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FINANCING OF TERRORISM  
(MONEYVAL)

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# Report on Fourth Assessment Visit - *Addendum*

Anti-Money Laundering and Combating the  
Financing of Terrorism

# GEORGIA

3 July 2012

Georgia is a member of MONEYVAL. This is the fourth report in MONEYVAL's fourth round assessment visits, following up on the recommendations made in the third round. This evaluation was conducted by the International Monetary Fund (IMF). A representative of MONEYVAL joined the IMF team for part of the evaluation exercise to examine compliance with the European Union anti-money laundering Directives where these differ from the FATF Recommendations and therefore fall within the remit of the MONEYVAL examinations. The report on the 4th Assessment Visit was adopted by MONEYVAL at its 39<sup>th</sup> Plenary (Strasbourg, 2 - 7 July 2012).

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## COMPLIANCE WITH THE 3<sup>RD</sup> EU AML/CFT DIRECTIVE

Georgia is not a member of the European Union. It is not directly obliged to implement Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter: “the Directive”) and the Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‘politically exposed person’ and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

| <b>1. CORPORATE LIABILITY</b>   |  |
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| <b>Art. 39 of the Directive</b> | Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.   |
| <b>FATF R. 2 and 17</b>         | Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.   |
| <b>Key elements</b>             | The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?  |
| <b>Description and Analysis</b> | <p>By the amendments of July 25, 2006, the new chapter XVIII<sup>1</sup> establishing the criminal liability of legal entities for the commission of the designated categories of crimes, among them money laundering, has been introduced to the CCG.</p> <p>To this end, Article 194 of the CCG was further amended on July 25, 2006. According to the above-mentioned amendment the commission of money laundering by a legal person is punishable with liquidation, fine or the deprivation of the right to pursue an occupation.</p> <p>Also, according to Article 1073 and Article 1077, added to the CCG by the amendments of July 25, 2006, the confiscation of the property shall be used against the legal entity as a sentence and the confiscation procedure should be performed in compliance with the provisions of article 52 (Confiscation of property) of the CCG.</p> <p>According to the amendments of March 19, 2008 to the Criminal Code of Georgia the scope of Article 107<sup>2</sup>, which determines the list of crimes for which the criminal liability of legal persons is established, was further expanded and currently it envisages the criminal liability of legal persons for the commission of crime provided for by article 194<sup>1</sup> of the CCG (acquisition, possession, use or realization of laundered proceeds) as well. Due to the amendments made to the Criminal Code of Georgia on September 26, 2008, the criminal liability of legal person can be applied where the crime is committed for the benefit of the legal person as a result of lack of supervision or control by the persons who occupy a leading position within that legal person.</p> <p>According to the paragraph 6 of Article 107<sup>1</sup> of the Criminal Code (Grounds for criminal liability of a legal person) criminal liability of a legal person for a criminal offence does not exclude criminal liability of a</p> |

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|  | <p>physical person for the same offence.</p> <p>There is only one form of liability applicable against the legal persons for ML, which is a criminal liability. The criminal liability of legal entity for money laundering does not preclude parallel criminal, civil or administrative proceedings against this entity triggered for any other reasons apart from ML.</p> <p>As it was mentioned above corporate criminal liability is extended beyond the ML offence to other offences as well, which are explicitly provided by 107<sup>2</sup> of the Criminal Code of Georgia.</p> <p>The list of the above-mentioned offences is as follows:</p> <p>Article 143<sup>1</sup>. Human trafficking;</p> <p>Article 143<sup>2</sup>. Juvenile trafficking;</p> <p>Article 158. Violation of the secrecy of private conversation;</p> <p>Article 186. Acquisition or sale knowingly of an object obtained by criminal means</p> <p>Article 189. Violation of the intellectual property rights, its adjacent rights and database rights;</p> <p>Article 192. Illegal entrepreneurial activity;</p> <p>Article 192<sup>1</sup>. Illegal educational activity;</p> <p>Article 194. Legalisation of illegal revenues (Money laundering)</p> <p>Article 194<sup>1</sup>. The use, acquisition, possession or sale of an object acquired by legalisation of illegal revenues.</p> <p>Article 195<sup>1</sup>. Violation of regulations on participation in state procurements;</p> <p>Article 200<sup>3</sup>. Transportation of goods for entrepreneurial purposes without a consignment note or refusal to issue an invoice upon the request of a buyer, or refusal to receive an invoice;</p> <p>Article 221. Commercial bribing;</p> <p>Article 224<sup>1</sup> Participation in a racket group;</p> <p>Article 227<sup>1</sup>. Posing a danger to navigation of a vessel;</p> <p>Article 227<sup>2</sup>. Misappropriation, destruction or damage of a stationary platform;</p> <p>Article 231<sup>1</sup>. Threat of misappropriation of a nuclear substance;</p> <p>Article 255. Illegal production or sale of pornography;</p> <p>Article 255<sup>1</sup>. Engaging a juvenile in illegal production or distribution of pornographic work;</p> <p>Article 260. Illegal manufacturing, production, purchase, storage, Transportation, dispatch or sale of narcotic drugs, its analogue or precursor;</p> <p>Article 261. Illegal manufacturing, production, purchase, storage, Transportation, dispatch or sale of psychotropic substances, its analogue or hard substances;</p> <p>Article 262. Illegal import, export or international transit of narcotic drugs, its analogue or precursor in Georgia;</p> <p>Article 263. Illegal import, export or international transit in a large quantity of psychotropic substances, its analogue or hard substances in Georgia;</p> <p>Article 264. Misappropriation or extortion of narcotic drugs, its analogue or precursor, psychotropic substances, its analogue or hard substances;</p> <p>Article 265. Illegal planting, growing or cultivating of plants containing narcotics;</p> <p>Article 266. Establishment or maintenance of a covert laboratory for illegal production of narcotic drugs, its analogue or precursor, psychotropic substances or its analogue;</p> |
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|  | <p>Article 267. Issuing a false prescription or other documents for the purchase of narcotic drugs, with the purpose of sale or its actual sale;</p> <p>Article 268. Issuing a false prescription or other documents for the purchase of psychotropic or hard substances, with the purpose of sale or its actual sale;</p> <p>Article 269. Violation of regulations for manufacturing, production, use, registration, storage, transportation, dispatch or import of narcotic drugs or its precursors;</p> <p>Article 270. Violation of regulations for manufacturing, production, use, registration, storage, transportation, dispatch or import of psychotropic and hard substances;</p> <p>Article 271. Provision of a residence or other premises for illegal use of narcotic drugs, its analogue, psychotropic substances, its analogue;</p> <p>Article 284. Illegal intrusion into computer data;</p> <p>Article 285. Creation, use or distribution of program damaging computer system;</p> <p>Article 286. Violation of the rules of exploitation of a computer, computer system or their network;</p> <p>Article 322<sup>2</sup>. Illegal economic activities on occupied territories;</p> <p>Article 323. Terrorist act;</p> <p>Article. 324 Technological terrorism;</p> <p>Article 324<sup>1</sup> Cyber terrorism;</p> <p>Article 325. An attack on a political official of Georgia;</p> <p>Article 326. An attack on a person or institutions under international protection;</p> <p>Article 327. Creation, leading of or participation in a terrorist organisation;</p> <p>Article 328. Joining a terrorist organisation of a foreign country or an organisation under foreign control or assisting it in terrorist activities;</p> <p>Article 329. Taking a hostage for terrorist purposes;</p> <p>Article 330. Seizure or blockade of a facility of strategic or special importance for terrorist purposes;</p> <p>Article 330<sup>1</sup>. Public appeal to terrorism;</p> <p>Article 330<sup>2</sup>. Training for the purpose of terrorism;</p> <p>Article 331<sup>1</sup>. Financing of terrorism;</p> <p>Article 339. Giving a bribe;</p> <p>Article 339<sup>1</sup>. Bargaining with one's influence;</p> <p>Article 344<sup>1</sup>. Illegal transfer of migrant on the state border of Georgia and/or creation of conditions for illegal migrant to stay illegally in Georgia;</p> <p>Article 362. Fabrication, sale or use of a false document, seal, stamp or blank</p> <p>Article 364. Obstruction of the administration of justice and preliminary investigation</p> <p>Article 365. The use of threat or violence in relation to the administration of justice or preliminary investigation;</p> <p>Article 372. Exertion of pressure upon a witness, a victim, an expert or an interpreter;</p> <p>Article 406. Manufacturing, purchase or sale of weapons of mass destruction.</p> <p>Extract from the Criminal Code of Georgia: Article 107/2. Cases of Criminal Liability of a Legal Person (23.02.2010 N2641)</p> <p>A legal person shall be imposed criminal liability for criminal offences prescribed by the articles 143/1, 143/2, 158, 186, 189, 192, 192<sup>1</sup>, 194, 194/1, 195<sup>1</sup>, 200/3, 221, 224/1, 227/1, 227/2, 231/1, 255, 255/1, 260-271,</p> |
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|                   | 284, 285, 286, 322/2, 323-330, 330/1, 330/2, 331/1, 339, 339/1, 344/1, 362, 364, 365, 372 and 406 of the present Code. |
| <b>CONCLUSION</b> | Criminal liability for money laundering extends to legal persons, beyond the ML offence.                               |

| <b>2. ANONYMOUS ACCOUNTS</b>    |   |
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| <b>Art. 6 of the Directive</b>  | Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.  |
| <b>FATF R. 5</b>                | Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.  |
| <b>Key elements</b>             | Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?  |
| <b>Description and Analysis</b> | Art. 6 (9) of the AML/CFT Law stipulates that the financial institutions shall be prohibited to open or / and maintain anonymous accounts or accounts in fictitious names.<br>Similar provisions are also provided by the Regulation for Commercial Banks (FMS Decree No.4 / January 18, 2012), at Art. 6 (9).<br>Furthermore, the Civil Code of Georgia – Chapter III on Deposit Accounts and Article 875 – states that credit institution is obliged to issue deposits only in the nominative form. Nominative form is defined as – issued to a specific person (Amendment to civil code 2003). |
| <b>CONCLUSION</b>               | The anonymous accounts and/or the anonymous passbooks are prohibited under the AML/CFT Law of Georgia.  |

| <b>3. THRESHOLD (CDD)</b>         |  |
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| <b>Art. 7 b) of the Directive</b> | The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions <u>amounting</u> to EUR 15 000 or more.   |
| <b>FATF R. 5</b>                  | Financial institutions should undertake CDD measures when carrying out occasional transactions <u>above</u> the applicable designated threshold.   |
| <b>Key elements</b>               | Are transactions and linked transactions of EUR 15 000 covered?  |
| <b>Description and Analysis</b>   | Financial institutions should undertake CDD measures in case of carrying out any kind of transaction (including occasional transactions) if the transaction amount exceeds GEL 3000 (or its equivalent in other currency) (approx. 1300 Euros). These provisions are stipulated by Article 6 (1) a) of the AML/CFT Law of Georgia.<br>There is also a requirement applicable for persons engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities, the identification of their clients being carried out if the amount of transaction exceeds GEL 30 000.<br>Similar requirements are provided by Art. 6 (1) of Regulation for Commercial Banks (FMS Decree No.4 / January 18, 2012), and also by other sectoral regulations:<br>1) Insurance Companies – Article 6.1;<br>2) Money Remittance Entities – Article 6.1;<br>3) Microfinance Organizations – Article 6.1;<br>4) Credit Unions – Article 6.1;<br>5) Exchange Bureaus – Article 5.1;<br>6) Securities Registrars – Article 5.1 |

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|                                     | <p>7) Brokers – Article 5.1<br/>             8) Lotteries – Article 5.1;<br/>             9) Casinos – Article 5.1<br/>             10) Notaries – Article 5.1;<br/>             11) NAPR – Article 6.1 (threshold is 30000 GEL);</p>  |
| <b>CONCLUSION</b>                   | <p>The requirement is broadly covered by the AML/CFT Law of Georgia, being subject to a lower threshold than the one stipulated by the Directive. However, the provisions of the AML/CFT Law doesn't explicitly require that CDD measures should be applicable also in the case when the transaction is carried through several operations which appear to be linked.</p>  |
| <b>Recommendations and Comments</b> | <p>REC: (1) Even though this requirement is broadly met, it is applicable only to the monitoring entities, which are expressly defined under the AML/CFT Law of Georgia. However, the overall provisions of the Directive cover a broader approach, which relates the CDD measures applicable for the transactions of a specific threshold, and not necessarily only to the transactions performed by a reporting entity (Art. 2 para (1) let. e) of the Directive). Georgian authorities should consider implementing such an approach in order to fully comply with these provisions of the Directive.<br/>             (2) The CDD measures applicable above the certain threshold should be explicitly required also when the transaction is carried through several operations which appear to be linked.</p> |

| <b>4. BENEFICIAL OWNER</b>                        |  |
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| <b>Art. 3 (6) of the Directive</b><br>(see Annex) | The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements   |
| <b>FATF R. 5</b><br>(Glossary)                    | 'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.   |
| <b>Key elements</b>                               | Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.   |
| <b>Description and Analysis</b>                   | <p>Under the Article 2(q) of the AML/CFT of Georgia, the beneficial owner refers to a natural person(s) representing an ultimate owner(s) or controlling person(s) of a person or / and a person on whose behalf the transaction (operation) is being conducted; beneficial owner of a business legal entity (as well as of an organizational formation (arrangement) not representing a legal entity, provided for in the Georgian legislation) shall be the direct or indirect ultimate owner, holder or / and controlling natural person(s) of 25% or more of such entity's share or voting stock, or natural person(s) otherwise exercising control over the governance of the business legal entity</p> <p>Pursuant to Article 2(q<sup>1</sup>) of the AML/CFT Law of Georgia person includes any resident as well as non-resident natural person or legal entity, and an organizational formation, provided for in Georgian legislation not representing a legal entity.</p> <p>As regards control and controlling person they are defined under Art. 2(j) and Art.2(k) of the Regulation for Commercial Banks and is based on the Organic Law of Georgia of the National Bank of Georgia.</p> |



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|                                     | <p>Consequently, according to Article 2(x) of the above mentioned Organic Law control is an exercising a strong influence, directly or indirectly, alone or in concert with others, by using voting shares (stock), or through any other means, while controlling person is a person exercising the control (Article 2(y)).</p> <p>Even though the definition of the beneficial owner seems to cover all the EU criteria in this respect, more precise requirements are needed for specific types of entities, as foundations, or for legal arrangements, such as trusts, which administer and distribute funds.</p>  |
| <b>CONCLUSION</b>                   | The definition of “beneficial owner” under the AML/CFT Law broadly covers all the EU criteria issued in this respect.   |
| <b>Recommendations and Comments</b> | <p>REC: (1) Georgian authorities should consider implementing a more explicit definition of “beneficial owner”, such as the one provided by the Art. 3 (6) of the Directive, particular regarding a specific types of entities, as foundations, or for legal arrangements, such as trusts, which administer and distribute funds.</p> <p>(2) In case of the regulations issued for financial sector, Georgian authorities should consider if the definition of the “controlling person” covers also the person who “ultimately owns or controls ...”, as provided by the Directive. The introduction of this term can allow an extended process of identifying the persons who are the ultimately (real) beneficial owners.</p> |

| <b>5. FINANCIAL ACTIVITY ON OCCASIONAL OR VERY LIMITED BASIS</b> |  |
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| <b>Art. 2 (2) of the Directive</b>                               | <p>Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive.</p> <p>Art. 4 of Commission Directive 2006/70/EC further define this provision.</p>   |
| <b>FATF R. concerning financial institutions</b>                 | When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.). |
| <b>Key elements</b>  | Does your country implement Art. 4 of Commission Directive 2006/70/EC?   |
| <b>Description and Analysis</b>                                  | The AML/CFT Law of Georgia does not apply any exceptions from general CDD requirements to financial activity on occasional or very limited basis.  |
| <b>CONCLUSION</b>  | Georgia does not implement Art. 4 of the Directive 2006/70/EC.   |
| <b>Recommendations and Comments</b>                              | COM: These provisions are options given by the EU AML/CFT standards as regards the requirements applicable for the financial activities performed at occasional or very limited basis. Each state can consider what approach should implement in this respect.   |

| <b>6. SIMPLIFIED CUSTOMER DUE DILIGENCE (CDD)</b> |  |
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| <b>Art. 11 of the Directive</b>                   | By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains. |



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| <b>FATF R. 5</b>                    | Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.  |
| <b>Key elements</b>                 | Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?   |
| <b>Description and Analysis</b>     | <p>The AML/CFT legislative framework of Georgia stipulates that reporting entities should have in place Identification and verification procedure that can be conducted on a risk sensitive basis depending on the type and nature of the client, business relationship, product/service risk or the transaction. The background of these requirements is based on the provisions of Article 6 (13) of the AML/CFT Law of Georgia.</p> <p>Furthermore, Article 6 (22) of the Regulation for Commercial Banks requires that banks shall have in place the appropriate risk management system for identification and verification of such client whose activity may pose a high risk of legalization of illicit income and/or terrorism financing and shall exercise enhanced identification, verification and enhanced monitoring procedures with respect to them.</p> <p>Verification of identification data shall be carried out based on a reliable, independent source.</p> <p>Similar provisions are set forth in other sectoral regulations, such as:</p> <ul style="list-style-type: none"> <li>- Article 6 (13) of Regulation for Credit Unions</li> <li>- Article 5 (17) of the Regulation for Currency Exchange Bureaus</li> <li>- Article 6 (17) of the Regulation for Money Remittance Entities</li> <li>- Article 5 (13) of the Regulation for Accountants and Auditors</li> <li>- Article 5 (12) of the Regulation for Casinos</li> <li>- Article 5 (12) of the Regulation for Persons Organizing Lotteries, Gambling and Other Commercial Games</li> <li>- Article 5 (13) of the Regulation for Notaries</li> <li>- Article 6 (21) of the Regulation for Insurance Companies</li> <li>- Article 6 (21) of the Regulation for Microfinance Organization</li> <li>- Article 6 (17) of the Regulation for Securities</li> <li>- Article 6 (17) of the Regulation for Brokerage Companies</li> </ul> <p>In this respect, it seems that there is no provision which allow the simplified CDD measures to be applicable in certain situations, even through a process based on a risk sensitive approach.</p> <p>No simplified CDD measures are stipulated within Georgian AML/CFT framework, being applicable only standard and enhance due diligence measures.</p> |
| <b>CONCLUSION</b>                   | Considering the fact that Georgian AML/CFT legislative framework doesn't stipulate any simplified CDD measures, the provisions of Art. 11 of the Directive are not implemented.  |
| <b>Recommendations and Comments</b> | COM: These provisions are specific options given by the EU AML/CFT standards as regards instances where institutions and persons may not apply CDD measures. Each state can consider what approach or requirements should implement in this respect.   |

## 7. POLITICALLY EXPOSED PERSONS (PEPs)

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| <b>Art. 3 (8), 13 (4) of the Directive</b><br>(see Annex) | The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)). |
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| <b>FATF R. 6 and Glossary</b>   | Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.  |
| <b>Key elements</b>             | Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?  |
| <b>Description and Analysis</b> | <p>The AML/CFT Law of Georgia regulates issues related to Politically Exposed Persons.</p> <p>Definition of PEPs, his / her family member and a person having close business relationship with the politically exposed person (PEP) is established under Article 2 of the AML/ CFT Law according to which: Politically Exposed Person (PEP) [is] a foreign citizen, who has been entrusted with prominent public functions in a respective country and carries out significant public and political activities. They are: Head of State or of government, member of government, their deputies, senior official of government institution, member of parliament, member of the supreme court and constitutional court, high ranking military official, member of the central (national) bank’s council, ambassador, senior executive of state owned corporation, political party (union) official and member of executive body of the political party (union), other prominent politician, their family members as well as person having close business relations with them; a person shall be considered as a politically exposed during a year following his / her resignation from the foregoing positions. ((Article 2(v))</p> <p>Family member [is] a spouse of a person, his / her parents, siblings, children (including step – children) and their spouses. (Article 2(w));</p> <p>Person having close business relationship with the politically exposed person (PEP) [is] a natural person who owns or / and controls a share or voting stock of that legal entity, in which a share or voting stock is owned or / and controlled by the Politically Exposed Person (PEP); also, a person having other type of close business relationship with the Politically Exposed Person (PEP) (Article(x).</p> <p>In addition to performing the CDD measures required under the AML/CFT law, Article 6<sup>1</sup> of the AML/CFT Law of Georgia puts in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person.</p> <p>Due to the above mentioned Article:</p> <ol style="list-style-type: none"> <li>1. Monitoring entity shall identify whether the person having business relations with the entity and his / her beneficial owner belongs to the category of Politically Exposed Persons (PEPs).</li> <li>2. If a person having the business relationship with the monitoring entity or / and his / her beneficial owner represents a Politically Exposed Person (PEP), in addition to the steps stipulated under the Law, the monitoring entity shall take the following actions: <ol style="list-style-type: none"> <li>a) Obtain permission from the management to establish business relationship with such person;</li> <li>b) Take reasonable measures to ascertain the origin of funds and property of such person as well as the identity of the beneficiary of the account;</li> <li>c) Perform permanent monitoring over its business relations with such person.</li> </ol> </li> <li>3. If the person (his / her beneficial owner) becomes Politically Exposed Person (PEP) after establishing business relations with the monitoring entity, the latter shall undertake measures provided for in Paragraph 2 of this Article against such person upon availability of the aforementioned information.</li> </ol> <p>Regulations issued by the FMS for monitoring entities include the above mentioned definitions and the relevant requirements related to PEPs, as it follows:</p> |

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|                                     | <ul style="list-style-type: none"> <li>- Article 7 (1) of the Regulation for Commercial Banks</li> <li>- Article 7 (1) of Regulation for Credit Unions</li> <li>- Article 7 (1) of the Regulation for Microfinance Organization</li> <li>- Article 6 (1) of the Regulation for Currency Exchange Bureaus</li> <li>- Article 7 (1) of the Regulation for Money Remittance Entities</li> <li>- Article 7 (1) of the Regulation for Insurance Companies</li> <li>- Article 6 (1) of the Regulation for Securities</li> <li>- Article 6 (1) of the Regulation for Brokerage Companies</li> </ul> |
| <b>CONCLUSION</b>                   | <p>The definition of politically exposed persons, provided by the AML/CFT Law of Georgia, is explicitly restricted only to foreign PEPs.</p> <p>The provisions of Art. 2 of the Commission Directive 2006/70/EC and of Art. 13 (4) of the Directive have been implemented within AML/CFT legislative framework of Georgia, with the exception above mentioned.</p>   |
| <b>Recommendations and Comments</b> | <p>REC: (1) Georgian authorities should consider enlarging the definition of PEPs, to be in line with the provisions of Art. 2 of the Directive 2006/70/EC (no delimitation between domestic and foreign PEPs).</p> <p>(2) Georgian authorities should consider introducing an explicit requirement to financial institutions in order to develop and implement risk-based procedures for properly identifying a customer as being a PEP (having not only the requirement by itself - Article 6<sup>1</sup> (1) of the AML/CFT Law of Georgia).</p>  |

| <b>8. CORRESPONDENT BANKING</b>     |   |
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| <b>Art. 13 (3) of the Directive</b> | For correspondent banking, Art. 13(3) limit the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.  |
| <b>FATF R. 7</b>                    | Recommendation 7 includes all jurisdictions.  |
| <b>Key elements</b>                 | Does your country apply Art. 13(3) of the Directive?  |
| <b>Description and Analysis</b>     | <p>Cross-border correspondent banking is regulated under the Regulation issued by the FMS for Commercial Banks.</p> <p>According to Article 8 of the above-mentioned Regulation, in the course of establishing international correspondent relations, Banks shall obtain information from public sources on reputation of respondent Bank and degree of supervision imposed thereon, as well as ascertain whether the Bank represents monitoring entity in the light of fighting money laundering and terrorism financing. Banks shall request from respondent banks information on exercising internal control by the latter with respect to fighting money laundering and terrorism financing and assess quality of such control.</p> <p>Establishing correspondent relations without consent of the Board of Directors (Curator Director) shall not be permitted (Article 8(2) of the Regulation for Commercial Banks).</p> <p>Correspondent relationship involving the maintenance of “payable-through accounts” is not applicable for Georgia.</p> |
| <b>CONCLUSION</b>                   | <p>The provisions of the Art. 13 (3) of the Directive are broadly met by the Georgian AML/CFT framework.</p> <p>However, there is no explicit requirement for the financial institutions to document the respective responsibilities of each institution, a fact which undermines the fully compliance with Art 13 (3) of the Directive</p>   |
| <b>Recommendations and Comments</b> | REC: Georgian authorities should consider introducing more explicit requirements and/or measures in relation with the level of “reputation” accepted for a responding bank.   |

| <b>9. ENHANCED CUSTOMER DUE DILIGENCE (ECDD) AND ANONYMITY</b> |   |
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| <b>Art. 13 (6) of the Directive</b>                            | The Directive requires ECDD in case of ML or TF threats that may arise from <u>products</u> or <u>transactions</u> that might favor anonymity.  |
| <b>FATF R. 8</b>   | Financial institutions should pay special attention to any money laundering threats that may arise from new or developing <u>technologies</u> that might favor anonymity [...].   |
| <b>Key elements</b>  | The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?  |
| <b>Description and Analysis</b>                                | Pursuant to Article 6(23) of the Regulation for Commercial Banks, a bank should pay special attention to any threats that may arise from new technologies, products and service that might favor anonymity during the service and take all measures, to prevent their use in legalization of illicit income and terrorism financing. Furthermore, a bank shall have in place such identification and verification policy and procedures that reduces the risks associated with non face to face service as it is considered under the Georgian legislation. Policy and procedures defined under this paragraph shall apply when establishing business relationship and when conducting permanent monitoring.<br>Similar requirements are set for the other monitoring entities, through their sectoral regulations. |
| <b>CONCLUSION</b>  | The provisions of the Art. 13 (6) of the Directive are implemented within the Georgian AML/CFT framework.   |

| <b>10. THIRD PARTY RELIANCE</b> |  |
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| <b>Art. 15 of the Directive</b> | The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.   |
| <b>FATF R. 9</b>                | Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.  |
| <b>Key elements</b>             | What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?   |
| <b>Description and Analysis</b> | After the changes of March 19, 2008 to the AML/CFT Law of Georgia it is permitted to financial institutions to rely on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business relations.<br>More precisely, according to Article 6 (11) of the AML/CFT Law, in the course of identification or / and verification of client (its beneficial owner) the monitoring entity may rely on a third person / intermediary, who according to the international standards carry out identification and verification of identification of a person, maintaining of documents (their copies) and is subject to the respective supervision and regulation for the purpose of preventing illicit income legalization and terrorism financing. In addition, for ensuring immediate access to information (documents or copies thereof) required for identification of the client monitoring entity shall take respective action. In such a case an ultimate responsibility for identification and verification of the client according to the procedure set by this Law should remain with the monitoring entity.<br>Article 6(12) of the Regulation empowers monitoring entities for |

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|                                     | <p>identification of a person to use the electronic databases of identification documents provided by the Civil Registry Agency of the Ministry of Justice of Georgia.</p> <p>It is to be noted that the AML/CFT Law does not specify particular entities and professions which could be qualified as third parties. However, there are no specific requirements in relation with third party reliance, especially regarding the obligations for third parties on providing to financial institutions comprehensive CDD information (accessing relevant documents, identification of beneficial owners, etc) and also regarding the celerity on giving this data.</p> <p>On the other hand, there are no specific requirements addressed to financial institutions or to competent authorities to take into consideration the level of compliance of third parties, and also the one of the jurisdiction in which is registered.</p> |
| <b>CONCLUSION</b>                   | The provision of Art. 15 of the Directive are not fully covered within the Georgian AML/CFT framework.   |
| <b>Recommendations and Comments</b> | REC: Georgian authorities should take significant steps to comply with the requirements provided in this respect by the Directive.   |

| <b>11. AUDITORS, ACCOUNTANTS AND TAX ADVISORS</b> |  |
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| <b>Art. 2 (1)(3)(a) of the Directive</b>          | CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.  |
| <b>FATF R. 12</b>                                 | <p>CDD and record keeping obligations</p> <ol style="list-style-type: none"> <li>1. do not apply to auditors and tax advisors;</li> <li>2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: <ul style="list-style-type: none"> <li>• buying and selling of real estate;</li> <li>• managing of client money, securities or other assets;</li> <li>• management of bank, savings or securities accounts;</li> <li>• organization of contributions for the creation, operation or management of companies;</li> <li>• creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).</li> </ul> </li> </ol>   |
| <b>Key elements</b>                               | The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.   |
| <b>Description and Analysis</b>                   | <p>By the provisions of Art. 3 (j) of the AML/CFT Law of Georgia, the persons conducting accountancy or/and auditor activity are considered monitoring entities, thus all the CDD and record keeping obligation being applicable for these professions.</p> <p>Furthermore, on January 31, 2012, the FMS issued Decree No. 12 – “Regulation on Receiving, Systemizing and Processing the Information by Persons Conducting Accountancy or/and Auditor Activity and Forwarding to the Financial Monitoring Service of Georgia”.</p> <p>The Art. 5 (2<sup>3</sup>) of the AML/CFT Law limits the reporting obligations of this monitoring entities only to suspicious transactions, when they are engaged by order of the client or on behalf of the client in the following activities/transactions:</p> <ul style="list-style-type: none"> <li>- Buying and selling of real estate;</li> <li>- Management of funds, securities or other assets;</li> </ul> |



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|                                     | <ul style="list-style-type: none"> <li>- Management of bank, savings or securities accounts;</li> <li>- Organization of contributions for creation, operation or management of legal entity;</li> <li>- Creation, operation or management of legal entity or organizational formation;</li> <li>- Buying and selling of legal entity (share).</li> </ul> <p>Thus, the AML/CFT Law provides narrower limits than the Directive.</p> |
| <b>CONCLUSIONS</b>                  | The AML/CFT Law provides a narrower approach than the Directive as regards the reporting obligations for auditors, external accountants and tax advisors.  |
| <b>Recommendations and Comments</b> | REC: Georgian authorities should take into consideration the wider approach provided by the Directive.   |

| <b>12. HIGH VALUE DEALERS</b>         |  |
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| <b>Art. 2(1)(3)e of the Directive</b> | The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.  |
| <b>FATF R. 12</b>                     | The application is limited to those dealing in precious metals and precious stones.  |
| <b>Key elements</b>                   | The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?   |
| <b>Description and Analysis</b>       | According to Article 3(e) of the AML/CFT Law of Georgia entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiques are monitoring entities and their supervision should be carried out by the Ministry of Finance of Georgia (Article 4(b) of the AML/CFT Law of Georgia).<br>However, the Directive approach is broader, not necessarily being linked to a type of entity but to a specific threshold of transaction. |
| <b>CONCLUSION</b>                     | The AML/CFT Law of Georgia is covering this type of activities (as monitoring entities). Nonetheless, Georgian AML/CFT framework is not following the broader approach of the Directive.   |
| <b>Recommendations and Comments</b>   | REC: Georgian authorities should implementing the provisions of the Directive in order to cover a broader approach, which relates the CDD measures applicable for the transactions of a specific threshold, and not necessarily only to the transactions performed by a reporting entity.  |

| <b>13. CASINOS</b>              |  |
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| <b>Art. 10 of the Directive</b> | Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.   |
| <b>FATF R. 16</b>               | The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.  |
| <b>Key elements</b>             | In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?  |
| <b>Description and Analysis</b> | Pursuant to Article 6(2) of the AML/CFT Law of Georgia and Article 5(1)(a) of the Regulation for Casinos identification of a person taking part in a transaction is carried out when transaction amount exceeds GEL 3000 (or its equivalent in other currency) (apprx. 1300 <u>Euros</u> ).<br>However, the customers are identified by the Georgian casinos at the entry of casino. For identification it is required an identity card, or a passport or any other official document, which contains the relevant |

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|                   | information and is equalized to them under the Georgian legislation (Article 5(6) of the Regulation for Casinos).    |
| <b>CONCLUSION</b> | The provisions of Art. 10 of the Directive have been implemented within the AML/CFT legislative framework of Georgia |

| <b>14. Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU</b> |   |
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| <b>Art. 23 (1) of the Directive</b>   | This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self regulatory body, which shall forward STRs to the FIU promptly and unfiltered.   |
| <b>FATF Recommendations</b>   | The FATF Recommendations do not provide for such an option.   |
| <b>Key elements</b>   | Does the country make use of the option as provided for by Art. 23 (1) of the Directive?  |
| <b>Description and Analysis</b>   | According to the requirements of the AML/CFT Law of Georgia, notaries as well as all other monitoring entities are obliged to submit STRs directly to the Financial Monitoring Service of Georgia.<br>Rules and procedures of submission of STRs are defined under the Regulations issued by the FMS for monitoring entities. |
| <b>CONCLUSION</b>   | The legislative framework of Georgia does not provide such an option in relation with the AML/CFT reporting system.   |
| <b>Recommendations and Comments</b>   | COM: These provisions are specific options given by the EU AML/CFT standards as derogation from the system of direct reporting to the FIU. Each state can consider what approach or requirements should implement in this respect.  |

| <b>15. REPORTING OBLIGATIONS</b>        |  |
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| <b>Arts. 22 and 24 of the Directive</b> | The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obligated persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).  |
| <b>FATF R. 13</b>                       | Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.  |
| <b>Key elements</b>                     | What triggers a reporting obligation? Does the legal framework address <i>ex ante</i> reporting (Art. 24 of the Directive)?  |
| <b>Description and Analysis</b>         | Definition of “suspicious transaction” and the requirement for monitoring entities to report suspicious transaction is included in the AML/CFT Law of Georgia (Article 2(h) and Article 5(1)(b)) as well as in AML/CFT sectoral Regulations.<br>Pursuant to Article 2(h) of the AML/CFT Law of Georgia suspicious transaction is a transaction (regardless its amount and operation type) supported with reasonable grounds to suspect that it had been concluded or implemented for the purpose of legalizing illicit income or/and the property (including funds) on the basis of which the transaction had been concluded or implemented is the proceeds of criminal activity or/and the transaction had been concluded or implemented for the purpose of terrorism financing (person participating in the transaction or the transaction amount causes suspicion, or other reasons exist for |



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|                   | <p>considering transaction as suspicious), or any person involved in the transaction is on the list of terrorists or persons supporting terrorism, or / and is likely to be connected with them, or / and funds involved in the transaction may be related with or used for terrorism, terrorist act or by terrorists or terrorist organization or persons financing terrorism, or any involved person’s legal or real address or place of residence is located in a non-cooperative zone or the transaction amount is transferred to or from such zone.</p> <p>Besides, the AML//CFT Law defines the cases when monitoring entities are required to refrain from carrying out a transaction. Namely, according to Article 5(7) of the above-mentioned Law if it is impossible to identify a person intending to set business relations with a monitoring entity, as well as in the case of PEPs, when there is no permission from the management to establish business relations with such a person, monitoring entity shall refuse such person to carry out the transaction (to service the client).</p> <p>The monitoring entity shall also suspend the performing of the transaction in the event where any participant of the transaction is included in the list of persons that support terrorists or acts of terrorism, and immediately send the respective reporting form to the FMS of Georgia.</p> <p>Similar provision is set forth in AML/CFT sectoral Regulations issued by the FMS for monitoring entities.</p> |
| <b>CONCLUSION</b> | Based on the AML/CFT Law of Georgia, the reporting obligation is it also addressed <i>ex ante</i> . However, it is narrower than the provisions of the Directive, being restricted only to specific situations.  |

| <b>16. TIPPING OFF (1)</b>      |  |
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| <b>Art. 27 of the Directive</b> | Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.  |
| <b>FATF R. 14</b>               | No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for “tipping off”, which is reflected in Art. 26 of the Directive)  |
| <b>Key elements</b>             | Is Art. 27 of the Directive implemented in your jurisdiction?  |
| <b>Description and Analysis</b> | <p>According to Article 12(4) of the AML/CFT Law, when acting within the scope of their powers, the Financial Monitoring Service of Georgia, monitoring entities, supervisory bodies, their management and employees shall not be held liable for failure to observe the confidentiality of information considered under a normative act, or under an agreement, or/and for protection or referral of such information, except for the case when the crime considered under the Criminal Code of Georgia is committed (Article 202<sup>1</sup> of the Criminal Code of Georgia „Violating the Secrecy of a Transaction Subject to Monitoring “).</p> <p>The term “shall not be held liable” covers all kind of liability, including civil, administrative or criminal liability of persons mentioned in Article 12.</p> <p>In the course of fulfillment of the obligation to submit information to the Financial Monitoring Service the identity of employees of monitoring entities shall not be disclosed (Article 12(7) of the AML/CFT Law of Georgia).</p> |
| <b>CONCLUSION</b>               | Provisions of the AML/CFT Law of Georgia concerning the “tipping” off are broadly in line with the requirements of Article 27 of the Directive.  |

| <b>17. TIPPING OFF (2)</b>      |   |
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| <b>Art. 28 of the Directive</b> | The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.  |
| <b>FATF R. 14</b>               | The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.   |
| <b>Key elements</b>             | Under what circumstances are the tipping off obligations applied? Are there exceptions?   |
| <b>Description and Analysis</b> | <p>According to Article 12(1) of the AML/CFT Law of Georgia management and employees of the Financial Monitoring Service of Georgia, monitoring entities and supervisory bodies shall not be authorized to inform parties to the transaction or other persons that the information on transaction has been forwarded to the relevant authority in conformance with obligations defined under the AML/CFT Law of Georgia.</p> <p>Based on Article 12(4) of the AML/CFT Law of Georgia the above-mentioned persons shall not be held liable for failure to observe the confidentiality of information considered under a normative act, or under an agreement, or/and for protection or referral of such information, except for the case when the crime considered under the Criminal Code of Georgia is committed (Article 202<sup>1</sup> of the Criminal Code of Georgia „Violating the Secrecy of a Transaction Subject to Monitoring“).</p> <p>Incompliance with the afore-mentioned requirements causes responsibility under the Georgian legislation (including civil, administrative or criminal).</p> <p>The same requirements of the AML Law on protection and disclosure of information are stipulated in the FMS Decrees / sectoral regulations:</p> <ul style="list-style-type: none"> <li>- Commercial Banks (Article 9.19);</li> <li>- Microfinance Organizations (Article 10.19);</li> <li>- Credit Unions (Article 9.19);</li> <li>- Insurance Companies (Article 9.19);</li> <li>- Brokerage Companies (Article 8.17);</li> <li>- Securities Registrar (Article 7.18);</li> <li>- Money Remittance Entities (Article 9.17);</li> <li>- Exchange Bureaus (Article 9.17).</li> </ul> |
| <b>CONCLUSION</b>               | Provisions of the AML/CFT Law of Georgia concerning the “tipping” off are broadly in line with the requirements of Article 28 of the Directive.   |

| <b>18. BRANCHES AND SUBSIDIARIES (1)</b> |  |
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| <b>Art. 34 (2) of the Directive</b>      | The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries. |
| <b>FATF R. 15 and 22</b>                 | The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.  |
| <b>Key elements</b>                      | Is there an obligation as provided for by Art. 34 (2) of the Directive?  |
| <b>Description and Analysis</b>          | All financial institutions (commercial banks, insurance companies, and securities market participants) ensure that their foreign branches and subsidiaries observe AML/CFT measures are consistent with home country requirements and the FATF Recommendations, to the extent that local laws and regulations permit.                          |

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|  | <p>A commercial bank when establishing a branch (representatives) outside Georgia is obliged to submit a full package of laws and by-laws, on the basis of which fighting against money laundering and terrorism financing is performed in the country where a branch is located. As well as a statement of the Supervisory board of the bank saying that a branch from the moment of initializing its functioning will carry out the policy against money laundering and terrorism financing which means implementing internal control mechanisms, appointing a compliance officer, training of staff and other.</p> <p>The requirements of the National Bank of Georgia in case of establishing a branch, a division (service centre) and a representative office by commercial banks are defined under Decree of the President of the NBG of February 22, 2010, #24/01.</p> <p>According to Article 5 of this Decree: Together with other relevant documents, the following shall be attached to the application for establishing a branch by a commercial bank outside Georgia, submitted to the National Bank of Georgia: Statement of the Bank’s Supervisory Council that for the purpose of fighting illicit income legalization and terrorism financing and complying with FATF recommendations the branch, upon commencement of its activities will have a program for fighting illicit income legalization and terrorism financing which shall include: Procedures for appointing persons for internal control and management level positions, recruitment of other employees, which should at maximum extent facilitate prevention of possible involvement of the Bank’s employees in the processes of illicit income legalization and terrorism financing; Current training program of employees; Internal audit function for checking the system. The requirement that a branch of a Bank complies with the FATF recommendations is envisaged by Article 10<sup>1</sup> of the Law of Georgia on “Activities of Commercial Banks”.</p> <p>According to Article 10<sup>1</sup> of the Law of Georgia on “Activities of Commercial Banks” states that: Bank for the purpose of conducting abroad activities specified in Georgian legislation for monitoring entities provided for in the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization shall submit the following documents to the National Bank within 14 days following establishing the branch or establishing or acquiring subsidiary: Statement of the Bank’s Supervisory Council body that for the purpose of fighting illicit income legalization and terrorism financing and complying with FATF recommendations the branch or subsidiary, upon commencement of its activities will have a program for fighting illicit income legalization and terrorism financing.</p> <p>The law of Georgia on “Insurance” envisages relevant provisions regarding the fulfillment of FATF recommendations. According to Article 28<sup>1</sup> of the Law of Georgia on “Insurance” states that: Insurer for the purpose of conducting abroad activities specified in Georgian legislation for monitoring entities provided for in the Law of Georgia on Facilitating the Prevention of Illicit Income Legalization shall submit the following documents to the National Bank within 14 days following establishing the branch or establishing or acquiring subsidiary: Statement of the insurer’s governance body that for the purpose of fighting illicit income legalization and terrorism financing and complying with FATF recommendations the branch or subsidiary, upon commencement of its activities will have a program for fighting illicit income legalization and terrorism financing.</p> <p>According to Article 20<sup>1</sup> of the Law of Georgia on “Securities’ Market”, securities’ registrar and brokerage company are obliged in case of</p> |
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|                   | <p>establishment of a branch/subsidiary or purchase of subsidiary in a foreign country, to present within 14 days from the date of establishment or purchase of a subsidiary for the purposes of the Georgian Law on Facilitation of the Prevention of Illicit Income Legalization” the following information and documentation: declaration of the Supervisory Board that for the purposes of the fulfillment of recommendations provided by the Financial Action Task Force on Anti Money Laundering and Terrorist Financing issues, branch/subsidiary has adopted special program for the facilitation of the prevention of anti-money laundering and terrorist financing.</p> |
| <b>CONCLUSION</b> | <p>The provisions of Art. 34 (2) of the Directive have been implemented in the AML/CFT legislative framework of Georgia.</p>  |

| <b>19. BRANCHES AND SUBSIDIARIES (2)</b> |   |
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| <b>Art. 31(3) of the Directive</b>       | <p>The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.</p>   |
| <b>FATF R. 22 and 21</b>                 | <p>Requires financial institutions to inform their competent authorities in such circumstances.</p>   |
| <b>Key elements</b>                      | <p>What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?</p>   |
| <b>Description and Analysis</b>          | <p>In case if laws and regulations effective in the foreign country, where the branch is located, do not provide for compliance with the FATF recommendations by the branch, or measures for fighting money laundering and terrorist financing are not used and the FATF recommendations are not or are insufficiently applied: Supervisory Council of the Bank shall undertake an obligation in writing that it will ensure application by its branch of measures set for fighting illicit income legalization and terrorist financing in conformity with requirements established in Georgia for banks and the FATF recommendations, within the framework of the laws and statutory acts of the country where the branch is located. This provision is envisaged in Article 10<sup>1</sup> of the Law of Georgia on “Activities of Commercial Banks”.</p> <p>According to Article 28<sup>1</sup> of the Law of Georgia on “Insurance”, in the event when laws and regulations effective in the foreign country, where the subsidiary is located, do not provide for compliance with the FATF recommendations by the branch or a subsidiary, or measures for fighting money laundering and terrorist financing are not used and the FATF recommendations are not or are insufficiently applied: Insurer’s governance body shall undertake an obligation in writing that it will ensure application by its branch or subsidiary of measures set for fighting illicit income legalization and terrorist financing in conformity with requirements established in Georgia for insurers and the FATF recommendations.</p> <p>According to Article 20<sup>1</sup> of the Law of Georgia on “Securities’ Market”, in case if the country of location of the branch or subsidiary does not have legislation in place regarding the fulfillment of recommendations provided by the FATF or when there are weak mechanisms to control illicit income legalization and fight against terrorism: Supervisory Board of the securities registrar and brokerage company shall take written</p> |

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|                   | obligation that branch or subsidiary will act in conformity with the norms and rules established under the Georgian legislation with respect to the fulfillment of FATF recommendations. |
| <b>CONCLUSION</b> | The provisions of Art. 31 (3) of the Directive have been broadly implemented in the AML/CFT legislative framework of Georgia.  |

| <b>20. SUPERVISORY BODIES</b>       |  |
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| <b>Art. 25 (1) of the Directive</b> | The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.  |
| <b>FATF R.</b>                      | No corresponding obligation.   |
| <b>Key elements</b>                 | Is Art. 25(1) of the Directive implemented in your jurisdiction?   |
| <b>Description and Analysis</b>     | <p>According to Article 11(3) of the AML/CFT Law of Georgia, if the supervisory body reveals that the transaction is subject to monitoring and the information on this has not been forwarded to the Financial Monitoring Service of Georgia, or provisions of this law, other relevant normative acts or guidelines of the Financial Monitoring Service of Georgia have been violated, it shall immediately inform the Financial Monitoring Service and apply the appropriate sanction against the infringer.</p> <p>NBG supervises the financial sector and in accordance with the Organic Law of Georgia on the National Bank of Georgia and pursuant to sector specific legislation it is authorized to impose sanctions in case financial institutions violate AML/CFT legislation. In this respect, the Organic Law stipulates at Art. 49 (1) let. c) that NBG supervise and audit commercial bank and non-bank depository institution, audit their subsidiaries, audit the accounting documents, components of financial statements and other material and receive any information from them within the scope of their competence. In the case of detection of signs of crime after the audit the material shall be handed over to competent authorities.</p> |
| <b>CONCLUSION</b>                   | The provisions of Art. 25 (1) of the Directive have been broadly implemented within AML/CFT Law of Georgia.  |

| <b>21. SYSTEMS TO RESPOND TO COMPETENT AUTHORITIES</b> |   |
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| <b>Art. 32 of the Directive</b>                        | The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.   |
| <b>FATF Recommendations</b>                            | There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.   |
| <b>Key elements</b>                                    | Are credit and financial institutions required to have such systems in place and effectively applied?   |
| <b>Description and Analysis</b>                        | Article 7 of the AML/CFT Law of Georgia defines obligations of monitoring Entities to retain Information (documents) on transactions. Namely, monitoring entities shall retain information (documents) on transactions, (including those presented for the identification of a person) as well as records on unusual transactions for not less than 6 years from the moment of concluding or implementing transaction, if there is no request from the respective supervisory authority for retaining those for a longer period or / and if longer period for retention of such information |



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|                   | <p>(documents) is not set under the Georgian legislation. Such information should be kept in their original form, and where impracticable, a copy of such information (document) confirmed by a notary or a recipient person (an authorized employee) should be maintained.</p> <p>The information (documents) is to be recorded and filed in a way, where all its data fully reflect the concluded or implemented transactions and, when needed, can be submitted to the respective supervisory body in a timely manner, and in the event of criminal prosecution, is used as evidence.</p> <p>Monitoring entities are obliged to create an electronic database (system) in order to reveal suspicious and partitioned transactions.</p> <p>The FMS is authorized to request and obtain from monitoring entities additional information and documents (original or copy) available to them, including confidential information, on any transaction and parties to it, for the purpose of revealing the facts of illicit income legalization or terrorism financing (Article 10(4)(a) of the AML/CFT Law of Georgia). In case of violation of the above-mentioned obligations by monitoring entity sanctions are applied according to by-law of the respective supervisory body.</p> |
| <b>CONCLUSION</b> | The provisions of Art. 32 of the Directive have been broadly implemented in the AML/CFT legislative framework of Georgia.  |

| <b>22. EXTENSION TO OTHER PROFESSIONS AND UNDERTAKINGS</b> |  |
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| <b>Art. 4 of the Directive</b>                             | The Directive imposes a <i>mandatory</i> obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.   |
| <b>FATF R. 20</b>  | Requires countries only to consider such extensions.   |
| <b>Key elements</b>  | Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?   |
| <b>Description and Analysis</b>                            | <p>AML/CFT Law of Georgia establishes the list of monitoring entities that includes not only financial as well as the following non financial institutions (Article 3):</p> <ul style="list-style-type: none"> <li>- Commercial banks, currency exchange bureaus, non-bank depository institutions and microfinance organizations</li> <li>- Entities performing money remittance services;</li> <li>- Broker companies and securities' registrars;</li> <li>- Insurance companies and non-state pension scheme founders;</li> <li>- Entities, organizing lotteries and other commercial games;</li> <li>- Entities engaged in activities related to precious metals, precious stones and products thereof, as well as antiquities;</li> <li>- Legal entity of public law of the Ministry of Finance of Georgia</li> <li>- Revenue Service</li> <li>- Entities engaged in extension of grants and charity assistance;</li> <li>- Notaries;</li> <li>- Legal entity of public law – the National Agency of Public Registry</li> <li>- Person conducting accountancy or/and auditor activity as it is</li> </ul> |

|                                     |   |
|-------------------------------------|---|
|                                     | <p>defined under the Georgian legislation;</p> <ul style="list-style-type: none"> <li>- Leasing companies</li> </ul> <p>All requirements defined under the AML/CFT Law of Georgia for financial institutions are also mandatory for the above mentioned non financial institutions. Besides, their authority and obligations are defined under the sectoral regulations issued by the FMS for each monitoring entity.</p> <p>There is no concrete evidence for following a comprehensive process of understanding the level of ML/FT exposure of these sectors.</p> |
| <b>CONCLUSION</b>                   | The provisions of art. 4 of the Directive are broadly covered.  |
| <b>Recommendations and Comments</b> | REC: Georgian authorities should consider implementing a comprehensive risk-assessment in order to properly identify if there are other professionals and categories of undertakings than those referred to in AML/CFT Law, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes..  |

| <b>23. SPECIFIC PROVISIONS CONCERNING EQUIVALENT THIRD COUNTRIES?</b> |   |
|---|---|
| <b>Art. 11, 16(1)(b), 28(4),(5) of the Directive</b>                  | The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD). |
| <b>FATF Recommendations</b>   | There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.   |
| <b>Key elements</b>   | How, if at all, does your country address the issue of equivalent third countries?  |
| <b>Description and Analysis</b>                                       | Georgian AML/CFT legislation does not envisage any specific provision in respect of equivalent third countries.   |
| <b>CONCLUSION</b>   | The Georgian AML/CFT legislation does not address the issue of equivalent third countries.  |

**a) APPENDIX I - Relevant EU texts**

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

**Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3<sup>rd</sup> Directive):**

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:



(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;

(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;

(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

**Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3<sup>rd</sup> Directive):**

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

**Article 2 of Commission Directive 2006/70/EC (Implementation Directive):**

**Article 2 - Politically exposed persons**

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:

(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliaments;

(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(d) members of courts of auditors or of the boards of central banks;

(e) ambassadors, *chargés d'affaires* and high-ranking officers in the armed forces;

(f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.

The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:

(a) the spouse;

(b) any partner considered by national law as equivalent to the spouse;

(c) the children and their spouses or partners;

(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:

(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.