COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Mutual Evaluation Report – *Executive Summary*

Anti-Money Laundering and Combating the Financing of Terrorism

AZERBAIJAN

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Azerbaijan is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the report was adopted as a third round mutual evaluation at its 28th Plenary (Strasbourg, 8-12 December 2008).

EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Azerbaijan as at the date of the second on-site visit from 12 to 20 April 2008, or immediately thereafter. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out the level of compliance of Azerbaijan with the FATF 40 + 9 Recommendations.

2. Some of the issues raised in the first report have been addressed. These include the extension of the underlying offences for money laundering beyond the drugs predicate offence and the introduction of value confiscation. The Azerbaijan authorities consider that money laundering and financing of terrorism operate largely through the banking system and the National Bank (NBA) have taken some steps since the 2004 evaluation to require strict observance by the banks of the requirements of FATF standards and Wolfsberg Group Principles. So-called "mandatory" letters have been issued requiring banks to notify the AML Division in the National Bank of Azerbaijan of suspicious or unusual transactions, and some Methodological Guidance has been prepared for the Banks.

3. However, at the time of the second on-site visit, there was still no AML/CFT preventative law in place. Similarly, though the National Bank was performing some of the functions of an FIU in respect of the banks, an FIU which meets international standards has still not been established and will not be until the AML/CFT law is enacted. Some further preventive measures have also been taken to reduce the risks inherent in the lack of a preventive law. However the steps which have been taken (mainly by the National Bank and the State Committee on Securities)) are limited and fragmented, and are not substitutes for a comprehensive AML/CFT Preventive Law which meets international standards.

4. MONEYVAL placed Azerbaijan under its Compliance Enhancing Procedures in February 2006. In February 2008, shortly before the second on-site visit, a high level mission was undertaken by the Council of Europe under Step V of the Compliance Enhancing Procedures to draw the attention of senior governmental officials in Azerbaijan to the continued failure of Azerbaijan to comply with MONEYVAL reference documents. At the end of June 2008, shortly after the expiry of the 2 month period from the on-site visit, a draft AML/CFT Bill passed its first reading in the Milli Mejlis.

5. The act of money laundering has been a criminal offence in Azerbaijan since 1 September 2000. At the time of the second on-site visit, there had still been no criminal prosecutions for money laundering brought before a criminal court. The present evaluators consider that, for practical purposes, money laundering criminalisation is currently a dead letter. In the absence of a preventive law with binding obligations, it was perhaps understandable if some of the interlocutors with which the team met did not fully understand the need for money laundering criminalisation.

6. With regard to financing of terrorism, the previous report in 2003 indicated that law enforcement had experienced charity and humanitarian organisations being used in the financing of terrorism. The 2003 MONEYVAL report noted that a number of organisations having links to the financing of terrorism had been identified and closed down. The evaluators noted that there was a continuing awareness that certain parts of the NPO sector were vulnerable to financing of terrorism. After the ratification of the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (The Terrorist Financing Convention) in 2001, an autonomous offence of financing of terrorism was

created in a way that clearly covers funding for terrorist acts. The offence has been successfully prosecuted and one conviction has been obtained.

7. At the time of the second on-site visit, there appeared to be a system in place which was intended to implement the UNSCRs on freezing of terrorist assets and assets of persons listed by third countries. However, although it was clear that lists were being sent to a number of Ministries and supervisors by the Ministry of Foreign Affairs, only representatives of the banking sector appeared to be aware of relevant lists as a result of the intervention of the Azerbaijan authorities. It was noted that there had been no freezing orders under SR.III since the previous evaluation.

8. Since there is no AML Law in force as yet it should be noted, that there are no AML/CFT obligations established for any DNFBPs.

9. There is no systematic training regime in place to raise awareness of money laundering and terrorist financing. As a consequence of this, the financial sector still lacks a real awareness of AML/CFT risks and there remains a poor understanding of some basic AML/CFT issues. The practice of the financial institutions on some of the preventive requirements is slightly better in financial institutions supervised by the National Bank and the State Securities Committee. The same criticism can also be applied to law enforcement agencies where there needs to be greater awareness of basic AML/CFT issues.

2. Legal Systems and Related Institutional Measures

10. Azerbaijan has put in place certain provisions aimed at criminalising money laundering.

11. Although substantial changes have been made to those sections of the Azerbaijan Criminal Code dealing with money laundering, a number of uncertainties and shortcomings still remain. Furthermore, the various money laundering offences have still not been tested in practice so it was not possible for the evaluators to form an opinion of their overall effectiveness.

12. Azerbaijan has improved the criminalisation of the money laundering offence since the last evaluation and it is welcome that Azerbaijan has moved to an "all crimes approach". Most of the "designated categories of offences" contained in the FATF Glossary Recommendations are covered although it was considered that it is necessary to establish offences of "insider trading" and "market manipulation". Furthermore, the offence of "financing of terrorism" needs to be widened in order to enable all relevant issues to be covered as predicate offences to money laundering. Uncertainties still remain in the width of the criminal provisions in part because the legislative provisions differ significantly from the wording used in the relevant Conventions. Legislative improvements are required to better reflect all the physical aspects of the money laundering offence as provided for in the international conventions (eg simple possession of laundered proceeds is still not covered). However the main problem is that the offence of money laundering has still not been tested in criminal proceedings before a court; indeed, the evaluators did not find evidence of any investigations of money laundering as a stand-alone offence. There are also uncertainties as to whether a prior conviction for a predicate offence is required before such a money laundering investigation (or prosecution) could commence and as to whether money laundering is indictable where the predicate offence is committed abroad. Interlocutors with whom the evaluators met also considered it would be necessary to prove in a money laundering case that the criminal proceeds came from a particular predicate offence on a particular date. Cumulatively all these uncertainties and concerns give rise to a general perception that prosecutions for money laundering are very difficult and would add little or nothing to convictions for the predicate offences followed by compensation and/or confiscation. This

implies that money laundering is seen in terms only of self-laundering, and that the role of professional (third party) launderers and the possibilities of using money laundering to target the upper echelons of organised crime have not been considered.

13. At the time of the on-site visit, only natural persons were subject to criminal liability for the money laundering offence. The assessors were informed that during the implementation of the State Anticorruption Programme (2004-2006), a draft law which provided for criminal liability of legal persons was developed and presented to international experts in order to obtain recommendations. Despite this initiative, Azerbaijan has not applied the principle of corporate criminal liability (with neither administrative nor civil liability for legal persons). Thus legal persons cannot be punished for money laundering, financing of terrorism or other offences.

14. With regard to the financing of terrorism under Azerbaijani law, the offence seems to imply financing of terrorism in a very strict sense. It appears to be necessary to adduce evidence of the provision of financial or material resources for the preparation of specific terrorist acts. In the previous evaluation report concerns were expressed because the domestic provision on terrorist financing did not explicitly criminalise the financing of terrorist organisations or an individual terrorist, only terrorism as such. That situation still remains as no reference is made to the general and broader financing of terrorist organisations or individual terrorists and the offence appears to exclude the funding of terrorist organisations' "day-to-day activities" or terrorist recruitment and training or, indeed, any financial support of the families of terrorists while such persons are in custody. The evaluators considered that such broader general financing of individual organisations is not covered although it was noted that in one instance an individual was convicted of collecting money to finance future terrorist acts.

15. The evaluators were concerned that confiscation is not available in respect of all predicate offences. Furthermore, with the exception of money laundering, confiscation is generally only available for offences carrying over two years imprisonment and as a result is not available in respect of the basic form of all predicate offences. Although the evaluation team was told that value orders have been made, the Azerbaijan authorities were unable to provide any statistics in this regard. As legal persons have no criminal liability in Azerbaijan, there is no power to confiscate property from legal persons. Although it is unclear how widely used confiscation of criminal proceeds is beyond compensating victims, the evaluators noted that the sums confiscated are rising year on year.

16. With regard to the freezing of funds used for terrorist purposes, there did not appear to be any competent authority for the prompt designation of the persons and entities that should have their funds or other assets frozen. The NBA does circulate the UN lists to the banks through a series of letters, although the letters containing the lists do not appear to have statutory authority and failing to comply with the letters does not carry a sanction. Other parts of the financial sector were generally not aware of the UN lists and did not know that they were being circulated. It was noted that no freezing actions under the United Nations Resolutions have been taken by the non-banking financial sector. No guidance has been issued to the financial sector and even where the requirements to check lists and to freeze funds or other assets are made known by the authorities, there is no guidance on what is meant by funds and other assets.

17. As stated above, there is no FIU operating as an independent national centre for receiving, analysing and disseminating disclosures of STRs. The evaluators were advised that the establishment of an FIU will only be possible after the adoption of the draft AML/CFT law. An AML Division has been created within the NBA that has some shadow functions of an FIU although at present this division has only 3 staff. Attention will need to be given to the numbers and training of staff when the FIU is fully established.

18. It is unclear who has the lead in AML/CFT enquiries. The overall responsibility on AML matters is with the General Prosecutor, though his office seemed unaware of any STRs. The Ministry of National Security seemed most engaged with AML/CFT issues and were of the view that the majority of STR reports related to the financing of terrorism, although the evaluators were not told of any current terrorism investigations or prosecutions arising from reports received. There is the capacity for joint investigation teams under the co-ordination of the Prosecutor General but there was no evidence of any being created and neither were any examples given demonstrating the use of special investigative techniques. General police powers are standard and should not pose problems for investigations. The overall impression was that law enforcement is adequately resourced. However, it was less clear whether law enforcement bodies currently have sufficient resources assigned to them for combating AML/CFT, given the focus that there appears to be on corruption at the expense of AML/CFT. The other problem in the law enforcement field is the major lack of training and awareness on AML/CFT issues and in financial investigation techniques. The STR regime, such as it is, is not generating AML cases and there is no proactive money laundering investigation by law enforcement bodies, independent of the rudimentary STR regime.

19. Though the Customs have power to stop and restrain for short periods, it was unclear what they would do if they suspected money laundering or financing of terrorism (regardless of any financial threshold or breach of the Customs Rules). They have no indicators with which to identify possible money laundering or financing of terrorism and legally they have no powers to stop or restrain currency where there is a suspicion of money laundering or financing of terrorism. Furthermore, there is no formal requirement for them to report suspicions of money laundering and financing of terrorism to other law enforcement authorities.

3. Preventive Measures – financial institutions

20. CDD measures for financial institutions are covered by a combination of laws and regulations made under those laws. Laws are adopted by Parliament and, if not specified otherwise in the law themselves, they become valid from the date of their publication in the official newspaper. The NBA regulations have the force of law when they are registered with the Ministry of Justice although, there is no explicit power to issue specific AML (or CFT) regulations anywhere in a statute. The examiners have concluded that all issued Regulations are enforceable and, at best, amount to "other enforceable means" for the purposes of the Methodology and that if the contents of the asterisked criteria in 5.2, 5.3, 5.4(a), 5.5, 5.5.1, 5.5.2(b), and 5.7 were fully covered by any of the Azerbaijani Regulations, they would still not fully satisfy the criteria because they are not specifically issued or authorised by a legislative body. In practice the difficulties the examiners experienced were not generally in establishing the legal quality of the instrument in which an obligation is found, but that the relevant asterisked obligation was incomplete, deficient or simply missing. In the context of the development of Azerbaijan's legal structure on AML/CFT it is strongly advised that the high level obligations in R.5, which are marked with an asterisk, should, in due course, be placed in the comprehensive AML/CFT legislation, where it will be clear that they have general legal effect. As a general issue, whatever requirements are in place that may cover some FATF AML requirements, in the absence of comprehensive AML/CFT legislation, the legal basis for requiring CFT obligations is, at the very least, questionable, and, indeed, CFT is rarely addressed in the normative acts.

21. Based on the "Law on the National Bank" which designated the NBA as the supervisory body for banks, the NBA issued the "Methodological Guidance On The Prevention Of The Legalization Of Illegally Obtained Funds Or Other Property Through Banking System". The evaluators do not consider that there is a legal basis for issuing the Methodological Guidance generally on ML issues

and specifically on TF issues. Clearly, the Methodological Guidance is not law. The Azerbaijani authorities consider the Methodological Guidance to be "other enforceable means". The evaluators do not accept this argument. They consider the language is too permissive and that the Methodological Guidance does not, when examined, create binding obligations, which are understood as such; furthermore, during discussions with industry representatives it was apparent that the Methodological Guidance is treated as a recommendation. The evaluators consider that the Methodological Guidance is not clearly sanctionable as there is no legal provision in Azerbaijani law for sanctions for AML/CFT breaches, and no specific AML/CFT sanctions have been issued. Thus it was concluded that the Methodological Guidance does not amount to "other enforceable means"

22. Currently there is little by way of basic customer identification obligations provided for in primary legislation. According to the Law "On Banks" (article 42.1) "*Banks shall identify each client that they service. During making of payments, banks shall require the clients to indicate the recipient (beneficiary). No anonymous accounts can be opened, including anonymous savings accounts*". It was therefore concluded that full customer due diligence (CDD) requirements, which comprehensively and clearly cover both the identification and the verification process, as provided for in the FATF Recommendations, are not implemented. Regarding the identification of the beneficial owner, while there is a definition in the Methodological Guidelines that follows the FATF definition of beneficial owner, there is no normative act of general application in Azerbaijani legislation covering the definition of "beneficial owner" within the meaning of the FATF Recommendations. Consequently, there are no legal requirements binding on the whole of the financial sector 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 by financial institutions. These same criticisms apply to requirements to establish the purpose and intended nature of the business relationship, conduct ongoing due diligence and perform enhanced due diligence for higher risk categories of customer.

23. There is no basic legislation or other enforceable provisions in place in Azerbaijan containing specific and/or enhanced CDD measures in relation to politically exposed persons (PEPs), whether foreign or domestic and the evaluators considered that there was a lack of understanding on PEP related issues within the private sector.

24. Subsequent to the on-site visit regulations were issued to cover the operation of correspondent banking arrangements in Azerbaijan on behalf of foreign banks. There are still no provisions that apply to Azerbaijani banks when opening correspondent accounts abroad.

25. Azerbaijani legislation does not include enforceable requirements on non face-to-face business relationships or transactions; consequently, financial institutions have not implemented policies and/or procedures to prevent the misuse of technological developments for ML/FT purposes. It was however noted that modern banking and financial technologies are not widespread in the Azerbaijani financial services industry and financial institutions confirmed that non face-to-face business operations are quite rare on Azerbaijani territory.

26. Currently legislation does not permit financial institutions to rely on third parties to perform the customer identification process on behalf of intermediaries although there is no legally binding provision to prohibit it. The examiners understood that there is no general practice of using agents in Azerbaijan.

27. The secrecy or confidentiality rules for financial institutions do not have a character which causes insurmountable problems for the investigation of cases concerning money laundering and financing of

terrorism and, generally, these are satisfactory. Professional secrecy can be lifted on the basis of a Court decision.

28. With regard to record keeping, there are no clear obligations for financial institutions to keep records of account files and business correspondence. Furthermore, no provision is included to ensure that the mandatory record-keeping period may be extended in specific cases upon request of an authority. It is merely left to the decision of the bank itself in case of banks. For others there is no such requirement at all. Although banks are required to keep records for a "minimum period 10 years", it should be noted that this does not meet the precise requirement of criterion 10.2 (keeping records for a longer period if requested by a competent authority in specific cases upon proper authority).

29. Banks are the only entities that provide wire transfers in Azerbaijan. There are no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer although, the evaluators were advised that in practice transfers received without complete originator information are prohibited from execution in Azerbaijan and the information on such attempts is submitted to the AML Division within the NBA.

30. Financial institutions are not specifically required to pay special attention to complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose and, where relevant information is obtained, there is no obligation for the financial institutions to document the obtained information in writing and keep it available for relevant authorities and auditors. Furthermore, there is no requirement which provides that transactions with countries which insufficiently apply the FATF recommendations should be the subject of written findings to assist competent authorities and auditors and there are no mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply the FATF recommendations.

31. There is still no law in place which establishes a direct mandatory obligation on all financial institutions to make an STR when they suspect or have reasonable cause to suspect that funds are the proceeds of criminal activity. This situation has not changed since the first evaluation report. The NBA has issued mandatory letters to banks and more than 500 STRs were been received from the banks in 2007, of which 24 had been considered suspicious enough to pass to law enforcement. It was however noted that at least one major commercial bank was unaware of the STR system and reporting obligation.

32. In addition to the forgoing, there is no law in place that requires financial institutions to report to the FIU 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 or those who finance terrorism.

33. There is no specific requirement anywhere in the existing legislation for financial institutions to develop programmes against money laundering and financing of terrorism. There are no requirements for financial institutions to designate at least an AML/CFT compliance officer at the management level, there are no requirements that the AML/CFT compliance officer act independently and there is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information. Financial institutions are not specifically required to include the necessity for internal audit to test compliance with the internal procedures and policies for AML/CFT. A requirement for financial institutions to put in place screening procedures to ensure high standards when hiring staff is not specifically mentioned in the Azerbaijani legislation, except in relation to fit and proper tests for owners, management, and the internal audit function under the Law on Banks. Financial institutions are not specifically required to put in place screening procedures to

ensure high standards when hiring employees although the evaluators were reassured that financial institutions apply their own internal vetting procedures when recruiting staff.

34. There is no specific requirement anywhere in the normative acts for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit. Furthermore, financial institutions are not required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.

35. Legislation does not provide a definition of shell banks and contains no clear prohibition on financial institutions conducting transactions with shell banks. In practice, the evaluators have no reason to consider that any of the banks currently authorized and operating in Azerbaijan have any characteristics of shell banks. All indications are that they all have a physical presence in the country, with mind and management based there.

36. As no basic legislation existed in Azerbaijan at the time of the on-site visit there were no competent authorities specifically listed for supervision of financial institutions for AML/CFT purposes. The NBA is the authority responsible for the supervision of banks and credit unions, the Ministry of Finance is the authority responsible for insurance supervision and the State Committee on Securities (SCS) is responsible for the supervision of operations of the authorised participants on the securities market. The evaluators were advised that these supervisory authorities do include AML/CFT issues in regular supervisory activities. It was however, considered that an more consistent approach needs to be adopted to the supervision of AML/CFT activity.

37. The number of supervisors and their familiarity with the AML/CFT issues was broadly satisfactory in relation to the NBA and the SCS. Their representatives had all participated in some training. They appeared to be adequately structured, funded and staffed and provided with sufficient technical resources. All of these regulatory bodies conducted on-site and off-site regulatory reviews although, apart from the NBA, no other designated supervisory body includes AML issues as an integrated part of its supervisory activities. The interviews with the authorities and relevant market participants showed some general understanding of AML/CFT issues. Apart from NBA no other supervisory body has so far issued guidelines that can assist financial institutions to implement and comply with the AML/CFT requirements and no guidelines have been issued to assist financial institutions to combat terrorist financing The evaluators were concerned that, in the absence of an AML/CFT law, there were inadequate sanctions to cover non-compliance with AML and CFT requirements and no sanctions were in place in relation to the directors and senior officers of financial institutions.

38. Banks are the only entities which perform money transfers in Azerbaijan. They perform wire transfers via banking channels, including the SWIFT-system and global money transfer services (e.g. Western Union, Money Gram). Banks act as registered agents for the global money transfer services providers. Money remitters are not permitted to operate outside the framework of banks, and money remitters have to follow the same AML/CFT requirements as banks. The implementation FATF Recommendations in the MVT sector suffers from the same deficiencies as those that apply to other financial institutions and which are described in this report

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

39. The coverage of DNFBPs for AML and CFT purposes is non-existent and is not in line with international standards. Furthermore, many of the FATF recommendations that should apply to DNFBPs are not addressed in Azerbaijani legislation. There are no designated competent authorities that have responsibility for the AML/CFT regulatory and supervisory monitoring regime for DNFBPs and the powers for the supervisors of the existing DNFBP are not defined, including powers to monitor and sanction for deficiencies connected with AML/CFT.

40. Tax advisors, external accountants, auditors and lawyers are not currently intended to be subject to AML/CFT requirements in Azerbaijan as it is considered that these professions cover insignificant segments of the non-financial sector and there is a low risk of ML or TF. Therefore, only notaries and the dealers in precious metals and stones were being considered as possible subjects of the AML/CFT requirements in future. Casinos And gaming are prohibited in Azerbaijan although lottery games are undertaken by "Azerlottery" OJSC, whose shares are 100% owned by the government. It was also stated that trust and company service providers do not operate in Azerbaijan. Azerbaijan should nonetheless implement all the FATF requirements with respect to DNFBP and consider whether there are others which, in the context of Azerbaijan, should be covered.

41. The rules concerning anonymous accounts and accounts in fictitious names are not applied for DNFBPs. In certain circumstances DNFBPs are not required to identify customers when carrying out occasional transactions by wire transfers or when there are doubts about the veracity or adequacy of previously obtained identification data. Furthermore, DNFBP are not required by law to obtain information on the purpose and intended nature of the business relationship, conduct ongoing due diligence on the business relationship or perform enhanced due diligence for higher risk categories of customers, business relationships or transactions. Moreover, there are no requirements to perform CDD when there are doubts about the veracity or adequacy of previously obtained data; nor are they obliged to apply CDD requirements to existing customers on the basis of materiality and risk. There is no legislation which provides for a concept of "beneficial owner" as required by the Methodology. DNFBP are not required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

42. The issue of politically exposed persons is not addressed in the Azerbaijani legislative system as it does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons. The issue is not covered either in any of the DNFBP special regulations.

5. Legal Persons and Arrangements & Non-Profit Organisations

43. Azerbaijan has implemented a comprehensive regime for the registration of legal persons. The Ministry of Taxes of the Republic of Azerbaijan has been defined as the sole authority for the registration of commercial entities. There are comprehensive filing requirements for both newly formed legal persons as well as for changes of details although there are no arrangements in place to verify the accuracy of the information. All information filed concerning the ownership of legal persons is publicly available.

44. Although the legislation provides a definition of beneficial ownership it does not require that information on beneficial ownership be collected or made available and the system does not provide adequate access to up-to-date information on beneficial ownership in a timely manner.

45. Bearer shares can be issued in Azerbaijan by joint stock companies and there is no limit on the number of bearer shares that can be issued. Banks and state companies are not allowed to issue bearer shares. The SCS is not aware of any bearer shares that have currently been issued by Azerbaijani legal persons, however in the event that bearer shares were issued, there is no transparency of the shareholders of companies that have issued bearer shares and no specific measures have been taken to ensure that bearer shares are not misused for money laundering.

46. The Azerbaijani authorities advised the examiners that the concept of trust is not recognised under Azerbaijani law. The evaluators were advised that as no definition of "trust" exists in Azerbaijan law a trust could only be registered as a normal legal entity and would be subject to all of the requirements of the relevant legislation. As a consequence of this, the entity would not be able to undertake trust activities.

47. In Azerbaijan non-profit organisations comprise public associations, foundations and unions of legal persons. Since there was no AML/CFT Law in place in Azerbaijan at the time of the on-site visit, the evaluators were unable to establish if the NGOs were reporting entities. The Azerbaijani authorities informed the evaluators that in practice the NGOs/NPOs are reporting entities but since no STRs were provided to the designated authorities in relation to the financial transactions performed by them it was difficult to accept this assurance.

48. The Azerbaijani authorities do not periodically review the NPOs/NGOs with the object of assess terrorist financing vulnerabilities and no risk assessment of NPOs/NGOs has been undertaken, although there is some financial transparency and reporting structure to the Ministry of Justice and tax agencies. Measures have not been put in place to prevent funds or other assets collected by or transferred through NPOs/NGOs being used to support the activities of terrorists or terrorist organisations and there is no regular programme for on-site reviews. Nor are there any apparent arrangements in place for the sharing of information between the governmental departments involved in supervision and law enforcement agencies. Although there is some financial transparency and reporting structures, these measures do not amount to effective implementation of the essential FATF criteria.

6. National and International Co-operation

49. At the working level there was little evidence of co-operation and co-ordination between the supervising bodies to ensure that the AML/CFT matters were adequately monitored in a consistent way across the whole of the financial sector. Likewise, at the policy level there appears to be little effective co-operation and co-ordination between the relevant agencies.

50. With regard to international cooperation, Azerbaijan has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. Criminal legislation has been amended in order to implement the Conventions but those provisions still need to be further amended to ensure that the money laundering offence fully reflects the terms of the Conventions so far as is consistent with fundamental principles of domestic law. While the United Nations lists are being circulated, there is no clear structure for the conversion of the designations under Security Council Resolutions 1267 and 1373 and a comprehensive system is not in place; in particular, as previously noted, insufficient guidance and communication mechanisms with financial intermediaries and DNFBP are in place and Azerbaijan has not provided clear and publicly promoted procedures for listing/delisting and freezing/unfreezing.

51. Since 2004 the Republic of Azerbaijan has concluded four bilateral treaties and a number of other bilateral treaties on mutual legal assistance are in place. When a foreign request relates to money laundering, the dual criminality principle does apply. It is questionable whether a request to Azerbaijan for MLA would be successful in a stand-alone ML case where the requesting country had not obtained a conviction for the predicate offence as money laundering as a stand alone offence has not been tested domestically in Azerbaijan. The absence of corporate liability could also prove a barrier to MLA with regard to legal persons. There also appeared to be a comparatively limited range of offences susceptible to confiscation domestically which may adversely affect international cooperation. No statistics were provided in relation to MLA requests and it is not clear which authority is responsible for keeping statistics in relation to MLA requests. The evaluators were unaware of any specific arrangements to co-ordinate seizure and confiscation actions with other countries although it was understood that arrangements could be made for co-ordinating seizure and confiscation actions on a case by case basis.

52. In theory the legal provisions that are in place allow Azerbaijani authorities to co-operate in extradition matters. The lack of detailed statistical information makes it difficult to ascertain how the system works, and whether it does or does not in an AML/CFT context. There are some legal uncertainties, related to the criminalisation of the ML and TF offences, which might interfere with the extradition possibilities, such as the dual criminality requirement. This was not considered to be a major problem as the deficiencies in the formal qualification of the offences do not necessarily have the same negative impact on extradition procedures, as criminal behaviour appears to prevail over the formal text.

53. Azerbaijan co-operates with a number of countries based on international agreements signed between them. It appears that law enforcement authorities are developing a network of cooperation and information exchange at the intelligence level (i.e. outside the scope of judicial legal assistance). However, as there is no FIU in place, the range of cooperation with other FIUs is, of necessity, severely limited although the NBA has responded to requests from two FIUs. However, until there is an FIU in place which meets the Egmont definition, it is not possible to make any meaningful assessment of Azerbaijan's ability to cooperate at FIU level. Cooperation between supervisory authorities on supervision issues with their foreign counterparts is developing through bilateral and multilateral agreement, although no specific AML/CFT exchanges were pointed to as yet. The information which the supervisory authorities currently possess in connection with CFT is, in any event, very limited.

54. Although some statistics in respect of "STRs" received by the NBA were provided it was unclear as to where in law enforcement they were submitted and no real statistics were provided by law enforcement on AML/CFT investigations. It was also noted that there appeared to be no overall review of the AML/CFT system on a regular basis.

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

For each Recommendation there are four possible levels of compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC). In exceptional circumstances a Recommendation may also be rated as not applicable (N/A). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country *e.g.* a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating[1]
Legal systems		
1. Money laundering offence	**NC**	• The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions: - Uncertain whether the conversion, or transfer of property for the purpose of concealing or disguising the illicit origin of the property (A.6.1 a i Palermo) fully covered - Conversion or transfer for the purpose of helping another to evade the consequences of his action is not covered by the present legislation in Azerbaijan (A.6.1 a i Palermo). - Concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property may not be covered (A 6. 1 a ii Palermo) - Acquisition and possession appear not to be covered (A 6 1 b i Palermo) • Conviction for predicate offence is thought to be required before a money laundering investigation or prosecution can be started. • Conspiracy / association only available in the

[1] These factors are only required to be set out when the rating is less than Compliant.

		context of organised crime. • "Insider trading", "market manipulation" and financing of terrorism in all its aspects not predicates to money laundering. • Effectiveness issue (no investigations, indictments or Court decisions and no real understanding of the value of money laundering investigations and prosecutions, particularly autonomous money laundering cases).
2. Money laundering offence Mental element and corporate liability	**PC**	• The Law of Azerbaijan has not established criminal liability for legal persons or civil or administrative liability for money laundering by legal persons. • The practice to allow the intentional element of the money laundering offence to be inferred from factual circumstances is untested in practice. • Effectiveness issue (no investigations, indictments or court decisions).
3. Confiscation and provisional measures	**PC**	• Not all predicate offences have an associated power of confiscation. • With the exception of the money laundering offence, confiscation is generally not available for the basic form of predicate offences carrying less than two years imprisonment. • Effectiveness issue – little evidence of orders re indirect proceeds and value confiscation. • There should be a clear power to confiscate laundered property in a stand-alone money laundering offence. •
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7
5. Customer due diligence	**NC**	• Though the banks are covered, insufficient legal prohibition on anonymous accounts in the rest of the financial sector. • Full CDD requirements and on-going due diligence are not implemented in the law. • There are no explicit or complete legal requirements (in law or regulation) on the financial institutions to implement CDD measures when: - financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of

		US$/Euro 15,000, - carrying out occasional transactions that are wire transfers, - there is a suspicion of ML and FT; - financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data. • The documents which can be used for verification of identification are not sufficiently determined. • For customers that are legal persons or legal arrangements, there are no requirements that financial institution should verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person. • There is no law or regulation which provides for a concept of "beneficial owner" as required by the Methodology. Financial institutions are not required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources. • There is no enforceable obligation on financial institutions to obtain information on the purpose and nature of the business relationship. • No provision for a "risk based approach", involving enhanced or simplified CDD measures for different categories of customers, business relationships, transactions and products. • No requirement for enhanced due diligence for higher risk customers by the monitoring entities, as necessary, using reliable independent documents. • There is an inadequate obligation on financial institutions to keep documents, data and information up to date. • There is no clear obligation on financial institutions to consider making an STR in case of failure to satisfactorily complete CDD requirements before account opening or commencing business relations or where the business relationship has commenced and doubts about the veracity or adequacy of previously obtained data arise. • As regards existing clients, there is no obligation to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. • There is no comprehensive legal obligation which covers customer identification when carrying out occasional transactions that are wire transfers in all the circumstances covered by the Interpretative

		Note to SR VII. • The possibility to establish the client's identity on the day when the transaction was carried out (unless there is a suspicion of money laundering) is too general and not in line with the circumstances as described by criterion 5.14.
6. Politically exposed persons	**NC**	• The Azerbaijani legislative system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
7. Correspondent banking	**PC**	• Azerbaijani legislation does not include the requirements for financial institutions to gather sufficient information about a respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. • The requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective is not implemented. • There are no provisions requiring any guarantees that a respondent institution applies the normal CDD obligations on customers that have direct access to the accounts of the correspondent institution and that it is able to provide relevant customer identification data on request to the counterpart institution.
8. New technologies and non face-to-face business	**NC**	• While modern financial technology is not widespread in the Azerbaijani financial industry, the existing legislation does not contain enforceable measures requiring financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions.
9. Third parties and introducers	**N/A**	Recommendation 9 is not applicable.
10. Record keeping	**PC**	• There are no clear obligations for financial institutions to keep records of the account files and business correspondence. There is no obligation to retain documents supporting customer identification. • No provision is included to ensure that the mandatory record-keeping period may be extended in specific cases upon request of an authority. • No formal provision requiring that customer and transaction records to be made available on a timely

		basis to domestic competent authorities. • No provision as yet in secondary legislation defining the record keeping documents to be retained and the length of retention in the insurance sector.
11. Unusual transactions	**NC**	• The financial institutions are not specifically required to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose. • There is no obligation for the financial institutions to document the obtained information in writing and keep it available for relevant authorities and auditors.
12. DNFBP – R.5, 6, 8-11	**NC**	• The coverage of DNFBP is not complete or in line with international standards. • Recommendations 5, 6, 8, 10 and 11 are not implemented for DNFBP.
13. Suspicious transaction reporting	**NC**	• No STR system in place in law or regulation.
14. Protection and no tipping-off	**NC**	• No provisions on tipping off and safe harbour.
15. Internal controls, compliance and audit	**NC**	• There is no specific requirement anywhere in the existing legislation for financial institutions to develop programmes against money laundering and financing of terrorism. • There are no requirements for financial institutions to designate at least an AML/CFT compliance officer at the management level. • There is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information. • Financial institutions are not specifically required to include the necessity for internal audit to test compliance with the internal procedures and policies for AML/CFT. • A requirement for financial institutions to put in place screening procedures to ensure high standards when hiring staff is not specifically mentioned in the Azerbaijani legislation.
16. DNFBP – R.13-15 & 21	**NC**	• Recommendations 13 – 15 and 21 are not addressed for DNFBP in the Azerbaijani legislation.
17. Sanctions	**NC**	• Without an AML/CFT law in place in Azerbaijan there are no requirements for sanctioning for non-compliance with AML/CFT measures.

		Administrative sanctions, as required by Recommendation 17, cannot be found in any of the sectoral laws. • Sanctions are not available in relation to the directors and senior management of financial institutions. • The range of sanctions available does not include the power to impose financial sanctions.
18. Shell banks	**PC**	• There are no criteria set to identify shell banks in order to avoid establishing any correspondent banking relations with shell banks. • There are no measures in place that require the financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their account to be used by shell banks.
19. Other forms of reporting	**C**	
20. Other DNFBP and secure transaction techniques	**PC**	• Azerbaijan authorities have not considered any other non-financial businesses or professions to be at risk of being misused for money laundering or terrorist financing.
21. Special attention for higher risk countries	**PC**	• No measures in place to advise financial institutions of concerns about weaknesses in AML/CFT systems in countries other than those identified by FATF or other international institutions. • No requirement upon financial institutions to keep written findings relating to the background and purpose of transactions with relevant jurisdictions. • There are no mechanisms in place that would enable the authorities to apply counter-measures to countries that do not apply or insufficiently apply the FATF recommendations.
22. Foreign branches and subsidiaries	**NC**	• There is no specific requirement anywhere in the normative acts for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit. • Financial institutions are not particularly required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local (i.e. host country) laws, regulations or other measures.
23. Regulation, supervision and	**PC**	• As no basic AML/CFT legislation existed in

monitoring		Azerbaijan at the time of the on-site visit there were no competent authorities specifically listed for supervision of financial institutions for AML/CFT purposes. • In practice, apart from the NBA, no other designated supervisory body includes AML issues as an integrated part of its supervisory activities. • There is no mention of CFT issues anywhere in the regulatory acts for market entry needs.
24. DNFBP - Regulation, supervision and monitoring	**NC**	• There are no designated competent authorities that have responsibility for the AML/CFT regulatory and supervisory regime for DNFBP. • The powers for the supervisors of the existing DNFBP are not defined, including powers to monitor and sanction for deficiencies connected with AML/CFT.
25. Guidelines and feedback	**NC**	• Apart from NBA no other supervisory body has so far issued guidelines that can assist financial institutions to implement and comply with the AML/CFT requirements. • No guidelines have been issued to assist financial institutions to combat terrorist financing. • No guidance for DNFBP is provided for AML/CFT purposes in Azerbaijan • No feedback to financial institutions.
Institutional and other measures		
26. The FIU	**NC**	• There is no FIU that meets international standards.
27. Law enforcement authorities	**PC**	• Law enforcement responsibilities fragmented and unclear in AML/CFT repression. • Ineffective pursuit of such STRs as there are. • No law enforcement generated money laundering cases (effectiveness issue).
28. Powers of competent authorities	**LC**	• The effectiveness of available powers has not been tested in money laundering or combating the financing of terrorism investigations and prosecutions.
29. Supervisors	**PC**	• Criterion 29.4 of the FATF Methodology requiring the supervisor to have adequate powers of enforcement and sanction against the directors or senior management of financial institutions for failure to comply with or properly implement requirements to combat money laundering and terrorist financing, consistent with the FATF Recommendations is not covered at all anywhere in Azerbaijani legislation.

30. Resources, integrity and training	**PC**	• while supervisors and law enforcement overall are adequately resourced, the resources assigned to AML/CFT currently are inadequate. • no integrity standards for law enforcement or supervisors of which the evaluators are aware. • inadequate relevant training on AML/CFT for law enforcement and prosecutors.
31. National co-operation	**PC**	• No real mechanisms in place to co-ordinate at the working level.
32. Statistics	**NC**	• no review of AML/CFT system on a regular basis. • no statistics provided on where "STRs" went. • absence of real statistics on AML/CFT investigations, cases involving provisional measures and confiscation. • absence of statistics on MLA and R.40.
33. Legal persons – beneficial owners	**PC**	• Commercial, corporate and other laws do not require adequate transparency concerning the beneficial ownership and control of legal persons • No full transparency of the shareholders of companies that have issued bearer shares and no specific measures taken to ensure that bearer shares are not misused for money laundering.
34. Legal arrangements – beneficial owners	**N/A**	• The concept of trusts is not known and neither domestic or foreign trusts operate in Azerbaijan
International Co-operation		
35. Conventions	**PC**	• Effectiveness of the implementation of the standards in relation to ML gives rise to doubts. • Some aspects of the physical and material elements of the Vienna Convention need clarification • Though the Palermo, Vienna and FT Conventions have been brought into force there are still reservations about effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some aspects of the provisional measures regime.
36. Mutual legal assistance (MLA)	**LC**	• The definitional problem of the money laundering offence may render MLA problematic in some cases involving money laundering as a "stand alone crime" and ML involving conversion or transfer and simple possession. • The absence of the corporate liability could be a problem in providing MLA.
37. Dual criminality	**LC**	• Given the problems with the criminalisation of ML and TF domestically the apparent need for full dual criminality may hinder MLA and extradition

		requests.
38. MLA on confiscation and freezing	**PC**	• Very limited range of offences susceptible to confiscation domestically • Dual criminality principle may adversely inhibit such assistance. • Lack of practice in this area raises effectiveness issues.
39. Extradition	**LC**	• The absence of statistical data means there is a reserve on effectiveness. • legal uncertainties related to the criminalisation of ML coupled with strict dual criminality requirements might interfere with extradition possibilities.
40. Other forms of co-operation	**PC**	• Little practice in law enforcement intelligence information exchange on AML/CFT issues • No FIU in place so no legal basis for FIU to FIU cooperation. • No proper basis for supervisory authorities having information on CFT issues. • Little practical experience of supervisory cooperation in AML/CFT.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• FT offence should be amended in order to ensure fully cover of the Terrorist Financing Convention. • While the United Nations lists are being circulated, there is no clear structure for the conversion of the designations under 1267 and 1373 and a comprehensive system is not in place. In particular insufficient guidance and communication mechanisms with all financial intermediaries and DNFBP. • Azerbaijan has not provided clear and publicly known procedures for listing/delisting and freezing/unfreezing; also the Financing of Terrorism Convention is not covered in relation with the identification of the beneficial owners. • A precise mechanism for freezing of funds related to terrorist financing should be established. • Preventive measures in FT Convention not implemented.
SR.II Criminalise terrorist financing	**PC**	• The financing of terrorism offence does not cover the financing of individual terrorists, or terrorist organisations. • Unclear whether funding of all activities of terrorist organisations covered including legitimate

		activities. • The FT offence does not cover all elements of SR.II, defined as terrorist offences in the Annex of the FT Convention. • The law does not explicitly provide that the offence covers the use of legitimate funds. • Unclear if the wide concept of "funds" in the Financing of Terrorism Convention is fully covered. • Unclear if knowledge can be inferred from objective factual circumstances. • Lack of certainty on the concepts of "money resources", "money" and "other property". • Unclear if it is necessary to show that funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act. • No criminal liability for legal persons.
SR.III Freeze and confiscate terrorist assets	**NC**	• No dedicated CFT structure for the conversion of designations into Azerbaijan Law under UNSCR 1267 and 1373, including consideration of designations by Third countries. • No designating authority for UNSCR 1373. • Unclear whether a legal or administrative freezing mechanism (or both) is to be followed. • No clear requirements on the financial sector as to their duties on notification of designations. • Designations not being promptly received by all the financial sector from Azerbaijan authorities. • No publicly known procedures for considering de-listing, unfreezing and for persons inadvertently affected. • No guidance on the scope of "funds or other assets" to the financial sector. • Unclear whether a freezing order in the criminal process would ultimately be effective to sustain or maintain freezing of assets of all designated persons. • No recent freezing orders made (effectiveness issue). • No active supervision by all the regulators of compliance with SR.III and no clear capacity by them to sanction in the event of non-compliance.
SR.IV Suspicious transaction reporting	**NC**	• No STR system relating to FT in law or regulation.
SR.V International co-operation	**PC**	• The limitations in relation to the criminalisation of FT offences may have impact on Azerbaijan's ability to deliver mutual legal assistance in FT cases.

		• The limitations in relation to the criminalization of the ML/TF offences may negatively affect the extradition possibilities. • Little practice in CFT exchange of information at law enforcement intelligence level. • Little or no information on CFT issues available to supervisors.
SR.VI AML requirements for money/value transfer services	**PC**	• Implementation of Recommendations 4-11, 13-15 and 21-23 in the MVT sector suffers from the same deficiencies as those that apply to other financial institutions and which are described earlier in section 3 of this report.
SR.VII Wire transfer rules	**PC**	• There are no legal requirements on financial institutions concerning the obligation to include full originator information in the message or payment form accompanying cross-border wire transfers of EUR/USD 1 000 or more. • The information needed for domestic wire transfers does not include the originator's address. There is no obligation that the information included in wire transfers is meaningful and accurate. • There are no requirements for each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer. • The sanctions regime concerning SR VII has several deficiencies and has never been applied in practice which raises concerns of effective implementation.
SR.VIII Non-profit organisations	**NC**	• The Azerbaijani authorities do not periodically review the NPOs/NGOs with the object of assess terrorist financing vulnerabilities; • No risk assessment of NPOs/NGOs has been undertaken, although there is some financial transparency and reporting structure to the Ministry of Justice and tax agencies exists; • There is no regular programme for field audits. The designated authorities should begin AML/CFT assessments for the entities engaged in the extension of grants and charitable assistance. Closer liaison between the governmental departments involved is required as well as increasing the sharing of information between them and with law enforcement; • Detailed provisions regarding financial obligations and annual reports are only applicable to "charitable

		entities"; • No measures are in place to ensure that funds or other assets collected by or transferred through NPOs/NGOs are not used to support the activities of terrorists or terrorist organisations; • Though there is some financial transparency and reporting structures, these measures do not amount to effective implementation of the essential criteria VIII.2 and VIII. 3.
SR.IX Cross Border declaration and disclosure	**PC**	• No power to stop and restrain currency for a reasonable time to ascertain whether evidence of money laundering or financing of terrorism may be found where there is a suspicion of money laundering. • No reporting requirement on suspicions of AML/CFT to other law enforcement bodies or the NBA (effectiveness issue).