and expertise, clearing certain specific issues;

k) carry out, in compliance with the law, photography, taping, audio and video recording, dactyloscopy and registration of persons subjected to detention or arrest, stipulated under the law;

1) demand from managers of controlled enterprises to carry out inventory of material values and cash and collating mutual offsets, duly submission of technical-regulatory and accountancy documentation regulating and confirming transactions on use of tangibles and cash;

m) ascertain violation of financial-economic and tax legislation and apply sanctions stipulated under the law;

n) sequester and/or confiscate from natural and legal persons engaged in entrepreneurial activity material values, including means of transportation, in cases as follows:

- failure to produce while transporting, storing or selling documents certifying legality of their origin;
- storing non-enrolled into accounting documents material values or storing such in places not declared with the tax authority;

o) arrest, if it can not be postponed, accounting documents of entrepreneurs, documents with false registrations, goods without owner, objects and documents, from operative information, till the final settling of the case;

p) in compliance with the effective legislation appeal with the statement of claim to a judicial instance;

r) participate in the elaboration and improvement of legislation in what refers to averting and suppressing economic crimes and corruption;

s) require and receive information and consulting support, from public authorities, necessary to perform anti – corruption expertise of Government's drafts of legislative and normative documents;

t)advance proposals on elimination of causes and conditions fostering offences arising from its competencies and following the procedure stipulated under the law;

u)based on inter-governmental agreements (conventions) carry out exchange of information on economic relationships established by natural and legal persons of the Republic of Moldova and natural and legal persons of other countries;

v) using mass media with the scope of establishing circumstances of offences and searching for persons escaping from inquest, investigation and prosecution.

(2) In cases of disclose of law violations decisions and resolutions on accrual of tax liabilities, application of penalties and other sanctions shall be taken by the managers of the Center and its local subdivisions as well as by their deputies.

(3) In case if the credits granted by the state or local budget and the interest are not reimbursed, will be undertaken forced execution measures for their reimbursement, in compliance with legislation in force.

Chapter III
ORGANIZATION OF CENTER'S ACTIVITIES COMPETENCIES OF CENTER'S DIRECTOR

Article 8. Organization of Center's activity.

(1) The Center is managed by its Director appointed by the Government for a term of four years.

(2) Director of the Center (hereinafter referred to as Director) shall be entitled to take part in Government sittings.

(3) Director has his deputies appointed and dismissed by the Government upon submission of the respective application by Center's Director.

(4) Created with the Center shall be the Collegium. Number of personnel and composition of such shall be approved by the Government upon submission of the Director.

(5) The Center is independent in determining the plan of its activity and in carrying out its competencies.

Article 9. Director's competencies.

(1) The Director's competencies are as follows:

a) organizing and ensuring activities displayed by the Center and its local subdivisions, activities displayed by the Collegium and bears personal responsibility for the fulfillment of objectives entrusted to the Center;

b) determining and distributing functional duties between his deputies and managers of structural subdivisions of the central apparatus;

c) determining fields of activity to be covered by Center's local subdivisions;

d) approving staff of central apparatus and its local subdivisions in compliance with the structure and within the number of personnel approved by the Government;

e) approving financing programs within budget allocations envisaged under the law of budget for the respective year and submitting such for approval to the Ministry of Finance;

f) approving internal routine rules for the Center;

g) issuing, on the basis and for the purpose of executing the present law, respective orders, resolutions and instructions;

h) organizing selection, assignment and training of personnel;

i) ensures conspiracy and confidentiality regime;

j) conferring respective ranks to Center's employees;

k) issuing orders on appointing and dismissal of Center's employees;

1) ensuring measures of incentive and applies disciplinary punishment onto Center's employees in compliance with the effective legislation and other regulatory acts;

m) representing the Center in its relationships with other public authority bodies as well as with the similar structures in other countries;

n) canceling or making changes in orders, decisions, resolutions and instructions issued by the managers of local subdivisions of the Center in cases when such are contradicting to the effective legislation and other regulatory acts.

(2) The Director is entitled to proceed as follows:

a) delegate part of his functions to other employees of the Center;

b) bring to the Government proposals on changing the structure of the Center with the scope of improving its activity.

Article 10. Financing and logistics

The financing and logistics of the Center are ensured at the expense of the state budget allocations.

Chapter IV ENROLEMENT WITH THE CENTER STAFF

Article 11. Employees

(1) Center's employee shall be considered a person enrolled with one of its bodies and entrusted with certain rights and obligations with the scope of fulfilling objectives entrusted to the Center and to whom special rank has been conferred in compliance with the procedure established under the present law.

(2) Likewise employed by the Center can be public servants to whom conferred in compliance with effective legislation shall be respective class ranks as well as technical personnel.

(3) At the enrolment and every year after that, the employee of the Center is obliged to present, in compliance with the legislation, declaration on income and property.

Article 12. Enrolment conditions

(1) Enrolled with the Center can be citizens of the Republic of Moldova who are capable by their

personal or professional qualities of fulfilling objectives pursued by the latter with high school or secondary education background in financial, accounting or juridical domain and health condition allowing them to perform duties in the respectively occupied position.

(2) Persons whose appointment to the respective position envisages special expertise can not be employed with the center if aged over 30 or respectively over 35 for being employed with medium and high level managerial positions. Employment shall be done following conditions and terms established by the Collegium.

(3) Enrolment with the Center is voluntarily and shall be done in compliance with the law by signing individual employment contract.

(4) In compliance with the effective legislation a certain probation period can be established for persons enrolled with the Center. Days when missing due to temporary incapacity to work or any other reason envisaged under the law shall not be included into probation period.

(5) Candidates for enrolment with the Center shall be subjected to thorough check up.

(6) At the enrolment, the employees are submitted to obligatory state dactyloscopy registering, in compliance with the legislation.

Article 13. Limitations

(1) Any person with prior convictions, including cases of cancelled convictions, or such freed from penal responsibility under amnesty, as well as such recognized under the law as incapable of act or with limited capacity of act can not be employed with the Center.

(2) The Center's employee can not:

a) take another paid position except for such bound with teaching, scientific or creative activity;

b) be involved in entrepreneurial activity personally or through the third parties;

c) share membership in managerial bodies of an enterprise;

d) be the solicitor or third parties representative with the Center's bodies;

e) use outside service duties financial resources, logistics and information provisions, other state assets as well as service information;

f) use service position in the interest of parties, other social and political associations, including trade unions and religious organizations.

(3) In compliance with the effective legislation for the duration of employment with the Center its employee is obliged to transfer into trust management to another person his interest (package of shares) held in the statutory capital of the enterprise.

(4) In case of violation of the provisions set out under the present article or commencing any action incompatible with the position taken, the Center's employee shall be dismissed irrespective of the time of commencing such action.

Article 14. Employment certificate and uniform

(1) Following the established procedure issued in are of Center's employees shall be employment certificates, badgers and personal seals, the specimens of which shall be defined by the center. Employment certificate shall certify the right of the respective employee for wearing and safekeeping service weapon and special means, other rights and competencies granted by the law.

(3) Center employees enjoy free uniform. The specimen of the uniform, distinguishing badges and uniform provision rates shall be approved by the Government. The procedure of wearing uniform shall be established by the Director of the Center.

Chapter V CONFERRING SPECIAL RANKS

Article 15. Special ranks

(1) The Center's employees are the officers and warrant officers conferred to whom can be the following special ranks: warrant officer; senior warrant officer; lieutenant; senior lieutenant; captain, major; lieutenant-colonel; colonel ,-major-general; lieutenant-general; colonel-general.
(2) The following special ranks correspond to each complement of staff:
   a) junior complement: warrant officer, senior warrant officer;
   b) medium managerial complement: lieutenant, senior lieutenant, captain;
   c) senior managerial complement: major, lieutenant-colonel, colonel;
   d) superior managerial complement: major-general, lieutenant-general, colonel-general.
(3) The list of positions with the Center and respective special knowledge to match the position are established by the Government.
(4) Special ranks with the Center's employees shall be equaled to the respective military or other special ranks.
(5) Special ranks shall be conferred for the life time. When reaching the age of retirement added to the rank shall be "retired servicemen".

Article 16. General conditions of conferring special ranks.
(1) Special ranks are conferred personally taking into account qualification and professional expertise of Center's employee, length of service and position occupied, as well as other conditions envisaged under the present law.
(2) Special ranks ranging from major-general and up as well as special rank to Center's Director shall be conferred by the President of the Republic of Moldova upon submission of application by the prime-minister.
(3) Special ranks up to colonel inclusively shall be conferred by the Center's Director.
(4) Special ranks conferred to Center's employees are subdivided into initial and ordinary.
(5) When appointing to a position envisaged for which is the requirement of conferring special rank of a major and higher, initially conferred can be special rank not higher than major, unless the person in question has been prior conferred higher class rank of public servant, special or military rank.
(6) The ordinary special rank is conferred in succession and in compliance with special rank envisaged by the position taken upon expiry of the established term of service holding previous special rank.
(7) The ordinary special rank up to colonel inclusively can be as well conferred when attending profile educational institution (recommended by the Center) in compliance with position taken prior to entering schooling institution. Upon graduation from schooling institution or post-graduate study the ordinary special rank is conferred irrespective of prior taken position.
(8) Establishing other than herewith-specified procedure of conferring special ranks is inadmissible.

Article 17. Conferring initial special ranks.
(1) The initial special rank of warrant officer is conferred upon enrolment with the Center services and appointment to position corresponding to special rank of warrant officer or senior warrant officer.
(2) The special rank of lieutenant is conferred to Center employees having high school background, appointed to respective position and corresponding to special rank beginning with lieutenant and up.
(3) A person having military rank or special rank conferred by other public authority body, being enrolled with the Center services and appointed to a position shall be conferred special rank corresponding to prior conferred military or special rank if in compliance with the present law any higher rank can not be conferred.
(4) Conditions of compliance of military and special ranks to special ranks of the Center shall be defined by the Government.

Article 18. The oath
(1) Within 10 days after initial special rank has been conferred Center's employee shall take the following oath:

"Having joined the Center for combating economic crimes and corruption I am herewith taking this oath to serve the people of the Republic of Moldova, making commitment to rigorously observe the Constitution as well as other laws of the state, to secure citizens' rights and freedoms and to voluntarily fulfil my service duties.

I swear to overcome the difficulties with dignity, be honest, courageous, display vigilance and use all my knowledge to ensure economical security of the Republic of Moldova, and to strictly observe the state and service secret.

And shall I break the oath I am prepared to bear responsibility envisaged under the law".

(2) The procedure of taking the oath shall be defined by the Director of the Center.

Article 19. The length of service in special ranks.

(1) Applicable to the length of service in special ranks are as follows:

a)	warrant officer	1 year;
b)	lieutenant	2 years;
c)	senior lieutenant	3 years;
d)	captain	3 years;
e)	major	4 years;
f)	lieutenant colonel	4 years.

(2) The length of service in special ranks of warrant officer, colonel and higher is not established.

(3) For the employees having high school background and passing services with the Center in the speciality conferred upon graduation and which is specific for the activity displayed by the Center, the length of service in special rank of lieutenant is 1 year.

(4) The ordinary special rank corresponding to the position taken shall be conferred to Center employee upon expiry of service in prior conferred rank.

Article 20. Age limits of service

(1) The employees remain enrolled with the Center until they reach the following age limits corresponding to special rank:

a)	from sergeant up to captain	45 years;
b)	from major up to colonel	50 years;
c)	major-general	55 years;
d)	lieutenant-general and colonel-general	60 years.

(2) The age limit for civil servants and technical personnel shall be established by the effective legislation.

(3) The service term with the Center in excess of age limit can be extended for up to 5 years upon employee's request by the person or body authorized to appoint for position, provided said employee is found fit for service with the Center by medical examination commission.

(4) Liable under military service enrolled with the Center as employees shall be taken off the military registration record in compliance with the legislation and transferred with the Center's staff.

Article 21. Delay in conferring ordinary special rank.

The ordinary special rank is not conferred in cases as follows:

a) found at Center's disposition prior to being appointed to a position;

b) found under disciplinary punishment until such is canceled;

c) found under service investigation in connection with infringement of service discipline or charged with penal responsibility until service investigation is over or penal case is closed (except for cases when freed from penal responsibility under amnesty act) or court ruling of non guilty. In cases when infringement of service discipline finds no confirmation or when penal case is cancelled on rehabilitative grounds or court ruling of non guilty the ordinary special rank is conferred as of the day when grounds occurred for conferring such.

Article 22. Specific issues of conferring special ranks and estimation of the length of service in case of employees transferred to the Center.

(1) The civil servant transferred to Center bodies shall be conferred special rank corresponding to prior conferred one irrespective of his position taken with the Center.

(2) The civil servant transferred to the Center bodies to take position of a civil servant shall preserve prior conferred special rank or class or higher class rank in case his position taken with the Center is higher.

(4) The length of service calculated on previous employment with public authority bodies as well as such in taking positions in financial, economic, accounting or juridical fields shall be enrolled into length of service with the Center.

Chapter VI PASSING SERVICES WITH CENTER BODIES

Article 23. The rights of an employee

(1) When fulfilling service duties an employee of the Center within the frameworks of occupied position has the rights as follows:

a) to receive, as per established procedure, information and materials required to fulfill his service duties;

b) to get familiar with the documents defining his rights and obligations as well as with criteria of quality evaluation when passing services with the Center;

c) to take decisions and/or participate in preparing drafts of certain decisions;

d) to advance proposals on improving activities displayed by the Center;

e) to take part in contest for replacing vacant positions with the Center's bodies;

f) to get familiar with materials of his personal case, references on his performances as well as with other documents and to submit explanations to be annexed to his personal case;

g) to rise qualification at the expense of resources allocated by the Center for the purpose;

h) to demand service investigation to be carried out in order to disproof data discrediting his dignity and depriving his rights;

i) to participate in meetings held by the Center;

j) to keep specially assigned service weapon, to use physical force, special means and service weapon observing the procedure in cases set out under the present law;

k) to receive financial, material, medical, pension and other types of provisions envisaged under the effective legislation.

(2) The Center's employee is entitled to enjoy other rights envisaged by the effective legislation.

Article 24. The obligations of an employee

(1) The employee of the Center has the following obligations:

a) to observe Constitution of the Republic of Moldova, provisions set out by the present law as well as other regulatory acts;

b) to provide for observance and protection of basic human rights and freedoms;

c) to fulfill lawful orders and instructions of his superiors;

d) to observe internal regulations of the Center, procedure of using service information, fulfill other instructions, provisions and regulatory acts;

e) to keep state and other law protected secrets, not to divulge information became known in connection with fulfilling service duties, including such touching private life, honor and dignity of the citizens.

(2) The obligations of the Center's employee are defined by the office instructions approved by its Director.

(3) Referred to fulfillment of service duties by Center's employee are as follows:

a) carrying out provisions set out under regulatory acts issued by the central public authority bodies and referred to activities displayed by the Center;

b) executing orders and instructions of superiors issued in compliance with their competencies except for deliberately illegitimate ones ;
c) carrying out service duties within the established work hours or extra hours if such is called for by service necessity as well as attending to studies with schooling institutions recommended by the Center;
d) taking part in reunions, exercises, contests and other arrangements initiated by the center or displayed with Center's participation;
e) taking part in actions on preventing and liquidation of consequences of natural calamities, emergencies and catastrophes;
f) protecting own and other persons life and bone, honor and dignity;
g) traveling to and from the place of service, being on a business trip or medical care;
h) being kept hostage in connection with fulfilling service duties;
i) missing until officially recognized as missing or declared deceased in compliance with the procedure established under the law;
j) attempting other actions recognized by the judiciary instance as committed when performing service duties.

Article 25. Attestation

(1) Attestation is carried out with the aim of evaluating the level of professional qualification and fitness to the occupied position.
(2) Attestation, as a rule, takes place once every 3 years, but not less than once every four years and not earlier than one year from the assignment.
(3) The procedure of attestation shall be established by the Government.

Article 26. Conditions and extent of applying physical force, special means and service assigned weapon.

(1) The Center's employees shall be entitled, following respective training, to hold and use service assigned weapon and special means within the limits and following the procedure established under the present law.
(2) Application of physical force, special means or service assigned weapon shall be preceded by warning on intention to make use of such and allowing for sufficient time for response, with exception of cases when delay in applying physical force, special means and service assigned weapon may generate direct danger to life and bone of citizens and/or Center's employee or may lead to grave consequences.
(3) Service assigned weapon shall not be used against women and minors, elderly persons or such having evident physical deficiencies, except for the cases when such persons are attempting joint assault menacing peoples' life and bone and such actions can not be stopped by other ways or means.
(4) In case of applying physical force, special means or service assigned weapon, the Center's employee is obliged to notify on the case to his superior as well as to prosecutor.
(5) Exceeding by the Center's employees their attributions with regards to application of physical force, special means and service assigned weapon implies responsibility set out under the effective legislation.
(6) Physical force, including special fighting methods shall be applied to defeat resistance opposed to legal requirements in case when non-violent methods are not sufficient for ensuring fulfillment of obligations.
(7) Means of immobilizing (s.a. handcuffs, batons, tear gas, etc) shall be applied in cases as follows:
a) averting assaults attempted on Center's employees and other persons found on duty;
b) arresting and delivering to Center's office or other service premises persons that have committed offence, escorting and holding arrested persons if such refuse to subordinate or

oppose resistance to Center's employee as well as in case when there are grounds for suspect that they can escape, cause prejudice to persons in their vicinity or to themselves.

(8) Type of special means and severity of application shall be chosen by Center's employee depending on situation created, nature of offence and delinquent's identity.

(9) The service assigned weapon shall be used by Center's employee as an extreme measure in cases as follows:

a) for self defense against assaults implying real threat to life or bone, as well as for preventing capturing of service assigned weapon through violence;

b) for halting group or armed assault against Center's employees and other employees of the Center on duty, as well as halting any other assaults of other nature threatening their life and bone;

c) for arresting person opposing armed resistance or a delinquent escaping from arrest as well as of armed person that refuses to subordinate to the order of lay down his arm, when it does not seem possible to halt resistance or arresting a delinquent by any other means.

(10) Shooting above the target shall be considered application of arm.

(11) The arm can be used without prior warning in case of unexpected assault with use of wrestling technique and/or means of transportation.

(12) In all cases of applying physical force, special means and service assigned weapon, the Center's employee shall take all possible precautions to ensure citizens' safety and to minimize prejudices inflicted to their bone, honor, dignity and property as to extend first aid assistance to the victims.

Article 27. Responsibility of employees

For commencing illegal activity, Center's employees shall bear disciplinary, material, administrative and penal responsibility in compliance with the effective legislation.

Article 28. Appeals against actions attempted by the employees

Appeals against actions attempted by Center's employees which may cause prejudices to citizens rights, freedoms and their legitimate interests shall be examined and solved in compliance with the legislation.

Article 29. Remedy of prejudice caused by the employees

In case when Center employees offenses the rights, freedoms and legitimate interests of natural or legal persons, the Center shall take measures of rehabilitation and remedy the prejudice in compliance with the legislation.

Article 30. Incentive

(1) In order to ensure conscientious fulfillment of service duties certain incentives can be extended through the following:

a) expressing thanks;

b) rewarding w/bonus;

c) gift of value;

d) Diploma of Honor of the Center for Combating Economic Crimes and Corruption;

e) Decoration with badges: "Exemplary of the Center for Combating Economic Crimes and Corruption" and "Honored Collaborator of the Center for Combating Economic Crimes and Corruption";

f) Premature canceling of disciplinary sanction.

(2) For courage in executing service duties and in view of ensuring economic security of the Republic of Moldova, for other special merits to the country, the employees can be rewarded with state distinctions or with honorable titles of the Republic of Moldova in compliance with the legislation.

(3) Regulation on badges "Exemplary of the Center for Combating Economic Crimes and Corruption" and "Honored Collaborator of the Center for Combating Economic Crimes and Corruption", as well as Diploma of Honor of the Center for Combating Economic Crimes and Corruption shall be approved by the Collegium.

Article 31. Application of disciplinary sanctions

Applied for violation of service discipline shall be disciplinary sanctions as follows:

a) observation;
b) reprimand;
c) austere reprimand;
d) retrograding from special rank or function;
e) warning on partial unfitness for the service
f) dismissal.

Chapter VII DISCONTINUING SERVICES WITH THE CENTER

Article 32. Ground for discontinuing services with the Center.

(1) Services with Center can terminate in case of dismissal or decease.
(2) Dismissal can occur in cases as follows:
a) upon submission of application;
b) due to old age;
c) upon expiry of individual employment contract;
d) in case of transfer to another public authority;
e) in case of being elected to a function with another public authority;
f) in case of winding up one of the Center's body or staff redundancy;
g) in case of incapacity to fulfill attributions confirmed by medical examination findings;
h) in case of failure to prove fitness to the occupied position confirmed by attestation commission, in case of no inferior vacancies or refusing to accept proposed assignment;
i) for serious or systematic infringement of internal regulations;
j) in case when the necessary information for engagement with the Center was hidden;
k) for committing offence and being condemned through definite court ruling;
l) in case of revocation of the citizenship of the Republic of Moldova or holding citizenship of another country;
m) in other cases envisaged under the legislation.
(3) It is not admitted to dismiss an employee when on holidays or on medical leave with exception of cases envisaged under par. (2) item h).

Article 33. Benefits in case of dismissal

(1) In case of dismissal under provisions set out in Art. 32, par. (2) items b), g) , or for age limit, the employee is eligible to get one time benefit depending on the length of service as follows:

from 2 to 10 years	5 average monthly salaries
from 10 to 15 years	10 average monthly salaries
from 15 to 20 years	15 average monthly salaries
over 20 years	20 average monthly salaries

(2) One time benefit to an employee awarded with state distinctions during the period of service within the Center shall be increased by 2 average monthly salaries.

Chapter VIII LEGAL AND SOCIAL PROTECTION

Article 34. Legal protection

(1) Center's employee is inviolable person found under state protection. The person, its honor, and dignity are protected by the law.
(2) The employee is entitled to protect his rights and interests with the court of law.
(3) The employee shall not be liable for material prejudice inflicted to the offender in connection with the latter's refuse to subordinate or opposing resistance when arrested.

Article 35. Inadmissibility of interference into employer's activity

(1) When fulfilling service duties the employee shall be subordinated to his immediate superior exclusively. None of other persons shall be entitled to interfere with activities displayed by the employee.

(2) In case of receiving from his superior or other officials orders or instructions contradicting to the legislation, the Center's employee shall be guided by the Law.

(3) Center employee's demands to citizens and official persons as well as actions taken are recognized legitimate until otherwise established by the authority entrusted to carry out control over his activity.

Article 36. The right of taking professional risk

(1) Actions attempted by Center's employee if done under conditions when taking professional risk was justified shall not be considered violation despite of the fact that it may contain features, which imply disciplinary, administrative or penal responsibility.

(2) The risk shall be considered justified if said action was commenced by Center's employee arising from information, facts and circumstances that were made known to him, while the legitimate objective could not have been achieved without such risk and provided employee made all possible precautions to prevent negative consequences.

Article 37. Pension provisions

Retirement in case of Center's employee shall occur in compliance with the effective legislation.

Article 38. Social welfare

(1) In case when an employee is killed while on duty his family and his dependent persons are eligible for one time allowance to the size of ten-years salary earned in his last position taken with the Center. Minor dependent children of the deceased one enjoy additional monthly allowances to the size of average monthly salary of the deceased in his last position until they reach the age of 18.

(2) In case when an employee gets corporal injuries while on duty and provided their gravity excludes further fulfillment by the latter of his service duties such an employee is eligible for one time benefit to the size of 5-years salary earned in his last position plus pension.

(3) In case when an employee gets corporal injuries while on duty with less grave consequences as these specified under paragraph (2) above, such an employee is eligible for one time benefit to the size of 5 average monthly salaries.

(4) Prejudices inflicted in connection with fulfillment of service duties by Center's employee, or such inflicted to his property or close ones shall be fully recuperated.

(5) Paying out benefits and recuperation of prejudices inflicted shall be done at the expense of state budget resources with the right of regressive collection of such from the offenders.

(6) Benefit is paid out based on court ruling or statement made by the investigation authority or prosecutor in cases when penal case is ceased or when penal investigation is suspended.

Article 39. Mandatory insurance

(1) Center's employees are subject to mandatory insurance at the expense of state budget and other funds envisaged for the purpose.

(2) The insurance cover is paid out in cases as follows:

a) in case of insured person's decease while on duty or prior to expiry of one year after dismissal from one of the Center's bodies in connection with corporal injuries or contusions inflicted to the latter while fulfilling his service duties as well as diseases caused by fulfilling said duties - to his hires to the size of 10 average monthly salaries calculated for the last year in service;

b) in case of establishing disability grade to the insured employee, provided such was in

connection with fulfilling service duties or in case disability grade is established within one year after dismissal from the center the cover is paid out as follows:
7.5 average monthly salaries to disabled grade I;
5 average monthly salaries to disabled grade II;
2.5 average monthly salaries to disabled III;
c) in case grave corporal injuries are inflicted to the insured one when fulfilling his service duties - cover is paid to the size of annual salary and in case of medium gravity corporal injuries the cover paid out is worth half yearly salary.

(3) The size of annual salary is calculated based on the last position taken with the Center and includes all cash payments due during the year in which insurance case occurred.

(4) Other conditions of mandatory insurance of Center's employee shall be defined by the agreement signed between the Center and the insurance company.

Article 40. Income taxation

(1) for the service, the Center's employee receive maintenance indemnities, food rations and equipment.

(2) The Center's employee maintenance indemnities contains: function salary, salary for special rank, salary spore, calculated in %, for length in service, for work in special conditions, other payments, spores and rewards according with the legislation.

(3) in exchange for food ration and equipment, the Center's employee receive money compensation in compliance with effective legislation.

Article 41. Holidays

(1) The civil servants and technical personnel are granted holidays in compliance with the effective legislation.

(2) The Center's employees are granted holidays following the below procedure:

a) annual for the duration of 30 working days;

b) extra:

5 working days in case the length of service is 10 years;

10 working days in case the length of service is 15 years;

15 working days in case the length of service is 2 0 years and more;

c) medical leave is granted based on certificate issued by the medical institution. For the duration of medical leave the employee is paid his average salary.

(3) In compliance with the effective legislation Center's employees may enjoy other holidays.

Chapter IX CONTROL AND SUPERVISION

Article 42 . Control and supervision over the activity displayed by the Center.

(1) Control and supervision over the observance of legitimacy by Center's employees when fulfilling their service duties shall be carried out by the prosecutor's office in compliance with the effective law.

(2) Control over spending of budget resources allocated for maintenance of the center shall be carried out by the Chamber of Accounts.

Chapter X FINAL AND TRANSITORY PROVISIONS

Article 43 .

The Government shall proceed as follows:

a) ensure in compliance with the effective legislation, employment of public servants dismissed in connection with creation of the Center;

b) within two months:

c) submit to the parliament proposals on bringing legislation in conformity with the present law;

d) bring regulatory acts in conformity with the present law;
e) ensure conformity of ministerial and departmental regulatory acts with the present law.

Chairman of the Parliament Eugenia Ostapciuc
Chisinau, June 6, 2002 No. 1104-XV

Order of the Director of the CCCEC on Rules of the Office for Prevention and Control of Money Laundering (No. 111 of 15.09.2003)

The order of the director
of the Center for Combating
Economic Crimes and Corruption
No.111 of 15 September 2003

The Rule of the Office for Prevention and Control of Money Laundering

Chapter I

1. The Office for Prevention and Control of Money Laundering, named as Office, was founded on the base of the law nr. 633-XV for prevention and control of money laundering, with ulterior modification, is an independent subdivision of the Center for Combating Economic Crimes and Corruption, formed through the Director's order.
2. The Office is invested with the attribution of prevention and control of money laundering, its aim is to accumulate, analyze, and process the information on the financial transaction effectuated by legal and physical persons, and to transmit (remit) the materials of control to the resort structures.
3. The Office do operative measures of investigation in the financial-banking area as well, and it is based on the principles of legality, to observe the human rights and freedoms, social equity and the observation of opportunities, combination of the methods and *public resources* with the secret ones, the combination of the collegiality and personal responsibility, collaboration with public authorities, NGO-s , with citizens and mass-media authorities.
4. The Office in it's activity *is guiding by* the Constitution of the Republic of Moldova, the Law on the Center for Combating Economic Crimes and Corruption, the law on Prevention and Combating Money Laundering, other normative acts concerning the prevention and combating money laundering, the decrees of the president of the Republic of Moldova , normative acts of the Government of the Republic of Moldova, orders and dispositions of the Director of the Center, international accords at which the Republic of Moldova is the member and of the present regulation.
5. The office constitutes a proper department at the central level and territorial, in depends of the case, forms common gropes of working.
6. Common groups of working from the territory are subordinate to the Office and will be formed through the Director's order, in dependence of the operative situation in the administrative-territorial unity.

Chapter II
Work duty

In order to effectuate the objects of its activity the Office has the following main attribution:

1. Receives the dates and information from the institution that effectuates financial operation oversees by the law nr. 633-XV, with the ulterior modification, concerning the operations and transactions effectuated in national / or foreign currency.
2. Analyzes and process the dates, inclusively the information received.
3. Examines the case from the area of competence from its initiative.
4. Requests from the competent institution or from the physical person which has business undertakings, the supplying of necessary dates and information in order to effectuate the objects of its activity.
5. Collaborates with the subdivision of the Center , Ministry of Finance, Ministry of Justice, General Office of Public Prosecutor, Ministry of Internal Affairs, Office of Information and Security, Ministry of External Affairs, National Bank of the Republic of Moldova, Palate of Accounts, Customs Department, National Securities Commission, control authorities of the financial –banking institution and their association, other institutions;
6. Cooperates and promote exchange of information, exchange of experience with similar foreign institutions and with international institution that have attribution in the framework of money laundering.
7. emits, in the law condition, decisions to suspend the effectuation of transaction suspected in money laundering;
8. Ascertains the contravention made in its framework of activity and applies the sanctions established by the legislation of the Republic of Moldova.
9. Follows the uniform application of the legal provision from its framework of activity.
10. Advances proposals to the public authorities into the effectuation of the measures in the goal of prevention and control of money laundering, notice the project of normative acts that have links with its framework of activity.
11. Organize and process special programs of trainings for representations of the financial – banking institutions.
12. Forms reports of activities annual and semester, achieves studies, analyses, syntheses on its framework of activity.
13. Organizes the archive of the secondary and operative evidence, the registration of all financial operation which is the object of the law concerning the prevention and control of money laundering inclusively.
14. Elaborates the form of the reports for the financial operations settled by law.
15. Advances proposal on the agreements, accords and protocols with similar institution, from other states.
16. Organize the effectuation of the operative investigation, the realization of the prophylaxis measures into prevention and control of money laundering.
17. Accords practical and methodological help to the subdivision of the Center, other state institutions into the prevention and combating money laundering, the forestalling, searching and stopping the financial – banking crimes.
18. Analyzes the evolution of the phenomena of money laundering from different areas of the economy and in depends of methods and elements used, organize the measures for stopping the causes and conditions which favored their appearance.
19. Assures the improving of the forms and methods of the operative investigation in the framework of repressing the phenomena of money laundering in the base of the applying the realization of the science, techniques and experience, organize and unfold practical - methodological seminars with the staff of the Office, into the improvement of the professional quality.
20. Informs through the Director of the Center the ability persons about the negative phenomena which affects the normal function of the economic system and indicates the measures that will be done into the prevention and control of money laundering.

Chapter III
The organization and functioning of the office for prevention and control of money laundering

1. The organization, structure and proceeds of functioning of the Office should assure the realization of the duties settled by law and by present rule.
2. The Office is administrated by the chef, which is named and discharge from the office by the Director of the Center.
3. The Deputy Chief of the Office is named and discharged from the office by the Director of the Center.
4. The Chief of the Office is subordinate to the Director of the Center.
5. The Deputy Chief of the Office is subordinate to the chief of the Office and to the Director of the Center.
6. The Chief and the Deputy chief of the Office debate and in accordance with the case, can decide about:
   - The reports on suspected transactions, on some objections find on these and decide on the measures which are imposed.
   - to suspended the effectuation of transactions and on the formulation of the request, it can be the prolongation of the request of suspended, addressed to the General Prosecutor Office;
   - the information of resort subdivisions in the cases in which exists major dates and indices concerning the money laundering;
   - The lists that contain persons suspected in commitment terrorism actions or suspected in financing terrorist groups.
   - Points of view, recommendations and notes on the implementation of the legal stipulations of the material.
   - The regalements projects proposed to the adoption to the authorized institutions.
   - Reports of activity;
   - The elaboration , adoption and harmonization of the strategies on prevention and control of money laundering ;
   - The elaboration and harmonization of the methods of collaboration with home authorities, for the effectuation of the activity area of the Office;
   - The stabilization of the criterions, promotion and trainings of the staff
   - The stabilization of general lines of cooperation of the Office with foreign authorities and with international institutions for the harmonization of the legislation in domain.

Chapter IV
The functional attribution of the Head of the Office

The Head of the Office exercise the following attributions:

- Organize and assure the activity of the Office and its responsibility of the exercitation of the attribution of the Office.
- Determine and share the attribution of his and of office's staff;
- Conduct and control the office's activity in accordance with the direction of activity of each employer, approves plans of working;
- Represent the Office in relations with other subdivisions of the Center, with other subdivisions of the resort Ministries and Departments;
- Initiate the disposals, indications, orientations normative and legislative acts in the framework of the Office's activity;
- Assure the selections, education and training the staff, respect the legislation, working and executive discipline. Advance proposals to the director of the Center concerning the selection of the staff , transfers in other subdivision,

- Approve the initiation of the operative Cases on physical and legal entities, implicated in money laundering.
- Propose the schedule of the time-off

Chapter V
The functional attribution of the Deputy Head of the Office

The deputy head of the Office exercise the following attributions:

- Organize and assure the activity of the Office in regard of the collection of the information on physical and legal persons from financial -banking sector implicated in the money laundering, investigation of the cases, coordination and managing of the activity of the Office.
- Managing and coordinate the activity of collaboration of the Office with the Subdivisions of the Center, of the resort ministers and departments, inclusively with those from abroad.
- Specify the main directions of activity, forms and advanced methods of the work in the framework of the prevention and control of money laundering, elaborate methodical indication.
- Organize the providing of the methodical and practical help to the subdivision of the Center in the effectuation of the working obligation in regard with the prevention and control of money laundering.
- Analyze the criminal situation in the field.
- Verifies and control the operative cases.
- Control the operative cases on the interregional and transnational criminal persons.
- In the absence of the Head of the Office exercise the functional attribution of him.

Order of the Director of the CCCEC On the approval of the Regulation of the Office for prevention and control of money laundering (No. 113-1 of 08.09.2006)

In the goal of the efficient realization of the provisions of the Law nr. 633-XV from 15.11.2001 "on the prevention and control of money laundering and financing of terrorism" according to the provision of the article 9 par. (1) letter. b) and g) of the Law nr. 1104-XV from 06.06.2002 on the Center for Combating Economic Crimes and Corruption , –

I order:

1. To approve the Regulation of the Office of Prevention and Control of Money Laundering (it is attached), through which is invested with attributions the Office for Prevention and Control of Money Laundering to receive, analyze, investigate and disseminate the suspect transactions report of financing of terrorism.

2. To abrogate the order nr. 139 from „09th of September 2005".

3. the control of the execution of the present order and the replacement if it on the web address of the Center „www.cccec.md", will be realized bz the Head of the Office for Prevention and Control of Money laundering (Mr. Valeriu Sîrcu).

Director Valentin MEJINSCHI

Recommendations of the National Bank of Moldova on developing programmes for money laundering prevention and combating by the banks of the Republic of Moldova (decision no. 94 of 25.04.2002 as amended in 2003)

Official Monitor of the Republic of Moldova No 59-61 of May 02, 2002

Approved by the Decision No 94
of the Administrative Council of the
National Bank of Moldova,
April 25, 2002
As amended on June 19, 2003
Decision no. 134

Recommendations on developing programs by the banks of the Republic of Moldova on prevention and combat of money laundering

1. General provisions

1.1. The Recommendations on prevention and combat by the banks of the Republic of Moldova of money laundering (hereinafter - "Recommendations") are elaborated in compliance with the empowerments of the National Bank of Moldova stipulated in articles 11 and 44 of the Law on the National Bank, articles 1, 17, 25, 29, 33, 34, 40 of the Law on financial institutions, as well as in view of implementation of the provisions of article 23 of the Law on financial institutions and the Law on money laundering prevention and combat of money laundering.

1.2. Money laundering prevention and combat represents a major contribution for the national economy and leads to the confidence increase in the banking system.

1.3. The objective of these Recommendations is to guide licensed banks on the developing of the own programs on prevention and combat of money laundering, in order to enable financial institutions to attract and keep legal funds from legal customers, with the purpose to avoid risks related to money laundering and in particular reputation, operational, legal, concentration and information technologies risks.

1.4. These Recommendations are a continuation of the Recommendations on the internal control system that reveal the fundamental principles in the field of money laundering prevention and combat.

2. Responsibility

2.1 The financial institution's Board is responsible for developing and ensuring the application of an adequate internal Program on Prevention and Combat of Money Laundering, on which depend the prevention and timely detection of suspicious operations within the financial institution. Having such a program represents the most efficient mean by which a financial institution can protect itself against being involved in transactions that could facilitate illegal activities, as well as ensure compliance with applicable norms on reporting suspicious activities.

2.2. The financial institution's Board and the Executive Committee are responsible, within their fields of competence, for the financial institution's activity compliance with the provisions of the legislation in force in the field of prevention and combat of money laundering.

3. Risks associated with Money Laundering

When developing the programs against money laundering, financial institutions should consider the risks related to money laundering in view of their reduction.

3. 1. Reputation risk

The reputation risk is defined as the possibility of appearing of adverse publicity regarding a financial institution's business practices that could cause a loss of confidence in the institution's integrity. This risk may pose a major threat to the financial institutions, since the nature of their business requires maintaining the confidence of depositors, creditors and the market.

3.2. Operational risk

The operational risk can be defined as the risk of direct or indirect loss resulting from inadequate or failed internal processes, people or external events.

3.3. Legal risk

The legal risk is the possibility that lawsuits, adverse judgments or contracts that turn out to be unenforceable can adversely affect the operations or condition of an institution. The financial institutions will be unable to protect themselves effectively from such risks if they do not make a proper monitoring when identifying their customers and understanding their businesses.

3.4. Concentration risk

The concentration risk relates to the following:

- on the assets side of the balance sheet - the lack of an information system to identify credit concentrations and to set prudential limits in order to restrict institutions' exposures to single borrowers or groups of borrowers.

- on the liabilities side - early withdrawal of funds by large depositors, with potentially damaging consequences for the institution's liquidity resulting from inadequate analysis of deposits concentration, characteristics of their depositors, as well as non-maintenance of a close relationship by liabilities managers with large depositors.

3.5. Information technologies risk

The information technologies risk is determined by the appearance of new and emerging information technologies, especially when such risks might create favorable conditions for money laundering.

4. The main provisions of the program on money laundering prevention and combat

4.1. The program on money laundering prevention and combat represents policies, and procedures, including "Know-your-customer" rules, that promote ethical and professionalism standards in the financial sector and prevent the financial institutions being used, intentionally or unintentionally, by criminal elements. Policies and procedures should ensure that financial operations are conducted in a safe and sound manner.

4.2. Size, difficulty, nature and amount of activities of financial institutions, list of customers, level of risks associated with different customers and operations carried out by them shall be taken into account while developing such a Program.

4.3. National Bank considers that a detailed description of the manner in which a certain institution should implement its own Program on Money Laundering Prevention and Combat is not necessary. Nevertheless, the National Bank insists on applying opportune Programs on Money Laundering Prevention and Combat, and based on such considerations, has described in these Recommendations the fundamental principles that should be observed in the process of development of individual programs on money laundering prevention and combat, which structure could be established in accordance with the model from the enclosure 1 of these Recommendations.

4.4. The financial institutions should consider these Recommendations upon development of individual programs on money laundering prevention and combat and should adjust them to their financial activity and involved risk, at the same time taking into account the generally accepted practice in this field, including the Basle Committee documents.

5. The structure of the money laundering prevention and combat program

Every financial institution should develop and implement adequate programs on money laundering prevention and combat, which should include, without being limited to, the following:

5.1. The obligations of the top management that shall include the following:

- knowledge about the financial institution's high-risk customers circumstances;
- knowledge about information sources of third parties;
- approval of significant transactions of high-risk customers;
- determining financial sectors that may be subject to money laundering risk, by specific assignment of functions to each subdivision aimed to prevent and combat money laundering. The sectors vulnerable to money laundering could be sectors that are connected with the following: receiving deposits; selling travelers' checks; checks; payment orders; bank transfers; credits; international corresponding banking operations; special accounts; private banking operations; credit cards; internet banking operations; trade financing; brokering operations; trust operations; etc.
- ensuring the elimination of identified nonconformities in the field of money laundering prevention and combat.

5.2. Defining the money laundering process depending upon the financial institution's characteristics. The money laundering process consists of the following main elements:

- placement – initial movement of funds or other income stemming from criminal activity aimed to change their initial form or place in order to make them inaccessible for legal authorities.
- investment – separation from the initial source of income from criminal activity by means of different financial transactions.
- integration – applying certain legitimate transactions to hide illegal income, making possible for the laundered funds to return to the offender.

5.3. Policies and procedures on customer identifying (rules "know-your-customer")

5.4. Setting up a system to ensure compliance with the program on money laundering prevention and combat.

5.5. Procedure on reporting suspicious operations.

6. "Know-your-customer" Rules

"Know-your-customer" rules should include, at least:

6.1. Customer Acceptance Policies

The financial institutions should develop clear customer acceptance policies and procedures, including a description of the types of customers that are likely to pose a higher risk to the institution. When preparing these policies, factors such as customers' background, country of origin, public position, linked accounts, business activities or other risk indicators should be considered on higher risk customers. Customer acceptance procedures should include more stages depending on the level of customer risk, at the same time emphasizing on customers with a high net worth whose source of funds is unclear. Decisions to enter into business relationships with higher risk customers should be taken exclusively at the management level. It is important that the customer acceptance process does not affect general public's access to financial institution's services.

6.2. Customer identification policies

The financial institutions should have a systematic identification policy and procedure for new customers and for those acting on their behalf, and should not establish a banking relationship until the identity of the new customer is verified. All information necessary for adequate identification of each new customer, including purpose, nature of the business relationship, should be obtained. Special attention should be paid in the case of non-resident customers, as well as customers or beneficiaries receiving funds from abroad, at the same time taking into account the provisions of art. 4 (4) of the Law on money laundering prevention and combat.

Customer identification elements include:

- the person or entity that maintains an account in the financial institution, or those on whose behalf an account is maintained (owners – beneficiaries, etc.);
- the beneficiaries of transactions conducted by professional intermediaries;
- any person or entity connected with a financial transaction that can pose a significant reputational or other risk.

For customer identification the financial institution shall pay attention to the specific identifying subjects :

- trust and fiduciary accounts;
- corporate vehicles;
- introduced business;
- client accounts opened by professional intermediaries;
- politically exposed persons;
- non-face-to-face customers;
- correspondent banking operations.

6.3. Procedures on on-going monitoring of accounts and transactions that include:

- determining normal (specific) customer's operations;
- monitoring customer's operations to determine if such operations correspond to normal (specific) operations of the certain customer or customers from similar categories;
- having in place adequate management information systems to provide management and compliance officers with information needed to identify, analyze and effectively monitor higher risk customer accounts
- identifying by the financial institution of limited and suspicious operations, including potential ones, as well as of sources of funds used by the customer for such operations.

When an account was opened, but verification problems appear within financial relations that cannot be solved, it is recommended that the financial institution informs the body enabled by law in the field of money laundering prevention and combat. Financial institutions should not maintain anonym accounts or fictive name accounts.

6.4. Information maintaining and keeping procedures should include, at least, the following:

- maintenance of an identified customer registry for a period of at least five years (that would include at least: customer's name; fiscal code; account's number; opening date; closing date);
- maintenance of all entries on financial transactions for at least five years after the transaction occurred;
- maintenance of files on customer identification for at least five years after their accounts were closed;
- specific identification of data to be kept in the file on customer identification and by each transaction.

7. The system for ensuring compliance with the program on money laundering prevention and combat

In order to ensure that financial institutions comply with the program on money laundering prevention and combat, this should include:

7.1. Special provisions for an internal control system aimed to ensure continuous compliance in view of reduction of risks related to money laundering. Such provisions, in addition to those stipulated in the Recommendations on internal control systems of the banks of the Republic of Moldova, should include, without being limited to, the following:

- procedures for detection and identification of limited and suspect operations;
- customer monitoring in case of large cash transactions nonspecific to the customer's activity. To this end, the bank makes investigations about customer affiliation to the group subject to monitoring;
- monitoring of activities related to bank accounts;
- internal investigations regarding suspicious transactions reporting.

7.2. An audit service to test the compliance with the program on money laundering prevention and combat, carried out by the financial institution's personnel or an individual, whose functions shall include at least the following:

- independent evaluation of internal policies and procedures of the bank, including the compliance with the requirements of the legislation in force;
- personnel's activity monitoring through compliance testing;
- attracting the management's attention to the test results.

7.3. Appointing a person with decision-making powers, assigning him/her the responsibility to ensure the fact that the policy and procedures of the financial institution, as a minimum, are in compliance with the requirements and provisions against money laundering, properly emphasizing these Recommendations.

The responsible person contributes to the implementation of provisions of the internal program on money laundering prevention and combat with the view of counteracting the laundering of funds coming from illegal (criminal) activities. To this end, the person is assigned, at least, the following attributions:

- provides consulting to employees of the financial institution regarding the questions arisen during the implementation of the program on money laundering prevention and combat, as

well as during identification and examination of customers of the financial institution and risk evaluation related to laundering of funds stemming from illegal (criminal) activity;
- makes decisions based on the received information;
- organizes the training of the financial institution's employees regarding the issues of counteracting the laundering of funds coming from illegal (criminal) activities;
- organizes the submission of data to the body authorized for money laundering prevention and combat in accordance with the respective legislation;
- submits a written report on the results of implementation of provisions of the internal program on money laundering prevention and combat, to the Board of the financial institution, at least once a year;
- collaborates with the audit service in order to accomplish its goal to check the compliance of the institution's activity with the legislation in force in the field of money laundering prevention and combat;
- performs other functions in accordance with these recommendations and internal documents of the financial institution;

7.4. Adequate screening procedures to ensure high standards when hiring employees;

7.5. An ongoing employee training program regarding the contents and compliance with the program on money laundering prevention and combat . The training program should include all aspects of the process of money laundering prevention and combat, with banks' employees being adequately trained. The bank shall adapt the schedule and content of training for its own needs. The employee training should depend on the level of its involvement in the process of money laundering prevention and combat. The training requirements shall include, as a minimum:
- new staff should be trained with reference to the importance of the internal program on money laundering prevention and combat and the basic requirements within the financial institution;
- front-line staff members should be trained to verify the identity of new customers, to exercise due diligence in handling accounts of existing customers on an ongoing basis and to detect patterns of suspicious activity;
- regular refresher training should be provided to ensure that staff are reminded of their responsibility and are kept informed of new developments.

7.6. Normative acts that stipulate holding employees responsible if they fail to report willingly suspicious transactions to the responsible officer, security service or directly to the respective authorities and/or contribute themselves to the money laundering operations.

8. Reporting Suspicious Transactions

The financial institutions should have clear procedures, resulting from the provisions of the Law on money laundering prevention and combat, brought to the knowledge of all personnel, stipulating that employees should report all suspicious transactions to a certain senior management person responsible for data gathering and undertaking anti-money laundering measures. Also, a certain communication chain should be established, both to the management and to the internal security service to report problems related to money laundering.

If suspicious operations have been detected, the financial institution should record them, by filling in special forms and/or presenting the data, according to the legislation in force, with further reporting to the respective bodies. The submission of information to the respective bodies shall be done in a discreet manner.

Besides reporting to the Center for Combating Economic Crimes and Corruption, the financial institutions should report to the supervision authorities about suspicious activities or fraud cases that essentially affect the financial institution's security, stability or reputation.

9. Final Provisions

9.1. These Recommendations shall enter into force at the date of publication in "Monitorul Oficial al Republicii Moldova".

9.2. The Recommendations do not interfere with or modify the obligations of financial institutions on compliance with the legislation in force on money laundering prevention and combat.

Annex 1

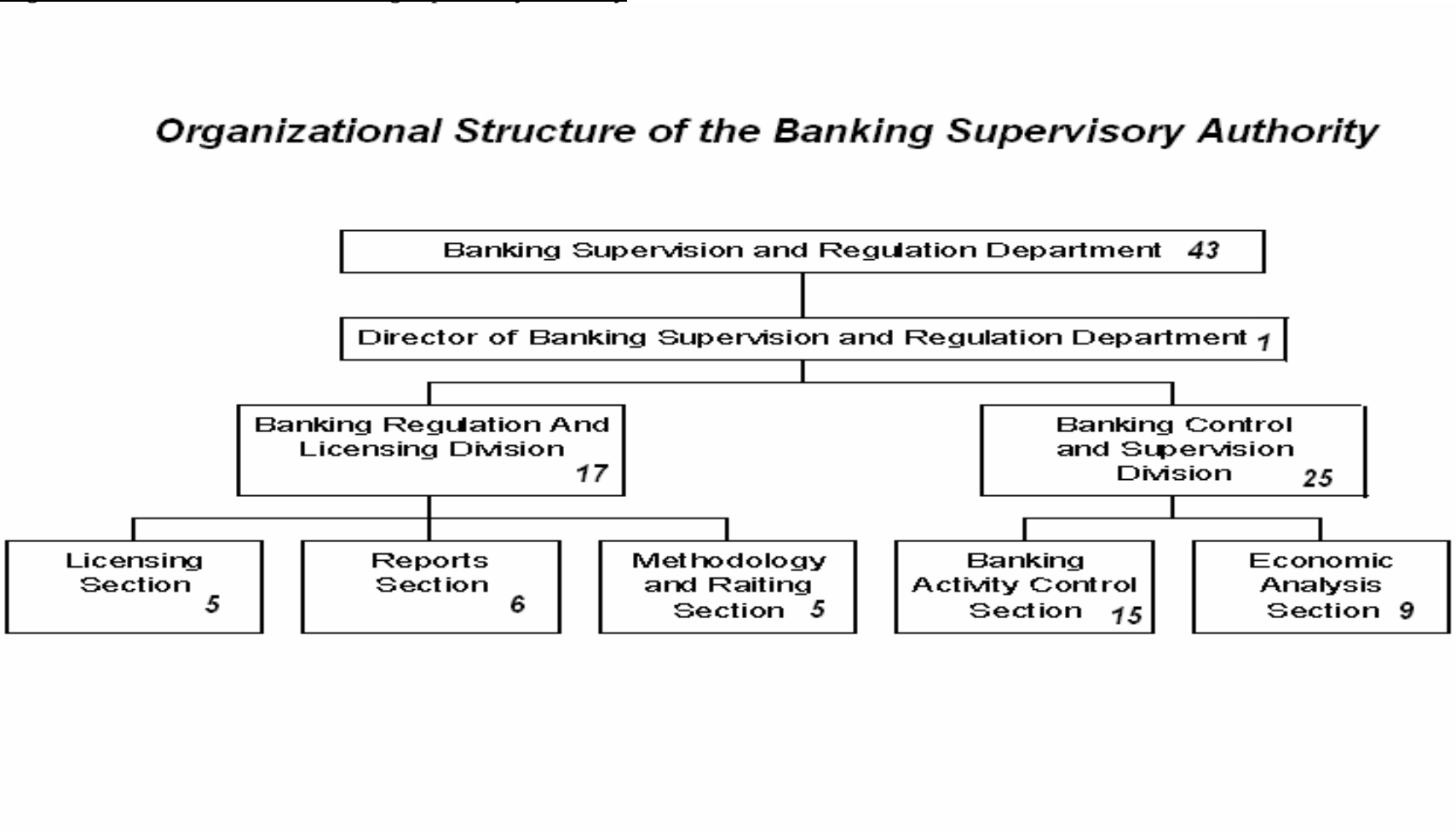
The model of the structure of internal program on money laundering prevention and combat

Objectives
Authority
Responsibilities and obligations
- Bank's Council
- Bank's executive board
- Responsible person
- Employees

Rules "know your customer"
- Customer acceptance
- Customer identification
- Transactions monitoring
- Information maintenance and keeping

Controls
Audit responsibilities
Requirements on employees' selection
Training
Reporting requirements:
- Reporting term
- Correspondence with the respective body

Organizational structure of the banking supervisory authority



Examples of sanctions applied by the NBM for non compliance (in relation to the criteria under FATF R. 5)

FATF Recom-mendation	The Date and reason of sanctions	The sanction's essence	Provisions that were not respect from Recommendations on developing programs by banks of the RM on prevention and combat of money laundering and terrorism financing
5.2 d)	Date - 14.04.2005 Reason- non accumulation of information in order to determine suspicious operations regardless of any exemption or thresholds	Written warning for bank's council and executive according to art.38 (1) a) of the Law on financial institutions	Item 6.3 and 8
	Date - 13.05.2005 Reason- non accumulation of information in order to determine suspicious operations regardless of any exemption or thresholds	Was issued a Warning according to art.38 (1) a) of the Law on financial institutions	
	Date - 09.03.2006 Reason- non accumulation of information in order to determine suspicious operations regardless of any exemption or thresholds	Written warning for bank's council and executive according to art.38 (1) a) of the Law on financial institutions	
5.3	Date - 20.06.2006 Reason – non accumulation of information regarding customer identification	Was imposed a fine according to art.38 (1) d) of the Law on financial institutions	Item 6.2
5.7.1	Date - 06.01.2005 Reason – caution measures taking by banks did not include determination of source of funds	Limited the deposit activity of the bank according to art.38 (1) f) of the Law on financial institutions	Item 6.3
	Date - 18.12.2003 Reason – caution measures taking by banks did not include determination of source of funds	Withdrawn the confirmation issued to the administrator of the bank according to art.38 (1) e) of the Law on financial institutions	
	Date - 12.03.2004 Reason - caution measures taking by banks did not include determination of source of funds	Was issued a Warning according to art.38 (1) a) of the Law on financial institutions	
5.15	Date - 20.06.2006 Reason- non reporting of suspicion transactions	Was imposed a fine according to art.38 (1) d) of the Law on financial institutions	Item 5.5