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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT on AZERBAIJAN[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

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

[1] Adopted by MONEYVAL at its 28th plenary meeting (8-12 December 2008)

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LIST OF ACRONYMS USED

AML Law	Anti-Money Laundering Law
AZN	Azerbaijani Manat
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
IN	Interpretative Note
IT	Information Technology
LEA	Law Enforcement Agency
MFA	Ministry of Foreign Affairs
MLA	Mutual Legal Assistance
MOT	Ministry of Taxes
MOU	Memorandum of Understanding
NBA	National Bank of Azerbaijan
NCCT	Non-cooperative countries and territories
NPO	Non-Profit Organisation
PEP	Politically Exposed Persons
SRO	Self-Regulatory Organisation
SCS	State Committee on Securities under Auspices of the President of the Republic of Azerbaijan
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Azerbaijan was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), together with the Third Directive of the European Union 2005/60/EC and the relevant Implementation Directive 2006/70/EC, in accordance with MONEYVAL's terms of reference and Rules of Procedure, and was prepared using the AML/CFT Methodology 2004[2]. This was the second evaluation of Azerbaijan by MONEYVAL. The first on-site visit took place in May 2003 and the report was adopted in December 2003. The second evaluation was based on the laws, regulations and other materials supplied by Azerbaijan, and information obtained by the evaluation team during its on-site visit to Azerbaijan from 12 to 20 April 2008, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Azerbaijan Government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation was conducted by an assessment team which consisted of experts in criminal law, law enforcement and regulatory issues, together with the Executive Secretary of MONEYVAL: Ms Daina VASERMANE, Financial Integrity Division, Supervision Department, Financial and Capital Market Commission, Riga, Latvia (Financial evaluator); Mr Vilius PECKAITIS, Head of the Second Subdivision, Financial Crime Investigation Service, Ministry of the Interior, Vilnius, Lithuania (Law enforcement evaluator); Ms Alina BICA, Prosecutor Chief Service, Office of the Prosecutor General, Bucharest, Romania (Legal evaluator); Mr Jeremy RAWLINS, Head of Proceeds of Crime, Delivery Unit, Crown Prosecution Service, London, Great Britain (Legal evaluator, representing an FATF country). The evaluators reviewed the institutional framework, the relevant AML/CFT Laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Azerbaijan as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, sets out Azerbaijan's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). Compliance or non-compliance with the EC Directives has not been considered in the ratings given in Table 1.

[2] As updated in February 2008.

II. 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 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. 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

23. 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.

24. 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"

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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).

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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 authorised 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.

39. 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.

40. 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.

41. 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

42. 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.

43. 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.

44. 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.

45. 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

46. 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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

52. 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.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Azerbaijan

1. Azerbaijan lies at the border between Asia and Europe. It is situated in the south-eastern part of the Southern Caucasus and shares borders in the North with the Russian Federation, in the South with the Islamic Republic of Iran, in the West with Turkey, Georgia and Armenia, and in the East its neighbours across the Caspian Sea and Kazakhstan and Turkmenistan. It covers a total area of 86,600 square kilometres. The length of its land borders is 2,646 kilometres. The Caspian Sea coastline covers about 800 kilometres. The country comprises one Autonomous Republic (the Nakhichevan Autonomous Republic), and 65 regions. Parts of its territory (the Nagorno Karabakh region and 7 adjacent districts) are not under government control.

2. The population of Azerbaijan is approximately 8.5 million. The major ethnic groups are set out in the table beneath:

Ethnic Groups	Population	Percentage
Azerbaijans	7,205,500	90.8 %
Lezgins	178,000	2.2 %
Russians	141,700	1.8 %
Armenians	120,700	1.5 %
Talysh	76,800	1.0 %
Avars	50,900	0.6 %
Turks	43,400	0.5 %
Tartars	30,000	0.4 %
Ukrainians	29,000	0.4 %
Tsakhurs	15,900	0.2 %
Georgians	14,900	0.2 %
Tats	10,900	0.13 %
Jews	8,900	0.1 %
Udins	4,100	0.05 %
Others	9,600	0.12 %

3. Religion is separated from the State and all religions are equal before the Law. About 93 % of the population are of Muslim background.

4. Azerbaijan was part of the Union of Soviet Socialist Republics (USSR) until it proclaimed its state sovereignty in 1991. Today the State of Azerbaijan is a legal, secular and unitary Republic. Azerbaijan became a member of the United Nations on 2 March 1992. Within Europe, it is a member of the Organisation for Security and Co-operation in Europe (OSCE) and became a member of the Council of Europe in 2001. It also is a member of the Commonwealth Independent States (CIS), the Organisation of the Islamic Conference (OIC), the Black Sea Economic Co-operation (BSEC) and the Organisation of Economic Co-operation (OEC).

System of government

5. State power in the Republic of Azerbaijan is based on the principle of the separation of powers. The *Milli Mejlis* (Parliament) exercises legislative power. Executive power belongs to the President of the Republic of Azerbaijan. The courts exercise judicial power.

6. The Milli Mejlis is a unicameral legislative body, comprising 125 deputies, elected by direct elections. A parliamentary term is 5 years. Deputies enjoy immunity from prosecution during their terms of office.

7. The President of the Republic is Head of State. The President is also elected for a 5-year term by way of general, direct elections. For implementation of Executive Power, the President is authorised to establish a Cabinet of Ministers, which is headed by a Prime Minister, who is nominated by the President and is appointed with the approval of the Parliament. The Cabinet of Ministers is subordinate to the President and it reports to him.

Legal system

8. Judicial power is implemented through the Constitutional Court, Supreme Court, Courts of Appeal, and ordinary and other specialised law courts, including an Economic Court. The President proposes to Parliament candidatures for judicial office in the Constitutional Court, Supreme Court and Economic Court and these appointments are made by the Parliament. Candidates for other judicial posts are selected by the Judicial-Legal Council, which is a self-governing public entity composed of 15 members and judges selected by the Judicial-Legal Council are formally appointed by Presidential Decree. The courts which exercise jurisdiction in criminal matters in Azerbaijan are the following:

   - Courts of First Instance
     Articles 67 to 70 of the Code of Criminal Procedure provide that district/city courts, the military courts, the Assize Court, and Military Assize Court are to function as courts of first instance.

   - Courts of Appeal
     The Courts of Appeal hear appeals in respect of decisions of the courts of first instance, excluding appeals from judgments by the district/city courts of the Nakhichevan Autonomous Republic.

   - Supreme Court of the Nakhichevan Autonomous Republic
     This Court hears appeals in respect of decisions by the district/city courts of the Nakhichevan Autonomous Republic.

   - Supreme Court
     The Supreme Court exercises jurisdiction by way of judicial review of all the decisions of all the subordinated courts, including decisions of the Supreme Court of the Nakhichevan Autonomous Republic.

9. Article 127 of the Constitution provides that "Judges are independent. They are subordinated only to the Constitution and laws of the Republic of Azerbaijan". They can only be replaced during their term of office (which is from appointment until the retirement age of 65) by a decision of the Parliament.

10. The Republic of Azerbaijan is a civil (continental) law country. The Constitution (adopted by referendum on 12 November 1995) and all other national legislation is applicable throughout the territory of Azerbaijan.

11. As in other continental law countries, *stare decisis (*courts applying the same reasoning as adopted in similar previous cases) does not apply in the Republic of Azerbaijan, although judges may follow earlier decisions by higher courts. The national legislation provides for other general civil law principles, such as *lex specialis* derogat generali (a specific law overrules a general law), *lex posterior derogat priori* (a new law overrules an older law), and *lex superior derogat legi inferiori* (higher legal sources overrule lower source of law).

12. According to article 148 of the Constitution the hierarchy of laws in the Republic of Azerbaijan is as follows:
    - Constitution;
    - acts accepted by referendum;
    - laws;
    - decrees of President of the Republic of Azerbaijan;
    - decrees of Cabinet of Ministers of the Republic of Azerbaijan;
    - normative acts of central executive power bodies;
    - international agreements wherein the Republic of Azerbaijan is one of the parties.

13. International agreements to which the Republic of Azerbaijan is a party constitute an integral part of the legislative system of Azerbaijan. Whenever there are conflicts between legal acts in the legislative system of Azerbaijan (except for issues covered by the Constitution and provisions ratified by way of referendum) and international agreements to which the Republic of Azerbaijan a party, the provisions of international agreements are said to prevail.

Economy

14. Two thirds of Azerbaijan is rich in oil and natural gas. In 1994 a contract was signed between the State Oil Company of the Republic of Azerbaijan (SOCAR) and 11 foreign oil companies for joint exploration of the Azeri, Chirag and Guneshli fields (ACG) located in the Azerbaijan sector of the Caspian Sea. Azerbaijan has signed 21 oil contracts with foreign oil companies since the 1994 contract was signed. A major oil exportation pipeline of 1760 kilometres through Georgia and Turkey will create a major East-West energy corridor. A second major pipeline is being built for the exportation of natural gas.

15. Economic growth in Azerbaijan is strong. While oil and oil products have largely driven this growth in the economy, other sectors, including transportation, communications and services have grown rapidly. 610,000 new jobs have been created since 2003. In 2007, the surplus on the current account balance was 7 billion dollars (exceeding 23 % of GDP). It is anticipated that the surplus in the coming year will be in excess of 14 billion dollars. In 2008, it is expected that reserves under the control of the National Bank will reach 19-20 billion dollars. Though wages are rising, inflation is also increasing. At the time of the last report inflation was in single digits, but in the first quarter of 2007, inflation had reached 16.6 %.

16. Exports have been dominated by oil and gas products. There has been considerable investment in the inward energy sector and generally. In 2007 foreign investment accounted for 40.4 % of all investment in Azerbaijan. As was stated in the first report, a major challenge has been and will continue to be the privatisation of the oil industry.

17. The pattern of foreign trade has grown since independence. The number of countries Azerbaijan has trade relations with, and the volume of trade, has been increasing year on year. Compared with 1992, by 2001, the number of countries Azerbaijan had trade relations with had doubled. Trade with non-CIS countries in 2000 accounted for 79.1 % of the total volume of trade. Trade with non-CIS countries in 2007 accounted for 74.5 % of the total volume of trade. The Republic of Azerbaijan has trade relations with 137 countries.

18. The Azerbaijan authorities have provided the following table showing major macro-economic developments between 2004 and 2008.

Major Macroeconomic Magnitudes between 2004 and 2008

	2004	2005	2006	2007	2008
Real GDP (% change)	10.1	26.4	34.5	25	21.3
CPI inflation (%)	6.7	9.6	8.3	16.7	23
Unemployment Rate (%)	8.4	7.6	6.8	6.5	6.4
General government balance (% of GDP)	1.1	0.8	-0.8	2.1	21.9
Government gross debt (%o of GDP)	23	18.6	12.7	9.9	8.2

19. The unit of currency is the Manat (AZN). In October 2008, 1 USD Dollar = 0.81 AZN, 1 Euro = 1.1002 AZN. Thus, with the opening up of Azerbaijan to foreign capital, with increasing foreign investment, and the potential for major privatisation, the external AML/CFT risks to Azerbaijan will continue to grow.

Transparency, good governance, ethics and measures against corruption

20. In Transparency International's 2007 Corruption Perceptions Index, Azerbaijan was ranked at 150 (in a list of 180 countries, where a country ranked at 180 is perceived to be the most problematic in this regard). That said, Azerbaijan become a full Party to the United Nations Convention against Corruption of 2005 on 30 October 2005. Azerbaijan also became a full Party to the Council of Europe's Criminal and Civil Law Conventions on Corruption (CETS 173 and 174) in 2004 and joined the Group of States against Corruption (GRECO) at the same time. Azerbaijan has been evaluated once by GRECO in 2006. The GRECO report concluded that "Corruption is a major problem, which according to the authorities of Azerbaijan could jeopardise the strong economic growth of the country and represent a threat to its social and political development. To address this problem, the Government has introduced a State Programme on Combating Corruption (2004-2006), a comprehensive anti-corruption strategy which requires various authorities to implement legislative and organisational measures. In carrying out this programme commendable progress has been made in adopting new legislation and amending existing legislation. However, a more challenging task lies ahead for the authorities of Azerbaijan: the effective and timely implementation of the legislation and the State Programme".

21. The GRECO report made 27 recommendations to Azerbaijan, including a first recommendation to carry out a comprehensive study, in order to gain a clearer insight into the extent of corruption in Azerbaijan, its causes, its features, and the sectors most affected by it. GRECO is following up this and other Recommendations which included:
    - consideration of reducing the number of persons with immunity from prosecution;
    - adopting a Code of Ethics for all civil servants;
    - anti-corruption, ethics and integrity training for all civil servants.

22. There have been investigations for corruption with some tangible results. There have been successful corruption prosecutions in the last years. A table setting out criminal cases investigated by the Anti–Corruption Department under the Prosecutor General of the Republic of Azerbaijan is set out below:

Years	Persons	Criminal cases
2005	35	12
2006	79	39
2007	69	41
First six months of year 2008	74	40
Total	**257**	**132**

23. Overall GRECO considered a more proactive approach was required. It was, however, noted by the present MONEYVAL evaluators that assets confiscated in corruption cases are now administered by a Commission, and are shared between the investigation and operational divisions. It is noted here that auditors have developed and adopted their own Professional Code of Ethics, but that disclosure to the authorities is only allowed where there is correct, precise and irrefutable information about a serious crime being committed.

1.2 General Situation of Money Laundering and Financing of Terrorism

24. As indicated above, while increasing foreign investment is very welcome to Azerbaijan, it also opens up more possibilities for money laundering in Azerbaijan by persons abroad.

25. Domestically the risks are also high. The tables beneath show the rise in proceeds-generating crime which has been committed within Azerbaijan, and the rise of pecuniary gain by individuals investigated.

COMPARATIVE TABLE
of some of registered crimes in the Republic of Azerbaijan for 2004-2007

Year	2004	2005	2006	2007
Human trafficking	-	-	27	74
Robbery	176	196	238	218
Burglary	171	165	160	142
Theft	1 776	2 151	2 139	1 951
Fraud	1 347	933	1 216	1 223
Drug related crime	2 053	2 114	2 266	2 396
Hereof: with a view of purchasing	674	742	774	881
Assignment or waste	84	140	90	87
Smuggling	96	102	77	119
Evasion from payment of taxes	190	341	369	192

FIGURES
of general pecuniary injury caused by crimes
in the Republic of Azerbaijan for 2004-2007

Year	Number of accused persons	Sum of pecuniary injury (in AZN)
2004	2 652	157 373 702
2005	2 886	42 994 975
2006	2 821	125 674 350
2007	2 676	389 710 111

26. The Azerbaijan authorities are aware that organised crime groups are operating on their territory, though few groups have been detected. The authorities indicated that it was their view that the threat from organised crime was mainly external. Their geographical location is favourable for the transit of drugs such as heroin from Iran or Afghanistan to Russia and elsewhere in Europe. They consider that Azerbaijan is also a transit country for human trafficking and also a source country for women being trafficked to the Western world. A Department of Organised Crime in the Ministry of Internal Affairs had been operating for more than a year at the time of the on-site visit and a specialised trafficking unit now operates within it.

27. 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.

28. The fact remains that at the time of the last evaluation there was no comprehensive AML/CFT legislation in place and this was the position at the time of the second on-site visit in April 2008.

29. 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 understandable if some of the interlocutors with which the team met did not fully understand the need for money laundering criminalisation.

30. 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 eliminated. One such organisation had been receiving funds for various projects from humanitarian organisations in foreign countries under the pretext of developing farming. That organisation had also been receiving funds through the commission of criminal offences, including kidnapping. The evaluators in 2008 noted that there was a continuing awareness that certain parts of the NPO sector presented financing of terrorism vulnerabilities. The evaluators were referred to 12 NPOs that had been eliminated or dissolved because of connections with financing of terrorism. 8 of these cases involved groups which had been dealt with between 2000 and 2003, and of which the first evaluation team would have been aware. 3 other organisations were the subject of enquiries in 2003-2004 and were also eliminated in 2004. The Law of the Republic of Azerbaijan "On the struggle against terrorism" dated 18 June 1999 defines the legal and organisational basis for the fight against terrorism in Azerbaijan. Terrorist organisations operating in Azerbaijan can be dissolved on the basis of a court decision, and property will be confiscated and retained by the State.

31. 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. 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. In any event there had been no freezing orders under SR.III since the last evaluation.

32. After the ratification of the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (The terrorist Financing Convention) in 2001, Article 214-1 was added to the Penal Code by a Law of 17 May 2003, creating an autonomous offence of financing of terrorism in a way that clearly covers funding for terrorist acts. The offence has been successfully prosecuted and one conviction has been obtained. This resulted from a major operation carried out by the Ministry of National Security. A criminal group consisting of foreign citizens with relations to international terrorist organisations, was detected and eliminated. An Afghanistani citizen, then living in Azerbaijan, had organised a criminal group, consisting of citizens from a number of countries, to carry out terrorist acts in the Russian Federation as well as to provide funds and other property for the purposes of committing terrorist acts. Members of this group were arrested by the Anti-Terror Centre of the Ministry of National Security in October 2004 and criminal proceedings were instigated on 15 October 2004. 9 persons were arrested and brought before the court. Large numbers of military and special communication technologies, as well as arms and weapons, and remote controlled bombs were confiscated. All members of this criminal group were sentenced to imprisonment for different terms, with the coordinator of the group receiving a sentence of 12 years imprisonment. The majority of the convictions were for terrorist offences. However, four individuals were convicted solely on charges of terrorist financing.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

33. The financial sector primarily comprises banking, insurance and securities:

Banking sector
- commercial banks;
- credit alliances;
- microfinance organisations.

Insurance sector

- insurance organisations.

Securities sector

- broker companies;
- dealer companies;
- asset management companies;
- depositary;
- Stock Exchange;
- securities registrars.

Banking sector

34. The banking sector comprises 90-95 % of the activities of the financial sector as a whole in Azerbaijan. Commercial bank activities are mainly regulated by the Law on Banks and the "Law

on the National Bank of Azerbaijan". The "National Bank of Azerbaijan" (hereinafter NBA) adopts normative acts (Regulations, Guidelines) to regulate these entities. According to the Law on Banks, a license for establishing a bank is granted by the NBA, which also supervises their activities. The licenses are issued for an unlimited term and are effective on the whole territory of Azerbaijan. If obligations defined under the Law are not fulfilled, the license can be revoked, based on the NBA's decision. A license is also required for branches of foreign banks to operate in Azerbaijan.

35. Azerbaijan has not signed the Convention on the Law applicable to Trusts and on their Recognition (1 July 1985, The Hague).

36. At the end of December 2007, 46 commercial banks were operating in Azerbaijan, of which 6 worked with a majority of foreign capital. There are two fully State owned banks. The table beneath illustrates the ownership structure of commercial banks in Azerbaijan:

Ownership structure of commercial banks in Azerbaijan		
	Dec-06	**Dec-07**
Foreign ownership more than 50%	5	6
Foreign ownership less than 50%	13	13
Resident Shareholders 100%	24	25
Foreign Branches	2	2
Total number of banks	44	46

37. As noted, the banks are considered to be the driving force in the whole financial sector. The authorities provided the following table showing the total assets, loans and deposits of the commercial banks in relation to the GDP of Azerbaijan:

	2007 (in million AZN)	**% of GDP**
GDP	26 815	
Assets	6 726	25.1%
Loans	4 552	16.9%
Deposits	3 438	12.8%

38. The evaluation team were not provided with statistical data concerning the number of non-resident bank accounts, number of banks holding non-resident bank accounts, the percentage of non-residents accounts, etc. It was explained that no authority keeps such data centrally.

39. At the end of 2007, assets held by commercial banks totalled 6 726 million AZN (6 113 million Euros[3]) as summarised in the table beneath:

Items	**Amounts (in million AZN)**
Capital owned by banks (i.e. shareholders equity)	1 098 *(998 m Euros)*
Deposits and Due to banks	3 514 *(3 105 m Euros)*
Borrowing	1 571 *(1 427 m Euros)*
Gross Loans	4 552 *(4 137 m Euros)*
Portfolio	51 *(46 m Euros)*

[3] 1 Euro = 1.2450 AZN (30.12.2007)

(equity investments)	
Cash and Due from banks	1 169 *(1 063 m Euros)*
Total Assets	6 726

40. According to the statistics provided by the NBA, as of 31 December 2007, the commercial banks invest their loan portfolios as follows:
    - retail and service sector – approximately 1,193 million AZN;
    - household – approximately 1,605 million AZN;
    - transport and communication sector – approximately 470 million AZN;
    - construction and real estate sector - approximately 312 million AZN.

41. The NBA has issued licenses for 77 credit unions and 18 Microfinance institutions as of 31.12. 2007. That includes 7 new credit unions and 2 microfinance organisations licensed by the NBA during 2007.

42. Credit Unions are regulated under the "Law of Azerbaijan Republic on credit unions" and other regulations as provided by NBA. Credit Unions are mostly chartered in regions for the development of rural economy. These institutions are owned by their members and give credits only to their members. The number of members of the credit unions varies from 11 to 2,200 people. The amount of total assets in these institutions was 13 million AZN at the end of 2007.

43. Microfinance institutions are mostly funded by international donors (ACDİ VOCA, Finca International, USAİD, Oxfam America, World Vision International, Shorebank Advisory Group and etc.). These institutions also are not allowed to attract deposits from public. Their borrowers are small enterprises, individuals and low-income households. Assets of such institutions are growing from year to year. At the end of 2007 total assets of microfinance institutions was 128 million AZN. NBA has prepared Draft Law on such non-bank credit institutions, but it has not been approved by the nominating authorities yet.

Insurance sector

44. According to the Law on Insurance Activity, insurance undertakings can perform either non-life or life insurance activities. There are 29 licensed insurance undertakings (including one reinsurance business) operating in Azerbaijan, mainly dealing with non-life insurance (which comprises approximately 98% of the insurance business). The insurance supervision body – the State Insurance Supervision Department of the Ministry of Finance of the Republic of Azerbaijan - supervises the activities of the insurance market.

45. There are 7 insurance brokerage companies licensed to perform insurance mediation services on behalf and for the account of the policyholders in all lines of business (non-life and life insurance, as well as mediation services for reinsurance cover).

Securities sector

46. There were 37 valid licenses for professional activity in the securities market as at January 1st, 2008. This included 14 entities engaged in brokerage activity and 15 entities engaged in dealer activity in Azerbaijan with licenses to work with securities. The licenses are issued by the State Committee on Securities. There were also three entities engaged in depositary activity, one stock exchange, two entities dealing with registering securities' owners and one entity involved in clearing transactions.

Designated Non-Financial Businesses and Professions (DNFBP)

Notaries

47. There are 150 notaries providing a range of services (all based on the Law of the Republic of Azerbaijan "On Notary") to the public in the Republic of Azerbaijan. The Ministry of Justice licenses and supervises the activity of notaries. The bulk of notary transactions involve real estate transactions

Lawyers, accountants and auditors

48. There are no independent accountants in the Republic of Azerbaijan

49. **Auditors** – according to the national legislation audits can be conducted either by natural, or by legal persons. At present, there are 42 independent auditors (natural persons) and 52 auditor organisations (including 83 auditors, i.e. natural persons) in Azerbaijan. In accordance with the Law "On auditor activity" their activity is licensed and supervised by the Chamber of Auditors. Supervision over the activity of auditors is carried out on the basis of National Audit Standards approved by the decision of the Council of the Chamber of Auditors of 21.05.1997. Taking into account AML/CFT measures to be implemented, a revised draft of the Law "On auditor activity" is being developed and will be submitted to the Cabinet of Ministers. Along with this, provisions on control over AML/CFT activity of financial institutions were included in thematic audit programmes.

50. Trust service providers do not exist in Azerbaijan.

51. **Lawyers** – at present, there are about 800 lawyers in the Republic of Azerbaijan. Their status is protected by the provisions of Law of the Republic of Azerbaijan "On Advocates and Advocate Activities". Information obtained, provision of consultation and provision of references in relation to the implementation of professional obligations by advocats are covered by confidentiality. The disclosure by the advocate of known information comprising the secrets of court proceedings and preliminary investigation is allowed only upon the consent of a prosecutor or investigator.

52. Advocacy is not considered a business, but an independent professional legal activity. Lawyers cannot engage in other business activities (except for scientific, teaching or other creative activities) and cannot take state positions on any state level. So, it is prohibited by the provision of the Law to be involved in carrying out transactions for a client in relation to the activities mentioned in FATF Recommendation 12.

Casinos

53. Casino activity and gaming is prohibited on the territory of the Republic of Azerbaijan on the basis of the Decree of the President of the Republic of Azerbaijan N° 730 of 27 January 1998.

Dealers in precious metals and stones

54. There are 1000 registered dealers in precious metals and stones. These entities are subject to the supervision of and are licensed by State Assay Chamber.

Real Estate Agents

55. In the Republic of Azerbaijan, **real estate** includes land and everything that is inseparably and closely linked with land. All real estate must be registered in the State Register of Real Estate

which is maintained by the Service of State Register of Real Estate. Information stated in this register is publicly available. Real Estate agents are registered in the tax registry by the Ministry of Taxes of the Republic of Azerbaijan as a tax-payer. Nevertheless, all the activities of the real estate agents are interconnected with and inevitably pass through the notaries' activity. As of October 2008, 8005 real estate agents (agencies) have been registered.

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

56. All legal entities are defined in the Civil Code and divided into commercial and non-profit entities. Legal persons acquire civil rights and obligations.

57. All commercial legal entities need to register with the Ministry of Taxes. A new system: "the single window" system for the registration of commercial entities has been implemented from 1st of January 2008. According to this system the Ministry of Taxes of the Republic of Azerbaijan has been defined as the sole authority for the registration of commercial entities. Before the implementation of this system the company founders were required to register with a number of state authorities. By the implementation of the "Single Window" principle the procedure for beginning the business has been reduced by 3 times, the number of requested documents by 4-5 times, the registration period by 20 times and an on-line unified database of registration information has been established. Protection of business names, opening of bank accounts, VAT registration, connection into e-declaration system and use of other e-tax services were provided during the registration under the single window principle. 572 commercial companies registered within one week of the introduction of the new system.

58. The Ministry of Justice is responsible only for the registration of non-commercial legal persons (namely public associations, foundations and unions).

59. The formalities for registration and the documentation required is provided for in the Law on State Registration and State Recording of Legal Persons (see Recommendation 33 below). State registration and State recording apply in respect of any institution, as well as representation or branch of a foreign legal person which desires to obtain the status of legal person within the territory of Azerbaijan. Commercial institutions, as well as representatives or branches of foreign legal persons are able to act only after State registration is issued in respect of them.

Commercial entities

Limited liability company

60. Limited liability companies are companies whose stock capital is made up of predetermined contributions pledged by its members. No minimum stock capital is determined by the Law. The participants are not personally liable for the responsibilities of the company except for their share of the minimum capital.

Subsidiary liability company

61. According to article 97 of the Civil Code the participants of the subsidiary liability company bear in common the subsidiary liability for their obligations with their property in the amount equally divisible by the cost of their contributions, which is defined by the company's charter.

Joint stock company

62. A Joint stock company is defined as a company where the authorised capital is divided into a definite number of shares (securities). These securities can only be issued by joint stock companies. There is no special law requiring issuance of all securities on a name, but the SCS

advised that in practice there have not been any cases of issuing bearer shares in Azerbaijan. The Civil Code requires that securities can only be issued to a named legal person or individual.

Co-operative

63. Legal persons can form a co-operative i.e. a community of members established either to undertake business or to satisfy economic, social or other needs of its members. According to the article 110-3.4 of the Civil Code the members of co-operative bear the subsidiary responsibility for the co-operative's obligations. The subsidiary responsibility for the co-operative's obligations of the co-operative members are created when the co-operative has not enough means for the fulfilment of its obligations and created losses are reimbursed by the members as an additional contribution within two months of the approval of the annual accounts. Members of co-operative bear the subsidiary responsibility for the co-operative's obligations by the amount of additional contributions not paid by each member of the co-operative. **No minimum stock capital of the Co-operative is determined by the Law.**

Non-profit entities

64. The NPO sector comprises foundations, public associations and legal persons unions. A foundation is a non-profit organisation which doesn't have members, voluntarily established by one or several natural or legal persons for social, charity, cultural, educational, etc. purposes. There is no requirement for the founder to deposit initial funds in a bank account. The founders are not responsible for the foundation's obligations, and nor is the foundation. A public association is a voluntarily non-profit organisation created in accordance with the support of one or more natural or legal person. These associations are self-governing and non-profit making. Members of the association are not able to benefit from its activity or share it assets. Members of public associations have no rights over the property or membership fees of the association. Neither are they responsible for the association's obligations.

65. Legal person unions (or trade associations) are created where commercial organisations join forces to co-ordinate their businesses, defend their sector's commercial interests and sometimes perform work in the public interest. The union is not responsible for its participants' obligations. Its participants have subsidiary responsibility for its obligations in the amount defined by the statute of the union.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

Measures to improve the legislative framework

66. As will be seen beneath on progress since the last mutual evaluation, some improvements to the legislative base have been achieved, but the delay in bringing forward comprehensive AML/CFT legislation is very disappointing. In the context of the Second Anti-Corruption Programme (2007-2011) one of the priorities is now said to be the preparation of AML/CFT legislation. It is unclear specifically why AML/CFT legislation is seen as a component of the anti-corruption programme.

Capacity building

67. The NBA has, under the authority of the Law on Banks taken some steps to prepare the banking sector for formal AML/CFT obligations, and the NBA advised the evaluators that they monitor the effectiveness of the implementation of their requirements on the banks to implement certain AML/CFT measures.

68. With regard to law enforcement activity, it was indicated that preliminary investigation of AML/CFT issues is obligatory in all cases, but the money laundering offence has still not been tested before a court.

Education of the public on the need for AML/CFT legislation

69. It was indicated that State policy requires appropriate measures to raise public awareness of the dangers of money laundering and financing of terrorism, though it was unclear precisely what steps had been taken in this regard.

Technical assistance

70. Two general projects sponsored by USAID and managed by the Council of Europe in the Anti-Corruption Programme were also pointed to in the context of assisting Azerbaijan in improving the implementation of MONEYVAL recommendations. However, any technical assistance under this project on AML/CFT issues (as opposed to measures to counter corruption) is of course predicated on the passage of AML/CFT legislation.

71. In all the evaluators found that the approach to the AML/CFT issue generally, in the absence of a comprehensive AML/CFT law, of necessity, remains fragmented and without real strategic direction. A real strategy will only be developed with the passage of satisfactory and comprehensive AML/CFT legislation and the creation of a comprehensive implementation plan, including the speedy creation of an FIU.

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

72. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism:

The National Bank of Azerbaijan

73. According to the Law on the National Bank, NBA issues licenses and supervises commercial banks, foreign exchange offices and money remitters (the latter two types of operation can only be carried out within the internal structure of the banks). The NBA issues binding regulations for the banking sector. The NBA has the right to impose sanctions on commercial banks for breaches of laws or regulations. Within the Banking Supervision Department of NBA there is a special division dealing with AML/CFT issues (AML division). It should also be mentioned that the head of the special AML/CFT Experts Group under the auspices of the Cabinet of Ministers is at the same time the Deputy Chairman of the NBA.

Ministry of Internal Affairs

74. This Ministry is a centralised body with responsibility for protection of the public and the prevention and detection of crime, including analysis of and strategic planning in respect of the crime situation. The National Central Bureau of Interpol operates within the Ministry of Internal Affairs.

Ministry of Justice

75. The Ministry of Justice participates in the development of legislation through the formulation of proposals on draft legislation, drafting legislation, and general legal advice on legislation. It also supervises notarial activity. The Ministry can conclude agreements on judicial legal assistance with foreign countries and international organisations. The Ministry is also responsible for the enforcement of judicial decisions and organisation of the courts, including the collection of

court statistics. Additionally all grants to non-profit organisations have to be registered with the Ministry of Justice.

The Office of the Prosecutor General

76. The Constitution of the Republic of Azerbaijan defines the Prosecution's Office as a national centralised authority consisting of local and specialised prosecution departments all under the supervision of the Prosecutor General. The Law "on the Prosecutor's Office" of 7 December 1999 provides *inter alia* for the investigation of criminal cases by the Prosecutors and procedural supervision over the initial investigation, supervision over the implementation of laws in respect of investigation and detective search activity and State prosecution of criminal cases. The Office of the Prosecutor General has a policy role in that it can initiate legislative proposals.

77. Under Presidential Decree (28 December 2004) on the implementation of the Law "on fight against corruption" a specialist Department for corruption matters was set up under the Prosecutor General. The prosecution of money laundering and financing of terrorism is also the responsibility of the Prosecutor General.

Ministry of Foreign Affairs

78. The Ministry of Foreign Affairs has an overall co-ordination role in respect of financing of terrorism issues. In particular, it proposes and submits reports to the United Nations Counter-Terrorism Committee and the 1267 Committee. The Ministry co-ordinates the entry by Azerbaijan into international agreements generally including on AML/CFT issues. It is also represented as the Expert Group on AML/CFT under the Cabinet of Ministers.

Ministry of Finance – State Insurance Supervision Department

79. The Ministry of Finance is the responsible authority body for insurance supervision. Within the Ministry, the State Insurance Supervision Department deals with insurance entity issues. In relation to the insurance sector, the basic duties of this body listed in the Insurance Activity Law include licensing, regulatory and supervisory activity.

80. Since 2006, the Ministry of Finance (State Insurance Supervision Department) has been a member of the International Association of Insurance Supervisors (IAIS).

Ministry of Taxes

81. The Ministry of Taxes is the central executive authority for the implementation of State tax policy, and collection of taxes. Under paragraph 9.9.1 of the Statute of the Ministry of Taxes, this Ministry is also responsible for the State registration of commercial legal persons, and representatives and branches of commercial legal persons. In this process, it records the registered information on companies and provides information to State authorities in respect of the data in its possession as required and in the timescales envisaged by Azerbaijan legislation.

Ministry of National Security

82. Among the main functions of this body are undertaking actions aiming at the revealing, pre-empting and preventing intelligence, terror-subversive and other destructive and criminal activities of different criminal groups and individuals, fighting against international terrorism and other forms of transnational organised crime, fulfilling of the courts decisions on conducting detective-search measures, decisions or written assignments on criminal cases of investigatory bodies, as well as decisions of competent subjects of detective- search activity, in cooperation with other state bodies, conducting struggle against smuggling, illegal circulation of the special technical equipments designed for illegally obtaining information, drugs, psychotropic substances

and precursors, toxic, poisonous, radioactive, explosive substances and facilities, military equipments, fire-arms and military supplies, nuclear, chemical, biological and other types of weapons of mass destruction, materials and equipments that can be used in manufacture of the weapons of mass destruction, strategically important raw materials, objects of cultural, historical and archaeological importance, etc.. According to national legislation the Ministry of National Security is both an operational investigative and intelligence gathering body.

Customs Committee

83. The State Customs Committee has the status of a law enforcement body under the 1997 Customs Code. As well as *inter alia* having the responsibility for implementation of the supervision of the cross border currency regime, the carrying out of initial investigations of smuggling offences (Article 206 Criminal Code) and non-return of historical and archaeological property (Article 207 Criminal Code) and evasion of payment of Customs duties (Article 209 Criminal Code). Approximately, 200 Customs employees are involved in the fight against smuggling and related infringements. They do not have the competence to investigate money laundering or financing of terrorism.

Financial Intelligence Unit (FIU)

84. The National Bank of Azerbaijan AML Division has operated as a "receiving centre" for some money laundering reports from the banking sector since 2006. However, there is currently no FIU that meets international standards.

State Committee on Securities

85. The State Committee on Securities under Auspices of the President of the Republic of Azerbaijan (hereinafter "SCS") develops and implements state policy, conducts state management, regulation and supervision of the securities market activities. According to Azerbaijan legislation, the SCS may impose administrative sanctions on the supervised entities for violations of requirements of the laws or resolutions, take measures, such as suspending of the licenses, limit and halt the operations with securities. The SCS performs both on-site and off-site inspections. It co-operates with the National Bank and the Ministry of Finance on a daily basis on different operational issues relating to supervision.

c. The approach concerning risk

86. In the absence of a real legal framework for AML / CFT measures, the risk based approach has no practical application currently in Azerbaijan.

d. Progress since the last mutual evaluation

87. Since the first evaluation, in the legal sector some limited progress has been made on the recommendations in the first report. In 2003, the money laundering offence was confined to the drugs predicate, which limited the ability to prosecute money laundering domestically and the scope of international mutual legal assistance that could be afforded by Azerbaijan. The previous evaluators recommended that the law should extend the predicate offences to money laundering to all serious offences, including the financing of terrorism[4].

[4] The previous report was adopted before the 2004 AML/CFT Methodology was agreed.

88. The money laundering offence has been improved since 2003, in that the money laundering offence under Article 193-1 of the Criminal Code determines the underlying predicate offences by reference to all offences. Notwithstanding this the criminalisation of money laundering is still not fully compliant with international standards in respect of some of the physical elements provided for in the Palermo Convention. Equally the categories of predicate offences covered does not entirely correspond to all the FATF requirements.

89. One of the problems with the confiscation regime was the absence of value confiscation. This defect was remedied in that Article 51 of the Criminal Code now provides for this possibility where the property obtained through criminal acts is no longer available.

90. 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 was not in place. 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.

91. MONEYVAL placed Azerbaijan under its Compliance Enhancing Procedures [5] in February 2006. MONEYVAL proceeded through the steps in the process between 2006 and 2007 because of further delay and lack of progress on these two issues. 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 was passed to the Milli Mejlis[6] by the Presidential Administration. This draft Law has not been considered by the evaluators in any detail though they observed that it still contained problematic draft provisions.

[5] A graduated series of steps to ensure compliance with MONEYVAL reference documents.

[6] This draft Law passed a first reading before the Parliament adjourned for the summer recess. At the July 2008 Plenary meeting of MONEYVAL, consideration of a Public Statement of non-compliance was postponed until the December 2008 meeting. It is understood that a draft bill passed a second reading in October 2008.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

92. Azerbaijan acceded to the to the 1998 United Nations Convention against Illicit Traffic in Narcotics and Psychotropic Substances (The Vienna Convention) in 1992. It was brought into force in 1992. Furthermore it signed the UN 2000 Convention against Translational Organised Crime (Palermo Convention) which came into force in 7 August 2003.

93. The Vienna and Palermo Conventions require countries to establish as a criminal offence the following intentional acts: conversion or transfer of proceeds; concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds; and the acquisition, possession or use of proceeds [Vienna Convention - Article 3(1)(b) (i)–(ii) and (c) (i), and Palermo Convention - Article 6(1)(a)(ii) and (b)(i)].

94. Money laundering was first criminalised in Azerbaijan in 2000 by the Article 241 of the Criminal Code, which came into force in the same year (and covered drugs money laundering only). From 30 May 2006, the money laundering offence was criminalised by Articles 193.1 of the Criminal Code (CC)7 (Legalisation of money proceeds or other property obtained by criminal acts). This article modifies substantially and structurally the previous criminalisation of ML with the intention of bringing the money laundering offence fully into line with the Vienna Convention and the Palermo Convention.

95. Article 193-1 CC defines money laundering as carrying out financial transactions or other operations with monetary funds or other property, knowing that they have been obtained by criminal acts, in order to give them legal status or to conceal the criminal origin of the property**.**

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[7] 193-1.1 Legalization of money proceeds and other property obtained by criminal acts - that is carrying out financial transactions or other operations by using the money funds or other property either for the purposes of giving legal status to such money funds or other property knowing that they have been obtained by criminal acts, or for the purposes of concealing of the real sources of their obtainment –shall be punished by a fine at a rate from two up to five thousand of nominal financial units or imprisonment from two up to five years with confiscation of property with deprivation of the right to hold the certain post or to engage in the certain activity for the term up to three years or without it.

193-1.2 The same acts if:
19-1.2.1. committed by group of persons on preliminary arrangement
194.-1.2.2 committed repeatedly
193-1.2.3 committed by an official with use of his/her service position shall be punished by imprisonment from five years up to eight years with confiscation of property, with deprivation of the right to engage in certain activities and to hold certain post up to three years or without it
193-1.3. The actions provided for by arts. 193-1.1 or 193-1.2 of this Code if:
193-1.3.1 committed by organized group or criminal union (criminal organization);
193-1.3.2 committed in large amount shall be punished by imprisonment from seven up to twelve years with confiscation of property with deprivation of the right to hold the certain post or to engage in the certain activity for the term up to three years or without it.
Note: "large amount» given in the article 193-1.3.2 of this Code is understood the sum over the amount of forty five thousand of nominal financial unit. *(*nominal financial unit is equal to 1.1 AZN ~ 1 Euro)

Comparing the new provision with the previous criminalisation, it is obvious that substantial changes have been made. However a number of uncertainties and shortcomings still remain. The former flows, in part, from the decision to draft the legislative provision in a manner which differs significantly from the wording utilised in the relevant Conventions.

96. First of all the scope of the core offence still appears not to cover all of the physical (material) elements required by Article 3 of the Vienna Convention and Article 6 of the Palermo Convention. The full ambit of the terms "financial transactions", "other transactions" and "property" are also unclear, in the absence of any jurisprudence and any investigated cases.

97. The elements of the money laundering offences stipulated in articles 193-1 CC arguably cover the following requirements of both Vienna and Palermo Conventions:

- *"Conversion* or *transfer"* may be covered by the first sentence of the criminalisation ("carrying out financial transactions or other operations by using the money funds or other property"), but as no money laundering case has been fully investigated, it cannot be stated with certainty that the judicial authorities in Azerbaijan will interpret the provision in this way. For this reason the evaluators consider that a future legislative clarification is necessary to put the matter beyond doubt. "Financial operations" are not defined in the Criminal Code or in any other law; because of that it is also difficult to interpret the extent of the term intended by the legislator. The physical element of helping any person who is involved in committing the predicate offence to evade the legal consequences of his or her action is also not covered by the Article 193-1 of the Criminal Code.
- *"Concealment* or *disguising"* may be broadly covered; the exact words used are "for the purposes of concealing of the real sources". There are obviously subtle differences between the terms "concealing" and "disguising". Because of the lack of jurisprudence in relation to money laundering the Azerbaijani officials were not able to advise the assessors with certainty whether the formulation would capture all the activities involved in both concealing or disguising the true nature, source, location, disposition and movement of the proceeds when the individual is aware that the property in question constitutes proceeds of crime.
- *"Acquisition* and *possession"* – Acquisition may be covered but possession is clearly not covered in Article 193-1 CC. It was not argued that such a criminalisation would be contrary to the basic concepts of the legal system. The authorities argued that acceptance of laundered money, as well as acquisition or purchase of laundered property or objects automatically implies possession of the respective money or property, and therefore that "possession" should be considered to be covered by Article 193-1. However, the evaluators were not entirely convinced by this interpretation. According to Article 193-1 CC, the law covers only the requirement of "use.

98. The money laundering offence should be extended to any type of property, regardless of its value that directly or indirectly represents the proceeds of crime. In Azerbaijan the money laundering offence extends to "the money, funds or other property", but as noted above no definition or clarification is available on the width of these terms. Moreover the evaluators were not able to find a definition of the term "money". It is not clear if the notion "money funds" refers, without doubt, to cash, money in bank accounts and financial deposits and if the property includes all physical objects and property rights. Neither is it clear if the concept covers all types of negotiable instruments and bank accounts. In response, the Azerbaijan authorities stated during the on-site visit that the term "money funds" refers to cash, money and bank accounts, but no legal provision was pointed to in support of this assertion, and resolution of the issue will depend on judicial interpretation.

99. It is considered that since Azerbaijan is part of the Convention, its content automatically becomes part of the internal legislation. The authorities also argued that the concept of "property" was contained within the law, in article 135 of the Civil Code which does provide an adequate

definition. While these assertions are noted, it is difficult for the evaluators to be entirely satisfied in the absence of case-law. No examples were given where the meaning of "property" had been raised in other criminal cases.

100. Thus Article 193-1 of the Criminal Code is silent on the issue as to whether money laundering is extended to acts done in respect of both direct and indirect proceeds of crime. It can be seen that the law does not distinguish between proceeds of crime obtained directly or indirectly. The evaluators were assured that indirect proceeds of crime are considered as covered by the money laundering offence. It was argued that this could be inferred from Article 51 (1) CC that deals with the confiscation of property. According to particle 1 "*Confiscation of property is compulsory (...)" in relation with instruments and means,* used by condemned at the commission of a crime, and *also with "(...) the property extracted in criminal way*". The domestic authorities consider that this provision is a general principle in the criminal legislation covering this issue. This interpretation has also never been applied in a concrete case. Again, in the absence of jurisprudence, the evaluators have reservations about whether Article 51 (1) CC provides a completely sound legal basis for the criminalisation of laundering of indirect proceeds of crime.

101. The evaluation team was informed by Azerbaijan judges that in a money laundering case, when establishing that property represents the proceeds of crime, a prior conviction of a person for the predicate offence would be needed. It is considered that in order to commence a money laundering investigation related to money laundering, it is necessary to have a conviction for the predicate offence. As with other criteria this has also not been tested. The evaluators were concerned by this view, as it will hinder investigations and money laundering prosecutions, as well as being contrary to Criterion 1.2.1.

Predicate offences

102. The basic approach of the Azerbaijan authorities is to criminalise money laundering now on the basis of an "all crimes" approach, whether or not Azerbaijan law categorises them as "serious" crimes. In this regard it is noted that the Palermo Convention definition of serious crime includes offences carrying four or more years imprisonment (under domestic law).

103. The FATF standards, when applied to an "all crimes" approach require that predicate offences should include a range of offences in each of the designated categories of offences in the Glossary to the FATF Recommendations. The range of offences set out in Azerbaijan Law see Annex II include all required categories of offence except insider trading, market manipulation, and financing of terrorism (in all its forms as required under the FATF Recommendations).

104. It is noted here, though not required by the FATF Recommendations, that certain forms of tax evasion are predicate offences to money laundering (Article 213 CC) only where the amounts involved are "significant". While the FATF standards do not require this, the Azerbaijan authorities may wish to consider, in the domestic context, widening the range of offences susceptible to charges of tax evasion in the fight against criminality in general and organised crime in particular. An indirect result would be to broaden the predicate base for money laundering in the context of tax evasion.

Extraterritorial predicate offences

105. The evaluators were informed that Article 12, paragraph 1 and 3 of the CC, provides that the money laundering offence is applied also where the predicate crime is committed outside of the jurisdiction of Azerbaijan. According to this article, citizens and permanent residents of Azerbaijan who commit a predicate crime outside Azerbaijan are subject to criminal liability if the predicate crime that they commit is acknowledged as a crime both in the country where it was committed and in the Azerbaijan Republic, and if the offender is not already convicted in the

foreign country. The Azerbaijan authorities also explained that when a predicate offence is committed in another country and money is laundered in Azerbaijan, the perpetration of the money laundering offence is considered to be continued or ended in the territory of Azerbaijan, and it falls under Azerbaijan jurisdiction according to the Article 11, paragraph1 of the CC. Therefore the Azerbaijan authorities maintained that money laundering is prosecutable in Azerbaijan where the predicate offence is committed abroad by a foreign citizen.

106. While some uncertainties were expressed, the evaluation team was generally assured by the Azerbaijan authorities that the laundering of foreign proceeds should be covered by the language of Article 193-1 of the CC together with A.11.1 CC. They explained that Article 193-1 contains no restrictions in this respect and therefore it should refer to any proceeds (money and/or property or objects) regardless of whether the crime that they derive from is committed in the country or abroad. Such an interpretation would ensure that laundering in Azerbaijan of the proceeds from extra-territorial predicate offences committed by non Azerbaijan citizens abroad is covered. However this interpretation, again, has not been tested.

107. As noted earlier, the Azerbaijan judicial authorities, in any event, consider that a prior conviction of a person for the predicate offence is needed before starting a money laundering investigation regardless of whether the predicate offence was committed in Azerbaijan or in a foreign country. This means that in Azerbaijan, in this situation, both predicate offence and money laundering cannot be prosecuted simultaneously.

108. Because the legislation is silent on this issue and the Azerbaijan judicial authorities take this view, the evaluators were concerned that there is no real possibility for the Azerbaijan authorities to investigate money laundering offence in the situation where the perpetrator launders the proceeds of foreign crime in Azerbaijan and no conviction for the predicate offence has been obtained in the foreign country. Therefore, the evaluators strongly recommend that the criminal legislation should explicitly clarify that proof of the predicate offence (whether domestic or foreign) is possible through circumstantial or other types evidence, and that it should be irrelevant whether the predicate offence was committed within the territorial jurisdiction of Azerbaijan or not.

Self laundering

109. The formulation of Article 193-1 CC does not distinguish between laundering by the person who committed the predicate offence and a third person. The evaluators were informed, that "self laundering" can be prosecuted, but no case or investigation was pointed to by the Azerbaijan authorities in order to sustain this argumentation.

Ancillary offences

110. Criterion 1.7 requires that there should be appropriate ancillary offences, unless this is not permitted by fundamental principles of domestic law. In the criminal law of Azerbaijan most ancillary offences are provided by the general part of the Criminal Code with a potential application to any criminal offence defined in the Special Part, including money laundering.

111. According to Article 27 (2) and (3) of the CC the preparation for committing a crime and the attempt to commit a crime shall be admitted as uncompleted offences and the criminal liability shall fall under the same article which provides for the responsibility for completed crime (according to the Articles 28 and 29 of the CC). The limits for the punishment of an attempt are provided by Article 63 (3) CC and cannot exceed three quarters of the maximal limit provided for a concluded crime. According to Article 193-1 money laundering is susceptible to imprisonment from two up to five years or a fine from two up to five thousand nominal financial units;

Article 63 (3) CC requirements are also applicable for the money laundering offence. Article 63 (2 and 3) CC requirements are also applicable for the money laundering offence.

112. With regard to ancillary offences, the Common Law term of "conspiracy" is not used in Azerbaijani legislation. The term of "association" is used by Article 34 (2) of the CC only in relation to criminal organisations and provides that "(…) a steady association of two or more organised criminal groups (…)" created for the purpose of commitment of less serious or serious crimes shall be admitted as criminal community (the criminal organisation). The 2006 amendments to Article 193-1(2) and (3) provide a punishment of "five years up to eight years" or "seven up to twelve years imprisonment with confiscation of property and deprivation of the right to hold the certain position or to engage in the certain activity for the term up to three years or without it", for taking the actions provided by the Paragraph 1 or 2 if they are committed by a group of persons on preliminary arrangement or an organised group or a criminal union (criminal organisation).

113. The FATF Methodology foresees that "conspiracy" should be an ancillary offence without providing a specific definition for this term. In Common Law countries, in order to commit the offence of conspiracy, an agreement made by two or more natural persons to pursue a course of conduct which would involve the perpetration of a criminal offence at some time in the future is needed. The offence is committed even if the criminal offence has not been carried out.

114. The evaluators do not consider that the term "conspiracy" needs to appear in the legislative text in order to have covered this part of the essential criteria. The evaluators ascertained that, unlike the FATF Methodology, Articles 3 of the Vienna Convention and 6 of the Palermo Convention require Parties to take measures to criminalise "association with/ or conspiracy to commit". These measures must be in compliance with their constitutional principles and the basic concepts of the legal system. The two Conventions' provisions appear to provide for equivalent offences of "association" (which is more a civil law concept) and "conspiracy" (which is more familiar in common law jurisdictions). The evaluators consider that this supports the common sense view that requires them to look at the substance of available offences and not just the form – i.e. whether the precise term "conspiracy" is used in the Law.

115. The Criminal Code of Azerbaijan deals with incomplete crimes in Chapter 6 and includes the concepts of preparation to commit a crime in Article 28 and attempt to commit a crime in Article 29. Preparation to commit a crime includes looking for accomplices to commit a crime and also arranging to commit a crime, but applies only to the preparation of minor serious and especially serious crimes. Article 34 of Chapter 7 of the Criminal Code deals with completed offences by two or more persons, but also attributes criminal liability for preparation to members of a criminal group. The combination of these articles would seem to provide functional equivalence to the Common Law offence of conspiracy for minor serious and especially serious crimes and when prosecuting offences committed by organised crime, but would not cover the basic money laundering offence.

116. The other relevant ancillary offences are also available. Facilitating and counselling the perpetration of the money laundering offence is covered by the general part of the Penal Code (Articles 31 and 32). Articles 31 and 32 of the CC cover the action of a person who assists and helps the perpetrator to commit the offence by advice, encouragement and instruction, etc. The definitions for the organiser, instigator and executor of the crime are also provided by the above mentioned articles.

Additional elements

117. If the activity which generates proceeds is not an offence in the foreign country but the proceeds were laundered in Azerbaijan, the Azerbaijani authorities considered that, according to

Article 11 paragraph1 of the CC, they are able to prosecute the perpetrator for the money laundering offence since the activity committed abroad would constitute an act against the citizens of the Azerbaijan Republic and the interests of Azerbaijan. However it is unclear whether this would actually be acceptable in criminal proceedings.

Recommendation 2

Natural persons that knowingly engage in money laundering activities

118. 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 (nor administrative or civil liability for legal persons). Thus legal persons cannot be punished for money laundering, financing of terrorism or other offences.

119. Articles 19 and 20 of the CC provide that only a natural person who has mental capacity and reached the age of 16 years will be subject to criminal responsibility. Thus the money laundering offence applies to natural persons that knowingly launder property obtained through the commission of an offence.

120. Knowledge that the property has been obtained from criminal acts is provided for in Article 193-1. The moral element is thus one of knowledge and intention.

121. The mental element of the offence of money laundering is based on the general principles as set out in the Article 25 paragraph 2 of the CC: "The crime shall be admitted as committed with direct intention, if the person realised public danger of the acts (action or inaction), expected their dangerous consequences and wished their approach". Thus it is clear that knowledge that the property is proceeds of crime is required. The intention may also include the possibility that the defendant acknowledges that property could be the proceeds of crime and was prepared to accept that possibility (*doulus eventualis*).

122. Money laundering cannot be prosecuted on the basis of a "should have known" or negligence standard and the evaluators were informed that there are no plans to introduce the negligence standard in the money laundering offence. The evaluators endorse the recommendations in the previous evaluation round, namely that the Azerbaijan authorities should consider additionally the introduction of lower standards for the mental element, such as suspicion or negligence, with appropriately lesser penalties – to alleviate some of the evidential difficulties associated with the knowledge standard.

Inference from objective factual circumstances

123. The law does not provide explicitly that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. Nevertheless the Azerbaijan authorities informed the evaluators that with the ratification of the Palermo Convention, Azerbaijan has accepted this principle. Because of that the evaluators were informed that in practice the intentional element of the offence of money laundering may be allowed to be inferred from factual circumstances by virtue of Article 124 of the Code of Criminal Procedure of the Republic of Azerbaijan (Annex IV). Therefore the Azerbaijani prosecutors may rely upon both direct and circumstantial evidence to prove their case in any criminal prosecution. As such, the evaluators were told that knowledge or intent may be proved by direct evidence or may be inferred from the surrounding circumstances, and from objective factual circumstances, such as time and place of the crime and motive of the perpetrator. The evaluators, however, advise that this practice might benefit from

being reflected in the legislation, as useful guidance to domestic practitioners. In accordance with article 124 of the Code of Criminal Procedure reliable evidence (information, documents, other items) obtained by the court or the parties to criminal proceedings shall be considered as prosecution evidence. Such evidence shall be obtained in accordance with the requirements of the Code of Criminal Procedure, and shall be produced in order to show whether or not the act was a criminal one, whether or not the act committed contains the features of offence and other circumstances essential to determining the charge correctly. If there is no doubt as to the accuracy and source of the information, documents and other items and as to the circumstances in which they were obtained, they may be accepted as reliable evidence.

Criminal liability of legal persons

124. Under the Azerbaijan Law, legal persons cannot be held criminally liable. According to the Azerbaijani authorities, the fundamental principles of their domestic law, as contained in the Constitution, Criminal Code and in the Code of Criminal Procedure, moral blameworthiness cannot be extended to legal entities. Explicitly, this may be inferred from Section 2 of Azerbaijan's Constitution, which deals with the "*basic rights, liberties and responsibilities of the person and the citizen*". According to Article 63 and 66 of the Constitution the accused person should not prove his innocence and should not testify against himself, his/her spouse, and those close relatives which are designated by the law. In addition, according to these Articles any actions placing liability on the individual prior to a Court conviction are inadmissible and serve as a basis for compensating loss through a Court procedure. In this regard the criminally accused may only be a natural person.

125. The Azerbaijan legislation does not contain any provisions to apply liability to legal persons for money laundering. Similarly the Law does not contain any mechanism for administering such liability. Taking into consideration the system of legal acts in Azerbaijan, such a mechanism for administering such liability as well as the qualifying characteristics of the violation of money laundering in connection with sanctions, would need to be regulated by another legal act devoted to administrative liability issues in all types of violations. For Azerbaijan this act is "*the Code of the Azerbaijan Republic on administrative violations"* and according to Article 17 "*Legal persons, including foreign legal persons, bear administrative responsibility for administrative violations under this Code"*. At the same time this Code does not contain special provisions providing for the liability of legal entities for money laundering and financing or terrorism.

126. Article 23 makes available some types of administrative penalties in relation to legal persons but none of them relate to money laundering.

Sanctions for money laundering

127. The penalties applicable at the time of the on-site visit in relation to natural persons for money laundering are set out below. Article 193-1 of the Criminal Code of Azerbaijan provides the following sanctions:

- **Under Paragraph 1** - carrying out financial transactions or other operations by using the money funds or other property either for the purposes of giving legal status to such money funds or other property knowing that they have been obtained by criminal acts, or for the purposes of concealing of the real sources of their obtainment – *shall be punished by a fine at a rate from two up to five thousand of nominal financial units or imprisonment from two up to five years with confiscation of property with deprivation of the right to hold the certain post or to engage in the certain activity for the term up to three years or without it*;
- **Under Paragraph 2** – the above mentioned crimes committed by a group of persons on preliminary arrangement, repeatedly or by a person abusing his/her official position – *shall be punished by imprisonment from five years up to eight years with confiscation of*

*property, with deprivation of the right to engage in certain activities and to hold certain post up to three years or without i*t;

- **Under Paragraph 3 -** the above mentioned crimes committed by an organised group or criminal union (criminal organisation), or in a large amount – *shall be punished by imprisonment from seven up to twelve years with confiscation of property with deprivation of the right to hold the certain post or to engage in the certain activity for the term up to three years or without it*. The concept "large amount" means the calculation over the amount of forty five thousand of nominal financial unit (nominal financial unit is equal to 1.1 AZN ~ 1 Euro).

128. Article 15 of the Criminal Code imposes a classification of crimes depending on the nature and degree of action stipulated as public danger (actions or inaction), which will be subdivided into: the crimes which do not represent big public danger, less serious crimes, serious crimes and especially serious crimes. According to paragraph 3 less serious crimes will be considered those actions of which the maximal punishment shall not exceed seven years of imprisonment and according to Para 4 serious crime will be considered those actions of which the maximal punishment shall not exceed twelve years of imprisonment. According to this article, the basic form of money laundering offence is not considered to be a serious crime, because the penalty provided by the legislator is less than seven years of imprisonment. Money laundering becomes a serious crime only when committed by a group of persons on preliminary arrangement, repeatedly either by a person abusing his/her official position or by an organised group or criminal union (criminal organisation), or in a large amount.

129. According to the Article 63 (2) of the Criminal Code the penalty for the offence of preparation regarding money laundering, cannot exceed half of the maximum of the maximal limit for the punishment provided by the provision for the completed crime. For the offence of attempting to commit money laundering, the penalty cannot exceed three quarters of the maximum penalty. According to Article 33 of the CC (part 1) the criminal liability of accomplices shall be defined by the nature and the degree of actual participation of each of them in commitment of a crime. Additionally, paragraph 2 of the above-mentioned Article specifies that the organiser, instigator and helper shall be subject to criminal liability by virtue of the appropriate Article of the Special part referring to Article 32 of the Criminal Code, except for the cases when they simultaneously were co-executors of a crime. As a rule, the punishment for these accomplices is somewhat lower, than for the person committing the crime.

Statistics

130. At the time of the on-site visit, no investigation had been commenced in relation to the money laundering offence and no case was brought before the Court. The Azerbaijan authorities informed the evaluators that since the last evaluation round, the AML Division within the National Bank of Azerbaijan sent to the law enforcement authorities 24 "STRs", but it was not entirely clear which authority received the STRs or which law enforcement agency exactly was in charge of investigating those reports (Police Department, Prosecutors Office or Ministry of National Security). It appeared that all or most of the reports had gone to the Ministry of National Security.

131. It is advised that when criminal cases are prosecuted for ML, comprehensive statistics should be kept which show the nature of the predicate offence and whether the ML offence was self laundering or 3rd party laundering.

Effectiveness of the money laundering provision

132. The money laundering legal provision, though much improved since May 2006, is still not fully compliant with international standards in respect of some of the physical elements provided for in the Palermo Convention. Simple possession or use of laundered proceeds should be

covered. Equally the categories of predicate offences covered do not entirely correspond with all the FATF requirements. However the main problem is that the incrimination of money laundering has still never been tested in criminal proceedings before a court. The evaluators did not find evidence of any investigations of money laundering as a stand-alone offence. Uncertainties as to whether a prior conviction for the 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 appear to inhibit such investigations (and prosecutions). These two issues need clarifying. Interlocutors with whom the team 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. Much more training is required of prosecutors, investigators and judges into the potential of money laundering prosecution for the fight against acquisitive crime generally, and particularly in the fight against organised crime. Equally more training is required on the types and levels of evidence which Azerbaijan courts might consider acceptable to prove the physical and mental elements of the offence if money laundering incrimination is not to remain a dead letter.

2.1.2 Recommendations and comments

133. Azerbaijan has improved the criminalisation of the money laundering offence since the last evaluation. 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 but the Azerbaijan authorities should establish offences of "insider trading" and "market manipulation". Furthermore the offence of "financing of terrorism" should be widened in order to enable all relevant issues to be covered as predicate offences to money laundering.

134. Azerbaijan should make the necessary amendments to Article 193-1 of the Criminal Code to bring it in line with the provisions of the Vienna and Palermo Conventions. In particular it is necessary to criminalise explicitly the conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property (Palermo Article 6(1)(a)(i)) and concealment or disguise of the true nature, source, location etc (Palermo Article 6(1)(a)(ii)). As there appear to be no basic concepts of the legal system or fundamental legal principles preventing this, acquisition and possession of illegally gained income should be explicitly covered (Palermo Article 6(1)(b)(i)). Because of the lack of the investigations in relation to money laundering, the Azerbaijan officials were not able to demonstrate that the language of the offence is in practice wide enough to cover all the activities meant to conceal or disguise the true nature, source, location, disposition and movement of proceeds when the individual is aware that the property in question is the proceeds of crime, and because of that a legislative improvement is required.

135. It would also be helpful to provide in the text of law that part of the Vienna and Palermo Convention which covers the "conversion/transfer of property knowing that property is proceeds *for the purpose of helping any person who is involved in the perpetration of the predicate offence to evade the legal consequences of his or her action*".

136. Conspiracy is partly covered by association, but needs to be available to cover agreements to commit basic money laundering by others not involved in organised crime.

137. According to the Azerbaijan authorities the intentional element of the offence of money laundering is allowed, in practice, to be inferred from factual circumstances but, since no case of money laundering was instituted, the evaluators were unable to confirm that this approach would

be followed in relation to money laundering. The evaluators, however, advise that this practice should be reflected in the legislation.

138. The evaluators advise that the Azerbaijan authorities consider amending the legislation also by providing clear definitions for the following concepts: "financial transactions", "other transactions" or "money funds.

139. The Azerbaijan authorities should reconsider their stance concerning liability of legal persons to bring their legislation into line with modern international standards. It is noted here that several European countries, the legal traditions of which historically did not allow for corporate liability in the context of money laundering, have now relaxed their positions and are bringing their legislation into line with criterion 2.3 in the AML/CFT Methodology. Azerbaijan is strongly encouraged also to move in this direction.

140. It is also advised that the Azerbaijan authorities clarify in the Criminal Code that Azerbaijan has jurisdiction for the money laundering offence when the predicate offence was committed abroad by a foreign citizen.

141. As noted, money laundering is generally not considered to be a "stand alone" crime: the Azerbaijan judicial authorities advised the evaluators that a conviction for the predicate offence is necessary to start an investigation related to money laundering. Such an approach will mean that no case of money laundering in Azerbaijan of proceeds of foreign or domestic offences will ever be prosecuted, where the perpetrator of the predicate offence is not apprehended or there is no conviction for the predicate offence. It is strongly advised that the Azerbaijan prosecutors should test the provisions they have and, where necessary, invite the courts to draw necessary inferences. Additionally it is also strongly advised that Azerbaijan introduces a provision in its legislation clarifying that the absence of a judicial finding of guilt in respect of the predicate offence should not preclude money laundering investigations and prosecutions. It would help if this was also coupled with a provision, which clearly indicates that the existence of the underlying predicate offence (or, indeed, the intentional element of the money laundering offence) can be established in a money laundering case by objective facts and circumstances.

142. In the previous evaluation report, concerns were expressed that the money laundering offence had not been tested in practice. The evaluators are disappointed that this remains the case. Serious efforts need to be applied to use and develop the criminal offence. This needs to be addressed by a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements. This should be accompanied by training and awareness-raising in respect of police officers, prosecutors and judges particularly on how money laundering investigations and prosecutions have been successfully achieved in other European jurisdictions.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**Non compliant**	• The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions: - The conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property may be covered but should be clarified; - 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. - Concealment or disguise of the true nature, source, location, disposition, movement or ownership etc may not be covered (Palermo A.6(1)(a)(ii)). - Acquisition and possession appears 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 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 with no real understanding of the value of money laundering investigations and prosecutions, particularly autonomous money laundering cases).
R.2	**Partially compliant**	• 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).

2.2 Criminalisation of terrorist financing (SR.II)

2.2.1 Description and analysis

143. Azerbaijan signed the 1999 Convention for the Suppression of Financing of Terrorism on 1st October 2001. The Convention has been implemented by the law issued on 17th May 2002 which added article 214-1 to the Criminal Code.

144. The terrorism offence was inserted in 2002 into the Criminal Code in Article 214, as follows: "Terrorism, that is commitment of explosion, arson or other actions creating danger to destruction of people, causing harm to their health, significant property damage or approaches other socially dangerous consequences committed with a view of infringement of public safety, intimidation of population or rendering of influence to acceptance of decisions by the state authorities or international organisations, and also threat of commitment of a specified actions in a same purposes is punished by imprisonment for the term from eight up to twelve years with confiscation of property". The offences referred to in Article 214 *inter alia* appear to cover the following offences referred to in Article 2 of the 1999 Convention: murder, serious bodily injury, arson, criminal damage. Under this Article aircraft hijacking and offences in connection with nuclear safety appear not to be covered by the domestic legislation, notwithstanding that these are required by the 1999 Convention. The following table sets out the sections of the Criminal Code of the Republic of Azerbaijan implementing the requirements of the various conventions

Convention for the Suppression of the Financing of Terrorism	**Appropriate articles of the Criminal Code of the Republic of Azerbaijan**
1970 Convention for the Suppression of Unlawful Seizure of Aircraft	**219.** Stealing of aircraft, ship or railway train
1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	**116.0.12.** Attack on constructions, which destruction can result in big losses among civilians or cause significant damage to civil objects **120.2.4.** Deliberate murder committed with special cruelty or in publicly dangers way **126.2.4.** Deliberate causing of serious harm to health publicly dangers a way, from hooligan prompting **127.2.3.** Deliberate causing of minor serious harm to health in publicly dangerous way or from hooligan prompting **186.** Deliberate destruction or damage of property **216.** Obviously untrue report on terrorism **266.** Reduction to unsuitability of vehicles or means of communication **296.** Obviously false denunciation
1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents	**102.** Attack on persons or establishments, which use international protection **120.2.3.** Deliberate murder of victims or his close relatives in connection with

	implementation of a given person of service activity or performance of public debt **277.** Attempt on life of the state or public authority (act of terrorism)
1979 International Convention against the Taking of Hostages	**215.** Capture of the hostage
1980 Convention on the Physical Protection of Nuclear Material	**116.0.16.** Application of a weapon, means and ways of conducting a war, forbidden by international agreement to which the Azerbaijan Republic is a party **206.2.** Smuggling committed except or with concealment from the customs control or with use of fouls documents or means of customs identification or connected with undeclared or doubtful declaring **224-1.** Violation of rules on using double purpose goods (works, services) **226.** Illegal handling with radioactive materials **227.** Plunder or extortion of radioactive materials **248.** Infringement of rules on handling with ecologically dangerous substances and waste products **350.** Infringement of rules on manipulation with a weapon and subjects representing increased danger to associates
1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation	**120.** Deliberate murder **126.** Deliberate causing of serious harm to health **186.** Deliberate destruction or damage of property **233.** Organisation of actions promoting infringement of a social order or active participation in such actions **266.** Reduction to unsuitability of vehicles or means of communication
1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation	**120.2.4.** Deliberate causing of serious harm to health publicly dangers a way, from hooligan prompting **126.2.4.** Deliberate causing of serious harm to health publicly dangers a way, from hooligan prompting **127.2.3.** Deliberate causing of minor serious harm to health in publicly dangerous way or from hooligan prompting **186.** Deliberate destruction or damage of property **216.** Obviously untrue report on terrorism **219.** Stealing of aircraft, ship or railway train **219-1.** Piracy

	266. Reduction to unsuitability of vehicles or means of communication **296.** Obviously false denunciation
1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf	**120.2.4.** Deliberate causing of serious harm to health publicly dangers a way, from hooligan prompting **126.2.4.** Deliberate causing of serious harm to health publicly dangers a way, from hooligan prompting **127.2.3.** Deliberate causing of minor serious harm to health in publicly dangerous way or from hooligan prompting **186.** Deliberate destruction or damage of property **219.** Stealing of aircraft, ship or railway train **219-1.** Piracy **266.** Reduction to unsuitability of vehicles or means of communication
1997 International Convention for the Suppression of Terrorist Bombings	**214.** Terrorism **282.** Diversion

145. Article 214 of the Criminal Code provides different levels of punishment for those persons involved in committing terrorism offences, depending on their role in perpetrating such acts (e.g. whether they act as prime movers or otherwise). Therefore if the terrorism offence is committed by a group of persons on preliminary arrangement, or repeatedly, or with application of firearms or with other aggravating features, the punishment will be imprisonment for a term of ten to fifteen years with confiscation of property and with deprivation of the right to engage in certain activities and to hold certain posts for up to three years. According to the Azerbaijani authorities, a person participating in the preparation of an act of terrorism shall be released from criminal liability if he/she had warned the authorities or otherwise promoted prevention of implementation of the act, assuming his involvement discloses no other criminal acts.

146. Terrorism financing is separately criminalised in Article 214-1 of the Azerbaijan Criminal Code, which reads as follows: "*Deliberate full or partial, direct or indirect reference of money resources or other property for commitment of terrorism or accumulation of money resources or other property in the same purposes is punished by imprisonment for the term from eight up to twelve years with confiscation of property*". The Azerbaijani authorities confirmed that "accumulation" would include "collection".

147. This provision follow Azerbaijan's ratification of the 1999 International Convention for the Suppression of the Financing of Terrorism (hereinafter TF Convention). Despite the fact that the evaluators were informed that in the period of 2004-2007, 4 cases relating to terrorism were investigated by law enforcement agencies and one of them was connected to terrorist financing (in 2004), Article 214-1 was the subject of proceedings in 2004, as noted in paragraph 32, where 4 of the defendants were found guilty of financing of terrorism only and received significant sentences of imprisonment. Other defendants were convicted of other terrorist related charges in the same proceedings. The Azerbaijan authorities also informed the evaluators that several organisations have been proved to be involved in financing of terrorism and have been "shut down", though there were no related criminal proceedings.

148. The first comment is that the offence, read in conjunction with Article 214, 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. Such an approach would be fairly restrictive, although both domestic and international terrorism are covered. 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. The Article 214.1 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 consider 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.

149. The Azerbaijan authorities consider that under the law referred to above (Article 214), each of the following acts are recognised as support of terrorist activities (the acts referred to relate to the elements of terrorism financing through the interpretation of the *corpus delicti* of article 214-1**):**

- Recruitment for terrorist activities;
- Undergoing training or preparation for terrorist activities;
- Administering training and preparation of a person for terrorist activities;
- Violence against natural or legal persons;
- Damage of objects with a view of terrorism;
- Financing or otherwise assisting terrorist activities;
- Assisting the establishment of channels for arms supplies to terrorists and for the movement of terrorists across the state border.

150. The difficulty is that this interpretation has not been tested and criminalising TF solely on the basis of aiding and abetting etc does not comply with SR.II. The evaluators consider it would be clearer to include all aspects of SR.II in the separate financing of terrorism offence (Article 214-1).

151. Terrorist financing should extend to all "funds" as the term is broadly defined in the Financing of Terrorism Convention. The evaluators were unable to find definitions of the terms used in Article 214-1 "money resources" and "other property", or for that matter "money". It is not clear if the term "money resources" includes cash, money in bank accounts or financial deposits, and if the property includes all physical objects and property rights. It is also unclear if the terms cover all types of negotiable instruments and the banking accounts. The Azerbaijan authorities advised during the on-site visit that the term "money resources" refers to cash, money and bank accounts, but no legal provision was pointed to in order to support this view. With regard to the concept of "property", the Azerbaijan authorities advised the evaluators that they have no definition in the law and there is no need for it as Azerbaijan is part of the Convention, and automatically the convention becomes part of internal legislation. However, the authorities also argued that the concept of "property" is considered to be a "generic notion" in criminal law that does not need to be specified by the law.

152. The Financing of Terrorism Convention definition of funds is more detailed since it refers to "assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit". The domestic legislation does not provide the definition of "funds" or "assets". The Azerbaijani authorities also considered that the legal provision covers both licit and illicit funds as the essential element is the purpose of the funds. The evaluators recommend that the Azerbaijan authorities include the concept of "licit funds" as well as a specific definition of "assets" in the provision for clarity. "Movable and immovable" assets should also be covered by the provision.

153. Moreover it is difficult for the evaluators to determine whether the courts in Azerbaijan would consider that the financing of terrorism offence applies to the wide definition of "funds" in the Financing of Terrorism Convention, in the absence of jurisprudence. In these circumstances, it is advised that the full definition of "funds" is put into the Azerbaijan legislation.

154. Criterion II.1.c requires that the terrorist financing offence should not foresee that the funds were actually used to carry out or attempt a terrorist act or to be linked to a specific terrorist act. The terrorist financing offence in article 214-1 is extended to collecting "money resources and other property" for "supporting" of terrorism acts. The criterion is not considered to be fulfilled.

155. Under Articles 27 and 29 of the Criminal Code, attempt is criminalised for all offences for which an attempt is possible, including terrorism financing. The all-crimes predicate coverage of the money laundering offence in article 193-1 of the Criminal Code also includes the offence of financing terrorist activity. According to Article 28 of the CC "preparation to a crime" shall be considered the purchasing or manufacturing by a person of means or instruments in order to commit a crime, looking for accomplices of a crime, arrangements for committing a crime or other deliberate creation of conditions for committing a crime as long as a misdemeanour was not entirely finished regardless the personal will of the perpetrator. The criminal liability shall be instituted only for preparation of minor, serious and especially serious crimes.

156. The common ancillary offences (see above for money laundering) are also applicable in the terrorism financing context. Reference is made to the general part of the Criminal Code, in particular in articles 31 and 29 linked to attempt offences, on the basis of which attempted terrorism financing is punished. Article 32 also provides for the offence of participation which includes the role of organiser, instigator and helper. Article 33 provides the responsibility of accomplices that shall be defined by nature and degree of contribution of each of them in committing a crime.

157. According to Article 19 of the Azerbaijan Criminal Code, criminal liability is personal and the punishment can be imposed only on a physical person who has mental capacity and has committed a crime envisaged by the law; legal entities cannot be punished for financing the terrorism. It follows directly from article 214-1 that only intentional financing of terrorism is criminalised. The Azerbaijani authorities explained that, as a rule, negligence is covered only if it is stated explicitly in the relevant provision but according to Article 214-1 such a situation is not provided by the law. However, article 19 of the Law on Combating Terrorism provides that any organisation (its branches or subsidiaries) functioning in the territory of Azerbaijan can be eliminated by a decision of the Court if its activities are related to terrorism. In such a case its assets shall be confiscated.

158. The criminal legislation contains no explicit provision covering whether the intentional element of a criminal offence, including financing terrorism, may be inferred from objective factual circumstances. While the Azerbaijan authorities, as noted above in relation to Recommendation 2, were confident about the sufficiency of circumstantial evidence in proving *mens rea* standards, the issue has not been tested in either the context of money laundering or financing of terrorism. The evaluators therefore advise that it would be prudent for the law to explicitly provide and permit the intentional element of the offence to be inferred from objective factual circumstances.

159. Under the Azerbaijan legislation (Article 12, Paragraph 1, 2 and 3 of the CC) (Annex V), the provisions of the Criminal Code are applicable to Azerbaijan nationals for crimes committed abroad. The provisions are also applicable to foreign nationals and persons without citizenship who committed crimes of a general nature abroad and, in such a way, that they affect the interests of the Azerbaijan Republic, Azerbaijan nationals and in those cases stipulated by the international

agreements in which the Azerbaijan Republic is part of, if these persons were not convicted in the foreign country where the offence was committed. Thus, as long as the offender is an Azerbaijan or foreign citizen and the terrorism financing is committed on Azerbaijan territory, a person can be held liable under the criminal law for terrorism financing. If terrorism financing is committed abroad, the offence can be prosecuted in Azerbaijan if the conditions provided in Article 12 Criminal Code are met.

160. The Azerbaijani authorities informed the evaluators that during the period of 2004-2007, 4 criminal cases connected with the offence of terrorism were investigated by the law enforcement agencies. One of the criminal cases was connected with financing of terrorism offence (article 214-1) and it was investigated by the Ministry of National Security in 2004. Full particulars of that case have been set out in Part I of this report at paragraph 32. The terrorism financing offence is punished by imprisonment from 8 to 12 years together with confiscation of property.

2.2.2 Recommendations and comments

161. Despite the fact that the UN Convention for the Suppression of the Financing of Terrorism has been signed and ratified, there are still several shortcomings with respect to the implementation of the penal provisions of this Convention in the criminal substantive law. The offence seems to be only partially in line with the Convention.

162. Essential parts of SR.III are not implemented in the domestic law yet, such as the concept of "financing terrorist organisations or individual terrorist"; only "terrorism" as such is criminalised. The evaluators strongly recommend that financing of terrorist organisations and individual terrorists be explicitly criminalised.

163. Referring to the meaning of the terms "money resources" and "other property" the evaluators were unable to find definitions of these concepts. Furthermore no definition was found for the term "money". It is not clear if the concept "money resources" refers without any doubt to cash, money in the bank accounts or financial deposits and if the property includes all physical objects and property rights. It is also not clear if the concept covers all types of negotiable instruments and bank accounts. Because of that, the evaluators consider that future clarification is required to cover all these concepts. Furthermore the legislation does not provide a definition of "funds" in relation to terrorism financing. It should be ensured that "funds" fully covers the concept, as defined in the Terrorist Financing Convention.

164. The evaluators are not in a position to comment with certainty on whether Article 214-1 covers legitimate funds or not. For clarity, the financing of terrorism provision should explicitly extend to any funds, whether they come from legitimate or illegitimate sources.

165. The legislation should also provide that the terrorist financing offence should not require that the funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

166. The legislation does not address the issue whether the intentional element can be inferred from objective facts and circumstances, and the issue has not been tested in practice. It would be prudent to explicitly provide for this.

167. As in the analysis and recommendations in respect of Recommendation 2, the evaluators similarly recommend Azerbaijan to consider extending the offence of financing of terrorism to legal entities.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**Partially compliant**	• 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.

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

2.3.1 Description and analysis

168. Confiscation is listed as a permitted form of punishment under Article 42.0.8 of the Criminal Code and by virtue of being classified as an additional kind of punishment in Article 43.3, it is only available at the discretion of the court. The legal basis for confiscation is set out in Article 51 of the Criminal Code, which states:

> *51.1. Property confiscation is compulsory gratuitous expropriation on the benefit of the state of instruments and means, used by condemned at commitment of a crime, criminal items and criminally obtained property.*
> *51.2. Property confiscation can be applied only if it is envisaged by the appropriate articles of the Special Part of this Code.*
> *51.3. If criminally obtained property or criminal items cannot be expropriated to the benefit of the state because of its usage, assignation to other person or because of other reasons, the money or other property equal to the amount of the same property that belongs to the condemned shall be confiscated.*

169. Article 51 allows confiscation of the proceeds from, the instrumentalities used in and the instrumentalities for use in the commission of certain offences set out in the Part of the Criminal Code dealing with specific offences. The evaluators were told that the term "instrumentality" includes instrumentalities intended for use in the commission of future minor, serious and

especially serious crimes by virtue of the fact that under Articles 28.1 and 32.5 it is an offence to obtain instrumentalities for offences that are not completed through any circumstances beyond the defendant's control. In any event the Azerbaijani authorities were of a view that "instrumentalities" were also included within the term "criminal items" referred to in Articles 51.1 and 51.3. When money laundering is the only offence on the indictment, the Azerbaijani authorities indicated that laundered property could be confiscated as a "criminal item", although the evaluators found no definition of the term "criminal item". The Criminal Code does not specifically refer to indirect proceeds, but the evaluation team was assured that in practice confiscation orders are made which include indirect proceeds and an example was given in respect of a high profile case of the confiscation of a house bought with the proceeds of corruption.

170. Confiscation is not available in respect of all predicate offences. Further, 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.

171. Value confiscation was introduced in 2006 by Article 51.3 of the Criminal Code and applies when it is not possible to expropriate the criminally obtained items to the benefit of the state. Although the evaluation team was told that value orders have been made, the Azerbaijan authorities were unable to provide any statistics in this regard.

172. Article 177 of the Code of Criminal Procedure provides for the right to forcibly carry out certain investigative procedures. Some procedures normally require a court order made on the application of a prosecutor, including search and seizure in residential, service or industrial premises (Article 177.3.1), the attachment of property (Article 177.3.3) and the obtaining of information about financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets (Article 177.3.6). In urgent cases, however, if there is information indicating that the person who committed the offence may destroy, damage, spoil, conceal or misappropriate the property, the investigator may seize the property, in which case the investigator must inform the court and the prosecutor within 24 hours and within 48 hours submit the matter to the court (Article 249.5). The evaluation team was advised that the usual practice is for the prosecutor to apply *ex parte* without notice to the court for an attachment order to be made.

173. The procedure governing the attachment of property is set out in Chapter XXXII of the Code of Criminal Procedure. The stated aim is to guarantee a civil party's claim and the confiscation of property in circumstances provided for under the criminal law (Article 248.1) and so the property is valued to ensure that sufficient property is attached. Attachment may apply to the defendant's and third parties' property regardless of who may be in possession of it and it may also apply to property in which the defendant has a joint interest (Articles 248.2 and 248.3). If there is sufficient evidence that the property was used in committing an offence or was acquired or enhanced by committing an offence, the whole property or the greater part thereof shall be attached. An exception is made in respect of food, fuel of little market value, specialist books and equipment used in carrying on a professional activity, frequently used kitchen utensils and supplies or other essentials.

174. If the property attached is a bank deposit, then the order of attachment operates to prevent any further transactions on the account. In respect of moveable property, an inventory is made of the property and it is then left with the owner or holder, who may, if necessary, be prohibited from using the item. Precious metals and stones, pearls, money in local and foreign currency, securities (shares, bonds, cheques, treasury notes, loan certificates, lottery tickets etc) are given to the State Bank of the Azerbaijan Republic for holding and other items are packed and kept at law enforcement premises or at the court. Property that is attached but not removed is sealed and given to its owner or holder, or adult members of his family, for safe-keeping, in exchange for a commitment not to misappropriate, damage or destroy it and the person concerned is warned of the statutory liability incurred for so doing.

175. Property attached by court order may be released from attachment only on the basis of a court decision, except where the civil claim in the criminal case is withdrawn, the charges against the accused are altered, or the criminal prosecution is discontinued. Third parties may apply to the prosecutor to release property that has been unlawfully attached or attached in error. If the property is not released, then third parties may apply to the court and the decision of the court will be binding on all parties (Article 253.0).

176. State and bona fide third party rights may be litigated by way of a civil claim heard before the completion of the criminal proceedings. The procedure is set out in chapter XIX of the Code of Criminal Procedure. The procedure may be used by natural or legal persons. The procedure may be used by the State on its own behalf (including where it is necessary to prevent or void action which would prejudice the authorities in their ability to recover property subject to confiscation). The State may also use the procedure on behalf of those with limited or no capacity to pursue claims for compensation and to enforce contractual terms or to obtain compensation for their breach.

177. The evaluators were advised that 109 million AZN (99 million Euros) had been taken in 2007 as compensation in 2007, compared with 86,799 AZN in 2004, 772,828 AZN in 2005, and 1,869,032 AZN in 2006.

Additional elements

178. Legal persons have no criminal liability in Azerbaijan and there is no power to confiscate property from criminal organisations or from legal persons; however, Article 23.4.1 of the Code on Administrative Infringements allows the confiscation of instruments used to commit an administrative violation.

179. There is no civil recovery of criminal property without conviction.

180. The exercise of the powers of attachment of property and confiscation are based on the evidence placed before the court and there is no reverse burden on the defendant to show the lawful origin of property.

2.3.2 Recommendations and comments

181. Given the absence of statistics on confiscation and provisional measures in respect of cases, it is unclear how widely used confiscation of criminal proceeds is beyond compensating victims. The evaluators nonetheless acknowledge that the sums taken are rising year on year. In this regard, it would assist the prosecution effort if the legislation clearly stated that "property" covers both direct and indirect proceeds of crime. It appeared to the evaluators that financial investigation, with a view to major confiscation orders, was not really embedded in practice beyond the predicate offence of corruption. It would assist if confiscation is legally available in respect of all predicate offences to money laundering (as defined in the Glossary to the FATF Recommendations) not only where the offences are committed in their aggravated forms, but also where they are committed in their basic forms. As confiscation is essentially discretionary, it would also assist if confiscation of criminal proceeds is made clearly mandatory in respect of some of the major proceeds-generating offences, like drug and human trafficking. It would also assist the confiscation regime if, in respect of certain serious proceeds-generating offences, consideration is given to reversing the burden of proof after conviction for the criminal offence, when the court is considering the lawful origin property in the hands of the convicted person.

182. Assets confiscated in corruption cases are administered by a commission and shared between

the investigation and operation divisions. This system does not apply to assets confiscated in other cases and Azerbaijan may wish to consider extending this provision to all cases.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**Partially compliant**	• 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.

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

2.4.1 Description and analysis

Freezing and, where appropriate, seizing under the relevant United Nations Resolutions

183. Freezing of funds used for financing of terrorism (SR.III) was explained as being implemented by appropriate Presidential Decrees, letters of the NBA (that are said to have the form of normative acts) to banks, the Civil Code, Article 307 of the Criminal Code, and the Law N° 687-1Q on "Fight against Terrorism".

184. For the implementation of UNSCR 1267 (1999) a special Decree 470 of 15 July 2000 of the President of the Azerbaijan Republic was adopted (Annex VI). The Civil Code provides for the arrest of money resources on accounts under the decision of the courts in cases stipulated by law. For the implementation of UNSCR 1373 (2001) Special Decrees 824 of 3 November 2001 and 920 of 11 May 2002 of the President of the Azerbaijan Republic were adopted (Annex VII). The Decree of 11 May 2002 includes a Plan and sets out the areas of responsibility for each Ministry and department and requires them to take action to implement the Plan. The two earlier decrees simply asked the relevant ministries and departments to make plans to implement the two UNSCRs. While in respect of UNSCR 1267, the United Nations Security Council 1267 Committee designates persons whose assets or funds are to be frozen, the ***evaluators*** were not advised of any competent authority for prompt designation of the persons and entities that should have their funds or other assets frozen, or which examines and, as appropriate, gives effect to the actions initiated under the freezing mechanisms of other jurisdictions in the context of UNSCR 1373.

185. The United Nations lists are forwarded to the MFA, which then pursuant to PD N° 920 distributes the lists, by way of the Cabinet, to the MNS, National Bank of Azerbaijan, Ministry of Finance, Customs Committee, Ministry of the Interior, Ministry of Justice, the Prosecutor General, the State Committee on Securities and the MOT. Lists of other countries (for example, the USA and Canada) are also circulated in the same way.

186. The NBA circulates the UN lists to the banks by a series of letters. The NBA referred to the three Presidential decrees as authority for sending the letters, however, the letters do not appear to have statutory authority and failing to comply with the letters does not carry a sanction.

187. Nevertheless, two bank accounts in respect of NPOs (humanitarian organisations) on the United Nations lists were frozen by a commercial bank some time before 2003 apparently without a court order on the basis of these letters. There have been no cases of freezing actions pursuant to the United Nations Resolutions since the last evaluation. The evaluators have seen two of the letters sent to the commercial banks, dated 6 November 2007 and 28 January 2008 (Annex VIII), the first of which refers back to earlier letters. They "require" the banks "under the appropriate legislation" to freeze any transactions that have any connections with persons mentioned in the lists and in case of such attempts report on this to the National Bank promptly. The letters only make reference to UNSCR 1267. There is no reference to 1373. It is unclear what the National Bank would do with any information provided other than seek through the prosecution a court freezing order.

188. Other parts of the financial sector were generally not aware of the UN lists and did not know that they were being circulated by the MFA. No freezing actions under the United Nations Resolutions have been taken by the non-banking financial sector.

189. The State Committee on Securities has issued non-sanctionable directions requiring financial intermediaries to submit relevant information within three days of transactions by terrorists and persons financing terrorism and the State Committee on Securities may then suspend conclusion or performance of the transactions, or apply to the court for them to be invalidated.

190. As noted above, the evaluation team was also referred to Article 307 of the Criminal Code, which imposes criminal liability for concealing or not reporting information about a crime before it is committed and to Article 6 of Law No. 687-IQ "on Fight against Terrorism" which requires all State and local self government bodies, organisations and public associations, officials and citizens to assist state agencies in fighting terrorism.

191. These Articles were referred to by the Azerbaijan authorities as underpinning the obligations under SR.III. No person has been prosecuted in respect of these provisions in the context of failure to comply with obligations under SR.III.

192. Both UNSCRs call upon countries to freeze funds or other assets without delay. It was unclear how rapidly the letters from the NBA are circulated to the banks. The letters provided seem to indicate that information is circulated only intermittently. With regard to other parts of the financial sector, there is no circulation by the authorities as far as could be ascertained. As to the freezing mechanism itself, the Azerbaijan authorities indicated that (notwithstanding that the pre-2003 freezing orders were apparently made without court intervention) freezing pursuant to SR.III would be based on a "court decision"; presumably on the initiative of the authorities after the first "freeze" by the banks. They also advised that Article 249.5 of the Code of Criminal Procedure could be used in cases of emergency. This permits an investigator to attach property without a court decision where there is precise information indicating that the person who "committed the offence" may destroy or otherwise misappropriate property.

193. Even if the requirements to check lists and to freeze funds or other assets is made known to the financial sector by the authorities, there is no guidance on what is meant by funds and other assets. The NBA letters speak only of transactions and not funds. While the last Presidential Decree makes some mention of this issue, no competent authority has explained to the financial sector the width of "funds or other assets" in the context of the UNSCRs. In particular it would be unclear to the financial sector (given that the extended concept of beneficial owner is not clearly provided for in the preventive regime – see Section 3 of this report) that the definition should include all

funds or other assets wholly or jointly owned or controlled, directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations and funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. A clear legal obligation to freeze all "funds or other assets" as they are widely defined in the context of SR.III is required.

194. The evaluators were not advised of any guidance that had been issued, other than the letters to the banks, that might cover the Criteria III.5 and III.6 (dealing generally with guidance to the financial sector). In any event, the NBA letters are not ready guidance – they simply request action without any further elaboration.

195. There were no effective and publicly known procedures for considering de-listing requests or for unfreezing the funds or other assets of de-listed persons.

196. With regard to "false positives", pseudonyms, etc. there is no special procedure, of which the ***evaluators*** are aware, for unfreezing the assets of persons inadvertently affected by the freezing mechanisms upon verification that the person or entity is not a designated person other than recourse to the Code of Criminal Procedure. Assuming a court process is not used for freezings, as apparently was the case before 2003 with regard to some NPOs on the United Nations lists, it is unclear what unfreezing mechanism would apply in such a case where a person who has not actually been designated has his assets wrongly frozen by a non-court procedure.

197. No special procedures have been put in place for liaison etc. with the United Nations for authorising access to funds frozen pursuant to UNSCR 1267, which have been determined to be necessary for basic offences, or for certain types of fees, expenses and service charges or for extraordinary expenses (in accordance with S/RES/1452 (2002)).

198. The Azerbaijan authorities indicated generally on challenges and review by a court of designations, that the Constitution ensures the rights of every citizen and violations by State bodies of the rights of the citizen would be settled by the courts of law.

Freezing, seizing and confiscation in other circumstances

199. As noted under Recommendation 3 the Code of Criminal Procedure makes provision for freezing, seizing and confiscation of property obtained through criminal acts. The offence of financing of terrorism carries confiscation of property as an additional penalty. The confiscation provision in the financing of terrorism offence has not been tested in the courts. Such property may not be acquired as a result of criminal offences, as property used for financing of terrorism can come from legitimate or illegitimate sources. If it was argued that the property should not be confiscated as it was not criminally obtained property, it is assumed that such property would be subject under Article 51 Criminal Code to confiscation as either the "instruments or means" used by the defendant to commit the financing of terrorism offence or as "criminal items". The width of the current basis for criminalisation of financing of terrorism has been commented on earlier. The comments on the width of the confiscation regime in respect of indirect proceeds are also relevant in this context and the advice that the confiscation legislation should clearly cover indirect proceeds is equally applicable here. There would appear to be adequate provision for the tracing of property liable to confiscation in the financing of terrorism context.

200. There are no other procedures for seizing, freezing or confiscating terrorist property under other statutory provisions of which the evaluators are aware.

General provisions

201. The rights of *bona fide* third Parties need to be consistent with the standards provided in Article 8 (5) of the Terrorist Financing Convention (i.e. without prejudice to the rights of third Parties acting in good faith). As the Azerbaijan authorities indicate that the procedure would ultimately be court based, the third Party rights of litigation on confiscation orders referred to in the context of R.3 (Chapter XIX Code of Criminal Procedure) are thought to apply. Though how this would work if there was simply an administrative freezing by the financial institutions themselves is unclear.

202. There did not appear to be provision for monitoring compliance with the provisions of SR.III by the financial institutions or a system of civil or administrative sanctions for failure to comply. The possible criminal sanction referred to in paragraphs 196-197 above (if applicable in this context) would be better supported by a system of graduated civil or administrative fines, leaving criminal proceedings as the last resort. No inspections were referred to by the regulators on this point and no financial sanctions have been issued in this context. It was, however, noted that two bank accounts in respect of NPOs (humanitarian organisations) on the United Nations lists were frozen by a commercial bank before 2003 without a court order on the basis of letters of the National Bank. There are no reports of freezing actions being taken pursuant to the United Nations Security Council Resolutions since the last evaluation.

Additional Elements

203. In the absence of a solid and comprehensive legal structure for dealing with SR.III, it was uncertain whether the Azerbaijan authorities had addressed at all the issues in the Best Practices Paper. It appeared to the evaluators that of the five general types of issue outlined most were unaddressed. Some examples suffice: No consideration had been given to presenting lists of designations in a user friendly manner. On establishing effective regimes for competent authorities and courts there is: no clear competent authority for designations under 1373. If the procedure is intended to be court based, there is no clearly accountable competent court for these measures. There are no publicly known de-listing procedures for considering new arguments, and no consideration of "hold harmless" or public indemnity. On facilitating communication with foreign governments and international institutions, it was unclear if consideration had been given to any system for rapid pre-notification of pending designations. On facilitating co-operation with the private sector, there was no process of responding to inquiries on homonyms or guidance on permitted transactions in administering frozen funds or assets. Procedures to authorise access to funds or other assets that were frozen pursuant to S/RES/1373 (2001) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses have not been implemented.

2.4.2 Recommendations and comments

204. A partial, basically non-sanctionable system is in operation in the banking sector founded on the Presidential Decrees and the NBA letters to the banks, though even this limited requirement appears to be confined to UNSCR 1267. The Azerbaijan authorities should carefully review the requirements that both the UNSCRs place upon them. A comprehensive and transparent legal structure now needs to be put in place which ensures that all the financial sector receives designations and understand their obligations under UNSCR 1267 and 1373.

205. There should be a mechanism for conversion into Azerbaijan Law of designations under UNSCR 1267 and in the context of UNSCR 1373.

206. Specifically, there should be a clear national authority for designations under 1373 and for consideration of foreign requests for designations. This mechanism must assess without delay

whether reasonable grounds or a reasonable basis exists to initiate in Azerbaijan a freezing action (and subsequent freezing of funds or other assets) in respect of persons designated by third countries.

207. All designations under 1267 and 1373 should be communicated promptly to all parts of the financial sector.

208. All parts of the financial sector which may hold targeted funds need clear guidance on the wide meaning of funds or other assets in the context of SR.III, as defined in Criterion III.4.

209. As well as understanding that the obligation to freeze goes beyond transactions, all the financial sector need to understand whether the system is administrative in the sense that they are positively required to take initial freezing actions themselves, or whether they should simply notify an authority of a match with a view to an application by the competent authorities for a freezing order from the courts.

210. There needs to be publicly known procedures for de-listing and unfreezing and for those inadvertently affected by freezing mechanisms.

211. If the system ultimately is intended to be court based, linked to criminal process, it may be less than effective. It may be impossible to prosecute some designated persons for financing of terrorism (or any other criminal) offences, and a freeze cannot in such circumstances be sustained indefinitely, where a criminal case proves not to be possible. While the Best Practices Paper contemplates the adoption of judicial, as well as executive or administrative procedures for freezing funds under the UNSCRs, the Azerbaijan authorities may wish to consider the merits of a more administrative procedure for handling SR.III in its entirety, subject to proper safeguards (especially with regard to *bona fide* third Parties).

212. All supervisors should be actively checking compliance with SR.III and sanctions should be available (to be applied by the supervisors) for non-compliance. The lack of any recent freezing orders under SR.III indicated to the evaluators that the system, as far as it goes, is not working effectively.

213. Dedicated AML/CFT legislation is required that imposes duties on the Regulated Sector with sanctions in the event of non-compliance.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**Non compliant**	• 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.

Authorities

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

2.5.1 Description and analysis

214. There is no FIU as an independent national centre for receiving, analysing and disseminating disclosures of STRs. The evaluators were advised that its establishment will be possible only after the adoption of the draft law. It was unclear at the time of the on-site visit where that unit would be housed.

215. There is a special unit - AML Division within the NBA that has some shadow functions of an FIU. This Division was set up in 2007. It has 3 staff. Two are former employees of the Ministry of Justice and the other is specialised in economic AML/CFT activities. The Director of the Division is a member of the Experts Group reporting to the Cabinet of Ministers. They have computers and updated software, and have had AML and CFT training. An extract from their statute is set out beneath: The Statute of the Department of Supervision is annexed (Annex III).

216. The evaluators were advised that a mandatory letter (See Annex IX) was sent to all the banks by the NBA AML Division providing them with guidance regarding the procedure for the reporting system. However, the mandatory letters that were provided to the evaluators do not cover concrete procedures of reporting, manner of reporting and specifications on reporting. After interviews with representatives of one of the biggest commercial banks in Azerbaijan, it appeared that they were unaware about an STR system and reporting obligations.

217. The NBA AML Division has full and direct access to any data collected or kept in the NBA. The obtaining of information from any other authority is possible through official requests to the information from that authority. It was unclear how many requests had been made to other authorities in the course of analysis. In any event, the NBA AML Division has no access to law enforcement information. The AML division is also said to be entitled to request and acquire further information from a reporting party, though the provision relied upon (article 52 of the Law "On National Bank"), relates only to exchange of information for supervisory purposes.

218. Most of the disseminated reports are said to go to the Ministry of National Security, and the remainder to the Ministry of Internal Affairs. It was indicated that the AML Division had received about 500 reports and disseminated 24 of them to law enforcement.

219. The NBA AML Division is directly subordinated to the NBA management. The independence of the AML Division is a source of concern. As a result of the full integration of the NBA AML Division into the NBA management structure, the AML Division has limited decision making powers. For forwarding a case for further inquiry/investigation, or exchanging information, the decision of the NBA Director or Deputy Director is needed. The Azerbaijan authorities indicated that "as a rule" the decisions of the AML Division were not disputed.

220. The evaluators were told that no other body in NBA has any direct or indirect access to information held by the AML Division. However, there are no provisions which regulate precisely the handling of information on STRs collected by the NBA AML Division. It was unclear if there really is a distinction between information held by the NBA AML Division and NBA itself, which might imply that all information collected by the AML Division is available to other NBA departments.

221. There is no legal requirement for the NBA AML Division to publish a periodic report and none have been produced.

222. The team was told that, as soon as the FIU (as a national centre) is created, the Government will consider whether the FIU should apply for membership in the Egmont Group.

2.5.2 Recommendations and comments

223. The evaluation team recommends the creation of an FIU as a matter of urgency. The FIU should be adequately structured, funded and staffed, and provided with sufficient technical and other resources to fully perform its functions. The FIU should have access to relevant registers, and it should be authorised to disseminate financial information and other intelligence both to the national law enforcement authorities and to foreign FIUs. Together with the creation of an FIU the evaluators also recommend the introduction of a legal obligation for financial intermediaries to report suspicious transactions and activity to the FIU. The FIU should keep adequate statistics on received suspicious transaction reports as well as on requests for assistance.

2.5.3 Compliance with Recommendations 26

	Rating	Summary of factors underlying rating
R.26	**Non compliant**	• There is no FIU that meets international standards.

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

2.6.1 Description and analysis

Recommendation 27

The General Prosecutors Office

224. According to Article 215 of the Code of Criminal Procedure the investigation of the money laundering offence shall be carried out by the Prosecutor's Office. According to Article 19 of the Law on "Fight against terrorism" (of 18 June 1998) the Prosecutor General of the Republic of Azerbaijan and his subordinate prosecutors also conduct control over the legality of the fight against terrorism. There are 1200 prosecutors in the General Prosecutor's Office.

225. The Constitution of the Republic of Azerbaijan defines the Prosecutor's Office as a united centralised authority, which consists of local and specialised prosecutor departments under the

supervision of the Prosecutor General. According to the "Law on Prosecutor's Office" of 7 December 1999, the main functions of the Prosecutor's Office are:

- Supervision over the execution and implementation of legislation in certain circumstances;
- Investigation of criminal cases and procedural supervision over initial investigation;
- Supervision over execution and implementation of laws in investigations and detective-search activities;
- State prosecution in criminal cases.

226. In accordance with the "Act on changes in Constitution of the Republic of Azerbaijan" of 19 September 2002, the Prosecutor's Office also has a right of legislative initiative.

227. Pursuant to the Presidential Decree (28 October 2004) on implementation of the Law on Fight against Corruption, a Department to tackle corruption was established under the Prosecutor General of the Republic of Azerbaijan. The structure of the Anti–Corruption Department under the Prosecutor General of the Republic of Azerbaijan includes:

- Investigation Division;
- Analytical–Information Division;
- Internal Examinations Division.

228. The staff of the Department officially consists of 40 prosecutor positions. At present 26 prosecutors work in the Department. The main responsibilities of this Department are the examination of information on corruption infringements, institution of criminal liability on corruption and its investigation.

229. Among the other functions of this Department special attention is said to be paid to AML matters. But it appeared to the evaluators when they met this Department that they are mostly focused on corruption issues.

230. The team also met with prosecutors from the General Prosecution Superintendence Department. The staff of the Department officially consists of 40 prosecutor positions. At present 26 prosecutors work in the Department. The evaluators were advised that they had not been involved in any AML enquiry or investigation although all operational search activities have to be conducted under the supervision of the prosecutor. The General Prosecutor can investigate cases without using the Law on Detective Search Activities. Where there is necessity to use these provisions the General Prosecutor can call upon the Ministry of Internal Affairs or the Ministry of National Security.

The Ministry of National Security

231. In 2004 a new Department was also established within the Ministry of National Security.

232. Among the main functions of this body are:

- Intelligence gathering;
- Revealing, pre-empting and preventing terror and subversion;
- Other criminal activities of criminal groups and individuals;
- Fighting against international terrorism and other forms of transnational organised crime;

233. Their work includes:

- fulfilling of courts decisions on the conduct of detective-search measures;

- in cooperation with other state bodies, conducting struggle against smuggling, illegal circulation of technical equipment for illegally obtaining information;
- investigations with drugs, psychotropic substances and precursors and toxic, poisonous, radioactive, explosive substances.

234. The representatives from the Ministry of National Security advised that under current arrangements they are not responsible for AML investigations, which they noted should be done by the General Prosecutor's Office as this responsibility belongs to him. If they detected money laundering in their routine work, they would send the information to the General Prosecutor's Office. STRs from the NBA were, however, received by the Transnational Organisational Crime Division in the Ministry of National Security. They had used operational search activities when they had investigated STRs received by their Ministry from the NBA, and other sources. They indicated that they do preliminary investigations in money laundering and financing of terrorism. They indicated that they would send their results to the Prosecutor, who may send the case back to them for full enquiry or handle it himself, sometimes involving them. They had received 24 STRs. A number of them were still under investigation. Some had resulted in cases of financial fraud, forgery or drugs offences rather than money laundering or the financing of terrorism. They appeared to have no specific focus on following the money in investigations with a view to money laundering offences. They had experienced no difficulties in obtaining financial information.

The Ministry of Taxes

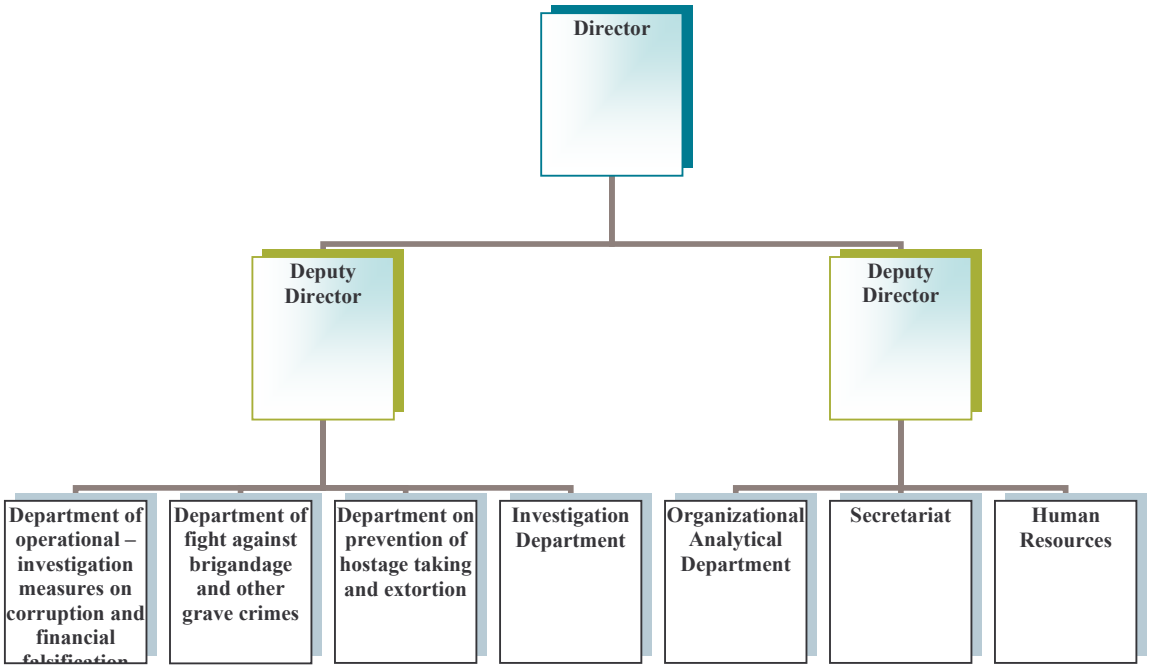
235. The Ministry of Taxes is a law enforcement institution, and deals mainly with illegal ownership and tax evasion. After 2002 by Presidential Decree they deal with corruption as well, if it appears in course of investigation of tax crimes. Ministry of Taxes is the central executive power authority ensuring the implementation of state tax policy. According to the paragraph 9.9.1 of the Statute of the Ministry of Taxes, they did not think that money laundering was part of their competence and had no practice of following the money in their investigations.

236. Thus all representatives of the Ministry of National Security, Ministry of Taxes generally consider that AML investigations must be done by the General Prosecutor's Office. If there are indications of AML, they would send the information to the General Prosecutor's Office.

The Ministry of Internal Affairs

237. The team also met with the Ministry of Internal Affairs Department on Organised Crime, which is responsible for national and transnational organised crime.

238. The diagram beneath shows the structure of the Department of Organised Crime within the Ministry of Internal Affairs.



239. The Corruption and Financial Crime Department support the work of the Anti-Corruption Centre in the General Prosecutor's Office. 142 criminal cases of corruption and 133 cases of abuse of power were being investigated. Again, money laundering investigation was not a major priority. Neither was focusing on the financial aspects of the investigations they undertake.

Law enforcement powers

240. In the context of Criterion 27.2, it appears that even if not formally regulated outside of the provisions of S.10 of the Law on Detective Search Activity (which allow for "person shadowing" and controlled delivery) there is no legal impediment against using the technique of waiving or postponing coercive procedural measures like arrest and seizure for the purpose of evidence gathering.

Additional elements

241. As noted, special investigative techniques including controlled delivery and undercover operations can be performed.

242. A full table of investigative actions which can be taken by law enforcement bodies (and any required consents) is set out beneath.

Investigative means as set out in the Law on detective search	Law Enforcement body entitled to use technique	Consent required
1. citizen enquiry	All investigative bodies incl. General Prosecution	No
2. making inquiries	All investigative bodies incl. General Prosecution	No
3. wire tapping	Ministry of National Security, Ministry of Internal Affairs	Yes (based on court decision)
4. examination of post, telegraph and other communication facilities	Ministry of National Security (State Customs Committee as well)	Yes (based on court decision)
5. exclusion of the information	Ministry of National	Yes (based on court

from communication channels and other technical facilities	Security (State Customs Committee as well)	decision)
6. examination of prisoners mail	Ministry of Justice	No
7. transport facilities check-up	All investigative bodies incl. General Prosecution	No
8. access to buildings, as well as apartments, other constructions and standings, and their examination	All investigative bodies incl. General Prosecution	Yes (based on court decision)
9. observation of buildings, as well as apartments, other constructions, standings, transport and other facilities	Ministry of National Security, Ministry of Internal Affairs, State Border Service	No
10. shadowing individuals	Ministry of National Security, Ministry of Internal Affairs, State Border Service	Yes (based on court decision)
11. identification of individuals	All investigative bodies incl. General Prosecution	No
12. controlled purchasing	All investigative bodies incl. General Prosecution	No
13. examination of objects and documents	All investigative bodies incl. General Prosecution	No
14. calculation of examples for compared analysis	All investigative bodies incl. General Prosecution	No
15. controlled delivery	All investigative bodies incl. General Prosecution	No
16. inclusion into criminal groups or criminogenic objects	All investigative bodies incl. General Prosecution	No
17. establishment of a legal person	Ministry of National Security, Ministry of Internal Affairs	No
18. conducting of operational experiment	All investigative bodies incl. General Prosecution	No

243. However, if there are sufficient grounds, as defined by the legislation of the Republic of Azerbaijan, the relevant law enforcement body shall be able to undertake the following activities without a court decision:

1) in order to prevent serious crimes being committed against individuals or against the state it is permissible to utilise wire tapping, control of mail, telegraph and other communication means, to extract information from technical communication channels, as well as shadowing of individuals;
2) entering of buildings, as well as other places with a view of arresting persons who are preparing to commit a crime, committing a crime, or escaping from prison or pre-trial detention, or prevention of activities which could cause fire, explosion or damage public security.

244. In the above mentioned circumstances the law enforcement body is required to submit a report within 48 hours to the relevant judicial authority which conducts judicial supervision and to the prosecutor who conducts the procedural management over the preliminary investigation.

Recommendation 28

245. According to Article 85.4.1 of the Code of Criminal Procedure of the Republic of Azerbaijan the investigator can make a reasoned request to the prosecutor, who, if he agrees, can apply for a Court Order to obtain financial information at all stages of the procedure. In accordance with art. 177.3.6 Code of Criminal Procedure for the obtaining of information about financial transactions, bank accounts or commercial secrets a court decision can be requested by any of the following investigatory bodies: *General Prosecutor Office, Ministry of Internal Affairs, Ministry of National Security, Ministry of Justice, Ministry of Taxes, State Customs Committee and State Border Service.* As noted earlier, law enforcement generally indicated to the evaluators that this issue has not presented problems.

246. The legal power to take witness statements as necessary in investigations, including money laundering, financing of terrorism and predicate offences, is a basic prerogative of all law enforcement bodies, including the Prosecutor's Office on the basis of the Criminal Procedural Code. When taking a statement from a suspect the investigator must advise him of the fact that he is a suspect and of his right to silence and counsel in accordance with the Law On Detective–Search Activity.

Recommendation 30

247. It is unclear whether law enforcement has adequate resources to tackle money laundering and financing of terrorism effectively. While the numbers of law enforcement officers overall are adequate, those with any real training in AML/CFT issues are too small. The evaluators heard that some training courses had been arranged by the US Embassy, but not enough is being done to train investigators, prosecutors, and judges of the importance of the money laundering offence, evidential issues connected with it and modern financial investigative techniques.

248. Agents of law enforcement and the General Prosecutor's office are required to be operationally independent by virtue of the Decree of the President of the Republic Azerbaijan "On distribution of authority in implementation of investigation and search actions" dated 19 June 2001.

Additional elements

249. There are no special training or educational programmes provided for judges and courts concerning money laundering and financing of terrorism and seizure, freezing and confiscation.

Recommendation 32

250. On the law enforcement side generally there are few relevant statistics kept.

2.6.2 Recommendations and comments

251. In the absence of any ongoing money laundering investigations, the effectiveness of the law enforcement effort in this area must be questioned. It is unclear who has the lead in AML/CFT. The general competence 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, but the reviewers were not told of any current terrorism investigations or prosecutions arising from reports from the NBA. 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. Attention will need to be given to the numbers and training of staff when the FIU is fully established, however, the overall impression was that law enforcement is adequately resourced.

252. Clearly the STR regime, such as it is, is not generating cases. It would be helpful if one agency is clearly tasked with the receipt and investigation of STRs when the Draft law is passed. At the very least, if the present arrangements are retained, all STRs should be copied to the General Prosecutor so that he can actively co-ordinate their investigation. The practice of sending the STRs to the Ministry of National Security seemed to be determined by the perception that they had more resources, even though their work is largely intelligence based.

253. The real problem is that there is no proactive money laundering investigation by law enforcement bodies, independent of the rudimentary STR regime.

254. All investigation bodies responsible for detection and investigation of proceeds-generating cases need to be sensitised to the importance of the financial aspects of these cases. As noted above, a concerted effort should be made now to raise awareness of the law enforcement community that money laundering is not just an adjunct to corruption cases, but that through money laundering investigations more success can be achieved in confiscation of the real indirect profits made by organised crime. To this end law enforcement and prosecutors need more training on evidential issues in money laundering cases, including specialised training in asset tracing and confiscation, perhaps looking at how prosecutors in other jurisdictions tackle some of the difficult evidential issues in these cases. Moreover, as noted in Section 2 of this report, a fresh approach to autonomous money laundering urgently needs to be developed – one which does not call for a prior conviction for the predicate offence in money laundering cases.

255. Much more should also be done to train the major investigators in modern financial investigation techniques, which will uncover laundering cases. In major cases, where the prosecutor is asked by the Police to obtain a court decision concerning coercive measures, the prosecutor should proactively consider the classification of the case – whether the case should be considered not just as one where the predicate offence only is investigated, but it is recommended that he should advise investigators, in appropriate cases, to pursue the money laundering aspects. The mindset of law enforcement and prosecutors which concentrates only on the predicate offence, whether it is corruption, drug or human trafficking, without considering the money laundering aspects needs to be changed if any real success in this area is to be achieved now that the money laundering offence has been extended beyond the drugs predicate.

2.6.3 Compliance with FATF Recommendations 27 and 28

	Rating	Summary of factors underlying rating
R.27	**Partially compliant**	• 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).
R.28	**Largely compliant**	• The effectiveness of available powers has not been tested in money laundering or combating the financing of terrorism investigations and

		prosecutions.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

256. As noted earlier, the State Customs Committee is a law enforcement body. Its officers are able to conduct all the actions provided for in the Law on Detective-Search Activity. Their main investigatory competences are smuggling, Customs violations and other related infringements. They do not investigate money laundering or financing of terrorism. With regard to smuggling, they have had some noteworthy successes.

257. The State Customs Committee staff of 300 persons are deployed mainly at major border crossing points. The State Customs Committee consists of the following main departments:

- Customs Control
- Fight against Infringements in Customs Matters
- Financial and Currency Control
- Statistics and IT
- Audit and Risk Analysis
- HR
- Investigations
- International Cooperation
- Legal
- Analysis.

258. The Department of Fight against Infringements in Customs Matters and The Department of Investigations are involved in the fight against smuggling and other related infringements. The Department of Fight against Offences in Customs Matters has its divisions in all Regional Customs Departments.

259. Pursuant to the "Regulations on bringing currency valuables by natural persons into and taking out from the Republic of Azerbaijan" there is a declaration system in place. According to the Law "On Currency Regulation" the term "currency valuables" includes:

- foreign currency;
- all kinds of securities (including bearer instruments) – payment documents (cheques, promissory notes, credit letters, etc.), stocks, loans and other debit obligations;
- precious metals;
- precious stones.

The Azerbaijani authorities confirmed that the transportation of currency by shipment through containerised cargo and the mailing of currency is forbidden.

260. According to the article 15 of the Law "On Currency Regulation" the State Customs Committee is the competent authority which carries out control over the carriage of national and foreign currency, as well as other currency valuables by Azerbaijan citizens and non-nationals through the customs borders of the Republic of Azerbaijan. Precise thresholds regarding the carriage of currency valuables in cash are indicated in the "Regulations on bringing currency valuables by natural persons into and taking out from Azerbaijan Republic".

261. In accordance with above mentioned Regulations, terms for the carriage of "currency valuables" in cash are as follows:

Residents:

Incoming:

USD 1 – USD 10`000	shall be declared and registered by "Passenger Customs Declaration"
above USD 10`000	shall be declared and a "Passenger Customs Declaration", together with a "Customs Certificate", certifying that the sum has been brought to Azerbaijan in cash, must be submitted.

Outgoing:

USD 1 – USD 10`000	shall be declared
USD 10`000 – USD 50`000 **(if brought by cash)**	shall be declared and a "Passenger Customs Declaration" together with a "Customs Certificate" certifying that the sum has been brought to Azerbaijan in cash must be submitted
USD 10`000 – USD 50`000 **(if transferred by bank)**	shall be declared and a "Reference letter on payment of foreign currency valuables transferred to the Republic of Azerbaijan before" must be submitted
above USD 50`000	by bank transaction only (by providing appropriate bank reference letter certifying cash payment of the amount to the same person)

Non-residents

Incoming:

USD 1 – USD 10`000	shall be declared and registered by a "Passenger Customs Declaration"
above USD 10`000	shall be declared and a "Passenger Customs Declaration" together with a "Customs Certificate" certifying that the sum has been brought to Azerbaijan in cash must be submitted

Outgoing:

USD 1 – USD 1`000	No requirement for declaration
USD 1`000 – USD 10`000	shall be declared and a "Passenger Customs Declaration" certifying that the sum has been brought to Azerbaijan in cash must be submitted
USD 10`000 – USD 50`000 **(if brought by cash)**	shall be declared and a "Passenger Customs Declaration", as well as a "Customs Certificate" certifying that the sum has been brought to Azerbaijan in cash must be submitted
USD 1`000 – USD 50`000 **(if transferred by bank)**	shall be declared and a "Reference letter on payment of foreign currency valuables transferred to the Republic of Azerbaijan before" must be submitted
above USD 50`000	by bank transaction only (by providing appropriate bank reference letter certifying cash payment of the amount to the same person)

262. Upon discovery of a false declaration or a failure to make a declaration, the Customs authorities have the authority to request and obtain further information from the carrier with regard to the origin of the currency etc. or its intended use. They can check information in the

Customs declaration and the submitted documents and request additional documents. Failure to declare or the making of a false declaration of currency and valuables is a ground for criminal or administrative liability.

263. Non declaration or false declaration of currency or goods carries administrative penalties under Article 261.1 of the Code of Administrative Infringements of confiscation of the property (in case of small amounts) or a penalty equivalent to between 30% and 100% of its value. The Customs agencies are entitled to seize currency or currency valuables from offenders for investigation purposes.

264. The criminal offence of smuggling applies where large amounts of goods or currency are moved through the Customs border through concealment or the use of false documents. "large amount" means more than 4,400 AZN.

265. Between 2003 and 2007, 573,089 US$, 5,800 counterfeit US Dollars, 250,000 Euros, more than 14,7 million Russian Roubles, 55 kilograms of gold and silver and more than 371 kilograms of silver and jewellery in large amounts have been confiscated for infringing the Customs rules. In 2007 5,000 violations were the subject of administrative procedures of which 200 resulted in criminal cases.

266. Pursuant to the Code of Administrative Infringements (article 399) persons who violate the state border control (including customs regime, border-patrol troops regime or rules applied for points of passage through the state border of the Republic of Azerbaijan) may be arrested for a period of up to 24 hours in order to clarify the circumstances of the administrative violation and for identification or, by the decision of a judge, for a period of up to 3 days in the absence of any identification documents.

267. According to the Criminal Procedural Code (article 148), in circumstances provided for in the Code, the person may be detained before the start of a criminal investigation. If no decision to start the criminal investigation is taken within 24 hours of the person being detained, the person shall be released immediately. Even if a decision to commence a criminal investigation is taken, the detention of the person may not exceed 48 hours. The detained person shall be charged within 48 hours of being taken into custody and shall be brought before a court; the court shall examine the case without delay and decide between arrest as a restraining measure or release.

268. 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, they also do not have a formal requirement upon them to report suspicions of money laundering and financing of terrorism to other law enforcement authorities (especially the General Prosecutor's Office).

269. The Azerbaijani authorities indicated that, according to Article 215.9 of the Criminal Procedural Code in a case of suspicion of money laundering or financing terrorism, Customs (as other agencies) shall refer the suspected person and the collected materials to the appropriate authority which has the power to investigate money laundering or financing terrorism cases, i.e. Prosecutors Office or Ministry of National Security.

270. Reports based on the declarations on imported and exported foreign currency are made to the NBA on a monthly basis (the total sum of each currency above US$ 10,000). Imported currency of above US$ 50,000 is reported to the NBA.

271. The Government and the State Customs Committee of the Republic of Azerbaijan has signed bilateral and multilateral agreements, protocols, memoranda with Customs Services of more than 30 countries and with a number of international organisations. The State Customs Committee co-operates with World Customs Organisation, Interpol, World Health Organisation, Organisation of World Intellectual Property, GUAM and other international institutions.

272. Azerbaijan is also Party to International Convention on mutual administrative assistance in the prevention, investigation and reduction of customs infringements.

273. The State Customs Committee executes requests and exchanges information with Customs Services of other States and international organisations. For the year 2007 more than 120 requests were received and executed.

274. The State Customs Committee also co-operates with the International Customs Organisation and carries out information exchange with its all member States custom services, via law enforcement networks.

275. The reports on cross border transactions are filed manually and then inputted into a computer system. It was understood that the information was nonetheless strictly secured. A project known as the "conception of an automated management system" has been approved, and established. The main aims of the project are the establishment of a centralised information database, application of new IT methods, creation of an on-line exchange of information with national and foreign partners, and the rapid determination of the main reasons for customs regulation violations.

Additional elements

276. The Azerbaijan authorities indicated that they were aware of the Best Practices document and they considered that they had been generally included in relevant laws and daily practice.

2.7.2 Recommendations and comments

277. Customs appear to be generally effective in what they do. There is, however, a need for measures to strengthen the capacity of Customs to detect funds possibly linked with money laundering and financing of terrorism. There is no formal requirement on them to provide reports about their suspicions in this area to any other law enforcement authority. Given that they have no competence currently to investigate money laundering or financing of terrorism, this is unfortunate. They should be provided with indicators to detect money laundering and financing of terrorism and have clear power to detain persons such as cash couriers where money laundering or financing of terrorism is suspected (in the absence of a breach of Customs Rules) for sufficient time to question those persons on money laundering / financing of terrorism, before handing them over to other authorities. The competence of Customs to investigate money laundering and financing of terrorism, which is discovered in the context of their work, should be reviewed. It would assist the national effort if they were empowered to conduct preliminary enquiries in this area at least before handing cases over to the General Prosecutor.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**Partially compliant**	• 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 or financing of terrorism. • No reporting requirement on suspicions of AML/CFT to other law enforcement bodies or the NBA (effectiveness issue).

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

278. Primary legislation in Azerbaijan includes *inter alia* the "Law on the National Bank", "Law on Banks", "Law on Insurance Activity", "Law on Credit Unions". 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.

279. CDD measures for financial institutions are covered (to some limited extent) by the following normative acts: "Law on Banks", Regulations issued by the National Bank ("Regulations on Implementation of Cash Transactions and Collection of Payments of Valuables in the Credit Organisations of the Republic of Azerbaijan", "Regulations on Cashless settlements and money transfers in the Republic of Azerbaijan", "Regulations on Opening, Carrying Out and Closing of Accounts in Banks", "Regulations on Regime of Resident and Non-resident's Currency Transactions in the Republic of Azerbaijan"), Law on Insurance Activity, and the "Regulations on broker activity in securities market" issued by the State Committee on Securities . The evaluators noted that any regulation of the NBA which is issued pursuant to article 8 is subject to registration with the Ministry of Justice before this can become legally enforceable.

280. The evaluators considered whether what are described as regulations in Azerbaijan can be technically considered to be regulations within the meaning of the AML/CFT Methodology definition of "law or regulation", which refers to primary and secondary legislation such as laws, decrees, implementing regulations or other similar requirements issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. The NBA regulations have the force of law when they are registered with the Ministry of Justice. There is no explicit power to issue specific AML (or CFT) regulations anywhere in a statute. The Law on the National Bank in A.8.1 provides that : "the National Bank shall independently develop and issue normative legal acts within the area of its authority." In line with other MONEYVAL reports, it is firstly considered that such a general delegating power is insufficient to amount to a "regulation" in the Methodology sense, which has been authorised by a legislative body. The evaluators accept that the requirements of Azerbaijan NBA Regulations are mandatory and are considered to be sanctionable. The only other relevant Regulation is issued by the State Securities Committee under, the evaluators have been advised, their charter which was approved by Presidential Decree. The evaluators have concluded that all these 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 satisfy the criteria because they are not specifically issued or authorised by a legislative body. In practice, the issue is academic as the difficulties the evaluators 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 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.

281. Based on the "Law on the National Bank" (Annex X) which designated the NBA as the supervisory body for banks, the NBA also issued the "Methodological Guidance On The Prevention Of The Legalization Of Illegally Obtained Funds Or Other Property Through Banking System" (Annex XI). This Methodological Guidance (which is not registered at the Ministry of Justice) includes "*recommendations on the legal mechanisms (which are also related to the counter-terrorism measures) of the prevention of the legalization of illegally obtained funds or other property through the banks functioning under the jurisdiction of the Republic of Azerbaijan, their offices and branches, as well as local branches of the foreign banks"*. The Methodological guidance goes on to say *"this Methodological Guidance includes the minimum of the activities*

against the legalisation of illegally obtained funds or other property and provides the banks with the opportunity to undertake additional measures". They also pointed to A.42 of the Law on Banks (Annex XV). This provision headed "prevention of money laundering" has 2 provisions – A.42.1 dealing with customer identification (see para 298 beneath) and A.42.2 which provides "for prevention of ML in the banks, other provisions of the legislation of the Azerbaijan Republic may be applied in addition to those stipulated under A.42.1 of this Law". The evaluators do not see this provision as a legal basis for issuing the Methodological Guidance generally on ML issues and specifically on TF issues, as CFT is not referred to at all in this provision. 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. Clearly, the Methodological Guidance is not law. The Azerbaijani authorities concede that neither is it a Regulation, though they considered it a regulation in all but name. The Azerbaijani authorities therefore consider the Methodological Guidance to be "other enforceable means". The evaluators do not accept this argument. They consider the language is too permissive and does not, when examined, create binding obligations, which are understood as such. During the discussions with the industry representatives it was apparent that the Methodological Guidance is treated as a recommendation. The evaluators consider also 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 the team has concluded that the Methodological Guidance does not amount to "other enforceable means".

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

282. At the time of the on-site visit there was no basic legal provision in place in the country as the AML law was not yet adopted. Thus it is obvious that not having the legal basis for AML/CFT issues in place one must conclude that the AML/CFT framework of Azerbaijan cannot be based on a risk assessment, as it does not exist in fact.

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

3.2.1 Description and analysis

Recommendation 5

283. As there is still no comprehensive legal basis for AML/CFT issues in Azerbaijan, no essential preventive measures are covered. The NBA has, as noted, promulgated several documents (Rules and Regulations) under provision of Law on National Bank (Art 8.1 "*The National Bank shall independently develop and issue normative legal acts within the area of its authority; these acts shall be binding on all banks, non-banking credit institutions, and other persons*"; Art 8.2. "*Normative legal acts of the National Bank shall be subject to state registration in the order specified by legislation*"). These Rules and Regulations include some of the basic elements of CDD.

284. The CDD measures in the financial organisations to some extent are covered by the "Law on Banks" (necessity to identify each customer the bank is serving), "Regulations on Implementation of Cash Transactions and Collection of Payments of Valuables in the Credit Organisations of the Republic of Azerbaijan", "Regulations on Cashless settlements and money transfers in the Republic of Azerbaijan" (details that have to be included in the payment include also payer's and recipient's name and "other details"), "Regulations on Opening, Carrying Out and Closing of Accounts in Banks" (application for opening an account is needed plus ID document which is taken to verify the identification information and signature in the application), "Regulations on

Regime of Resident and Non-resident's Currency Transactions in the Republic of Azerbaijan" (to some extent – p. 4.4. name, patronymic, surname, ID card details of the person who is paying and who is receiving the payment for currency withdrawal or transferring foreign currency to Azerbaijan from abroad), Law on Insurance Activity (require the copy of the document, confirming state and tax registration for legal person or copy of the identification card or passport for natural person). For the securities sector only the "Regulations on broker activity in securities market" contain provision for some CDD measures, including the requirement to register all the received applications under the full name of the applicant. The ID document received for verification of the identity of the applicant must be copied.

Anonymous accounts and accounts in fictitious names

285. Criterion 5.1 has an asterisk, which means that it needs to be covered by Law or Regulation and to be sanctionable. 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*".

286. It has to be noted that this measure provides a safeguard against anonymous accounts or accounts in fictitious names, but it does not present a systematic assessment as to whether banks still have such accounts.

287. The authorities explained that at the time of the on-site visit no anonymous accounts or numbered accounts existed in Azerbaijan. The evaluators were advised that NBA using its statutory power permanently conducts off-site and periodically on-site inspections, during which systematic assessments as to whether banks have such accounts are always being carried out.

288. At the time of the previous evaluation the so-called "nameless savings accounts" were permitted. There was information provided that approximately 6 million US dollars were held in approximately 40,000 such accounts in one bank. According to the information provided at that time these accounts were supposed to be closed within a period of 1 ½ years.

289. No information was provided during this visit as to what extent the existence of such accounts was stopped and whether and how the NBA has examined the situation at present. There were no figures available, e.g. how many of them were closed, transferred into named accounts etc. The Azerbaijan authorities subsequently advised that before the legal prohibition of anonymous accounts by Law "On Banks" only one commercial bank in Azerbaijan had opened such kind of accounts, but this bank previously identified and obtained contact information concerning the persons, who opened such accounts. In the process of implementation of the "Law on Banks" dated 2004, a six month time-limit period was determined to close anonymous accounts and within this period, the bank contacted those persons and asked them to change the account from anonymous to named, so that the balance of the anonymous accounts was transferred directly to named and fully identified accounts. The anonymous accounts were shut down at once. Article 222.3 of The Code on Administrative Violations provides sanctions for breaches of these requirements.

290. With regard to the Securities Market, according to the "Regulations on broker activity in securities market" some CDD measures are provided including the requirement to register all the received applications under the full name of the applicant. The ID document received for verification of the identity of the applicant must be copied. There is no direct prohibition to provide services without identifying the customer in the securities sector.

291. Though the "Law on Insurance Activity" requires keeping the copy of the document, confirming state and tax registration for legal persons or a copy of the identification card or passport for natural persons, it is not a sufficient measure to prevent the insurance sector from providing services without identification. During the on-site visit the evaluators were advised that, in practice, no insurance contract is signed without full identification of the customer.

Customer due diligence

When CDD is required

292. Criterion 5.2 has an asterisk which means that it needs to be covered by Law or Regulation and to be sanctionable. The criteria require all financial institutions to undertake CDD when:
   a) establishing business relations;
   b) carrying out occasional transactions above the applicable designated threshold (USD/€ 15,000). This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked;
   c) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
   d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations; or
   e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

293. There are no basic customer identification obligations provided in the primary legislation and full customer due diligence (CDD) requirements are not implemented, which comprehensively and clearly cover both the identification and the verification process, as provided for in the FATF Recommendations.

294. Existing normative documents cover only the necessity of submitting relevant documents to the bank, but do not speak of timing, except for the fact that the documents are to be submitted for opening an account in a bank or for concluding an agreement. Although the timing for other interrelations is not specifically provided by the legal acts, the general business practice and legislation implies the time for verification as not exceeding the time of the first application of the customer to a bank for creation of any kind of relationship, not just for opening an account.

295. Though NBA Methodological Guidance (which clearly is not law or regulation) covers to some extent the necessity to identify each customer in general, it is not mandatory and sanctionable. Hence it cannot be considered as "other enforceable means" within the meaning of the FATF Methodology. As noted earlier, neither is the Methodological Guidance "Law or Regulation".

296. Turning to other parts of the financial sector, in the case of the insurance industry, in accordance with the Insurance Activity Law (article 13) the insurer is obliged to identify its customer and obtain a copy of the "*certificate on state registration, approved according to the legislation and copy of the document, confirming registration in appropriate tax authority, as well as information on place of location*" for legal entities and/or "*copy of the identification card or passport, information on place of residence and place of work, employer's name and information on type of its activity*" for natural persons. This requirement is applicable when insurance amount is equal or exceeds the amount stipulated by the legislation (such amount will be introduced at the time AML/CFT Law comes into force).

297. For credit unions the customer identification requirements are easier to fulfil, because in order to operate through them, a membership of the credit union is required, which comprises a detailed and comprehensive identification process.

298. As to the implementation of criteria 5.2 (b) and (c) the Azerbaijani authorities pointed to "Regulations on currency transaction regime for residents and non-residents" as requiring identification for each transaction up to USD1000 without opening an account and "Regulation for

cashless settlements and money transfers" as requiring identification for each local transfer without any threshold.

299. the evaluators are of the opinion that these two documents do not sufficiently cover criterion 5.2 (b) as the first document limits its requirement only for natural persons resident in Azerbaijan (they need to present passport or ID for transfer), and the second document contains a requirement for details of a payment order and does not deal with customer identification and verification as described in the FATF Methodology.

300. Regarding criterion 5.2 (d) the Azerbaijani authorities pointed to the "Regulation on currency transaction regime for residents and non-residents" items 7.3 and 7.4 as covering it. The contents are too vague to cover the requirements.

301. CDD under criteria 5.2 (c), (d) and (e) are not provided for in the legislation. The Azerbaijani authorities took the view that identification of clients is required in these cases because customer identification has to take place before a transaction is implemented (regardless of a suspicion of ML/FT). They took this view in respect of criterion 5.2 (d) and applied the same argument to criteria 5.2 (c) and (e). However, the evaluators consider that in the case of these requirements marked with an asterisk specific provisions in law or regulation should clearly refer to the specific obligations on all financial institutions to conduct CDD of clients:

- when carrying out occasional transactions that are wire transfers,
- when there is a suspicion of money laundering or terrorist financing,
- when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

Required CDD measures

302. Criterion 5.3 is marked with an asterisk too. Financial institutions are to be required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information.

303. Apart from the non-binding NBA Methodological Guidance and above mentioned Regulations there are no other legislative acts existing in Azerbaijan obliging the financial institutions to identify customers. There is no obligation existing to verify the customers' identity using reliable independent source documents, data or information. See paragraph 290 above. Though it should be mentioned that first-level verification obligation exists for all segments of financial sector (Civil Code, Sectoral Laws).

304. According to the NBA "Regulation on Opening, maintenance and closing of accounts in banks" when opening an account it is required that the bank verifies the identity of the customer according to ID document provided by the customer. However there is no requirement for keeping a copy of the ID.

305. As to the insurance sector, a requirement to obtain the copy of the document, confirming state and tax registration for the legal person or a copy of the identification card or passport for a natural person is in place (see paragraph 290).

306. For the securities market only the "Regulations on broker activity in securities market" contain provision for some CDD measures including the requirement to register all the received applications under the full name of the applicant. However, there is no requirement to verify the data obtained using reliable independent source documents, data or information.

307. Criterion 5.4 requires two specific issues to be covered in respect of the verification process with regard to legal persons.

308. The first is verification that any person purporting to act on behalf of the customer is so authorised, and the identification and verification of the identity of that person (criterion 5.4a of the Methodology). This is marked with an asterisk and needs to be in Law or Regulation.

309. The Azerbaijani authorities pointed to several Regulations providing for the necessity to verify whether a person purporting to act on behalf of a customer (either natural or legal person) is so authorised and identify and verify the identity of that person. However, the contents of these documents do not reflect the necessary requirement to verify the authorisation and the identity of any person purporting to act on behalf of a customer as required in the asterisked criterion 5.4a

310. Criterion 5.4b of the Methodology covers the second issue in relation to the verification process for legal persons. It is not marked with an asterisk but needs to be covered by other enforceable means. The verification of the legal status of the legal person or arrangement requires e.g. proof of incorporation or similar evidence of establishment and information on the customer's name, trustees (for trusts), legal form, address, directors and provisions regulating the power to bind the legal person or arrangement.

311. Only the NBA "Regulation on Opening, maintenance and closing of account in banks" covers this issue, requiring among the documents necessary for opening an account in a bank "*a notarized copy of the charter*" of a legal entity, a notarized copy of the state and tax registration certificate and other documents depending on legal form of the applicant to be submitted to the bank. The evaluators consider that this criterion is appropriately covered by enforceable means for the banking sector.

312. Criteria 5.5.1 and 5.5.2 (b) are also asterisked. 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. Recapitulating, financial institutions are not obliged to determine/fully understand the ownership of customers and the person on whose behalf transactions or services are carried out.

Purpose and intended nature of the business relationship

313. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). This should be required by other enforceable means and be sanctionable. According to the Methodological Guidance, all customers of a bank should be divided at least into three categories and, depending on the category, the more precise information on the purpose and intended nature of the business relationship of the customers is required, but this document is not sanctionable. Additionally the Azerbaijani authorities pointed to the Regulations On the currency transaction regime of residents and non-residents in the Republic of Azerbaijan 2002 to 2007 (Annexes XII & XIII). These regulations only permit banking transactions for certain specified purposes. In this way the Azerbaijani authorities consider that the banks should know the intended purpose of each transaction through the banking sector. Moreover if any other transactions which are not mentioned in these regulations are required these need to be approved by the National Bank. The evaluators are not in a position to say how effectively this regime is implemented in practice.

Ongoing due diligence

314. According to Criterion 5.7 of the Methodology (again asterisked), financial institutions should be required to conduct ongoing due diligence (which should include e.g. scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile) on the business relationship. No existing legislative act (law or regulation within the meaning of the AML/CFT Methodology) requires financial institutions to conduct ongoing due diligence on their clients such as (a) keeping up-date information collected under the identification requirements, or (b) scrutiny of transactions undertaken by the clients and measures, as described in the FATF Recommendations.

315. Such a requirement, to some extent, can be found only in the (non-binding) Methodological Guidance. According to this document it is recommended that based on the risk category "*banks shall try to update the identification information of low-risk customers at least once in three years, of middle-risk customers once in a year, of high-risk customers once in six months*" (Guidance item. 4.5).

316. Thus the NBA Methodological Guidance to some extent *inter alia* includes the concept of ongoing due diligence. As noted, this document is considered as a guideline to the banking sector. The NBA examiners carry out on-site inspections on the basis of this document and have made some recommendations in this regard. However, as criterion 5.7 is an asterisked one, it needs to be set out in primary or secondary legislation, which is currently not the case. As the Law on Banks provides only a general possibility for sanctioning and does not specifically deal with the concept of ongoing due diligence, the requirements of criterion 5.7 are not fulfilled.

Risk

317. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

318. No legislative document in Azerbaijan provides for categories of transactions or products that require enhanced due diligence. Neither simplified nor reduced CDD measures are stipulated anywhere in legislation and regulation. Financial institutions have to identify all the clients on the basis of the provisions of "Law On Banks". The evaluators formed the view that in practice not all financial institutions are familiar with a risk sensitive approach.

319. For banks the (non-binding) Methodological Guidance recommends only to "*try to acquire and verify beneficiary and executed transaction, and if possible, more precise information about funds or other property*" with regard to high-risk customers (item 4.4). The evaluators were told that this recommendation is regarded as a requirement for performing enhanced due diligence for high-risk customers in banks. However, this cannot be regarded as sufficient for covering criterion 5.8. No other rules, regulations or enforceable means were found to cover this criterion as well.

Timing of verification

320. Apart from the above mentioned provision in the Law "On Banks" (article 42.1) that requires financial institutions not to provide the clients with services without preliminary identification there is no obligation existing to verify the customers' identity using reliable independent source documents, data or information. Though there is no timeframe set for these actions it should be noted that it was advised that banks cannot complete the CDD process after carrying out a transaction. However such approach is not in line with the possibilities as provided for by criterion 5.14.

Failure to satisfactorily complete CDD

321. At the time of the on-site visit there were no provisions that clearly stated the obligation for identification of existing customers.

Existing customers

322. Financial institutions should be required to apply CDD requirements also to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the customer documentation standards change substantially etc.

323. There are no provisions in the existing legislative acts that require applying CDD requirements to existing customers.

Recommendation 6

324. 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. So far, financial institutions are not required by sectoral laws to put in place appropriate risk management systems to determine if a potential customer, a customer or the beneficial owner is a PEP. Only the non-binding NBA Methodological Guidance provides for a definition of foreign "politically important persons" and advises banks to treat such persons as high risk customers (item 4) and "*hold their transactions subject to special monitoring irrespective of amount*" (item 7). In practice the evaluators concluded that there was a lack of understanding on PEPs issues within the private sector.

325. The evaluators were advised that for the securities sector the existing "Regulations on Measures to be Taken by Professional Participants of the Securities Market to Prevent Money Laundering and Terrorism Financing in the Securities Market" provide the requirement that "carrying out operations by politic parties, their leaders or persons authorised to act on behalf of them under the power of attorney" is considered suspected activities, and according to article 2.3 of the same regulations in case the financial intermediaries find out operations with these features, they have to inform the SCS within 3 (three) working days.

326. There are no requirements to develop procedures to obtain authorisation for establishing business relationships with a PEP from senior management, or for continuing such a relationship with a customer or beneficial owner who is subsequently found to be or becomes a PEP. As they are not identified, there is no requirement to conduct enhanced ongoing monitoring of business relationships with PEPs. It follows that financial institutions are also not required to take reasonable measures to establish the source of funds of customers.

Additional elements

327. Azerbaijan has signed (27 Feb 2004) and ratified (1 Nov 2005) the 2003 United Nations Convention against Corruption.

Recommendation 7

328. Criteria 7.1 to 7.4 of the Methodology cover cross-border banking and other similar relationships (which includes a requirement to gather sufficient information about a respondent institution, assess the adequacy of the respondent institution's AML/CFT controls, obtain

approval from senior management before entering new correspondent relations and document the respective responsibilities of each institution).

329. There were no laws, regulations or other enforceable means addressing the issue of correspondent banking at the time of the on-site visit. Only the (non-binding) Methodological Guidance provided some recommendations in this respect (item 5).

330. During the pre-meeting in Strasbourg the evaluators were provided with an amended version of NBA "Regulations on opening, maintenance and closing of account in banks". The amendments to this document came in force after registration of by the Ministry of Justice on June 15, 2008.

331. The amended regulation now requires that banks, before opening an account, to obtain from foreign banks, amongst other documents, "documents confirming the information on the AML/CFT internal control system of the foreign bank, person or group of persons who are responsible in this sphere, whether there were facts on instigation of AML/CFT proceedings and/or other measures presuming any sanctions in regard of the bank by any authority" (item 6.4.7.).

332. Apart from that the amended regulation stipulates that "the agreement on the foreign correspondent account shall come into force only after the signature of the senior official (the member of the Board of Directors)"(item 7.1-1.). At the same time the amended regulations set forth the reasons for not concluding a correspondent account "when there are reasonable grounds to believe that the account will be used for the purposes of money laundering or financing of terrorism" (item 7.2.6.) and "when the AML/CFT internal regulations of the foreign bank, customer due diligence measures concerning those who use the correspondent (payable-through) accounts, the identification of beneficial owners and/or the implementation of the internal control system are inadequate" (item 7.2.7.).

333. In conclusion, the evaluators are of the opinion that these regulations now contain only measures applicable for Azerbaijani banks when opening correspondent account for a foreign bank in Azerbaijan.

334. Furthermore, the introduced amendments are still limited as there are no provisions requiring financial institutions to gather sufficient information about a respondent institution to fully understand 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 other regulatory action. It should not be limited to just obtaining some of the needed information from the foreign bank itself at the moment of opening an account. Thus criterion 7.1. of the Methodology could be considered covered only partially.

335. The requirement of the criterion 7.2. to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective is not implemented. Though there is a requirement not to establish a relationship in cases where the information required is not provided, it should be noted that there is no requirement to assess the received information.

336. 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.

337. The Azerbaijani authorities advised the evaluators that banks in Azerbaijan are not allowed to open payable-through accounts. In this regard they pointed to the NBA "Regulations on Opening,

Carrying Out and Closing of Accounts in Banks". These regulations do not cover this possibility as they merely set out the types of accounts which it is possible to open in Azerbaijan, namely, "Current accounts; Current subaccounts; Loan accounts; Saving accounts (deposit accounts); Correspondent accounts". The NBA representatives advised that they would consider opening of a payable-through account a breach of the Regulations and would sanction any bank which had opened such an account.

338. Nevertheless the evaluators have concerns that financial institutions could commence correspondent relations with a foreign financial institution and not be aware that the foreign financial institution is permitting its customers to conduct transactions anonymously through the Azerbaijani bank account (payable-through accounts).

Recommendation 8

339. Criteria 8.1 to 8.2.1 of the Methodology cover: policies to prevent the misuse of technological developments; policies regarding non-face to face customers including specific and effective CDD procedures to manage the specific risks associated with non-face to face business relationships or transactions.

340. Modern banking and financial technologies are not widespread in the Azerbaijani financial services industry. Financial institutions confirmed that non face-to-face business operations are quite rare on Azerbaijani territory.

341. 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 development for ML/FT purposes.

3.2.2 Recommendations and comments

342. As indicated in Part I, the steps that have been taken by Azerbaijan so far are limited and fragmented. They are no substitute for a comprehensive AML/CFT law, which meets international standards. The lack of progress on AML/CFT preventive legislation since the last evaluation leaves Azerbaijan very vulnerable. Progress on this issue has been far too slow. The Azerbaijani authorities should, without further delay, introduce comprehensive AML/CFT legislation utilising an appropriate "risk based" approach. As has been indicated earlier, in paragraph 298, it is advisable, in the context of Azerbaijan, that all asterisked criteria in the Methodology are put into the preventive Law. As stated elsewhere in the report, it is essential that competent authorities, including an FIU, are established and provided with adequate resources.

343. At present, the Azerbaijani legislation contains a customer identification obligation but the CDD requirements as set out in the FATF Recommendations are not yet fully implemented. In particular, CDD measures should be explicitly applied, not only when establishing business relations, but also:

- when financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of US$/Euro 15,000;
- when carrying out occasional transactions that are wire transfers;
- when there is the suspicion of ML and FT regardless of any exemptions or thresholds or,
- when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

344. The concept of verification of identification should be further addressed. The Azerbaijani authorities should take steps to apply an enhanced verification process in appropriate cases. They should consider requiring financial institutions to use in higher risk cases for the verification of

the customer's identity not only the documents as currently prescribed by law but also to use other reliable, independent source documents, data or information.

345. Azerbaijani legislation should provide a definition of "beneficial owner", on the basis of the glossary to the FATF Methodology. Financial institutions should take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

346. Moreover, for all clients, financial institutions should determine whether the customer is acting on behalf of a third party and, if this is the case, identity the beneficial owner and verify the latter's identity. As regards clients which are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is.

347. Financial institutions should obtain information on the purpose and intended nature of the business relationship.

348. The scrutiny of transactions and the updating of identification data acquired during the CDD process should be undertaken as an ongoing process of due diligence on the business relationship and this requirement should be set out by the AML Law, in order to ensure that the transactions being conducted are consistent with the financial institutions' knowledge of the client.

349. The AML/CFT legislation that the Azerbaijani authorities will introduce should be based on a "risk based" approach and should require financial institutions to perform enhanced due diligence for higher risk categories of customer, transactions and products as described by the FATF Recommendations. It would follow from this that financial institutions could then determine an internal procedure for approval from senior management for categories of clients, products, services and transactions considered as higher risk of money laundering and of terrorism financing. Where the risks are lower, Azerbaijani authorities may decide to permit financial institutions to apply simplified or reduced CDD measures.

350. The Azerbaijani authorities may wish to consider permitting financial institutions to complete the verification of the identity of the customer and the beneficial owner following the establishment of the business relation provided that:
- this occurs as soon as reasonably practicable;
- this is essential not to interrupt the normal conduct of business;
- financial institutions are able to manage ML/FT risks.

351. Where a financial institution is unable to satisfactorily complete CDD measures, it should consider making an STR.

352. Financial institutions should be required by enforceable means to identify all existing clients (on the basis of materiality and risk) and to conduct due diligence on such existing relationships at appropriate times, in order to acquire all missing data and information.

353. There are no requirements in Azerbaijani Laws or Regulations with regard to PEPs. The Azerbaijani authorities should put in place measures by enforceable means that require financial institutions:
- to determine if the client or the potential client is - according to the FATF definition – a PEP;
- to obtain senior management approval for establishing a business relation with a PEP;
- to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP.

354. Azerbaijan has not implemented all the criteria under Recommendation 7 through enforceable means. In relation to cross-border correspondent banking and services, financial institutions should not only conduct CDD as required under Recommendation 5, but also obtain further information on:

- the reputation of the respondent counterparts from publicly available information;
- assessing the adequacy of the existing AML/CFT controls in a respondent bank;
- document the respective AML/CFT responsibilities of each institution;
- obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request.

355. Azerbaijan has not implemented Recommendation 8 through enforceable means. Financial institutions need to be required to have policies in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies in place to address specific risks associated with non face to face transactions. It is understood, for example, at present that the Internet is not used for moving money from one account to another, but this and other face to face transactions may develop soon and policies need to be in place to guard against money laundering and financing of terrorism risks.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**Non compliant**	• 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.
R.6	**Non compliant**	• The Azerbaijani legislative system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
R.7	**Partially compliant**	• 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.
R.8	**Non compliant**	• 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.

3.3 Third Parties and introduced business (R.9)

3.3.1 Description and analysis

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

3.3.2 Recommendation and comments

357. Currently the existing legislative acts do not provide for third party reliance or introduced business, but neither do they prohibit it, even though in practice this situation does not occur. However, as financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the authorities should cover all the essential criteria under Recommendation 9 in the AML Law.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	Recommendation 9 is not applicable.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

358. The criterion 4.1 states that countries should ensure that no financial secrecy law will inhibit the implementation of the FATF Recommendations. One specific area which may raise particular concerns is the ability of the competent authority to access the information required in order to properly perform their function in combating the money laundering and financing of terrorism; sharing the information between reporting institutions and competent authorities, either domestically or internationally, as well as sharing the information between the financial institutions is required by the Recommendations 7 and 9 or SR.VII.

359. Article 41 of the Law on Banks and Banking Activities in Azerbaijan determines banking secrecy rules and stipulates that "*In accordance with the Civil Code of the Azerbaijan Republic the bank shall provide the confidentiality of bank accounts, operations and balances, as well as client information, addresses and management. Bank maintains the confidentiality of information on existence of client property in the bank's depositories, information on owners of such property, its type and value"*. The same article provides as well that "*to state authorities and their executives such information can be provided under the valid court order related with resolution of claim, arrest, confiscation of property for compensation of client liabilities and property in the bank's depository"*. The evaluators were informed that according to the law Article 177.3 of the Criminal Procedure Code the prosecuting authority is whichever judicial authority is authorised to obtain such a Court order. In accordance with the provisions of the Criminal Procedure Code, the preliminary investigation, investigation and prosecution authorities are entitled to obtain a court order to disclose banking secrecy information. The preliminary investigation and investigation bodies are as follows: Ministry of Internal Affairs, Ministry of National Security, State Border Service, Ministry of Taxes and State Customs Committee. In accordance with the provisions of

the Criminal Procedure Code, the preliminary investigation, investigation and prosecution authorities are entitled to obtain a court order to disclose banking secrecy information. The preliminary investigation and investigation bodies are next: Ministry of Internal Affairs, Ministry of National Security, State Border Service, Ministry of Taxes and State Customs Committee.

360. According to article 41.2 paragraph 2 "*Information on bank account and bank operations of any legal entity or individual taxpayer entrepreneur serviced by the bank, shall be submitted to tax authorities only in cases and in accordance with procedures stipulated under the Tax Code of the Azerbaijan Republic"*. In this case, as well as in the case when the banking information was provided to the Central Bank of Azerbaijan, banking secrecy is not opposable to this authority but it is not available for public information.

361. The law provides for the prohibition to disclose banking information in general. In accordance with Article 41.5 of the Law on Banks in Azerbaijan, the current and former administrators of the bank, other employees and all shareholders of the bank are bound to keep secret data of accounts, operations and deposits of their clients and correspondents. In a case when such a person discloses banking data, other than under the law, clients whose right have been violated may require compensation of losses incurred from the bank in accordance with the Civil Code of the Azerbaijan Republic.

362. Nowadays in Azerbaijan no law is in place which makes available to the state authorities information related to the banking sector, without a Court order. In accordance with article 177.3.6 of the Criminal Procedure Code, obtaining information about financial transactions, bank accounts or tax payments, state, commercial or professional secrets shall be made only under Court decisions.

363. In accordance with the **Law on Banks,** banks provide the requested information to inspectors of the National Bank while performing their duties and to the external auditors without needing a Court order.

364. In relation to the foreign banks, according to article 41.4, when a contract exists between the National Bank and the bank regulatory authority of the foreign country "*if the object of information exchange is the information on subject performing activities or getting prepared to perform activities on the territory of relevant state, such information shall not be deemed the disclosure of banking confidentiality, provided that such information was not submitted to third parties and is used for banking control purposes only"*. For any other situations, if a foreign bank requests information on clients from an Azerbaijani bank, a decision of the Court is required in order to disclosure that information.

365. The Law on Insurance Activities also contains provisions on confidentiality which are not identical to the provisions of the Law on Banks; in this respect article 6.2 says that the insurer *"shall protect the data, considered as insurance secrecy, which they obtained as a result of their professional activities and shall not disclose such data to the other persons, except* [in defined circumstances]*"*.

366. Article 32 of the Law on Notaries provides as well for the "maintenance of confidentiality of notary actions" according to the "*criminal and civil cases processes by courts, investigation authorities and prosecution, on the basis of decision of such authorities they are issued with documents on notary actions"* and *"notaries, other officers performing notary actions and persons informed on notary actions in connection with performance of their service duties, shall maintain the confidentiality of such actions"*.

367. The Azerbaijani authorities told the evaluators that the lawyers have an absolute right of professional confidentiality even in the case of criminal investigations, being able to maintain secret information related to the defence stage of their clients. The evaluators were advised by the

Azerbaijani authorities that they had not detected lawyers playing a significant role in laundering operations, and they do not consider it a serious problem at present. According to the law on Lawyers and Lawyer Activity, lawyers are not permitted to carry out commercial services. Nevertheless some form of dialogue with the professions is needed and the Azerbaijani authorities should remain vigilant, given the increasing involvement of lawyers globally in business activities for their clients. It was understood that currently lawyers functioning in Azerbaijan are not engaged in any financial transactions, as stipulated by the FATF Recommendations. Lawyers, acting as independent legal professionals, are not required to report their suspicions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege (FATF, R.16).

368. In relation to the Securities Market the evaluators were informed that the commercially sensitive information obtained by securities market financial intermediaries is not an obstacle to meet the obligations under AML/CFT and there is therefore no contradiction. No other law or regulation can preclude providing information to the judicial authorities. According to article 9.2 of the "Law of Azerbaijan Republic on Commercial Secrets", "information gathered by legitimate means, irrespective of whether this information matches up with commercial secrets held by others, is considered legal and information obtained independently." Furthermore, according to article 7.5 of the SCS Statute, the SCS has the right to ask for and obtain from the ministries and other central executive bodies of the Republic of Azerbaijan, National Bank of the Republic of Azerbaijan, state and commercial banks, state companies and concerns, local executive bodies, municipal authorities, juridical and physical entities, engaged in entrepreneur activity, necessary information about their activity in the securities market, in a defined manner, for the purpose of investigating matters, within Committee's competence. At the same time, according to the article 7.18 of the SCS Statute, the SCS has a power of giving compulsory directions/instructions related to activities in the securities market, to issuers and securities market participants as well as self-regulating organisations of professional participants.

369. According to the article 123 of the Law on Insurance Activity insurers as well as insurance intermediaries are obliged to conduct insurance statistics, recording of the documents and documents filing, specified in the legislation and related to their activities. The mentioned article empowers the insurance supervision authority (the State Insurance Supervision Department of the Ministry of Finance) to define the list of documents to be kept and their retention period.

370. According with the domestic legislation, all supervisory authorities have the appropriate legal authority to overturn general financial secrecy provisions.

371. The evaluators were advised by the NBA that they cannot enquire closely into their domestic customers' sources of funds. They indicated that a constitutional provision in the Law on Providence of Heritage 1993-1995 (introduced during the transition to a market economy) appears to prohibit or prohibits such enquiries in the case of Azerbaijani citizens. On the other hand, they can (and do) enquire about the sources of foreign capital and financial beneficiaries. Moreover, the evaluators were informed that draft legislation was being prepared to stop offshore companies being ultimate owners of companies. the judiciary did not consider that this law should now cause real problems, when the AML law is in force, the evaluators understood that the Law on Providence of Heritage would be repealed.

372. There is no clear power for financial institutions to share information where this is required by Recommendation 7.

3.4.2 Recommendations and comments

373. Any potential AML/CFT consequences today in respect of enquiry into sources of funds arising from the Law on Providence of Heritage are generally considered to be a dead letter and the evaluators were encouraged to note that this law will be repealed on passage of the AML Law.

374. Generally, the secrecy 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. The professional secrecy can be lifted on the basis of a Court decision, if the law enforcement authorities and the Public Prosecutor agree on the fact that the question should be taken to Court.

375. It is recommended that a provision be made for the sharing of information between financial institutions in relation to correspondent banking..

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**Largely compliant**	• Financial institutions are not specifically authorised to share information for the implementation of Recommendation 7.

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

3.5.1 Description and analysis

Recommendation 10

376. Recommendation 10 has numerous criteria under the Methodology which are asterisked, and thus need to be required by law or regulation. Financial institutions should be required by law or regulation:

- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated;
- to maintain all records of the identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information;
- to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

377. According to the Law on Banks article 39 ("Retention of documentation") "*banks retain the appropriate information on banking operations contracts and completed contracts (deals), including the information of electronic carriers, as well as other documents, generated as a result of activities, in accordance with procedures and for the periods established under the legislation*" and "*documentation letting the client to identify, as well as to verify payment and transfer operations shall be retained by the bank for the minimum period of five years upon disintegration of relations with clients and completion of payments (transfers)*".

378. The National Bank of Azerbaijan has issued in addition "Instruction of the NBA on conducting of archive activities in the banking system" prescribing that "*the minimum period of records keeping is 10 years*" and "*each bank on its discretion may keep the documents in its archive for longer period*" (item 1.3.). Documents concerning customer identity and transactions should be held for at least five years after the termination of an account or the end of the transaction. The Azerbaijan authorities indicated that the 10 year record keeping provision for banks is longer than the FATF requirement, and that the NBA could always seek a legislative amendment to extend the period beyond 10 Years. This requirement only applied to transaction data and not to customer verification documents. While this is undoubtedly true the evaluators

could not find any specific provision which would enable records to be kept longer than the statutory period in an individual case where this is necessary. Similarly, although the NBA indicated that all banks understood that it was necessary to provide the NBA with relevant information on a timely basis, the evaluators could not find a requirement to this effect in law or regulation.

379. Record keeping requirements in the insurance sector were first provided for in the Law on Insurance Activities most recently implemented in March 2008, replacing earlier legislation. This provides for Insurers and insurance intermediaries to conduct insurance statistics, recording of the documents and documents filing, specified in the legislation and related to their activities and a list of documents to be kept and their retention period to be defined by the insurance supervision authority as agreed with the archive offices. Currently, secondary legislation is awaited to define the documents to retained and the period of retention.

380. According to item 2.4 of the "Regulations on Measures to be Taken by Professional Participants of the Securities Market to Prevent Money Laundering and Terrorism Financing on the Securities Market", issued by the State Committee on Securities, financial intermediaries are required to keep documents which identify their clients and counterparts, operations carried out on their accounts and business documentations for at least 5 years. According to item 12.1 of the "Regulations on keeping internal accounts by brokers and dealers in the securities market" also issued by the SCS, professional participants should keep the documents, related internal accounts and account journals at least for 10 years. According to item 8.5 of the "Standards of Depositary Activities" issued by SCS, information related to depositary accounting both printed and electronic data shall be kept by the depositary for 15 years. At expiration of the required period all documents may be handed over to the state archive in accordance with legislation. According to item 7.18 of the SCS Statute, the Committee has the power to make compulsory directions/instructions related to performing activities in the securities market, to issuers and securities market participants as well as to self-regulating organisations of professional participants. It means that SCS is empowered to require that any professional participant of the securities market to extend the record-keeping period envisaged by the legislation.

381. The existing requirement does not distinguish between domestic and international transactions when dealing with the record keeping issues. It simply points out that "*the appropriate information on banking operations contracts and completed contracts (deals)*" has to be kept.

382. There are no clear obligations for financial institutions to keep records of the 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 just left for the decision of the bank itself in case of banks. For others there is no such requirement at all. Though requiring banks to keep records for "minimum period 10 years" which goes beyond the requirement of Recommendation 10 to keep them for five years - is welcome, it should be noted that this is not the same as required by criterion 10.2 (keeping records for a longer period if requested by a competent authority in specific cases upon proper authority).

383. Based upon the Law on Banks (article 46.3.1.) NBA has the authority "*to have access to any bank, its branch, department, subsidiary economic units, as well as local branches of foreign bank and review their reports, accounting books, documentation and other records, demand for their clarifications a court decision*". Based upon a court decision, law enforcement authorities may obtain access to the information held by the banks on client identification and transactions.

SR.VII

384. The Methodology requires that, for all wire transfers, financial institutions should obtain and maintain the following full originator information (name of the originator; originator's account

number; or unique reference number if no account number exists) and the originator's address (though countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth) and to verify that such information is meaningful and accurate. Full originator information should accompany cross-border wire transfers, though it is permissible for only the account number to accompany the message in domestic wire transfers.

385. On the basis of the existing legislative acts the maximum amount in foreign currency allowed to be sent cross-border for residents is $500 US dollars per person, per transaction, per day, provided that the recipient is a member of the immediate family. The maximum amount allowed to be sent by residents is $10,000 US dollars per person, per year. Senders must present valid identification and a reason for the transaction. Non-residents may transfer foreign currency without any restriction, provided that they submit an extract from their personal bank account or customs declaration. In all other cases, an individual permit from the National Bank is required. Operations stated in this item may be conducted only through the opening of a banking account. By item 4.2.1 of Regulations on the Foreign Currency Regime for Residents and Non-residents of the Republic of Azerbaijan it is not permitted for non-residents to carry out wire transfers outside of the Republic of Azerbaijan without opening a bank account with an authorised bank.

386. The evaluators were told that banks are the only entities that provide wire transfers in Azerbaijan. It is necessary to mention in the context of SR VII that also 14 global money transfer services are operating through the banks in Azerbaijan.

387. Domestic wire transfers are conducted through banking channels. Banks perform cross border and domestic wire transfers using service-remitters (e.g. Western Union). For cross-border wire transfers, Azerbaijani banks can also operate via the SWIFT system. Concerning outgoing transfers, the evaluators were advised that SWIFT determines itself the items to fill in, in order to transfer money (number of accounts and full name and address of the originator).

388. The NBA "Regulations on currency transaction regime of residents and non-residents" provide the requirements for natural person transactions outside Azerbaijan, including limitations for amounts of such transfers. In accordance with this document it is permissible to transfer abroad not more than USD 1000 without opening an account for residents and no transfers at all are permissible for non-residents. All legal persons are allowed to make wire transfers only by using their bank accounts. Further to this requirement, the authorities advised that according to the NBA "Regulations on cashless settlements and money transfers in the Republic of Azerbaijan" all the transfers should include full originator's information (name, address, account number).

389. According to existing regulations, the following information is needed for domestic wire transfers: name of the originator, account number, type of transactions. The originator's address is not required according to these documents. Though these documents address to a certain extent the requirements of criterion VII.3, it should be noted that there is no obligation that the information is meaningful and accurate.

390. 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 (criterion VII.4).

391. The NBA "Regulation on cashless settlements and money transfers in the Republic of Azerbaijan" lays down the requirements for the transfer of money. Though this document contains the main principles, it does not mention the necessity of obtaining and maintaining ordering customer information for wire transfers (criterion VII.5). The evaluators were told 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.

392. According to the NBA Methodological Guidance if it is impossible to identify the parties of a transaction clearly or a customer avoids submitting identification information banks shall not execute the transaction.

393. The NBA is responsible for supervision of banks and this supervision activity covers also the implementation of SR VII by these entities as far as SR VII is provided for in the legal system. For this purpose the NBA conducts off-site and on-site supervision. Off-site control consists of reviewing the reports that commercial banks submit to the NBA. On-site control consists of reviewing of a selected sample of wire transfers and checking out its compliance with the legislation. In 2006, the NBA conducted 20 examinations within commercial banks, and in 2007 21 examinations that included these issues. Neither in 2006 nor in 2007, did the NBA find any non-compliance with the provisions of the relevant regulatory acts.

394. The deficiencies of the sanctions regime in relation to the relevant regulatory acts as described under section 3.10 (para 474 ff) apply also with regard to SR VII: The existing sanctioning regime does not involve monetary penalties. Without an AML/CFT law in place in Azerbaijan there are no requirements for sanctioning for non-compliance with AML/CFT rules.

3.5.2 Recommendation and comments

395. A clear obligation to keep records of the account files and business correspondence should be introduced for all financial institutions. A provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of an authority should be included in the legislation. In particular, all documents relating to customer identification data must be retained for a minimum period of 5 years and made readily available to all relevant authorities.

396. The information needed for domestic wire transfers should include also the originator's address. The obligation that the information included in wire transfers is meaningful and accurate should be included.

397. The 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 must be added in the legislation.

398. The sanctions regime concerning SR VII must be made more effective in order to be applied in practice.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Partially compliant**	• 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.
SR.VII	**Partially compliant**	• 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.

Unusual and Suspicious Transactions

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

3.6.1 Description and analysis

Recommendation 11

399. Recommendation 11, which requires financial institutions 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, needs to be provided for by law, regulation or other enforceable means.

400. 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. The Azerbaijani authorities directed the evaluators to the Methodological Guidance (items 6 & 7) and the Regulations on Foreign Currency Operations by Residents and Non-Residents in Azerbaijan Republic (item 7). The existing non-binding Methodological Guidance designed exclusively for banks talks only in the context of "special monitoring" about the necessity to inform the NBA about all suspicious transactions which may occur. Apart from these documents concerning the securities market the evaluators were pointed to the "Regulations on Measures to be Taken by Professional Participants of the Securities Market to Prevent Money Laundering and Terrorism Financing on the Securities Market" in which "non-ordinary meaning of any transaction not followed of any economic content or any legal purpose" is considered suspected activity, and according to item 2.3 of the same regulations in cases where the financial intermediaries discover operations with these features, they shall submit relevant information to the SCS within 3 (three) working days. Furthermore, according to item 2.2 of the same regulations "If the financial intermediaries suspect that the operations with securities carried out for the laundering of illegally gained means, they shall provide the SCS with the information on these operations". The evaluators did not consider that these provisions were sufficient to meet the specific requirements of Recommendation 11.

401. There is no obligation for the financial institutions to document the obtained information in writing and keep it available for relevant authorities and auditors. The authorities referred to Article 39 of the Banking Law which requires the banks to keep all the information about the customers and transactions for at least ten years; however, this requirement may be sufficient in the context of Recommendation 10 (record keeping) but has nothing to do with criterion 11.3 dealing with keeping records of the findings gathered according to criterion 11.2.

Recommendation 21

402. Recommendation 21 requires financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently apply the FATF Recommendations. This should be required by law, regulation or by other enforceable means. It places an obligation on financial institutions to pay close attention to transactions with persons from or in any country that fails or insufficiently applies FATF Recommendations and not just countries designated by FATF as non-co-operative (NCCT countries).

403. According to the non-binding NBA Methodological Guidance (item 7.1.1.) "*any transaction with the funds or other property related either to a citizen, person registered or to a person, who has a residency and permanent business or has a bank account that was registered in the state (territory) suspected of either participating in illegal narcotic drug and other psychotropic substances production, financing of terrorism, or the legalization of illegally obtained funds or other property, or the state, which does not require disclosing identification information when conducting financial operations*" is supposed to be subject to "special monitoring".

404. According to the "Law of the Azerbaijan Republic on Banks" (article 5.4.) "*foreign citizens and foreign legal entities, registered in offshore zones, the list of which is determined by the National Bank, including also foreign banks and foreign bank holding companies, can not be the founders or shareholders of local banks, as well to establish local subsidiary banks, open local branches and representations*". Additionally, the NBA advised that when countries were on the NCCT list they circulated those lists to the banks with an instruction to ensure special monitoring of transactions connected to those jurisdictions. They indicated that they could have sanctioned for non-compliance under article 42.2 of the Law on Banks though no sanctions were issued on this basis. The NBA have not issued letters in relation to any other country which has not been identified by FATF or other international institutions. The evaluators were additionally informed that, for example, with regard to the FATF statement of 28 February 2008, the National Bank of Azerbaijan issued letters of normative character addressed to all banks of Azerbaijan obliging them to apply enhanced CDD measures when dealing with transactions concerning the countries and territories reflected in the statement.

405. There is no requirement of which the evaluators are aware 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. There are also 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.

3.6.2 Recommendations and comments

406. Financial institutions are not required to investigate the purpose of complex/unusual large transactions and thus to keep a record of the written findings. There is no requirement to establish the purpose and background of unusual transactions or to maintain this information in writing and keep records which will be accessible by authorities. It is strongly recommended to implement Recommendation 11.

407. The Methodological Guidance addresses some elements of Recommendation 21 as it contains a reference to countries which could be seen as subject to this Recommendation. However, this document is non-binding and insufficient with regard to the requirements of Recommendation 21. It is recommended to implement Recommendation 21 by law, regulation or other enforceable means.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**Non compliant**	• 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.
R.21	**Partially compliant**	• 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.

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

3.7.1 Description and analysis

Recommendation 13

408. Recommendation 13 is one of the key FATF Recommendations. It applies to all financial institutions and, under the 2004 AML/CFT Methodology Essential Criteria 1, 2 and 3 are all marked with an asterisk, which means that they must be required by Law or Regulation.

409. Essential Criterion 1 requires that States provide for a direct mandatory obligation to make an STR when a financial institution suspects or has reasonable cause to suspect that funds are the proceeds of criminal activity. There is no such law or regulation in place. It was said that the NBA had issued mandatory letters to the banks and that more than 500 STRs had been received from the banks in 2007, of which 24 had been considered suspicious enough to pass to law enforcement. The evaluators acknowledge that reports have been received, but they may not have seen all the relevant mandatory letters. What they have seen (see e.g. Annex IX) does not fully cover concrete procedures for reporting. The NBA, purportedly using the authority of A.42 Law on Banks in relation to the prevention of money laundering has, as noted, drafted and adopted Methodological Guidance (Annex XI) for the banking sector. It is debateable whether Article 42 really is legal authority for the Methodological Guidance as Article 42/2 refers to "other provisions of legislation" which may be applied for the prevention of money laundering. The main objective of the Guidance is to prepare the banking sector for the adoption of the AML law and it may also assist banks in the identification of suspicious transactions. Articles 6 and 7 of the Methodological Guidance list a range of transactions for monitoring and special monitoring. The evaluators have not seen any letter which specifically asks the banks to report to them transactions in either of these categories. Even if they have given such instructions, as noted earlier, this

Guidance is not binding Law or Regulation, and, in the evaluators' view, does not amount to "other enforceable means", furthermore there are no sanctions for breaches of the guidance that is in place It might be added that at least one major commercial bank was unaware of the STR "system" and reporting "obligation".

410. Essential Criteria 2 requires that the obligation to make an STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or those who finance terrorism. It is unclear whether the NBA letters relate to "funds" as R.13 requires. The Methodological Guidance relates only to "transactions". The letters relating to financing of terrorism which have been seen relate to freezing transactions of persons on the UNSCR 1267 lists and reporting to the National Bank (in the context of SR.VIII).

411. There is no law or regulation which requires attempted suspicious transactions to be reported regardless of the amount. The Azerbaijan authorities indicated that this was covered, though how precisely was unclear. It was also unclear whether any of the received STRs covered attempted transactions.

412. The requirement to report regardless of whether tax matters are involved has to be required by other enforceable means. The Azerbaijani authorities indicated that reports based on tax matters are included for the banks. These requirements are set out in a letter from the NBA dated 7 June 2006.

Additional Element

413. Although itis said by the Azerbaijani authorities that the mandatory letters and the Methodological Guidance do not refer to specific predicate offences, it is their view that the banks should cover all predicate offences.

Special Recommendation IV

414. SR.IV Essential Criteria 1, which is to be covered by law or regulation, requires financial institutions to report to the FIU (suspicious transaction report – STR) 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. There is no such law or regulation. The relevant "mandatory" letter (which in practice is not binding) only covers reporting on matches under UNSCR 1267 in the context of SR.VIII. Attempted STRs re FT are not covered by the "mandatory" letters, neither is there a clear requirement that reports should be made regardless of whether tax matters are involved. There are no sanctions for failure to comply with the requirements as set out in the "mandatory" letters.

415. In practice, it appeared that a number of the reports received by the NBA may have involved FT.

Safe Harbour Provisions (Recommendation 14) and Tipping off (Recommendation 14)

416. The tipping off and safe harbour provisions of FATF Recommendation 14 need to be provided for by law, regulation or other enforceable means. These issues are not covered in that way or indeed by any non-enforceable guidance. There is no requirement which ensures that the names and personal details of staff of financial institutions are kept confidential by the FIU, as there is no FIU. Neither is there such a requirement in respect of the shadow FIU at the NBA. The Azerbaijan authorities advised that all these issues would be covered by the draft law.

Recommendation 19

417. Recommendation 19 requires countries to consider the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerised database.

418. In the context of foreign exchange operations, specific rules apply concerning when the National Bank must be informed of significant transfers. Reports about advance payments exceeding the equivalent of US$25,000 are submitted to the National Bank and registered following checks with regard to their nature. Information on fund transfers exceeding US$10,000 abroad by individuals must be submitted to the National Bank. The Regulations "On the Implementation of the Reporting System on the Currency Transfers Out of the Country through Banks by the Natural Persons" were adopted by the Board of Directors of NBA in 18 December 2002. According to the Regulations, for the purposes of the effective supervision and monitoring over the currency regime and the combating money laundering and financing of terrorism, all the banks were instructed to submit the completed reports on the transactions of any person, who transfers money funds over the amount equivalent to the US$1,000 out of the Republic.

419. The data submitted includes but is not limited to the information of customers' name, surname, patronymic name, full information of passport data, the exact amount of money and its currency that was sent, the beneficiary and the country of the beneficiary, the purpose of the transactions and all other relevant information. The reports are compiled and sent to NBA twice a month. Data from the reports is accordingly updated in the computerized "automated bank statistics report system".

420. Together with the recording of currency valuables exported by natural persons, monthly information on imported cash foreign currency valuables is submitted to the NBA in accordance with Regulations "On transportation of foreign currency into and out of the Republic of Azerbaijan by natural persons". Information on imported currency valuables above an equivalent of US$ 50`000 are submitted to the NBA.

Recommendation 25 (feedback and guidance related to STRs, Criterion 25.2)

421. There is no adequate and appropriate feedback of the type envisaged by the FATF Best Practices Guidelines on this issue. Indeed, the NBA find it difficult to obtain feedback on the reports they have sent to law enforcement.

3.7.2 Recommendations and comments

422. The situation with regard to Recommendation 13 and SR.IV has not changed since the first evaluation report. The evaluators repeat in large part that recommendation. The evaluators recommend that Azerbaijan as a matter of the highest priority should set up a system of mandatory reporting of suspicious transactions and activities. The reporting obligation should relate both to suspicions concerning money laundering and to suspicions concerning the financing of terrorism and should cover all predicate offences. All financial institutions and relevant non-financial institutions covered by the FATF recommendations (or the EU Directive) should be subject to the reporting duty.

423. The new legislation should also address the specific questions of disclosing the fact that an STR or related information is being reported to the FIU and provide for the protection from criminal or civil liability for financial institutions, their directors, officers and employees where they report suspicious transactions in good faith (R.14).

424. Once a statutorily based STR system is in place the Azerbaijan authorities should consider the provision of adequate and appropriate feedback to reporting entities.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**Non compliant**	• No STR system in place in law or regulation.
R.14	**Non compliant**	• No provisions on tipping off and safe harbour.
R.19	**Compliant**	
R.25.2	**Non compliant**	• No feedback to financial institutions.
SR.IV	**Non compliant**	• No STR system relating to FT in law or regulation.

Internal controls and other measures

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

3.8.1 Description and analysis

Recommendation 15

425. Recommendation 15, requiring financial institutions to develop programmes against money laundering and financing of terrorism, can be provided for by law, regulation or other enforceable means.

426. There is no specific requirement anywhere in the existing legislation for financial institutions to develop programmes against money laundering and financing of terrorism.

427. The authorities could point only to the Methodological Guidance designed for banks and advising them to establish an internal control system on "*activities against the legalization of illegally obtained funds or other property*". This document also points to the minimum that should be included for these purposes, e.g., retention of the identification information, confidentiality issues, training of the personnel.

428. This requirement is too general and due to its recommendation character cannot be treated as provided for by law, regulation or other enforceable means, hence not sufficient in terms of full compliance with the standard.

429. As to other financial market participants, the State Committee on Securities has issued Regulations "On measures taken by securities market intermediaries for the suppression of money laundering and financing of terrorism in capital market" stating that financial intermediaries "*shall permanently conduct ... complex of measures*" including "*Internal strategy, procedures and internal control, as well as control on legislation observance*" and assuring "*efficiency and functionality of organisation activity providing of regular internal audit*". This again is rather general and does not set out the obligation for establishing internal policies, procedures and controls for CDD and detection of unusual and suspicious transactions and the reporting obligation. The State Committee on Securities advised that under the above mentioned regulations they have the power to suspend conclusion or performance of transactions connected with money

laundering and terrorist financing or apply to the court for invalidation of them. So far, no such order has been made and no report has been made by the State Committee on Securities to law enforcement in connection with AML/CFT.

430. There are no requirements for financial institutions to designate at least an AML/CFT compliance officer at the management level. Only the NBA Methodological Guidance talks about including in the internal control systems of banks "*appointment of a person or group of persons at the level of management or heads of structural units, who shall be responsible for controlling the implementation of internal rules and procedures on the activity against the legalization of illegally obtained funds or other property*" (item.3.1.7).

431. There is no provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information. The Methodological Guidance issued by NBA only recommends to include in the internal control systems of banks "*possession of the authority to access to any kind of information concerning all transactions of bank by the competent person or the group of persons is another requirement of the internal control measures*" (item.3.1.8). The evaluators were not provided with any rules or procedures for hiring staff.

432. 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. Only the National Bank Methodological Guidance refers to these issues. Thus these requirements apply only to banks.

433. 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, which has set in the licensing requirements that the potential shareholders, employees cannot be persons sentenced to imprisonment or against whom bankruptcy procedures are taken. In the case of other financial institutions (apart from banks) the requirements are similar.

Additional elements

434. There are no special requirements for the AML/CFT compliance officer being able to act independently and to report to senior management above the compliance officer's next reporting level or to the board of directors, except for banks in the National Bank Methodological Guidance, where it is recommended for the banks that "*compliance officer (or group) reports to the senior management (board of directors, director, etc) directly*" (item.3.2).

Recommendation 22

435. Branches are the structural divisions of the credit institutions and are required to follow the financial institutions' internal procedures. As a result, credit institutions are responsible for their branches' activities. According to the Rules of the NBA on Organising Internal Control and Audit in Banks, banks should transfer the application of the banking policy, control mechanisms and internal procedures to their branches and subsidiaries. Alongside this, Regulations "On implementation of corporative management standards in banks" extend to all branches and subsidiaries of banks. Mentioned Regulations include establishment of information system on current financial status and operations of banks, organisation and implementation of strategically planning process, establishment of efficient organisational structure, implementation of financial planning process, existence of effective internal supervision and report systems etc.

436. One bank has 2 overseas subsidiary companies, 2 overseas branches and 3 overseas offices. One other bank has an overseas office and another an overseas branch

437. According to the information provided by the Azerbaijani authorities there are no branches or representative offices of insurance companies acting abroad.

438. Nevertheless 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.

439. 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. Though the authorities were of opinion that NBA supervises such situations no evidence was provided to prove this statement.

3.8.2 Recommendation and comments

Recommendation 15

440. The Azerbaijani authorities should consider including in law, regulation or other enforceable means requirement for financial institutions to develop programmes against money laundering and financing of terrorism.

441. Requirement for financial institutions to designate at least an AML/CFT compliance officer at the management level must be introduced in the legislation.

442. Provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information has to be introduced.

443. Financial institutions should be required to include the necessity for internal audit to test compliance with the internal procedures and policies for AML/CFT.

444. A requirement for financial institutions to put in place screening procedures to ensure high standards when hiring staff has to be addressed by the Azerbaijani legislation.

Recommendation 22

445. There is a necessity to include in local normative acts requirement for financial institutions to ensure that their foreign branches and subsidiaries pay particular attention to ensuring that AML/CFT measures applied are consistent with the Azerbaijani legislation in countries that do not or insufficiently apply the FATF Recommendations and in cases where the AML/CFT minimum standard differs.

446. It is necessary to include for financial institutions a requirement to inform their Azerbaijani supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures in the host country.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**Non compliant**	• 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.
R.22	**Non compliant**	• 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.

3.9 Shell banks (R.18)

3.9.1 Description and analysis

447. The existing legislative acts do not provide a definition of shell banks nor has anything on this issue, including a clear prohibition on financial institutions conducting transactions with shell banks, been provided for.

448. 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 accounts to be used by shell banks.

449. Though there are no provisions explicitly prohibiting the establishment of a "shell bank" in Azerbaijan, the Azerbaijani authorities pointed to the Law "On Banks" defining the procedures for licensing a bank including requirement for providing information on the address of a bank, its branch or representative office. Article 15 of the law "On Banks" provides for keeping "Registry of banking licenses and permits" by the NBA stating that "*National bank shall maintain the centralized registry, of banks, branches, divisions and representations, available to public. The Registry shall include the names, addresses of banks, branches, divisions and representations, information on administrators, registration numbers and dates of issue or cancellation of licenses and permits, information on bank, branches, divisions and representations, the activities of which are seized*". Banks are obliged "*within five calendar days …to send the written notification to National Bank on changes in information, included the registry"*.

450. Though the evaluators were assured by representatives of the National Bank that the current legal framework does not allow in any circumstances to open a bank without its physical presence, a more explicit text is required. Furthermore, the existing legislation does not prohibit establishing relations with shell banks.

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451. Furthermore, according to the Law on Banks, any legal person wishing to exercise banking activities shall acquire a bank license from the NBA. In order to acquire a license the legal person

must present all necessary documents that will certify its physical existence (with the information on an actual building which is fully equipped and secured, with identifiable personnel etc.) This should act as some barrier against shell banks.

452. In practice, the evaluators have no reason to consider that any of the banks currently authorised 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. However, considering the lack of a clear prohibition to establish a shell bank and the absence of a clear requirement on the financial institutions to ensure that their correspondent institutions do not permit their accounts to be used by shell banks, the existing legislation needs to be more explicit to comply with the standard

3.9.2 Recommendations and comments

453. Azerbaijan should review its laws, regulations and procedures and implement specific requirements covering the prohibition on the establishment or the continued operation of shell banks. Furthermore, financial institutions should be prohibited from entering into or continuing correspondent banking relationships with shell banks. In addition, there should be an obligation placed on financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. It would be helpful if the NBA then considered periodically seeking assurances in writing from all their banks that they have no direct or indirect correspondent relationships with shell banks. Again, the evaluators considered that there appeared to be a lack of understanding in the banking sector on this issue.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**Partially compliant**	• 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.

Regulation, supervision, guidance, monitoring and sanctions

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

3.10.1 Description and analysis

Recommendation 23 (overall supervisory framework: criteria 23.1, 23.2)

454. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF standards. Criterion 23.2 requires countries to ensure that a designated competent authority (or authorities) has responsibility for ensuring AML/CFT compliance.

455. 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. Although the evaluators were advised that supervisory authorities include AML/CFT issues in regular supervisory activities the fact that there is no one authority that takes overall

responsibility for supervision of AML/CFT activity detracts from the overall effectiveness of the regime.

456. The NBA is competent for the general supervision of banks and credit unions. This is based on the Law on National Bank, Law On Banks and Law on Credit Unions (Article 3.4. of the Law on Banks: "*Licensing and regulation of the banking activity of non-bank credit organisations, specified in Article 3.3 of this Law, shall be performed in accordance with existing legislation and regulatory acts of the National Bank. Requirements to professional qualifications and experience of executive employees of non-banking credit entities shall be determined by the National Bank*"; Item 5, point 8 of the Law on Credit Unions: "*The Credit union has to obtain a special permission in legal order to perform banking operations*"; item 5, point 10 of the Law on Credit Unions: "*The institution that gives a special permission for banking activities may define regulatory guidelines for the Credit unions and requests for the professional suitability of members of the Management Board and may apply sanctions*"). The activities in the insurance market are supervised by the State Insurance Supervision Department within the Ministry of Finance of the Republic of Azerbaijan. The State Committee on Securities is the supervisor for the financial intermediaries of the securities market.

National Bank

457. The NBA issues licenses and supervises commercial banks, foreign exchange offices and money remitters (the latter two categories of operation can only be carried out within the internal structure of the banks). Based on these legal acts, the NBA has issued by-laws that regulate the establishment and operation of these institutions and their supervision in more detail. In accordance with the "Law on the National Bank" (Article 5), the NBA has issued a "Methodological Guidance on the Prevention of the Legalization of Illegally Obtained Funds or Other Property through Banking System Manual". The NBA issues binding regulations for the banking sector and has the right to impose sanctions on commercial banks for breaches of laws or regulations. Within the Banking Supervision Department of NBA there is a special division dealing with AML/CFT issues (AML division).

Ministry of Finance

458. The Ministry of Finance is the responsible authority for insurance supervision. Within the Ministry, the State Insurance Supervision Department deals with the insurance entities' issues. In relation to the insurance sector, the basic duties of this body are listed in the Insurance Activity Law. That includes also responsibility for (general) supervising and licensing of insurance companies and insurance brokers. There are 29 insurance companies (1 reinsurance company) and 7 insurance brokers in Azerbaijan. Though the "Law on Insurance Activity" includes an article dealing with AML/CFT issues, there is no authorisation anywhere in the legislation for AML/CFT regulation and supervision of insurance entities.

State Committee on Securities

459. State Committee on Securities (SCS) is responsible for the (general) supervision of operations of the authorised participants on the securities market. If banks perform services related to securities, the SCS cooperates in supervision issues with the NBA. There are 37 licensed professional participants operating in Azerbaijan.

460. The chart beneath shows the supervisory and licensing authorities for all financial institutions.

Financial institutions	Supervisory/ Sanctioning authority	Licensing authority (if licensed)	Legal Basis
Commercial banks	National Bank	National Bank	Law "On Banks", Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Credit unions	National Bank	National Bank	Law "On Credit Unions", Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Insurance companies (including life)	Ministry of Finance	Ministry of Finance	Law "On Insurance Activity", Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Brokerage houses	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Securities companies	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Pension funds, pension companies	Ministry of Finance	Ministry of Finance	Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Stock brokers	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Investment funds, investment fund management companies	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	State Committee on Securities under the auspices of the President of the Republic of Azerbaijan	Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Foreign Exchange offices	National Bank	National Bank	Law "On Banks", Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Money remitters	National Bank	National Bank	Law "On Banks", Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.
Postal organisation	Ministry of Communication and Information Technologies	Ministry of Communication and Information Technologies	Decree of the President of the Republic of Azerbaijan #782, 2002.02.09.

Recommendation 30 – (Structure, funding, staffing, resources, standards and training)

461. 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 all had participated in some training. They appeared to be adequately structured, funded and staffed and provided with sufficient technical resources. NBA has a comprehensive on-site inspection manual covering banks. This manual includes also a section for Money Laundering, but is silent on counter terrorist financing issues. The State Committee on Securities has issued "Rules on AML/CFT" which were said to be developed for the needs of securities industry. The interviews with the authorities and relevant market participants showed some general understanding of AML/CFT issues.

462. The Azerbaijan authorities have mentioned in the MEQ that the Government of Azerbaijan in close cooperation with the Council of Europe, the United States Embassy in Baku and the United States Department of Justice has organised and conducted special seminars for the highest representatives of the ministries and authorities directly or indirectly involved in AML/CFT activity. They have mentioned that in order to provide effective implementation of methodology in banks a series of applied seminars for managers of the banks have been conducted. In order to improve the capacity building in AML/CFT field for prosecutors, a series of seminars were also organised by the US Department of Justice. It was pointed out that at the seminars, special attention was drawn on the prosecution methods concerning money laundering and terrorism financing issues. Besides the MEQ included information that the similar seminars were also conducted for the representatives of other authorities by the US Office on Technical Assistance, the World Bank, US Department of Justice, Council of Europe, US Embassy in Azerbaijan, etc. However, the exact numbers of AML/CFT trained supervisors were not provided to the evaluators.

463. Concerning rules which would require the staff of the supervisory authorities to maintain high professional standards it should be noted that the authorities could not point to any legislative act providing such requirements.

464. Concerning the requirement to keep professional secrets confidential, the authorities could only point to the Law "On Commercial Secrecy", namely, article 17.2 stating that "*Officers of state authorities in implementation of their public services shall provide the preservation of commercial secrecy*". The information on commercial secrecy can be disclosed only in cases stipulated under legislation. This law defines "commercial secrecy" as "*information related to production, technological, management or other activities of natural persons or legal entities, the disclosure of which without owner's approval may adversely affect his legal interests*" and there is a term "Know-how" used in this law which is defined as "*information obtained as a result of intellectual activities, not protected by legislation or patents*". This provision provides a general requirement to keep commercial secrecy confidential but this means that sectoral laws have to define what should be considered as "commercial secrecy" or "know-how". Consequently, without a specific rule determining what should be considered as "commercial secrecy" or "know-how", Article 17.2 of the Law on Commercial Secrecy cannot be applied.

465. This requirement for the bank supervisory authority (National Bank) is included in article 60 of "The Law of the Republic of Azerbaijan on the National Bank of the Republic of Azerbaijan" ("Confidentiality"): "*members of the Board and other employees of the National Bank may not disclose job-related information obtained through discharge of their official responsibilities, including information that constitutes or relates to state and bank secret, during or after termination of their employment with the National Bank other than in cases permitted by the law.*" As to the other supervisory authorities the evaluators were not advised of any other sectoral laws, which would define such secrecy.

466. The staff of the supervisory authorities had attended several seminars and courses on various subjects regarding AML/CFT issues:

No.	Title of the training-seminar	Number of participants, and the authority they represent	Organiser of the training seminar
1.	Countering Financing of Terrorism, 22-26 May 2006, Siracusa, Italy	National Bank of Azerbaijan, as well as FIUs and prosecutor offices of other countries	International Monetary Fund
2.	AML/CFT course for financial intelligence units, May – June 2006, Baku, Azerbaijan	27, Ministry of Finance, National Bank of Azerbaijan, General Prosecutor Office, Ministry of Internal Affairs, State Customs Committee, State Committee on Securities	World Bank
3.	Banking supervision, 5-16 June 2006, Baku, Azerbaijan	24, National Bank of Azerbaijan	USAID
4.	International seminar on development of insurance supervision in non-EU countries, 14-15 September 2006, London, UK	Ministry of Finance of Azerbaijan, as well as other relevant authorities from participating states	EBRD
5.	Role of financial supervision in strengthening of economic development, 16 September 2006, Baku, Azerbaijan	30, Ministry of Finance, National Bank, Chamber of Auditors, State Committee on Securities, Ministry of Economic Development	Chamber of Auditors
6.	Regional AML Seminar for ETC/CIS countries, 24-25 October 2006, Bishkek, Kyrgyzstan	National Bank of Azerbaijan, as well as other relevant authorities from participating states	EBRD
7.	Establishing an FIU in Azerbaijan to combat ML and FT, 30 October 2006, Baku, Azerbaijan	35, National Bank, General Prosecutor's Office, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, State Committee on Securities, Ministry of National Security	US Embassy, US Department of Justice, Council of Europe, Government of the Republic of Azerbaijan
8.	Use of securities in money laundering typologies, 30-31 October 2006, Podgorica, Montenegro	Representatives of relevant agencies and financial sector of participating states	MONEYVAL
9.	Seminar on implementation of Methodological Guidance on the Prevention of the Legalization of Illegally Obtained Funds or Other Property Through Banking System, January 2007, Baku, Azerbaijan	55, National Bank and banks operating in Azerbaijan	National Bank
10.	Workshop for regional internal controls and on-site inspections in financial sector for AML/CFT, 5-9 March 2007, Vienna, Austria	National Bank of Azerbaijan, as well as other relevant authorities from participating states	Joint Vienna Institute
11.	Training on main principles of insurance supervision, 18-29 March 2007, Baku, Azerbaijan	32, Ministry of Finance of Azerbaijan, as well as other relevant authorities from participating states	World Bank

12.	Typologies of ML and FT, 14-18 May 2007, Siracusa, Italy	National Bank of Azerbaijan, as well as other relevant authorities from participating states	International Monetary Fund
13.	Prevention of ML, 30 May – 01 June 2007, Baku, Azerbaijan	46, National Bank, State Committee on Securities, Ministry of Finance, banks operating in Azerbaijan	Fonds de Lutte, Luxembourg
14.	"Analysis of market", "Financial reports", "Mobile inspections ", 11-22 June 2007, Baku, Azerbaijan	25, Ministry of Finance of Azerbaijan, National Bank, Chamber of Auditors, Ministry of Taxes, State Committee on Securities	USAID and International Insurance Fund
15.	Insurance supervision, 22-28 July 2007, Toronto, Canada	Ministry of Finance of Azerbaijan, as well as other relevant authorities from participating states	Toronto International Leadership Centre

The National Bank of Azerbaijan

467. The Supervision Department of the NBA has 30 employees, involved in on-site and off-site supervision of banks. Within the Supervision Department there is a group of three banking supervisors specialized in the field of AML/CFT. These three supervisors are involved in on-site inspections together with at least two other supervisors and conduct examinations in the banks concerning AML/CFT issues. There are no specific powers anywhere in the existing legislation for NBA to conduct inspections on AML/CFT issues. According to article 46.2 of the Law on Banks, banks and local branches of foreign banks will be audited once a year by inspectors of the NBA who are empowered to demand any information from the bank, including AML/CFT issues. For purposes of clarification of facts of breach of legislation (any kind violation, including AML/CFT legislation), the NBA may conduct additional audits in banks and local branches of foreign banks. Moreover, the On-Site Supervision Manual specifically indicates money laundering as an issue to be thoroughly examined during the inspections. More detailed information on the on-site inspections may be found in the "Regulations on Procedures of Bank Inspections". The inspections are conducted in accordance with the "On-site inspections Manual". Overall it seems that the unit within the NBM responsible for AML/CFT supervision is adequately structured, funded, staffed, and provided with sufficient technical and other resources to perform their functions in the existing circumstances. Later on with further development of the AML/CFT regime in Azerbaijan the necessity to expand the unit will obviously be an issue.

State Insurance Supervision Department (Ministry of Finance)

468. The Ministry of Finance is the responsible authority body of the Republic of Azerbaijan for insurance supervision. Within the Ministry, the State Insurance Supervision Department deals with the insurance entities' issues. There is no specific authorisation for AML/CFT inspection as there is no AML Law yet in force. This division includes 19 employees dealing with supervisory activities. The evaluators were told during the on-site visit that it is planned to expand the number of employees dealing with AML/CFT issues when the AML Law comes in force.

State Committee on Securities (SCS)

469. The evaluators were told on-site that 7 persons are employed at the SCS of which 6 deal with supervision issues (off-site and on-site supervision). The evaluators were told that currently AML/CFT issues are not a part of the full scope on-site supervision examinations. However, with the AML legislation coming in force the situation will change and the evaluators were assured that SCS is ready to include AML/CFT issues in the scope of examinations in the future.

Recommendation 29 - Authorities' Powers

General

470. Criterion 29.1 requires that supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and financing of terrorism.

471. Article 46.3 of the Law of Azerbaijan on Banks authorises the inspectors of the National Bank, during their inspections of banks and their subsidiaries to:

- *have access to any bank, its branch, department, subsidiary economic units, as well as local branches of foreign bank and review their reports, accounting books, documentation and other records, demand for their clarifications;*
- *require from administrators, employees and agents of the bank its subsidiary economic units, persons, holding majority of participation share in bank, persons related to the bank and persons acting on behalf of persons, relating to the bank, department of the bank and local branch of the foreign bank submission of all necessary information on any issue, related to management of this structures, and current activities, including the client operations*.

472. In the case that these requirements are not fully observed, according to Article 48 of this law, a wide range of "corrective measures" may be applied separately or simultaneously:

"*48.1.1. limitation or suspension of implementation of certain banking activities;*
48.1.2. temporary suspension of administrators;
48.1.3. stoppage of implementation of banking operations and deals with persons, related to banks and persons acting on behalf of persons related to banks;
48.1.4. limitation of acceptance of deposits;
48.1.5. limitation or suspension of attraction of funds from sources other than funds attracted from founder banks, subsidiary banks or local branches of foreign banks;
48.1.6. limitation, suspension or cancellation of shares in the capital of other legal entities;
48.1.7. interruption of opening of new branches and departments or suspension of activities of existing branched and departments, or stoppage of their activities;
48.1.8. suspension of provision of financial privileges;
48.1.9. change to procedures and provisions for award of credits and attraction of deposits;
48.1.10. requirement for increase of capital;
48.1.11. requirements for establishment of capital reserves from profits;
48.1.12. dependent on quality of assets, requirement for reduction of establishment of special reserves and/or charter capital at the volume of bank loss amount;
48.1.13. suspension of issuance of provisions on obligations (guarantees) of other persons;
48.1.14. limitation or suspension of payment of dividends;
48.1.15. introduction of changes to operations and internal control procedures of the bank;
48.1.16. requirements for implementation of emergency general meeting of bank shareholders"

473. According to Article 49 of this law, along with the "corrective measures" sanctions may be applied as well:

49.1.1. apply penalties to the bank and bank administrators, as per Administrative Violations Code of the Azerbaijan Republic;
49.1.2. dismiss administrators from their positions.
49.2. In the event of application of sanction, stipulated under Article 49.1.2. of this Law by National Bank, the dismissal of bank administrator from his position shall be implemented immediately under the decision of the competent management authority of the bank.
49.3. National bank may decide to cancel the banking license on the basis stipulated under Article 16 of this Law.

State Insurance Supervision Department (Ministry of Finance)

474. Article 97.1 of the Law of Azerbaijan on Insurance Activity empowers the State Insurance Supervision Department to "*conduct ordinary or extraordinary inspections of the insurers and insurance intermediary in order to verify whether they observe this Law and other legislative acts, connected with insurance, as well as to conduct on-site inspection of their activity in order to verify financial stability in appropriate cases*". Article 78.5 of this law stipulates, that "*financial statements and other reports, specified in this Law, shall be analyzed by insurance supervision authority*". To that end, the ISD is authorised to request and receive reports to exercise control over them. The ISD is also empowered to instruct an insurer, in case of violation of insurance legislation, on elimination of the violation (Article 102). If the insurer fails to do so, the license can be suspended until the violation has ended or revoked (Article 103).

State Committee on Securities (SCS)

475. 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. The evaluators were reassured that the sanctions will be included in the Code of Administrative Infringements after the adoption of the draft AML law.

Recommendation 17 – Sanctions

476. Recommendation 17 requires countries to ensure that effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, are available to deal with natural or legal persons that fail to comply with anti-money laundering or terrorist financing requirements. The only measures or sanctions possible to apply in Azerbaijan by the National Bank do not go beyond the ones described earlier. As to the other financial sectors (insurance and securities) see paragraphs 472 and 473.

477. Article 48.1.8 of the Law on National Bank empowers the National Bank to impose in cases *specified by legislation* statutory corrective action (influence measures) and sanctions to credit institutions and their administrators. Article 42 is the sole article in the Law on Banks explicitly dealing with money laundering. Article 42.1 of the Law on Banks, provides that "Banks shall identify each client that they service. During making of payments, banks shall required the clients to indicate the recipient (beneficiary). No anonymous accounts can be opened, including anonymous savings accounts". Article 42.2 of the Law on Banks, provides that the National Bank "For prevention of money laundering in the banks, *other provisions of the legislation of the Azerbaijan Republic* may be applied in addition to those stipulated under Article 42.1 of this Law". The evaluators consider that in the absence of an AML/CFT law, there is no other AML/CFT obligation beyond customer identification and the operation of anonymous accounts

that is sanctionable by the NBA. In practice, the only sanction of which the evaluators are aware which arguably involves money laundering relates to the revocation of a license in 2004 on the basis of several findings:

"complete loss of liquidity,
actual impossibility of recovery of financial status,
conduction of transactions that cause suspicions on their sound character,
not implementation of appropriate identification of transactions carried out by customers,
as well as not fulfillment of instructions issued by the National Bank to this end,"

478. Although this is the only sanction in the context of money laundering, the full range of sanctions varies from written warnings to the withdrawal of the license but do not involve monetary penalties. Without an AML/CFT law in place in Azerbaijan there are no requirements for sanctioning for non-compliance with AML/CFT rules. Administrative sanctions, as required by this Recommendation, cannot be found in any of the sectoral laws.

479. As regards the responsibility of the supervisory bodies over the monitoring entities and the power to impose sanctions, it is specified in the legislation that the National Bank of Azerbaijan is the authority in charge of imposing sanctions for banks (Articles 47-50 of the Law on Banks).

480. For the insurance sector the sanctioning authority is the State Insurance Supervision Department of the Ministry of Finance of Azerbaijan (see for details paragraph 465). The Ministry of Finance have had powers available including monetary penalties (envisaged by the Administrative Violations Code), since March 2008, to sanction for customer identification breaches under the Insurance Activity Law. No such penalties have been issued.

481. The authorities advised that the State Committee of Securities is the authority for imposing sanctions on securities companies (see for details paragraph 466) and that basis for such power are stipulated in the Charter of the SCS approved by the Decree of the President of the Republic of Azerbaijan. However, this document contains only the right of the SCS "to suspend further distribution of the securities issued as a result of an illegal issue and to take measures with this respect" or to "suspend or annul issued licenses when this activity is undertaken in violation of the legislation of the Republic of Azerbaijan". In respect to monetary penalties the authorities pointed to the Administrative Violations Code.

482. The inspections carried out by NBA during 2005, 2006 and 2007 resulted in various corrective measures taken against 32 banks in Azerbaijan, but no measure was taken in connection with violations of AML/CFT requirements. The measures used were for violations of prudential regulations (e.g., capital adequacy, requirements for additional special provisions for non-performing assets) and resulted mainly in suspension of license. No statistics were provided concerning other financial market participants.

483. The above-mentioned measures (sanctions) have always been imposed against the monitoring entities and not against their directors and senior management. The evaluators were informed that such sanctions would be envisaged by the Code of Administrative Infringements after the adoption of the draft AML law. Consequently the existing regime of sanctions cannot be regarded as fully covering all the criteria of Recommendation 17.

Market entry – R.23 (criteria 23.3., 23.5, 23.7 (licensing/registration elements only))

General

484. The criterion 23.3 requires supervisors or other competent authorities to take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial

owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in a financial institution.

485. According to Article 47 of the "Law on the National Bank of the Republic of Azerbaijan", the NBA is authorised to grant licenses to banks, including performing services of money transfer and foreign exchange bureaus. For an overview of the licensing regime referring to the various financial institutions see the table at paragraph 457.

Banks (banks, branches of foreign banks and representative offices of foreign banks)

486. Regarding this criterion the authorities pointed to article 10.4 of the Law on Banks "*Bank Board Members, head of internal audit department, chief accountant of the bank (head of accounting services) and deputies, holding his signature authority, as well as heads of local branches of national and foreign banks (head of accounting service) and deputies, holding their signature authority, shall pass the qualification testing in National Bank. Upon the obtaining of approval of National Bank to these positions, administrators may start the implementation of their duties. Rules for implementation of qualification testing defined by National Bank"*. This provision covers only one aspect, namely the professional requirements of all the relevant positions, but does not refer to the reputation of these persons and thus cannot be considered as sufficient for covering criterion 23.3

487. At the same time Law on Banks in its article 10.1 provides the necessity for "*Administrators of banks, their branches, divisions, representations and local branches and representations of foreign banks shall be the persons having fit and proper characteristics*". By the term "Administrator" the Law identifies "*members of Controllers' Board, Auditor Committee and Management Board of the Bank, as well as chief accountant of the bank (head of accounting service), employees of internal audit division, managers and chief accountants of branches, departments and representations of the bank*". The meaning of "Person having acceptable and necessary characteristics" for this law is "*natural person, who is civilly impeccable, and is thought to be fair and trustful for its social position and professional qualities, experience, business interests of whose let him be the owner of majority participation share in the bank, administrator, temporary administrator and liquidator*". The term "civil impeccability" is also covered by the Law on Banks meaning "*for the owner of majority of participation share, and if it is the legal entity, for management of his executive authorities, as well as the management of subsidiary structures of the bank means the absence of criminal conviction for deliberately performed crimes; for administrator, temporary administrator and liquidator- absence of conviction, absence for criminal records on heavy crimes against property or for economic activities, absence of restrictions by the court order, for holding of the position or engagement in professional activities, absence of the fact on insolvency announcement by the court*". This covers to some extent Recommendation 23.

488. Furthermore, in accordance with article 7 of the Law on Banks, in order to obtain a bank license, the founder of the bank or their representatives authorised in accordance with legislation shall submit a written application to the National Bank. During the review of the application for obtaining a bank license, the National Bank should receive information from financial, tax and law-enforcement agencies on financial status, professional activities of major shareholders (and, if these are legal entities, information on management) and administrators, concerning whether they had any criminal convictions in the past. This requirement is also implemented with regard to persons, who subsequently obtain major shareholdings in the bank (and, if these are legal entities, information on management), newly appointed administrators and management of executive authorities of legal persons, reorganised into subsidiary structures of the bank. For these purposes, financial, tax and law enforcement agencies must submit the required information to the National Bank.

489. According to article 10.2.3 of the Law on Banks, the administrators of banks cannot be the persons, who were deprived of the right to be bank administrators in accordance with procedures of legislation.

Insurance companies (including life)

490. For the insurance sector such provision is based on the Law on Insurance Activity and in article 21 of the law it is stipulated that "*no person, including insurer's founders and shareholders, might conclude contract, resulting in obtaining significant participating share in insurer's paid up capital through purchase of its ordinary shares, as well as carrying out significant control over insurer without consent of insurance supervision authority*".

491. Documents to be submitted for the issuance of a license are required to provide only information on the competence of the relevant candidates and notarized application on "*civil impeccability in respect to each such person*" (article 44 of the Law on Insurance Activity). In order to obtain permission to increase the shareholders capital documents are required to be submitted proving the fact and amount paid in capital (Article 66 of the Law on Insurance Activity)[8]. Article 1.41. of the Law on Insurance Activity (as well as of the English text of that law) explains the term "*civil impeccability*" as follows:

> civil impeccability – for the persons, specified includes:
> -absence of previous convictions for deliberately committed crime;
> -absence of previous convictions for serious or especially serious crimes against property and in the sphere of economic activity;
> -absence of restrictions according to the court order for holding appropriate position or engagement in professional activities.

Securities market

492. It was explained that the same requirements apply to securities market participants; though no supporting legislative acts were provided in English at the time of the on-site visit although these were provided at a later date. Thus it might be said that there are no similar rules for significant shareholders or beneficial owners of significant or controlling interests in brokerage companies.

493. There is no special provision anywhere that requires licensing or registering natural and legal persons providing money or value transfer service, or a money or currency changing service (criterion 23.5). The reason for the lack of such special requirements was explained by the fact that these services can be provided only by banks. However, the information provided in the MEQ in this respect indicates that money or value transfer is possible through postal services and that transfer via post services cannot exceed the limit of 1000 US$/Euros. No further information concerning these services was provided to the evaluators.

Ongoing supervision and monitoring – R.23 (criteria 23.4, 23.6, 23.7 (supervision/oversight elements only))

The National Bank of Azerbaijan (NBA)

494. The NBA conducts off-site and on-site supervision of banks. Off-site supervision is done by surveillance of the documentation that banks submit to the NBA. The NBA has issued an "On-site Supervision Manual", which among other prudential issues describes procedures for evaluating the AML measures of banks; it is structured as a step-by-step system starting with the preparation for the examination and ending with the description of activities after the on-site visit. The manual includes guidelines for the analysis of policies, procedures and practices focusing mainly on evaluating "*the adequacy of internal controls employed to prevent money laundering or fraud, … the competence of bank officers responsible for designing money laundering and fraud preventing systems, … the procedures used by bank officers to prevent money laundering and abuses, … the*

[8] English version of the Law on Insurance Activity only partially provided the text of the law.

reliability of bank internal money laundering and fraud detection systems". In order to help supervisors the manual includes several questions that are useful when investigating or identifying fraud, but is not specifically designed for obtaining information on internal procedures for client identification and to some extent dealing with issues of management and internal audit responsibilities and reporting obligations of an institution. The NBA has issued a "Methodological Guidance on the Prevention of the Legalization of Illegally Obtained Funds or Other Property through Banking System" which is also used by NBA supervisors for on-site supervision. However, there is no provision for the evaluation of policies and procedures for combating terrorism financing and apart from mentioning it in several paragraphs of the Guidance and in the introductory part of the relevant chapter of the supervision manual.

495. At the time of the evaluation visit, the NBA has 12 off-site and 15 on-site inspectors as well as 3 AML inspectors. In 2007, the NBA conducted (pursuant to Article 48 of the "Law on the National Bank of the Republic of Azerbaijan") 67 on-site inspections of banks. Twenty-one examinations were full-scope and forty-four were targeted at specific issues. Full-scope examinations were said usually to include AML/CFT issues as well. At the time of the on-site visit, the NBA did not yet conduct specific AML/CFT inspections. The evaluators were told that the main elements of the examinations in 2007 were the evaluation of the internal control and audit systems, the anti-money laundering systems and the corporate governance. In the absence of effective sanctions and without any disciplinary investigations taking place it is difficult for the evaluators to form an opinion on the effectiveness of the supervisory regime concerning AML matters.

496. The authorities provided the following figures concerning on-site supervision conducted by the NBA:

Inspections held on banks in 2006 and 2007				
Total inspections		**Full - scale inspections**	**Target inspections**	**Un-planned inspections**
2006-year	54	20	29	5
2007-year	67	21	44	2

State Insurance Supervision Department (Ministry of Finance)

497. The State Insurance Supervision Department of the Ministry of Finance according to the article 95 of the "Law on Insurance Activity" supervises insurance companies in Azerbaijan. On-site inspections take place at least once a year, but if needed, inspections take place on a more frequent basis. In 2007 the license on activities of one insurance company was taken away, and the activities mentioned in a license of one another insurance company were temporarily suspended, then restored after that company complied with the solvency requirements. During 2007 the State Insurance Supervision Department conducted on-site inspections in 9 insurance companies. This resulted in suspending the licensed activities of one insurance company and revoking the license of another one. Previously 4 inspections in 2005 and 5 inspections in 2006 were carried out by the Ministry of Finance in insurance companies operating in the Republic of Azerbaijan. As a result of mentioned inspections mandatory requirements were given in order to eliminate relevant shortcomings and insufficiencies. No facts of money laundering and (or) terrorism financing were detected during mentioned inspections.

State Committee on Securities

498. The State Committee on Securities conducts both on-site and off-site inspections with regard to compliance with laws and regulations in the securities market. The Committee cooperates with the National Bank and the Ministry of Finance on a daily basis on different issues relating to

supervision. In 2007 monitoring of activity of 11 professional participants of the securities market of the Republic of Azerbaijan was conducted. This resulted in 227 administrative penalties the sum of which is AZN 60 555 and administrative penalties (fines) issued in respect of 129 stock companies as a result of grave infringements in their activity. However, these penalties and fines were not connected with AML/CFT as SCS is not inspecting implementation of these measures while there is no AML/CFT law.

Recommendation 25 – Guidelines and feedback

499. The only guidance and manual to some extent covering AML/CFT issues have been issued by the NBA as described above (see paragraph 491). This manual and guideline are generally designed for supervisory purposes and for use during the on-site inspections.

Recommendation 32 – statistics

500. The statistics on supervisory activities were provided by the NBA (see above paragraph 493), SCS (see above paragraph 495) and the SID (see above paragraph 494). As no sanctions have been imposed for AML/CFT issues so far, there are no statistics on that.

3.10.2 Recommendations and comments

501. Azerbaijan should implement effective, proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with national AML/CFT requirements.

502. Sanctions should be available in relation not only to the legal persons that are financial institutions or businesses but also to their directors and senior management.

503. The range of sanctions available should be broad and proportionate to the severity of a situation. They should include the power to impose not only disciplinary, but also financial sanctions and the power to withdraw, restrict or suspend the financial institution's license for not observing AML/CFT requirements.

504. 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. Though in practice the evaluators were advised that supervisory authorities include AML/CFT issues in the everyday supervisory activities.

505. The authorities should provide supervisors with 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.

506. Some very general provisions were pointed to in respect of the requirements on professional standards. The NBA indicated that they are pursuing a comprehensive human resources management policy in order to establish high levels of professionalism and training, and noted that their salaries are three to four times higher than other governmental bodies. They indicated that this assists the recruitment of good quality staff. In respect of professional standards, the other supervisory bodies referred in this context to their general duties as civil servants. Apart from employees of the NBA, there are no specific rules requiring staff to keep professional secrets confidential, again, other than in their general responsibilities as civil servants. Staff of all supervisory bodies should be required in the context of AML/CFT to maintain high professional standards and to keep professional secrets confidential. Presumably these issues will be covered when the AML/CFT law is passed.

507. Professional standards required of the staff of the Ministry of Finance, including staff of the State Insurance Supervision Department are set in the Law "*on the Civil Service*" and the Law "*on the rules of ethic conducts of civil servants" since all of the referenced individuals are civil servants. Article 28.1 of the Law "on the Civil Service*" stipulates that "Citizens are hired into the civil service on the bases competition". It is mentioned in the Article 31.1 of the mentioned law that "*every five years all civil servants holding administrative and assisting posts should be attested*". These articles and other articles of the mentioned law dedicated to the procedure of hiring for employment into and attestation in the civil service requires the insurance supervision authority to maintain high professional standards of its staff. According to the Article 18.0.8. of the Law "on the Civil Service", civil servants should keep information acquired during their employment relating to the personal life, honour and dignity of citizens confidential, except in cases when otherwise as required by Law. Besides, the Law "on the rules of ethic conducts of civil servants" in its Article 8.3 contain the same provision about the confidentiality as mentioned above.

508. The State Committee on Securities is a central executive body, its employees are civil servants. So, using insider information by the Civil Servants employed by the SCS is regulated by the Law on Civil Servants, the Law on Ethic Code of Conduct of the Civil Servants, and also by the SCS Regulations on Ethic Code of Conduct of Civil Servants. Along with this, it should be noted that the appointment of public servants is conducted by the State Commission on Public Service under the President of the Republic of Azerbaijan. Admission for the service at the State Committee on Securities is carried out jointly with the mentioned Commission in accordance with transparent competition and interview procedures.

509. A comprehensive HR management policy is implemented at the NBA in order to establish high levels of professionalism among staff and ongoing professional training and development of personnel is organised. Together with this, a more extensive implementation of this HR management policy is a matter of high priority in the main operational areas, particularly in the banking supervision area, which includes anti money laundering activity as well.

- In accordance with the article 22 of the Law "On the National Bank of the Republic of Azerbaijan", the National Bank approves its own budget, determines the organisational structure and its internal management procedures and approves the recruitment and evaluation of its personnel policy.
- The National Bank applies a competitive motivation system for its personnel. Based on article 22 of the Law on "the National Bank of the Republic of Azerbaijan", the level of salaries for the personnel in the National Bank is determined by taking into consideration the appropriate level of salary in the banking system of the Republic of Azerbaijan. In comparison with the salaries of all other governmental bodies, the salary of the personnel of the National Bank is 3-4 times higher; in comparison with the salaries of the top 10 commercial banks, it is higher by 15-20%.
- It should be noted that the number of National Bank personnel dealing with banking supervision matters has noticeably increased in recent years. For example, if in 2004 the staff of relevant department consisted of 25 persons, in 2008 this number increased more than twice and now constitutes 62 employees.
- The whole staff of the National Bank is equipped with all the necessary stationary and modern computers, the software of which is periodically updated and protected by antivirus software. At the same time, significant attention is paid to the foreign language training of staff. In this regard, special courses are arranged to improve linguistic skills. All personnel of the AML Division speak at least two foreign languages fluently.
- Employees of the Banking Supervision Department of the National Bank are periodically involved in appropriate training-seminars regarding various aspects of supervision, as well as AML issues. More detailed information can be obtained from the item 438 of the MONEYVAL Assessment Report on the Republic of Azerbaijan.

510. It worth noting that the National Bank profits from several foreign technical assistance projects. Technical assistance for effective implementation of banking supervision provided by the International Monetary Fund is of high importance. During the last 5 years USAID joined the initiative of technical assistance in supervision issues, including AML matters.

3.10.3 Compliance with Recommendations 17, 23, 25, 32 and 29

	Rating	Summary of factors underlying rating
R.17	**Non compliant**	• Without 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.
R.23	**Partially compliant**	• As no basic AML/CFT 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. • 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.
R.25	**Non compliant**	• 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.
R.29	**Partially compliant**	• 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.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

511. 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.

512. In order to provide money remittance services banks have to obtain a license to do so from NBA. The NBA supervises these activities as well, and includes this issue in the on-site and off-site inspections.

513. According to the definition of "Bank license" included in article 1 of the Law On Banks "*Bank license [is] special permit … providing exclusive rights for implementation of activities, related to … provision of payment, cash-desk and wire transfer operations by client request*". These activities are regulated by NBA Regulations "On cashless settlements and money transfers in The Republic of Azerbaijan" and "On the currency transaction regime of residents and non-residents in the Republic of Azerbaijan".

514. The NBA maintains the centralized registry of banks, branches, divisions and representations, available to public. The Registry includes "*the names, addresses of banks, branches, divisions and representations, information on administrators, registration numbers and dates of issue or cancellation of licenses and permits, information on bank, branches, divisions and representations, the activities of which are seized*" (Law On Banks, article 15).

515. Article 38 ("Payments and money transfers") of the Law "On Banks" provides that "*banks implement payments and money transfers in accordance with the Civil Code of the Azerbaijan Republic and legal documents adopted by the National Bank in accordance with this code, banking business practices, as well as relevant contracts*".

516. In their replies to the MEQ, the authorities advised that due to the fact that all the MVT service operators function through the banking system and consequently have to be in line with the banking legislation there is no need for the designation of another competent authority apart from NBA to register and/or license the MVT service operators.

517. The Law On Banks in article 47 ("Measures of influence applied to banks") stipulates that "*in the event of determination of prudential norms and requirements by the bank, implementation of its activities with violation of requirements of this Law and legal documentation of National Bank, violation of limitations, included in the banking license or permit issued to the National Bank, or determination of basis, which can result such violations, dependent of the nature of violation*". Corrective actions applicable to the banks include suspension of licensed activities, penalties and revoking licenses. According to the Law on Banks penalties can be applied in accordance with Administrative Violations Code with court decision. The dismissal of administrators from their positions or cancellation of the banking license is applied by the decision of the Board of National Bank (article 49).

3.11.2 Recommendations and comments

518. The authorities should implement requirements in relation to Recommendations 4-11, 13-15 and 21-23 specified for the MVT service providers.

519. The sanctioning system for infringements of the existing legislative acts requiring court decisions via application of the supervisory authorities is does not work in practice as no sanctions apart from NBA corrective measures for banks have been imposed so far. It should be amended to provide for an effective sanctioning regime.

520. The legislation should be amended in order to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**Partially compliant**	• 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.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

521. According to the information provided in the MEQ tax advisors, external accountants, auditors and lawyers are not intended to be subject to AML/CFT requirements in Azerbaijan. The reason for this decision was indicated as the low risk of ML or TF in these spheres. It was explained by the authorities that these professions cover insignificant segments of the non-financial sector. Therefore, only notaries and the dealers in precious metals and stones may be considered as being subjected to the AML/CFT requirements. No casinos were said to exist as on the basis of the Decree of the President of the Republic of Azerbaijan (№730, 27.01.1998) the activity of casinos is prohibited on the territory of the Republic of Azerbaijan. Trust and company service providers were also said not to exist in Azerbaijan. The evaluators were advised that there is no prohibition on the establishment of trusts in Azerbaijan.

522. The major DNFBP in Azerbaijan are as follows:

- 150 public notaries;
- 1 000 Dealers in precious metals and stones.

523. Though casino activity and gaming are prohibited by the legislation of Azerbaijan Republic it was advised that lottery games are undertaken only by "Azerlottery" OJSC, whose shares are 100% owned by the government. No other information as to the legal obligations of this entity was provided. The evaluators were not convinced that the prohibition on casino activity includes also the activities of internet casinos.

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

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5 to R.10)

4.1.1 Description and analysis

525. Recommendation 12 requires DNFBP to meet the CDD and record-keeping requirements set out in Recommendations 5, 6 and 8 to 11 in the circumstances specified in Criterion 12.1.

Applying Recommendation 5

526. The issue of anonymous accounts and accounts in fictitious names is not applied for DNFBP.

527. General CDD obligations for the categories of DNFBP supposed to be covered by the AML Law have considerable weaknesses. As a consequence, DNFBP are not required to identify customers (a) when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII; (b) when there are doubts about the veracity or adequacy of previously obtained identification data. DNFBP are also not obliged 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 (as outlined in R 5.6-5.8). 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. The documents which can be used for the verification of identification are not sufficiently determined. For customers that are legal persons or legal arrangements, there are no requirements to 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 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. The possibility of establishing 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.

Applying Recommendation 6 - Politically Exposed Persons

528. As already stated under section 3, Politically Exposed persons (PEPs) are 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 (PEPs). The issue is not covered either in any of the DNFBP special regulations. There was also a widespread unawareness of this issue amongst DNFBP: the interviewees told the evaluation team that they are not familiar with the term "politically exposed persons" as provided for by the FATF Recommendations.

Applying Recommendations 8 – new technologies and non face-to-face business

529. The situation as described above for financial institutions (see section 3.2) applies equally for DNFBP.

Applying Recommendation 9- Third Parties and introduced Business

530. Recommendation 9 is not applicable to Azerbaijan (see Section 3.3).

Applying Recommendation 10 – Record Keeping

531. The Law on Notaries contains a specific record keeping provision: Article 21 ("State Notary Archive") stipulates: "The relevant executive authority of the Azerbaijan Republic operates the state notary archive for storage of notary documents for the period of 75 years". There is no provision in this regard for dealers in precious metals and stones.

Applying Recommendation 11 - Complex, Unusual, Large Transaction

532. There is no specific requirement in the legislation for notaries and dealers in precious metals and stones to pay special attention to complex, unusual large transaction, nor to analyse them and keep records accordingly.

4.1.2 Recommendations and comments

533. The coverage of DNFBP is not complete or in line with international standards. It is strongly recommended to the Azerbaijan authorities to include other categories of DNFBP as subject to AML/CFT obligations e.g., lottery organisers, tax advisors, external accountants, auditors and lawyers.

534. Azerbaijan should fully implement Recommendations 5, 6, 8, 10 and 11 and make these measures applicable to DNFBP.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**Non compliant**	• 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.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

Applying Recommendation 13 - Suspicious transactions reporting

535. Criterion 16.1 requires essential criteria 13.1 – 4 to apply to DNFBP. Criteria 13.1-3 are marked with an asterisk. The first two require reports to the FIU where the obliged entity suspects or has reasonable cause to suspect, that funds are the proceeds of criminal activity or has reasonable grounds to suspect or suspects, that funds are linked to terrorism etc or those who finance terrorism.

536. As there is no FIU established and AML Law in force there are no requirements existing for DNFBP in respect of suspicious transactions.

Applying Recommendation 14 - Protection for disclosure and no tipping-off

537. As there is no AML Law in force in Azerbaijan the issues of "Tipping off" and "safe harbour" provisions are not covered.

Applying Recommendation 15 – Internal controls, compliance and audit

538. In the existing circumstances when there is no legislative basis as to AML/CFT obligations the implementation of Recommendation 15 is not covered for DNFBP.

Applying Recommendation 21 – Special attention for higher risk countries

539. There is no special requirement anywhere in the existing legislation concerning DNFBP which would address criteria 21.1, 21.1.1 or 21.2. There are also 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.

4.2.2 Recommendations and comments

540. Recommendations 13 – 15 and 21 are not addressed in the Azerbaijani legislation and should be implemented for DNFBP as soon as possible.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**Non Compliant**	• Recommendations 13 – 15 and 21 are not addressed for DNFBP in the Azerbaijani legislation.

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

4.3.1 Description and analysis

Applying Recommendation 24

541. There is no designated competent authority that has responsibility for the AML/CFT regulatory and supervisory regime for notaries and dealers in precious metals and stones. The supervisory authority for general purposes is the Ministry of Justice (in the Law on Notaries it is addressed as "*relevant executive authority*"). In accordance with the Law on Notaries in order to become a notary "*a citizen, who complies with all the requirements and wishes to work as notary, shall obtain the certificate for engagement in notarial activities*". There is no detailed explanation as to what kind of documentation should be provided under these circumstances to become a notary. The powers for "*relevant executive authority*" are not defined in the Law on Notaries, including powers to monitor and sanction notaries. No legislative basis for dealers in precious metals and stones was provided.

Applying Recommendation 25 (Guidance for DNFBP other than guidance on STRs)

542. No guidance for DNFBP is provided for AML/CFT purposes in Azerbaijan. However, the evaluators were assured that the situation would change when the AML Law comes in force. This is envisaged to happen in 2008.

4.3.2 Recommendations and comments

543. It is highly recommended to include all the relevant categories of DNFBP as obliged entities under AML/CFT regime. At the same time the relevant supervisory authorities should be designated and their powers should be defined in accordance with FATF recommendations, including powers to monitor and sanction DNFBP for deficiencies connected with AML/CFT.

544. Guidance for DNFBP should be provided including any measures that these institutions could take to ensure that their AML/CFT measures are effective.

4.3.3 Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.24	**Non Compliant**	• 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.
R.25	**Non Compliant**	No guidance for DNFBP is provided for AML/CFT purposes in Azerbaijan.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

545. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

546. 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.

547. The laws on "Electronic Signature and electron document" and on "Electronic Trade" were adopted. The laws are aimed at the reduction of vulnerabilities in the modern techniques for conducting financial transactions (including reducing reliance on cash, secured automated transfer systems etc.).

548. The NBA is planning to develop an electronic payments system for payment of salaries to state employees and also to cover benefit payments. As the banking network is not sufficiently comprehensive it is envisaged that this electronic payment system will also be operated by post offices which have a much more comprehensive geographical coverage in Azerbaijan. Taking into consideration these proposed development in electronic payment systems it is anticipated that there will be increased use of the National Payment System with the creation of a digital payment area through whole country which will provide greater access to financial services for both individuals and legal persons. To facilitate these developments, the "State Programme on Development of National Payment System in the Republic of Azerbaijan in 2005-2007" was affirmed by the Decree of the President dated on December 9, 2004.

549. In order to improve the infrastructure of payment systems the work on the creation of a Centralized Database on the Collection of the Fees of Public Utilities will shortly be completed.

4.4.2 Recommendations and comments

550. It is highly recommended that the Azerbaijan authorities consider other non-financial businesses or professions which, in the domestic context of Azerbaijan, may be considered to be at risk of being misused for money laundering or terrorist financing.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**Partially compliant**	• 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.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

551. Recommendation 33 requires countries to take legal measures in order to prevent unlawful use of legal persons in relation to money laundering and terrorism financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have timely, adequate and accurate access to the beneficial ownership and control information. Competent authorities must be also able to share such information with other competent authorities, either domestically or internationally. Bearer share issued by legal persons must be controlled.

552. According to the article 4.1 of the Law "On State Registration and State Registry of Legal Entities", parties desiring to obtain the status of legal entity on the territory of the Azerbaijan Republic, as well as representations or branches of foreign legal entities, shall undergo state registration and shall be included into the state registry. Commercial entities, as well as representations or affiliates of foreign legal entities may implement activities only upon state registration.

553. For state registration, the entity wishing to obtain the status of legal entity, shall apply to the relevant executive authority of the Azerbaijan Republic (article 5). According to the article 5.3 of the Law the application on state registration shall display the following information:

- if the founder(s) is (are) an individual(s) – his/her (their) name(s), surname(s), patronymic(s), place(s) of residence, serial number and date of issue of his/her (their) ID(s);
- if the founder(s) is (are) a legal entity(-ies) – its (their) name(s), location(s) and registration number(s);

if the application is signed by an authorised person – also his/her name, surname, patronymic place of residence, serial number and date of issue of his/her ID and information on letter of attorney.

554. According to article 5.4.3, 5.4.4 and 5.4.6 of this Law when the founder is a legal entity the following documents shall be submitted:

- notarized copies of its certificate on state registration (abstract of the state register) and its charter,
- document indicating the information on name, surname, patronymic, place of residence of the legal representative and verifying his/her responsibilities for representation, as well as notarized copies of his/her signature.
- When the founder is an individual – the copy of his/her ID. When the when legal representative is appointed the copy of his/her ID.

555. Pursuant to the article 12.1 of this Law the state register of legal entities is maintained by the Ministry of Taxes and Ministry of Justice of the Republic of Azerbaijan.

556. According to the art 14.1 following information on structures included into the state register is provided into the record made to the state registry:

- name of entity (firm);
- legal address of entity;
- organisation and legal form;
- fiscal year;
- the identification number of tax-payer (for commercial legal entities), registration number of non-commercial legal entities;
- surname, first name, middle name, citizenship and resident address of each founder of the structure, if the founder is the legal entity— his name, legal address and registration information;
- surname, first name, middle name, citizenship and residence of the legal representative of the entity;
- information on location, organisational and legal from and registration of entities established by the legal entity on the territory of the Azerbaijan Republic or outside of the Azerbaijan Republic.

557. In addition to above mentioned information for legal entities, representative offices or branches of foreign legal entities, are to be entered in the state register dependent on the organisational and legal form of the legal entity following information shall be provided:

- for partnerships— amount of investments of each participant;
- limited liability company or joint-stock company — amount of charter capital, amount of investment of each founder, in the event of establishment of controller's board— surname, first name, middle name and resident address of each member;
- in non-commercial organisations— scope of activities and objectives, area of activity, in foundations — information on members of the board of trustees, charter capital of the foundations and volume of property share of founders.

558. Pursuant to the Law every person has the right to review records in the state register, require an extract from the state register and copies of documents submitted for registration. The Ministry of Taxes and the Ministry of Justice shall provide the information on state registration or refusal of state registration of legal entity at the requirement of any interested person. Information on state registration and inclusion into the state registry of legal entities, as well as representations or branches of the foreign legal entity as well as other information related to organisation and activities of legal entities, publication of which is stipulated under the legislation, is published in the official state newspaper for general information.

559. In accordance with articles 84, 85, 86 and 177 of the Criminal Procedure Code relevant agencies are obliged to submit appropriate information to the authority which conducts criminal prosecution. Required provisions include agencies responsible for state registry of legal persons as well.

560. The **Law "On State Registration and State Registry of Legal Entities"** was adopted in December 2003. Article 2.0.8 of the Law provides for the setting-up of a commercial register as a unified, centralised electronic data base on legal persons registered in the Republic of Azerbaijan, representations, branches or other institutions of legal persons, as well as foreign legal persons managed by the Ministry of Justice and/or Ministry of Taxes of the Republic of Azerbaijan. The Azerbaijani authorities informed the evaluators that since 2008 only the Ministry of Taxes is the designated authority to deal with legal registration of commercial legal entities, which means that this authority is in charge of providing and keeping records on the commercial register and attributing the "tax ID" for the future legal entity.

561. Consequently, the commercial register is a public institution under the administration of the Ministry of Taxes. The main functions of the commercial register are the following:

- legal publicity;
- keeping records on the legal status of all traders;
- providing information on organisation, registration, shutting down of legal entities, representations or branches of foreign legal entities;
- providing statistical information;
- providing information on representation or branch, as well as other structures of the legal entity registered on the territory of the Azerbaijan Republic;
- informing and assisting the traders on issues related to the Trade Register's activities.

562. According to Article 4.1 of the Law, "parties desiring to obtain the status of legal entity on the territory of the Azerbaijan Republic, as well as representations or branches of foreign legal entities, shall undergo the state registration and shall be included into the state registry. Commercial entities, as well as representations or associates of foreign legal entities may implement activities only upon the state registration".

563. The new commercial register came into effect as of 1 January 2008 and the Azerbaijani authorities told the evaluators that 572 commercial institutions were registered within one week of the above mentioned system being implemented. The Articles 12.9 and 12.10 of the Law, stipulate that "*the state register of the Azerbaijan Republic is maintained by years and by each territorial administrative unit (region or city) of the Azerbaijan Republic"* and that "*territorial classification of state registry is maintained on the basis of legal address of the legal person, representation or branch of foreign legal entity"*.

564. By Decrees of the President of the Republic of Azerbaijan of April 30, 2007 and October 25, 2007 a "Single Window" system for the registration of commercial entities was implemented from 1st of January 2008. According to this system the Ministry of Taxes of the Republic of Azerbaijan has been defined as a sole authority for the registration of commercial entities. Before the implementation of this system the business founders had to register with several state authorities. By the implementation of the "Single Window" principle the procedure for registering businesses was reduced by 3 times, the number of requested documents by 4-5 times, the registration period by 20 times and an on-line unified database of registration information was established. Protection of the business name, opening of bank accounts, VAT registration, connection into e-declaration system and use of other e-tax services were provided during the registration under the single window principle.

565. According to the domestic law, in Azerbaijan, two types of legal persons are allowed to carry on economic activities, namely: **commercial legal persons**, which have the main objective of activity obtaining profit and **non-commercial legal persons**, which have the main objective of activity not obtaining profit or sharing profit obtained among its participants, but fulfilling the purpose which the entity was created for. Commercial legal persons are set up under the following forms: general partnership company, limited partnership company, subsidiary liability company, commandit legal person, joint stock company, cooperative. The general partnership company or the limited partnership companies should be set up by a legal document and should be signed by all the associates or by the founding members. The legal document should also acquire an official registration date by submission to the commercial register and should contain an extended requirements list in relation to the submitted documents. Such requirements differ depending on the legal structure of the company concerned.

566. Thus there are various forms of commercial companies established in Azerbaijan and they have to be registered in the commercial register. At the time of the on-site visit, the system of registration of legal entities was considered by the Azerbaijani authorities to be fully implemented and according to Article 12.4 of the Law the system is entirely electronic.

567. The registration within the commercial register requires a special application /procedure in a prescribed form, signed by the founder (in the event of many founders, by all of them) or his (their) appointed trustee on the basis of a power of attorney approved by a notary which will be submitted to the Ministry of Taxes. If the founder is a natural person the following information must be provided to the designated authority: last name, first name, middle name, place of residence, number and date of identification document. In the case where the founder is a legal entity the name, location and registration number must be provided. In the event of signing of application by an authorised representative, additionally, his last name, first name, middle name, place of residence, number and date of identification document issuance, and power of attorney must be presented to the register for legal registration. The following documents will be attached to the application:

- the constitutive documents— the contract of the legal entity approved by the founder (founders) of the structure wishing to obtain the status of legal entity, or his (their) authorised representative, decision on establishment of subject structure and approval of its charter (the decision shall be included for the purpose of the establishment of the structure wishing to obtain the status of legal entity, its founders, conditions of reorganisation at establishment of a new legal entity during merging, separation and division, approval of the charter, legal representative (in the event of his appointment) and his authority, as well as other issues considered necessary by the founders).. Such decision shall be signed by all founders;
- document on payment of state obligations;
- if the founder is the legal entity — the notary approved copy of state registration document (extract from state registry) and the contract;
- if the founder is a natural person – the copy of his identification document;
- document verifying the legal address of the structure wishing to obtain the status of legal entity;
- if necessary, the copy of identification document of the legal representative.

568. The data subject to publication at the commercial register is provided for in Article 14 of the Law, as follows:

- name of legal person;
- legal address of the company;
- organisation and legal form;
- fiscal year;
- the identification number of the tax-payer (for commercial legal entities), and registration number of non-commercial legal entities;
- surname, first name, middle name, citizenship and resident address of each founder of the structure, if the founder is the legal entity— the entity name, legal address and registration information;
- surname, first name, middle name, citizenship and residence of the legal representative of the structure;
- information on location, managerial and legal form and registration of structures established by the legal entity on the territory of the Azerbaijan Republic or outside of the Azerbaijan Republic.

569. A special requirement is stipulated by the article mentioned above and relates to the circumstances of registration in the commercial register of the representation or branches of foreign legal entities, because in this case, in addition to the information required by Article 14.1, the following information must be provided:

- for special partnerships— amount of investments of each participant;
- limited liability company or joint-stock company — amount of charter capital, amount of investment of each founder, in the event of establishment of controller's board— surname, first name, middle name and resident address of each member.

570. All information required by these legal provisions is mandatory for all commercial legal entities which want to obtain a legal status on the territory of the Azerbaijan Republic. The information must be provided to the designated authorities and if the Azerbaijani authorities consider it necessary to receive additional information, this has to be made available.

571. According to Article 9 of the Law each change of the data referred to above, shall also be entered in the commercial register. A request to change or update the information must be made by the legal entity within 40 days of the date of change and, if the relevant executive authorities consider that the request is in compliance with the law, in 5 days they will accept it and the change will be entered in the register.

572. The designated authorities are entitled to refuse to make any changes in the commercial register in the following situations (Article 11.3 of the Law "On State Registration and State Registry of Legal Entities"):

- *"in the event of conflict of the documents submitted to the relevant executive authority of the Azerbaijan Republic with the Constitution of the Azerbaijan Republic, this law and other legislative acts;*
- *in the event of conflict of goals, objective and forms of activities of the structures wishing to obtain the status of legal entity with legislation;*
- *in the event of violation of law on protection of trade marks or in the event of registration of non-commercial organisation under the same name;*
- *in the event that deficiencies which are found by the relevant executive authority of the Azerbaijan Republic are not resolved within the period established under Article 8.3 of this Law".*

573. According to the article 32 of the Tax Code a tax review is carried out to check the authenticity of the information in the register and compliance with other requirements of the tax legislation. The correct information in the state register is ensured by the tax examinations. Under the article 58 of the Tax Code a penalty is applied against the taxpayer in the amount of 40 AZN for not submitting information about changes in the register data.

574. The principles of foundation, registration, activation and liquidation of the Joint-Stock Companies are regulated by the Civil Code and the Law "On State Registration and State Registry of Legal Entities". The Law of "On State Registration and State Registry of Legal Entities" provides in Article 4 that this type of legal entity can be established but should not have as founders less than three natural and/or legal persons, except in those cases when such a joint stock company is established by control bodies authorised to manage the state property. This kind of company functions on the basis of the articles approved at a general meeting of the founders. According to Article 3 "shareholder of the company" could be "every natural or legal person who owns a share or has a temporary certificate of a share ownership" and, according to Article 2, the agreement of association must specify:

- the name, type, legal address, line of business of the company;
- the founder or composition of founders;
- the registered fund sum;
- category, kind, nominal value of shares proposed to issue, their quantity acquired by the founder or founders;
- measures foreseen at non-fulfilment of their obligations by shareholders;
- personnel and powers of the managing bodies, of the control and finance and auditing bodies;
- list of funds and procedures for their creation.

575. The registration must be carried out within one month after the presentation of the appropriate documents and the company becomes a legal person from the date of its incorporation in the commercial register. Thus, the company registration system contains no provisions

concerning the recording, registering or public availability of any data specifically related to the beneficial owner, which would include:

- natural person(s) who ultimately own or control a customer;
- person(s) on whose behalf a transaction has been conducted;
- person(s) who exercise the ultimate effective control over a legal person.

576. According to the article 7-1 of the Law the state registration of the business corporation, wishing to obtain the status of legal entity, including representative and branch offices of the foreign business legal entity must be performed within 5 days. According to the article 8 state registration of *non-profit organisations* wishing to obtain the status of legal entity, as well as representations or branches of foreign *non-profit* legal entities is performed as a rule within 40 days.

577. Pursuant to article 12.1 of the above referenced Law the state register of legal entities is maintained by the Ministry of Taxes and Ministry of Justice of the Republic of Azerbaijan. According to article 14.1 relevant information is recorded in the state registry. Pursuant to article 18 of the Law, information on state registration and inclusion into the state registry of legal entities, as well as representations or branches of the foreign legal entity as well as other information related to organisation and activities of legal entities, publication of which is stipulated under the legislation, is published in the official state newspaper for general information.

578. According to Article 106.2.2 of the Civil Code the when a company has more than 20 shareholders there is an obligation that a register should be maintained by a Licensed Registrar; licenses being granted by the State Committee on Securities. Changes in shareholder are required to be notified to Licensed Registrar immediately and registered with the State Register within 40 days. If there are less than 20 shareholders a register of shareholders may be maintained by the company itself if a staff member is licensed by the State Committee on Securities. In 2007 the State Committee on Securities conducted 11 inspection visits on companies with less than 20 shareholders. Regular visits were also carried out on Licensed Registrars. Under the article 58 of the Tax Code a penalty is applied against the taxpayer in the amount of 40 AZN for not submitting information about changes in the register data.

579. There are no sanctions for non-compliance with change information requirements.

580. **The Civil Code, the Law "On State Registration and State Registry of Legal Entities"** do not deal with the concept of "beneficial owners" as it is defined in the FATF Recommendation Glossary. The Azerbaijani authorities drew the attention of the evaluators to Articles 14 of the first law and Article 2 of the second one. As noted earlier, the evaluators consider that all these legal provisions deal only with the identification of those persons who establish the legal person, who are authorised to manage the legal entity, and those authorised to represent it.

581. Information about founders mentioned in the article 14 of the Law "On State Registration and State Registry of Legal Entities" is included in the state register. Additionally, information about legal or physical persons (their turnover, number of employees, etc.) engaged in business activities is collected in an automated tax information system implemented by the Ministry of Taxes. This information is transferred to the State Social Protection Fund within a certain time limit. Other authorities can obtain this information on the basis of their requests. The state register of the commercial legal entities is open to everybody. Under article 18 of this Law every person has the right to review records in the state register, request an extract from the state register and copies of documents submitted for registration. Information on state registration and inclusion into the state registry of legal entities, as well as representations or branches of the foreign legal entity as well as other information related to organisation and activities of legal entities,

publication of which is stipulated under the legislation, is published in the official gazette for general information.

582. As for the timely accessibility of the abovementioned information in the hands of the competent authorities (Criterion 33.2), according to Article 18.1, the commercial register is public so any person (without having a legal obligation to prove its legal interest) can read details of any information contained in the register. At the same time any person may receive copies of the documents submitted by the legal person for the registration. The Azerbaijani authorities informed the evaluation team that any interested person has the right to ask and receive information regarding any refusal by the designated authority to register a legal entity. Furthermore, according to Article 18.2 of the Law all information on the state registration as well as the inclusion of legal entities into the state registry or other information related to organisation and activities of legal entities must be published in the official state gazette for general information. The same provisions apply also for the representations or branches of foreign legal entities. Moreover, the Criminal Procedure Code of Azerbaijan gives the investigative authorities the possibility to apply for different investigative actions (for instance: search, seizure etc.) that may be necessary for proceeding with the investigation. However, as noted above, neither in the **Civil Code, the Law "On State Registration and State Registry of Legal Entities",** nor in any other Azerbaijan normative act is there a definition of "beneficial owners" as defined by the FATF Recommendation. There are also no legal requirements for the Azerbaijani authorities to take reasonable measures in order to establish which are the natural persons that ultimately control or own the legal entity. Financial institutions are not obliged to determine/understand the ownership of the legal entity. For this reason, the evaluators have concerns that solid information on real beneficial ownership on legal persons will not be available for the investigative authorities in time. Moreover the entities are not obliged to seek or register such information.

583. The Ministry of Taxes provides information related to the commercial legal entities, for example "tax ID", to the Statistics Committee and Social Protection Funds. According to Article 30 of the Tax Code, the authorities in charge of keeping the commercial register are not allowed to provide to other persons or authorities information related to the legal persons' commercial activity. This kind of information will be provided only to the judicial authorities after a civil or a criminal process has been started.

584. The evaluators were advised that bearer shares can be issued in Azerbaijan only by the joint stock companies. Banks and state companies are not allowed to issue bearer shares. According to Article 3 of the **Law "On State Registration and State Registry of Legal Entities"** securities can be issued in the form of certificate form printed on paper or record on accounts. In relation to fulfilment of property rights connected with the ownership of the securities, there can be **bearer** and **registered securities**. Registered securities grant property rights connected to the ownership of the investor, whose name is indicated on them, **whereas bearer securities grant this right to their direct bearer.** In consequence the ownership's right over the shares on bearer is transferred by simple assignment. There is no limitation for the number or amount of bearer shares within a company. A bearer shares owner who wants to vote at the General Assembly has to identify himself. It was indicated that information on first bearer share ownership should be available in the State Committee on Securities. The State Committee on Securities agreed that bearer shares were possible in theory but so far as they were aware there were none. The State Committee on Securities advised the evaluators that in the event of bearer shares being issued this would be treated as a suspicious activity. They anticipated that bearer shares would in due course be eliminated. The owner of the bearer share is known when first registered, but after having sold the share the owner of the bearer share is no longer known or registered. The authorities have not conducted an assessment of the risks associated with bearer shares. There would not be full transparency of the shareholders of companies that issue bearer shares and no specific measures are currently taken to ensure that bearer shares are not misused for money laundering. The Azerbaijani authorities advised the evaluators that they did not consider transactions were performed with bearer shares.

Additional elements

585. The evaluators were informed that a database of the state recording systems is managed by the Ministry of Justice and Ministry of Taxes and any interested person may request to the commercial register relevant information on a commercial company. Financial institutions have free access to this database through internet without any restriction, but this does not address the issue of measures to facilitate access by financial institutions to beneficial ownership information which would allow them to more easily verify customer identification data.

5.1.2 Recommendations and comments

586. It is welcome that the commercial register provides some transparency on the first ownership of the legal entities. However, it should be noted that the commercial register only determines whether all registration requirements as set out by the law have been met, and there is no type of verification process by the commercial register. Consequently the information available is not necessarily reliable.

587. Azerbaijan has a trade registration system for legal persons. The legislation 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.

588. Given that there is no definition of beneficial owner in Law or Regulation and the finding in Section 3 of the report that financial institutions are not required to take reasonable measures to verify the identities of beneficial owners, the likelihood of law enforcement being able to identify such persons in Azerbaijan through the investigative route in respect the CDD performed by financial institutions or DNFBP is remote: lawyers may become involved in the formation of companies, but currently they have no AML/CFT CDD obligations; as noted in Section 4 Trust and company service providers are said not to exist. It is unclear whether such information is likely to be available in the Company's registers.

589. There is not full transparency of the shareholders of companies that have issued bearer shares and no specific measures are taken to ensure that bearer shares are not misused for money laundering.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**Partially compliant**	• 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.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and analysis

590. The Azerbaijani authorities advised the evaluators that the concept of trust is not known in Azerbaijan. The only forms of legal persons or entities recognized by the law are the ones described under section 1.4 of the present report; no other form of legal arrangements exists. 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 Law "On State Registration and State Registry of Legal Entities". As a consequence of this, the entity would not be able to undertake trust activities.

5.2.2 Recommendations and comments

591. The concept of trusts is not known under the Azerbaijan Civil Code and the Azerbaijani authorities underlined that trusts (domestic or foreign) cannot operate in their country.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	• The concept of trust is not known and neither domestic nor foreign trusts operate in Azerbaijan

5.3 Non-profit organisations (SR.III)

5.3.1 Description and analysis

592. The non-profit sector is governed by the **Civil Code, Law on state registration and state recording of legal persons and Law on Non-Governmental Organisations** (public associations and foundations). The following legal provisions are also applicable in this domain:

- Criminal Procedural Code,
- Code of Administrative Infringements and Law on struggle against terrorism,
- Presidential Decree on Development of Justice Authorities and Law on Grant.

593. According to the Civil Code of Azerbaijan the NPOs comprise public associations, foundations and the union of legal persons. With regard to establishing operations, the registration, liquidation and legal status of these entities are regulated by the legal provisions mentioned above. According to Article 1 of the Law on Non-Governmental Organisations this provision shall not apply to political parties, trade unions, religious organisations, local government bodies and other non-governmental organisations that are regulated by other laws. Article 2.4 of the Law even prohibits association and foundation from engaging in election fundraisings activities, political campaigning or providing financial support to political parties.

594. According to the FATF Glossary an NPO refers to *a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works"*. **The Law on Non-Governmental Organisations** which refers to "**non governmental entity**" in article 2, provides that a "**public organisation**" is an entity which does not pursue derivation of profit as the main goal of its activity and does not distribute the derived profit among its members. At the same time a "**foundation**" is a non-membership non-governmental organisation that is founded by several individuals and/or legal entities on the basis of voluntary prosperity shares and is aimed at social, charitable, cultural, educational and other public activities. According to Art. 22 of the Law an NPO can produce and sell profitable goods, it can also acquire securities, property and non-property rights, and it can enter into partnerships with economic agents if these types of activities correspond to the objectives of the non-governmental organisation.

595. According to article 6 of the above mentioned law, the NGOs may be established in any organisational legal form and may operate with all-Azerbaijan regional and local status. The NGOs activity may be carried out individually or collectively by physical and/or juridical persons with or without registering a juridical entity and without having profit as a main purpose.

596. In accordance with the domestic laws the NPOs/NGOs (non-governmental organisations) are allowed to perform any activity for public benefit which is not prohibited by legislation of the Republic of Azerbaijan. Those activities must be in compliance with the goals of the entity, as provided in the foundation documents. The entity must be subject to registration in a special register managed by relevant executive authorities which may be the Ministry of Justice or Ministry of Taxes. The NPOs may freely determine the means for attaining their objectives.

597. Founders may be national and/or foreign legal persons and natural persons with legal capacity, except for state and local governmental bodies. Article 9 of the Law on Non-Governmental Organisations also allows under-aged persons to become a founder for a public youth organisation and they will have similar rights and responsibilities in accordance with the civil legislation in the Azerbaijan Republic. The founders of non-governmental organisations shall have both equal rights and obligations which are to be regulated by the foundation contract and/or charter. The members of the NGOs may elect and be elected in management bodies of the entity, they may survey the activity of these bodies and they also can exercise other rights provided by the charter.

598. According to the article 12 of the Law, for the purpose of establishing an NGO in Azerbaijan it is necessary to have the written decision of a founder (founders). In this case, foundation meeting shall be summoned and the charter of the organisation shall be adopted. According to Article 13 the charter of NGOs shall be in writing and must contain the following elements:

- name and address of organisation;
- objectives of operation and method of management;
- rights and responsibilities of members;
- conditions and rules for joining and leaving the membership of public organisation;
- sources for formation of property of a non-governmental organisation;
- rules for adoption of the charter, and for making changes and additions to it;
- rules for liquidation of a non-governmental organisation, and for utilization of its property in case of liquidation.

599. For any non-profit organisation which utilises the name "fund" (a non-membership non-governmental organisation that is founded by several individuals and/or legal entities on the basis of voluntary property shares and it is aimed at social, charitable, cultural, educational and other public activities) the charter shall include information about the name with the word "Fund" included, address, objectives, bodies, Custody Board, as well as the rules for the establishment of those bodies, rules for appointment and dismissal of fund officials and future destination of the fund's properties in case of liquidation.

600. Article 16 of the Law provides that the State Register for non-governmental organisations may refuse to perform the entry of an NGO only if there is another non-governmental organisation existing already under the same name or if the documents submitted for state registration are in contradiction with the Constitution, the Law or are not containing exact information. In a case of refusing the registration of the a NGO, the decision of the state registration shall be submitted to a representative of that non-governmental organisation in writing. The reasons for the refusal as well as any relevant provisions and paragraphs of legislation that have been violated in preparation of foundation documents must be provided to the legal entity's representatives. Refusal of state registration will not been seen as an obstacle for resubmitting the documents for state registration as soon as any deficiencies have been corrected.

601. The Law on Non-Governmental Organisations allows the possibility for the NGOs/NPOs to open local branches, but the legal provisions are silent in relation any documents that have to be provided to the designated authorities for the registration as well as for the procedure to be followed. Article 7 of the Law on Non-Governmental Organisations provides that branches may be established within the Azerbaijan Republic territory and/or abroad. Branches and representations of NGOs are not legal entities. Managers of branches and representatives shall be appointed by the NGOs and shall operate in line with the scope of powers given to them by the organisation.

602. According to Article 18.1 of the Law "On State Registration and State Registry of Legal Entities" the legal entity registered is public therefore any person (with no need to demonstrate a legal interest) can have access to details of any of the registered files and may receive copies of the documents submitted for the registration. The Azerbaijani authorities informed the evaluation team that any interested persons have the right to ask and receive information on the state register related to any refusal decided by the state registration. Furthermore, according to Article 18.2 of the Law all information on the state registration as well as the inclusion into the state registry of legal entities must be published in the official state newspaper for general acknowledgement. The same applies for the representations or branches of the foreign legal entities.

603. The dissolution of non-profit legal persons is regulated by Article 14. According to this article a non-profit legal person shall be dissolved:

- upon expiry of the term for which it has been established;
- by decision of its supreme body;
- declaration of bankruptcy;
- by decision of the district court by domicile of the non-profit legal person, where:
  a) it has not been established in compliance with the legal procedure;
  b) it pursues activities contrary to the Constitution, laws or morals.

Organisation and functioning of NPOs and NGOs

604. According to the art. 25 of the Law, the structure of the legal entity, the power of the management bodies, the rules for the adoption of the decisions are established in the charter of the NGO. The supreme management body of NGOs shall be a Founders General Assembly which has to take place at least once a year and members should be informed about the venue and date with at least two weeks notice. The general meeting may be summoned upon the initiative of the executive body, or one of its founders or 1/3 of its members.

605. **NGO**s may have the following bodies, a General Assembly, a board of administrators and may have other bodies as foreseen in the charter. According to the law the ultimate authority in the NGO belongs to the General Assembly which is composed of all members. The scope and powers of the General Assembly are:-

- adoption of the charter of a public organisation, and the power to make changes and additions to it;

- determination of principles for formation and use of property of a public organisation;
- creation of executive bodies of a public organisation and premature termination of their powers;
- adoption of annual report;
- participation in other organisations;
- reestablishment and liquidation of a public organisation;

606. The executive body of a NGO may be collegial or single and it shall exercise any current management operation, including the establishment of the branches. The management will be carried out by the president of the foundation or by the board of administrators. The supervisory activity will be carried out by a Supervisory Board which has the following powers:
- supervise activities of the fund;
- supervise adoption of decrees by other bodies of the fund, as well as implementation of such decrees;
- supervise utilization of the fund's means;
- adopt changes to the fund's charter;
- adopt decrees on liquidation or reestablishment of the fund.

607. According to Art. 22 of the Law all NGOs shall record their incomes and expenditures related to any business activities. Still the Law is silent on 3 aspects, namely which body or group is responsible for maintaining records, the state authority responsible for performing inspections and the sanction for not keeping proper books and records.

608. The NGO can be dissolved according to the Azerbaijan procedures provided by the Law on state registration and state recording of legal persons and the property of the NGO that has been dissolved, will be dealt in a manner provided by the Civil Code of Azerbaijan.

Preventive measures, powers of the competent authorities and sanctions

609. 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 with the financial transactions performed, it is difficult to accept that this is actually the real situation. The Azerbaijan authorities have not provided the evaluators with any information concerning outreach to the NPO sector, training undertaken with NPOs or any information on STRs received from NPOs. The evaluators were unable to establish whether an assessment of the vulnerabilities of the NPO sector had been undertaken.

610. Approximately 2400 NPOs are legally registered to the Ministry of Justice/Ministry of Taxes in Azerbaijan. From the information provided by the Azerbaijani authorities during the on-site visit it is unclear how many of these are still active.

611. If the data provided by the legal entities is not correct, the NPOs/NGOs will not be registered but there is no obligation for the designated authorities (Ministry of Justice, Ministry of Taxes and Ministry of Social Protection) to inform the law enforcement authorities accordingly. In relation to "charitable entities" there are no "best practice" documents and rules for giving and soliciting donations, and no restrictions on the amount of donations are set. Donations may also be anonymous.

612. The Ministry of Justice/ Ministry of Taxes are in charge of registering and partially supervising the NPOs/NGOs (*inter alia* verifying if the funds have been spent as planned). During the on-site visit the representatives of these authorities told the evaluators that theoretically they can identify activities which are being conducted outside of the NPOs/NGOs stated aims and can

obtain clarification when needed. However, no examples of such situations were provided to the evaluators. Regular inspections by the designated authorities are not compulsory. The Azerbaijani authorities indicated that they could initiate the "auditing" of NGOs in order to check if the financial funds are operating within their remit but how often this activity occurred remained unclear. The evaluators were not advised on any measures undertaken by the Ministry of Justice or any other competent authority at the registration stage (or further on) in order to ensure that known terrorist organisations would be prohibited from establishing a legitimate NPO or to becoming part of it in a later stage.

613. The designated authorities do not supervise financial activities but, according to article 22 of the Law, the non-profit entity shall maintain records related to their income and expenditures in accordance with the legislation. Information about the amount and structure of the income generated by the NPOs/NGOs, as well as the information related to its properties, expenses, number of staff, and salaries shall not be a classified as commercial secret. Funds shall be obliged to publish annual reports regarding the use of its properties. The NPOs/NGOs are registered with the tax authorities and receive a tax registration code. Income and expenditure issues are reviewed by the tax authorities.

614. No information was provided with regard to effective supervision or monitoring the activities performed on the NPOs with specific attention to the amount of the financial resources controlled by this sector and related to the share of the international activities sector.

5.3.2 Recommendations and comments

615. It is accepted that there are procedure in place to ensure some financial transparency and there are reporting requirement for foundations, charitably entities and associations. However, it appears that there are no formal review powers set out in the law and regulations to ensure that known terrorist organisations would be prohibited from establishing a legitimate NPO or to becoming part of it in a later stage.

616. The non-profit sector is closely regulated and NPOs/NGOs are subject to registration systems. The evaluators, however, did not receive any information to substantiate whether the Azerbaijani authorities periodically reviewed the NPOs/NGOs with the object of assess terrorist financing vulnerabilities.

617. A permanent independent audit should be carried out in order to ensure that funds are used for the stated purposes, to check if the funds have reached the intended beneficiary and to detect misdirection of the funds. Moreover not only basic information submitted under the registration should be publicly accessible but also the NPOs' records should be publicly accessible.

618. The NPOs/NGOs should take preventive verification measures to ensure that their entities, as well as their partner organisations are not being penetrated or manipulated by terrorists or terrorist organisations. Such preventive measures should also include special training programs for the designated authorities which are in charge of supervising the NPOs/NGOs sector. Terrorist financing experts should work with NPOs/NGOs supervisory authorities to raise awareness on the problems faced and to alert these authorities to the specific characteristics of terrorist financing.

619. The evaluators recommend a further review of the Laws on NPOs/NGOs based on an assessment of the vulnerabilities and needs of the sector.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**Non Compliant**	• 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.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

620. Recommendation 31 requires policy makers, the FIU, law enforcement and supervisors to have effective mechanisms in place which enable them to co-operate, and, where appropriate, co-ordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

621. Within the Government an Experts Group on Measures against Money Laundering and Financing of Terrorism which was created in 2003 is the standing coordination authority. It consists of responsible representatives of relevant state authorities and chaired by the Deputy Chairman of the Management Board of the NBA. The Statute of this Group was adopted by the Cabinet of Ministers. According to its Statute, followings are the tasks and duties of the Experts Group:

– development of state AML/CFT programme, coordination of AML/CFT activity of relevant state authorities, as well as development of international cooperation and elaboration of preventive measures and legal frameworks in this sphere;
– development of recommendations for the solution of problematic matters, scrutinizing of international experience and preparation of relevant proposals to this end;
– taking necessary steps in order to react timely to reports, recommendations and requests of international organisations addressed to the Republic of Azerbaijan;
– taking part in elaboration of periodical reports on implementation of obligations following from international documents which the Republic of Azerbaijan is party to;
– monitoring the progress in AML/CFT sphere is in the competence of the Experts Group as well.

In accordance with its Statute, Experts Group meets every month. Along with this extra meetings may be held on the initiative of its chair or other members.

The Experts Group has its own Secretariat which is responsible for activity of Group.

622. At the policy level it seemed to the evaluators that effective domestic co-operation and co-ordination has been lacking for some time. The National Bank has been in the lead in co-ordinating drafting of the AML/CFT legislation and there is an Expert Committee for this purpose which has done much at the working level on this. However, this activity has not translated into action so far. No working group has been in a position to move the issue forward within governmental circles.

623. At the working level there was little evidence of co-operation and co-ordination between the supervising bodies to ensure that the AML/CFT issue was monitored (even without basic legislation) in a consistent way across the whole of the financial sector.

624. On the law enforcement side, as has been noted earlier in this report, the arrangements are fragmented and the co-ordination that should be happening on AML/CFT issues by the Prosecutor General's office was not working in practice. As also noted, the legislation on the repressive / law enforcement side gives the Prosecutor considerable scope to co-ordinate and classify investigations where several agencies are involved and to create joint investigation teams. This provision appears, to the evaluators, not to be utilised effectively in the AML/CFT context. (see Article 215.6 of the Criminal Procedural Code, (Annex XIV))

6.1.2 Recommendations and comments

625. Article119 of the Constitution allows for the creation of special working groups. When the AML Law is passed a working group at the policy level to monitor the effectiveness of its application and the effectiveness of the system overall would assist.

626. At the working level it is advised that the newly-appointed FIU create a working group or groups which reach out to the financial sector and relevant parts of he DNFBP to assist the process of embedding the new provisions into Azerbaijani practice. Similarly, the FIU will need to co-operate in a better way than the NBA is able to do at present with law enforcement to ensure that the FIU receives feedback on the cases it sends to law enforcement and is thus able to give feedback to the reporting entities.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Partially Compliant**	• No real mechanisms in place to co-ordinate at the working level.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

627. The Republic of Azerbaijan signed the 2003 Protocol amending the European Convention on the Suppression of Terrorism in May 12, 2004 and 2005 and the Council of Europe Convention on the Prevention of Terrorism in May 16, 2005.

628. The United Nations Convention against Illicit Traffic and in Narcotic Drugs and Psychotropic Substances, 1998 (Vienna Convention) was signed in 1992 and ratified by Law №356 of 28 0ctober 1992 and the Law №549-IQ of 1 December 1998. The United Nations Convention against Transnational Organised Crime, 2000 (Palermo Convention and its two protocols) was signed in 2003 and ratified by Law № 435-IIQ of 13 May 2003. The International Convention for Suppression of the Financing of Terrorism, 1999 (the Terrorist Financing Convention) was signed in 2001 and ratified by Law №174-IIQ of 1 October 2001. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ("the Strasbourg Convention") was signed on 7 November 2001 and ratified by the Law №420-IIQ of 1 March 2003. Azerbaijan signed all those Conventions without reservations.

629. Since the ratification of any of these conventions does not necessarily mean full implementation as required by the R.35 and SR.I, the Methodology requires evaluators to be satisfied that the most relevant articles of the respective conventions are actually implemented. The comment made earlier in respect of the physical elements of the money laundering offence therefore also applies here.

630. How Azerbaijan has implemented the obligations under these Conventions has already been touched upon in earlier sections. Relating to the *Vienna Convention*, trafficking in drugs and other offences related to drugs and psychotropic substances are criminalised in **Articles 234** – "Illegal manufacturing, purchase, storage, transportation, transfer or selling of narcotics, psychotropic

substances", **235** – "Plunder or extortion of narcotics, psychotropic substances or drugs", **236** – "Declination to consumption of narcotics or psychotropic substances", **237** – "Illegal manufactory of the plants containing narcotic substances", **238** –"Organisation or maintenance of smoking places for consumption of narcotics or psychotropic substances", **239** –"Illegal distribution or fake recipes which give the right on reception of narcotics or psychotropic substances at absence of medical parameters", **240** –"Illegal circulation of strong or poisonous substances with a view of selling" and **241** –" Legalization of money resources or other property, acquired from illegal circulation of narcotics or psychotropic substances", Chapter 26 of the Criminal Code. Associated money laundering is also an offence, as Azerbaijan adopted an "all crimes approach" (for details please Recommendations 1 and 2). The Criminal Code provides for confiscation of the proceeds of money laundering related to trafficking in drugs. Some concerns regarding the confiscation of indirect proceeds of crime and third party confiscation were expressed earlier in the present report (please see recommendation 3).

631. Without going into detail on the transposition of the Vienna Convention, it is clear that some of the general issues raised in this report also apply here and in some cases represent gaps in the Convention's implementation. These include the evidence required for the offence of laundering (the need for a prior conviction for the predicate offence), the rules governing seizure and confiscation, and the criminalisation of money laundering offence (it is necessary to criminalize explicitly the conversion or transfer, acquisition and possession of illegally gained income. Furthermore, "simple possession" is not covered and there appear to be no fundamental issues of principle preventing this). However, Azerbaijan treats the fight against drug trafficking as a priority and has taken several of steps to deal with the problem. Special investigation techniques, including controlled delivery can be used, according to the provisions of the Criminal Procedure Code. According to the article 193-1 of the Criminal Code definition "carrying out financial transactions or other operations" includes "conversion and transfer" as well. Regarding the terms "acquisition" and "possession", it should be noted that, there is another article of the Criminal Code covering this issue:

> ***Article 194.*** *Purchase or selling of criminally obtained property*
>
> *194.1. Purchase or sale of a property in significant size obviously obtained by criminal means –*
>
> *is punished by a penalty of a rate from one up to three thousand of nominal financial units, or a custodial sentence for a term of up to three years, or imprisonment for a term of up to three years with a penalty of a rate of up to one thousand of nominal financial units.*
>
> *194.2. The acts, which are provided by article 194.1 of the present Code, committed:*
>
> *194.2.1. on preliminary arrangement by group of persons or an organised group;*
>
> *194.2.2. by official with use of the service position;*
>
> *194.2.3. by person, who have been previously convicted for this crime;*
>
> *194.2.4. in respect of large amounts-*
>
> *punishment by imprisonment for a term from three up to seven years with or without confiscation of property.*

632. The term "purchase of illicit-funds" means obtaining of rights on possession, use and disposing over the property by the convicted person. In this case property rights over the funds don't pass to the person who obtains them, since he is an unfair owner (article 166.2 of the Civil Code).

633. Turning to the implementation of the Palermo Convention, Azerbaijan has legislation criminalising laundering of proceeds of crime. Setting up, leading or participating in an organised crime group is criminalised in Articles 34 of the Criminal Code. [As noted earlier though, in Azerbaijan the offence of tax evasion is not a predicate offence despite that it is a serious offence under the Palermo Convention.] The Criminal Code provides for the confiscation of the proceeds

of crime. Some concerns regarding the confiscation of indirect proceeds of crime and third party confiscation were expressed earlier in the present report (please see recommendation 3). It is also noted that a key requirement of the Palermo Convention, liability of legal person, is not covered. Legislation in Azerbaijan also provides for mutual legal assistance and extradition. For a detailed analysis on the legal system governing mutual legal assistance and extradition please see Recommendations 36 – 39.

634. With respect to 1999 United Nations Convention for the Suppression of the Financing of Terrorism, Azerbaijan criminalised terrorism financing in Article 214-1 of the Criminal Code. It can be committed by natural persons. As stated earlier, while analysing compliance with Recommendation 2 and Special Recommendation I, there is no liability for legal persons.

635. Article 18.1.b of the Terrorism Financing Convention requires financial institutions and other professions involved in financial transaction to utilise the most efficient measures available for the identification for the usual or occasional customers, as well as customers in whose interest the opening of accounts where the holders or beneficiaries are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions. This and other aspects of the preventive measures under this Convention need further work for effective implementation.

636. The Republic of Azerbaijan submitted its updated Report to the Committee established pursuant to Security Council Resolution 1267 (1999) concerning Al-Qaeda and the Taliban associated individuals and entities in accordance with paragraph 6 of Security Resolution 1455 (2003) on December 15, 2003. On 3 November 2001 the President of Republic of Azerbaijan issued a Decree on the Implementation of UN Security Council Resolutions 1368 (2001) and 1373 (2001). On 11 May 2002 the President of Republic of Azerbaijan issued a Decree on the Plan of Action towards the Implementation of UN Security Council Resolutions 1368 (2001), 1373 (2001) and 1377 (2001). The Republic of Azerbaijan submitted Third (S/2003/1085), Fourth (S/2004/964) and Fifth (S/2006/802) national Reports to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council Resolution 1373 (2001) consequently, on October 31, 2003, on December 3 2004 and on October 5 2006. Under Section 2.4, the main issues concerning the implementation of the UNSC Resolutions were discussed. The areas of concern are the awareness of some reporting entities of the role they play in the freezing procedure and the lack of specific procedures for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person

Additional elements

637. Since 1999 - until 2007 the Republic of Azerbaijan was party to the UN General Assembly Resolution on "Preventing and combating corrupt practices and transfer of assets of illicit origin and returning such assets, in particular to the countries of origin, consistent with the United Nations Convention against Corruption" adopted by consensus. As noted earlier, Azerbaijan is a full member of the Strasbourg Convention.

6.2.2 Recommendations and comments

638. The evaluators welcome that Azerbaijan has ratified all the relevant instruments. 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 should be further amended to fully ensure that the money laundering offence fully reflects the terms of the Conventions so far as is consistent with fundamental principles of domestic law, and that the terrorist financing offence is fully consistent with the 1999 Convention.

639. It is recommended that Azerbaijan authorities reinforce its system for implementing UN SC Resolutions relating to prevention and suppression of financing terrorism (S/REC/1267 (1999) and S/REC/1373 (2001) by developing and implementing the necessary procedures and mechanisms.

640. Also several issues still need to be addressed (their detailed assessment was made under Section 2 of the present report):

- liability of legal persons is not covered;
- awareness of some reporting entities with respect to their role in CTF mechanism;
- a specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

641. The preventive regime needs completion to bring it more into line with Article 7 of the Palermo Convention and Article 18 of the International Convention on the Suppression of the Financing of Terrorism.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**Partially Compliant**	• 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.
SR.I	**Partially Complaint**	• 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.

6.3 Mutual legal assistance (R.36-38, SR.V)

6.3.1 Description and analysis

Recommendations 36 and 37

642. Mutual legal assistance (MLA) in Azerbaijan is based on three types of instrument:

- **multilateral treaties, such as:**
  - The European Convention on Mutual Assistance in Criminal Matters, 1959 and its Protocols signed on 7th November 2001 and ratified on 4th July 2003. When ratifying the Convention, a specific reservation was made in the instrument of ratification allowing for the refusal of MLA *inter alia* if the request for assistance concerns acts which are not qualified as an offence under the legislation of the Republic of Azerbaijan.
  - The European Convention of extradition, 1957, and its additional Protocols of 15th October 1975 and 17th March 1978 signed on 7 November 2001 and ratified by the Law of 17th May 2002;
  - The International Convention for the Suppression of the Financing of Terrorism signed on 1st October 2001 and ratified by the Law of 17th May 2002, and
  - The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 1990 signed on 7 November 2001 and ratified by the Law of 1st March 2003. Azerbaijan is also part of the CIS 1993 Convention on Legal Assistance.

- **bilateral mutual legal assistance treaties**.
  - Since 2004 the Republic of Azerbaijan has concluded one bilateral agreement on mutual legal assistance with the United Arab Emirates.

643. Since 2004 the Republic of Azerbaijan has concluded four bilateral treaties on mutual legal assistance with Moldova, United Arab Emirates, Peoples Republic of China and Kingdom of Jordan.

644. The Republic of Azerbaijan has concluded bilateral treaties on mutual legal assistance with Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Kyrgyzstan, Lithuania, Moldova, Ukraine, United Arab Emirates, Uzbekistan, Russian Federation, Turkey and Turkmenistan.

645. The Ministry of Justice of the Republic of Azerbaijan is the central authority which deals with mutual legal assistance and cooperation matters. Along with the elaboration of relevant treaties on MLA, the Ministry is responsible for the provision of requests on legal assistance in accordance with its obligations following from above mentioned bilateral treaties, as well as international instruments. Furthermore, Azerbaijan meets all relevant requests on MLA on the basis of the European Convention and there are a number of countries to which Azerbaijan has concluded agreements and MOUs on cooperation. These are Austria, Belarus, Egypt, France, Italy, Netherlands, Romania and Tajikistan.

646. The Law "On legal aid in criminal matters" and the provisions of the Criminal Procedure Code, Chapter LVII, provide the legal basis for mutual legal assistance in criminal matters and for extradition, as well. According to Article 1 of the Law "On legal aid in criminal matters", the legal assistance is regulated by the Constitution of the Republic of Azerbaijan, Criminal Procedural Legislation of the Republic of Azerbaijan, the law on "legal aid in criminal matters", other legislative acts of the Republic of Azerbaijan and international agreements to which the Republic of Azerbaijan is a party. It is apparent from the Constitution of the Azerbaijan Republic that the main principles applicable in the field of international cooperation in criminal matters in international treaties have precedence over national laws and there is direct applicability of the conventions. Article 148 of the Constitution provides that "*International agreements wherein the Azerbaijan Republic is one of the parties constitute an integral part of the legislative system of the Azerbaijan Republic*". Accordingly, Article 488 of the Criminal Procedure Code provides that *"(...) if the provisions of the legislation of the Azerbaijan Republic conflict with those of the international agreements to which the Azerbaijan Republic is a party, the provisions of the international agreements shall apply*". As a consequence, the domestic law can only be applicable in non-treaty based cooperation or for the regulation of issues not covered otherwise by the applicable treaty.

647. Based on Article 488.2 of the Criminal Procedure Code, the Azerbaijani authorities are able to provide MLA in AML/CFT investigations as set out in the Methodology at 36.1. The MLA in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect in which Azerbaijan is a party, or based on the principle of reciprocity. Mutual legal assistance shall comprise the following (Article 2.3 of the Law "On legal aid in criminal matters"):

- taking the testimony or statements of persons;
- provision of judicial documents;
- searching or seizure;
- conducting of examination of objects, residence or other places;
- provision of papers, information or material evidence;
- provision of expert opinions;
- provision of originals or verified copies of documents, including bank and financial documents;
- determination of identity or place of residence;
- searching property or its arrest;
- determination of illegally obtained funds, property, as well as funds used for committing of crime;
- undertaking other measures that are in accordance with the legislation of the Republic of Azerbaijan.

648. When a foreign request relates to money laundering, the dual criminality principle applies. The problems of money laundering as a stand alone offence domestically in Azerbaijan have already been described. It is therefore at least 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. Presumably the doubts raised in the domestic implementation of money laundering and in respect of some of the physical aspects of the ML offence might be resolved in favour of the requesting country in the context of international co-operation which does not require coercive measures given the primacy here of Convention obligations under ETS 141. However, no practical situations have arisen where this has been tested, as far as the evaluators are aware. Where dual criminality is strictly applied, (as with coercive measures) MLA requests in ML cases where coercive measures are sought would require all the elements mentioned in the ML offence in article 193-1 of the CC to be met. The evaluation team was told that in such cases it might be possible to assist on the basis of the predicate crime, but no confirmation was given in this respect. It was unclear if all special investigative means could be applied in the context of MLA, or whether co-operation would be refused in respect of such a request. The Azerbaijani authorities consider that all special investigative means can be applied in the context of MLA, since SITs indicated in the Criminal Procedural Code are covered by the means reflected in the Law "On legal aid in criminal matters".

649. According to Article 13 of the Law "On legal aid in criminal matters" the Court, the prosecutors and the investigators are entitled via the Ministry of Justice to fulfil requests for/of mutual legal request.

650. The Azerbaijan law (Article 419.5 of the Criminal Procedure Code) provides for the possibility of participation in the execution of requests for legal assistance by officials of the competent requesting authority of the foreign state. The law stipulates as well that if the execution of the official request for legal assistance requires the conduct of procedural and other acts which need the approval (decision) of a Court, the prosecuting authorities of the Azerbaijan Republic will apply to the appropriate Court of the Azerbaijan Republic exercising judicial supervision in accordance with the provisions of the Criminal Procedure Code. Paragraph 2 provides that for executing on official legal assistance request, if the legislation of the foreign requesting state is not in conflict with the legislation of the Azerbaijan Republic, the legislation of the foreign state may be applied.

651. Article 8 of the Law "On legal aid in criminal matters" provides the possibility for a foreign state to request to hear as a witness a person who resides within the territory of the Republic of Azerbaijan, with the approval of the person concerned. The person requested to be heard as a witness is able to refuse testimony in the following circumstances:

- he/she has a right to refuse to testimony on similar cases investigated or trials in the foreign state, on the basis of the legislation of the Republic of Azerbaijan;
- he/she has a right to refuse to testimony on similar investigations or trials on the basis of the legislation of foreign state.

652. According to Article 12 of the Law "On legal aid in criminal matters" the relevant executive authority (Ministry of Justice) or other competent authority of the Republic of Azerbaijan shall conduct search or seizure in accordance with criminal-procedural legislation of the Republic of Azerbaijan on the basis of the request of competent authority of the foreign state.

653. Generally, the requested legal assistance can be carried out if the same process could be exercised in a similar domestic case. Furthermore, Azerbaijan carries out legal assistance only on the basis of reciprocity (if no specific agreement with the requesting country). As for coercive measures dual criminality is needed. The evaluation team was informed by the Azerbaijani authorities that when the request concerns money laundering, to a certain extent, the assistance can also be carried out on the basis of the predicate crime

654. According to article 490 of the Criminal Procedure Code and article 4 of the Law, the following information should be reflected in the request for legal assistance submitted to the relevant executive authorities of the Republic of Azerbaijan by the competent authority of the foreign state:

- name (or title) of the competent authority of the requesting foreign state;
- name (or title) of the relevant competent authority which conducts examination, investigation or court examination in accordance with the request;
- the subject of the request and its nature;
- the elements of *corpus delicti*, description of facts and qualification of deed, text of relevant law of the requesting foreign state;
- information on name, surname, patronymic name and place of residence of person in respect of whom request is issued;
- other information necessary for considering the request on legal aid;
- information on identity and place of residence of person in respect of whom information or material evidence is requested;
- identity and supposed place of residence of person in respect of whom place of residence is requested;
- description of place or person subject to search, as well as exhibits subject to seizure;
- list of questions which should be addressed to the person;
- information on amount and expenses which should be paid to the person invited abroad;
- other forms of legal assistance, could be provided based on international agreements that the Republic of Azerbaijan is part of, or it is obliged on the basis of the reciprocity principle.

655. When the relevant executive authorities of the Republic of Azerbaijan appreciate that additional information is necessary for performing the mutual legal assistance request, according to the Law, the Azerbaijani authorities are entitled to ask the foreign request country authorities to provide it.

656. If the Azerbaijani authorities refuse to provide MLA the law requires that the requesting foreign state should be informed about the grounds of the refusal. The Azerbaijani authorities informed the evaluators that if the legal assistance request interferes with an investigation carried out by the law enforcement authorities or court examination of criminal cases in the Republic of Azerbaijan, the assistance will be postponed. The conditions for refusing to provide MLA are

stipulated by article 492 of the Criminal Procedure Code and article 3 of the Law and foresee the following cases:

- When the Azerbaijani authorities have sufficient grounds to think that providing the mutual legal assistance will damage the sovereignty, safety and other important interests of the Republic of Azerbaijan;
- If the offence perpetrated in the foreign requesting country is characterized as a political crime in the Republic of Azerbaijan
- If the request is issued in respect of crime against military service;
- If the request is issued in respect of a deed which is not recognized as a crime according to the legislation of the Republic of Azerbaijan;
- If there are sufficient grounds to suppose that the request for legal assistance has been submitted with a view to persecuting a person for his/her race, nationality, language, religion, citizenship, political views or sex;
- If the request have been issued in respect of an offence under the investigation or court examination in the Republic of Azerbaijan and postponement of execution of mentioned request is not possible;
- If the form and context of the request for legal assistance does not correspond to the provisions of Article 4 of this Law.

657. With respect to all the forms of MLA, the request is executed according to the procedure provided by the Azerbaijani law or according to a procedure provided by an international agreement to which the Azerbaijan Republic is party. The evaluators were advised that all mentioned mechanisms of providing MLA are fulfilled in a very efficient, timely and effective manner and that cases of money laundering and terrorism financing would be handled with priority. At the same time the Azerbaijani authorities were unable to provide an approximate time frame for dealing with requests, since no request in relation to the money laundering offence was received.

658. According to the Azerbaijani authorities a request for mutual legal assistance received by the designated authorities will not be declined on the sole ground that the offence is also considered to involve fiscal matters. Moreover Azerbaijan does not refuse to grant assistance in these particular cases if the legal definition of the offence is not completely the same in both countries. What matters is the substance of the criminal behaviour and it should be punishable in both countries. Referring to Criterion 36.5 Azerbaijan does not refuse a request for mutual legal assistance on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions. A request related to such issues is treated according to the national provisions for lifting bank secrecy by the Court, upon request of the prosecutor.

659. The law is silent as to the possibility of using the procedure of transferring criminal procedures to another state or from another state to Azerbaijan, in order to avoid the conflict of jurisdiction. Moreover, as it was noted in article3 of the Law, if the legal assistance requests that in the situation when a MLA interferes with the investigation carried out by the law enforcement authorities or Court examination of criminal case in the Republic of Azerbaijan, the assistance will be postponed.

660. In Azerbaijani legislation there are no rules concerning the mechanism for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country. The evaluators were informed that whenever such conflicts appear in practice, they would be solved based on article 148 of the Constitution. According to the article 148 of the Constitution international agreements wherein the Republic of Azerbaijan is one of the parties constitute an integral part of legislative system of the Republic of Azerbaijan. The idea is that, the solution of such kind of conflicts is carried out in accordance with international practice to this end. For example, as often happens in practice, the prosecution agencies of Azerbaijan and the relevant foreign state will decide who will carry out the investigation of a criminal case which is the

subject to prosecution in both countries. In that case, the relevant prosecution agency of Azerbaijan will either refer the criminal case to other state, or request that the foreign competent agency to do the same thing.

Additional Elements

661. According to Article 5 of the "Law on legal aid in criminal matters" the Ministry of Justice or other competent authority of the Republic of Azerbaijan can execute the request on legal aid in a relevant way defined by the legislation of the Republic of Azerbaijan. According to article 5.2. of the Law "On legal aid in criminal matters" if the relevant executive authority (Ministry of Justice) or other competent authority of the Republic of Azerbaijan is not entitled to consider the request for legal assistance, it shall forward that request to the competent authority and inform the competent authority of the foreign state to this end. Furthermore, in accordance with agreements of the Republic of Azerbaijan relevant state agencies are entitled to provide the necessary support on the basis of direct requests received from their foreign counterpart.

Statistics

662. The Azerbaijani authorities have confirmed that no MLA requests relating to AML/CFT have been received.

663. The evaluators have been advised that the Ministry of Justice is the body which is in charge of maintaining statistical data. According to article 5.3. of the Law "On Extradition" the Ministry of Justice shall examine all attached documents within seven days after receiving relevant request for MLA and submit a response thereon. In cases non-compliance with the terms of the legislation, the MoJ shall apply to the competent authority of foreign state to this end..

Recommendation 38

664. According to Article 488 of the Criminal Procedure Code legal aid is regulated in accordance with the Constitution, the Criminal procedure Code, the Law on Legal Aid in Criminal Matters, Presidential Decree on regulations on assignment of part of confiscation property to improvement of material and technical basis of law enforcement and other agencies. Where there is no relevant agreement between the Republic of Azerbaijan and foreign States, the Law on Legal Aid in Criminal Matters should be applied. According to Article 2 of the Law "searching or seizure of the possession, determination of illegally obtained funds, property, as well as funds used for committing crime are susceptible to legal aid".

665. The difficulty that the evaluators have is that in the absence of any statistics in this area it is not possible to determine whether and to what extent Azerbaijan could provide effective and timely responses to foreign requests for freezing, seizure or confiscation. It has been noted earlier that dual criminality is applied strictly for coercive measures, and it has also been noted that in the domestic regime, confiscation is not available for all predicate offences. Indeed, some predicate offences are not recognised yet in Azerbaijan (insider trading, market manipulation, and various aspects of financing of terrorism). In the absence of a multilateral or bilateral agreement between Azerbaijan and the requesting country covering this area, it is unlikely that Azerbaijan would provide assistance in respect of offences for which dual criminality does not apply or for which confiscation is not possible domestically.

666. In the case of countries with which Azerbaijan has international or bilateral agreements the situation may be different, but so far as the evaluators are aware, this issue has yet to be tested. Azerbaijan is a full Party to the Strasbourg Convention and that Convention creates mandatory obligations between contracting parties to take provisional measures and to enforce confiscation

orders (including value orders) or submit such requests to its competent authorities. The Strasbourg Convention permits co-operation on provisional measures to be refused if the measures sought could not be taken under the domestic law of the requested party. Thus, even if Convention obligations take precedence in Azerbaijan practice, under the Strasbourg Convention, they would still be entitled to decline assistance on provisional measures in cases where provisional measures could not be applied domestically. The evaluators requested information on how Azerbaijan would implement a request to enforce a foreign confiscation order, bearing in mind Article 13 of the Strasbourg Convention. The evaluators have been advised that a request would be sent to the appropriate Court. According to the Criminal Procedure Code, the Court of the Republic of Azerbaijan for Cases on Serious Crime is the competent authority for making decisions on MLA requests on confiscation matters. According to article 521 of the Code, the court acting as an independent authority, shall follow both the national legislation and international instruments when making decisions on such requests.

667. For those offences which may attract confiscation, or provisional measures domestically in Azerbaijan, MLA in this area may be possible, given that provisional measures, property and value confiscation are now possible domestically. The confiscation of indirect proceeds, though not perhaps embedded in Azerbaijan domestic practice yet, appears to have been applied in at least one case domestically and if that procedure is followed then perhaps enforcement of a confiscation judgement based on indirect proceeds will be possible. Until these issues are resolved in practice the evaluators have a reserve on whether Azerbaijan will always be in a position to provide timely and effective MLA in this area to all its partners in multilateral agreements and doubt that it would be provided to non-Convention partners where the requested measure is not possible domestically.

668. The evaluators were unaware of any specific arrangements to co-ordinate seizure and confiscation actions with other countries. Though it has not been formally addressed, it was understood that arrangements could be made for co-ordinating seizure and confiscation actions on a case by case basis. At the time of the on-site visit confiscated assets in Azerbaijan corruption cases could be applied for the benefit of domestic law enforcement agencies which instituted the proceedings. As to whether confiscated assets could be shared with other countries, where law enforcement action is co-ordinated between them, the Azerbaijan authorities pointed to their ratification of the Palermo Convention and A.14 of it in particular – which permits (but does not oblige) countries to give consideration to concluding arrangements with other contracting parties to share such proceeds. As far as the evaluators are aware, no such situation has arisen as yet but the Azerbaijani authorities indicated that this would be considered if it did arise.

Additional elements

669. Non-criminal confiscation orders are currently not consistent with principles of Azerbaijani domestic law. Article 465 of the Civil Procedure Code of Azerbaijan would thus appear to give a ground for refusal of such a foreign order, though, again, this has not been tested.

Special Recommendation V

670. SR.V requires, among other things, that each country should give assistance to another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange. The assistance should be provided in relation to criminal, civil and administrative investigations, inquires and proceeds related to financing of terrorism, terrorist acts and terrorist organisations.

671. The MLA mechanisms applicable in Azerbaijan are presented above, while assessing the compliance with Recommendations 36 to 38. It is, however, worth mentioning the fact that related to terrorism financing the same legal provisions are available.

672. International cooperation in the area of ML and FT could in some instances suffer from certain gaps in the national legislation, especially in respect with the compliance with the Palermo and Vienna requirements. As well, absence of corporate liability could be a problem in providing MLA.

6.3.2 Recommendations and comments

Recommendations 36 and 37

673. The dual criminality condition exists in respect of MLA, but according to the CC and to the Law "On legal aid in criminal matters", the possibilities for Azerbaijan to provide legal assistance to foreign states appear to be quite broad and well-balanced. Generally speaking, Azerbaijan can provide to foreign states the kind of assistance that the authorities of Azerbaijan themselves can exercise in domestic cases. This, however, for some steps, is a restriction in itself. For example, seizures in the course of criminal proceedings can only be exercised to ensure confiscation of property, and only where the confiscation measure is mentioned in the specific offence. This of course has implications for legal assistance, because requests from abroad for seizure cannot be exercised to a wider extent in international co-operation than in domestic cases. The evaluators have been advised that according to the Law "On legal aid in criminal matters" seizure of property is one of the actions subject to MLA.

674. As mentioned above, the exercise of coercive measures (production of bank accounts, searches, seizure, interception of communication etc.) require formal dual criminality, as do some non-coercive measures like observations, exchange of information and taking of statements.

675. Whenever the foreign request relates to a money laundering case, the dual criminality principle applies. As the money laundering offence as stand alone crime, self-laundering offence, and the conversion or transfer, acquisition and simple possession, are not covered by article 193-1, the dual criminality principle restricts very much the possibilities to provide assistance. Because of that situation, in money laundering cases, Azerbaijan can only assist on coercive measures, if the predicate crime committed abroad relates to the elements mentioned in article 193-1 of the CC. The evaluation team was told that in such cases it might be possible to assist on the basis of the predicate crime, but no confirmation was given in this respect.

676. In the previous report the evaluation team noted that article 502 of the Criminal Procedure Code does not prevent Azerbaijan from opening a case on money laundering or financing of terrorism, where the criminal action has been committed abroad by an Azerbaijani citizen. The same conclusion is maintained in the present report.

677. It is also evident to the evaluators that the absence of a comprehensive legal framework for asset tracing, including seizures, sets real limits on the implementation of international co-operation to combat money laundering and financing of terrorism in the country. The evaluators therefore also recommend that the Azerbaijani authorities should address these issues as a matter of priority.

Recommendation 38

678. So far there has been little or no practice in MLA in this area though there had apparently been some requests. The very limited range of offences susceptible to confiscation domestically (19 of the 64 predicate offences listed in Annex II carry confiscation as a penalty and of these only seven have confiscation available for the basic form of the offence), and the requirement of dual criminality may become obstacles to the provision of assistance to countries.

679. There are no formal arrangements for coordinating seizure and confiscation actions, but if the need arose on an individual case then ad hoc arrangements could be put in place.

680. The Azerbaijan authorities are recommended to consider a review of existing law and practice in this area to identify any features which may act as barriers to the development of practical co-operation of this type.

Special Recommendation V

681. In the absence of any significant legal restriction in the field of MLA, Azerbaijan is in principle able to provide assistance in the field of criminal proceedings and in ML and FT in particular.

682. Some specific deficiencies noted above in relation to the criminalisation of financing of terrorism domestically may inhibit international co-operation.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**Largely compliant**	• 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 corporate liability could be a problem in providing MLA.
R.38	**Partially compliant**	• Very limited range of offences susceptible to confiscation domestically • Dual criminality principle may adversely inhibit such assistance.
SR.V	**Partially compliant**	• 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.
R.37	**Largely compliant**	• Requirements of dual criminality may inhibit MLA requests in ML cases.

6.4 Extradition (R. 37 and 39, SR.V)

6.4.1 Description and analysis

683. The extradition procedure is dealt with in articles 493 to 500 of the Code of Criminal Procedure, Law on "Extradition of persons who committed crime" and article 9 of the " Law on legal aid in criminal matters". Extradition is granted in accordance with international treaties to which Azerbaijan is party or on the basis of reciprocity where such an agreement does not exist. According to Article 2 of the Law on Extradition a person requested by a foreign state can be extradited only in a case where the crime committed abroad is also criminalized according to the legislation of the Republic of Azerbaijan.

684. According to Article 493 of the Code of Criminal Procedure, an official request for extradition of a person must indicate the following information:

- the name of the prosecuting authority of the Azerbaijan Republic to which the request is addressed;
- the name of the requesting competent authority of the foreign state;
- the title of the criminal case in respect of which legal assistance is requested and brief information about it;
- a description of the factual circumstances of the act and the text of the requesting state's law describing the act as an offence;
- the family name, first name and father's name of the person to be extradited, his nationality, address or whereabouts and, if possible, a description of his personal appearance and other information about his identity;
- the cost of the damage caused by the offence.

All the documents and evidence at the disposal of the requesting competent authority of the foreign state shall be attached to the official request for criminal prosecution.

685. The law provides that in Azerbaijan an official request for extradition will be accepted only if it is accompanied by a certified copy of the arrest warrant issued for the person who has to be extradited. If any of the requested information is not included in the official request for extradition, the prosecuting authority of the Azerbaijan Republic to which the request is addressed may seek additional information within 1 (one) month. According to the law if the competent authority of the foreign state which requests extradition of a person in detention fails to provide the additional information during the prescribed period, the person shall be released by the prosecuting authority of the Azerbaijan Republic.

686. The person shall not be extradited in the following cases:

- if, at the time of receiving the request for extradition, under the legislation of the Azerbaijan Republic, the criminal prosecution cannot be started or the judgment be enforced because the time-limit for criminal prosecution has expired or there are other legal grounds as provided by Article 3.2 of the Law on Extradition;
- if there is a final Court decision interrupting the proceedings against the person whose extradition is requested;
- if, under the legislation of the Azerbaijan Republic, the prosecution phase is started based on a complaint formulated by the victim.

687. According to Article 496 CC, Azerbaijan does not extradite its own citizens. Pursuant to the article 502 of the Criminal Procedural Code the prosecuting authority of the Republic of Azerbaijan, on the basis of an official request from the competent authority of a foreign state and in accordance with the legislation of the Republic of Azerbaijan, is able to prosecute the citizens of the Republic of Azerbaijan suspected of committing an offence on the territory of the

requesting state. In the situation when an offence was perpetrated on the Azerbaijan territory, the Azerbaijani authorities will refuse to grant extradition for offences committed on its territory. The evaluators were told that such persons would be prosecuted in Azerbaijan. Extradition may be also refused in the following cases:

- if the person whose extradition is requested is a citizen of the Azerbaijan Republic or has been granted political asylum in the Azerbaijan Republic;
- if the offence connected with the request for extradition was committed on the territory of the Azerbaijan Republic;
- if the person whose extradition is requested is prosecuted for his political, racial or religious affiliations;
- if the person whose extradition is requested is prosecuted in peacetime for committing a war crime;
- if the state requesting extradition does not have an agreement with the Azerbaijan Republic on legal assistance in criminal matters, or if that state does not comply with the requirements of the agreement on legal assistance in criminal matters.

688. According to the legislation, in order to admit a request for the extradition of foreign nationals, the offences for which they are being prosecuted, must carry a maximum sentence of at least one year of imprisonment. Shorter periods apply to persons who are already convicted (6 months). This means that foreign nationals involved in money laundering, terrorism or financing of terrorism cases can be extradited.

689. According to article 7 of the Law on Extradition, in urgent circumstances, on the basis of a petition of a foreign requesting state, relating to search and seizure activities that need to be taken against a person that will be subject to extradition the relevant executive authorities of the Republic of Azerbaijan (Ministry of Justice and Ministry of Internal Affairs) shall take necessary measures as defined in the criminal-procedural legislation, in order to meet the required assistance, until the official request for extradition is received. The petition shall include information related both to the crime, and to the person.

690. There are no reports of unreasonable delays relating to the extradition procedure. The procedure is bound by strict deadlines (Articles 497-498 CPC).

691. It is difficult for the evaluators to assess how extradition works in practice. According to the questionnaire, there has never been an extradition to or from Azerbaijan, related to AML/CFT.

692. Money laundering and financing of terrorism are extraditable offences in Azerbaijan. Extradition is covered by the Law on "Extradition of persons who committed crime".

693. Since there are no extradition requests have been received or applied for on grounds of ML or TF, it has not been possible to provide statistics and information to this end. However, statistics on extradition requests in 2008 on other crimes which can appear as predicative offences for ML are set out in the following table:

No.	Requesting state	Requested state	Articles of the Criminal Code	Result
1.	Azerbaijan	UAE	179 (Assignment or waste); 313 (Service forgery).	extradited
2.	Azerbaijan	UAE	144 (Kidnapping of the person).	pending

3.	Azerbaijan	Lebanon	200 (Deceit of consumers or manufacture and selling of lower-quality production); 213 (Evasion from payment of taxes).	pending
4.	Azerbaijan	United Kingdom	179 (Assignment or waste).	pending
5.	Azerbaijan	Pakistan	95 (Murder) (previous Criminal Code).	pending
6.	Azerbaijan	Australia	162 (Infringement of a labor safety rules).	pending
7.	Azerbaijan	UAE	178 (Fraud); 320 (Fake, manufacturing or selling of official documents, state awards, seals, stamps, forms or use of counterfeit documents).	pending
8.	United Kingdom	Azerbaijan	150 (Violent actions of sexual nature).	extradited
9.	Azerbaijan	UAE	243 (Involving to prostitution).	pending
10.	Azerbaijan	Germany	178 (Fraud).	pending
11.	Azerbaijan	United Kingdom	145 (Illegal imprisonment); 185 (Illegal occupation of automobile or other vehicle without a purpose of plunder).	pending
12.	Azerbaijan	Croatia	178 (Fraud)	pending
13.	Azerbaijan	Lebanon	200 (Deceit of consumers or manufacture and selling of lower-quality production); 213 (Evasion from payment of taxes).	pending
14.	Azerbaijan	UAE	243 (Involving to prostitution)	pending
15.	Azerbaijan	United Kingdom	81–1 (Violation of currency transactions rules) (previous Criminal Code).	pending

6.4.2 Recommendations and comments

694. On the basis of the available information, the current system does not seem to pose problems. 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 should not be a major problem; however since the deficiencies in the formal qualification of the offences do not

necessarily have the same negative impact on extradition procedures, the criminal behaviour would appear to prevail over the formal text.

695. There are no reports of unreasonable delays related to extradition. The procedure is bound by strict deadlines where detention of the extraditable person is involved (article 497-498 CPC)

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37.2	**Largely compliant**	• legal uncertainties related to the criminalisation of ML coupled with strict dual criminality requirements might interfere with extradition possibilities.
R.39	**Largely compliant**	• 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.
SR.V	**Partially compliant**	• The limitations in relation to the criminalization of the TF offence may negatively affect the extradition possibilities.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

696. Azerbaijan co-operates with a number of countries based on international agreements signed between them. The Republic of Azerbaijan also reinforces regional cooperation in the field of money laundering and financing terrorism through its participation in the activities of certain regional organisations (OSCE, GUAM[9], CICA, CoE, BSEC, CIS, SECI and others). According to the Azerbaijani authorities they carry out international cooperation as a party to bilateral or multilateral international agreements or arrangements, mechanisms or channels. The Azerbaijan authorities have provided the following comprehensive list of agreements which fall outside judicial legal assistance. However, it was unclear if any of these agreements specifically cover AML/CFT issues. The Azerbaijani authorities indicated generally that these were broad agreements to which AML/CFT cooperation could apply if necessary.

- Agreement between the National Bank of Azerbaijan and Bank of the United States of America (August 1, 1997);
- MOU between the Ministry of Finance of Azerbaijan and Department of Finance of the USA (August 23, 2002);
- Agreement on control over drugs and assistance between law enforcement between the Government of Azerbaijan and the Government of the USA (January 3, 2003);
- Agreement on mutual assistance and cooperation on customs matters between the Government of Azerbaijan and Government of the USA (February 7, 2007);
- Joint Declaration between State Customs Committee and Customs Department of Germany (August 27, 2007);

[9] Including Georgia, Ukraine, Azerbaijan and Moldova

- MOU between Ministry of Interior of Azerbaijan and Ministry of Interior of Austria (April 12, 2000);
- Agreement on mutual assistance and cooperation between the Government of Azerbaijan and Government of Austria (November 19, 2002);
- Agreement on cooperation between the Ministry of Interior of Azerbaijan and Ministry of Interior of Belarus (June 5, 1999);
- Agreement on cooperation between the Ministry of Finance of Azerbaijan and Ministry of Finance of Belarus (August 9, 2001);
- Agreement between the Government of Azerbaijan and Government of Belarus on cooperation on customs matters (November 5, 2004);
- Agreement on mutual security of secret information between the Government of Azerbaijan and Government of Belarus (May 2, 2007);
- Agreement between the State Customs Committee of Azerbaijan and Ministry of Finance of Belarus (May 2, 2007);
- Agreement between the National Bank of Azerbaijan and the National Bank of Belarus (May 2, 2007);
- Agreement on fight against illicit drug trafficking between the State Customs Committee of Azerbaijan and Customs Committee of Georgia (February 3, 1993);
- Agreement on fight against smuggling and violation of customs rules between the Government of Azerbaijan and the Government of Georgia (May 7, 1995);
- Agreement on cooperation on supervision over currency transactions and export of goods between the Government of Azerbaijan and the Government of Georgia (December 27, 1997);
- Agreement on legal information exchange between the Government of Azerbaijan and the Government of Georgia (Mart 22, 2000);
- Agreement between the National Bank of Azerbaijan and the National Bank of Georgia (August 20, 2007);
- MOU on customs matters between the Government of Azerbaijan and the Government of the UK (July 7, 1997);
- Agreement between the Government of Azerbaijan and the Government of Bulgaria on customs matters (December 2, 1999);
- MOU between the State Customs Committee of Azerbaijan and National Customs Agency of Bulgaria on development of cooperation in customs matters, as well as enhancing of professionalism of customs servants (September 23, 2005);
- Agreement between the National Bank of Azerbaijan and the Central Bank of Moldova (February 3, 1994);
- Agreement on supervision over currency transactions and exportation matters between the Government of Azerbaijan and the Government of Moldova (November 27, 1997);
- MOU between the National Bank of Azerbaijan and Banking Regulation and Supervision Agency of Turkey (September 7, 2005);
- Agreement on customs matters between the Government of Azerbaijan and the Government of Moldova (May 22, 2006);
- Protocol on cooperation between the State Customs Committee of Azerbaijan and Customs and Financial Security Service of Hungary (February 3, 2006);
- MOU between the Ministry of Finance of Azerbaijan and the Ministry of Finance of Hungary (March 22, 2007);
- Agreement on mutual assistance on customs matters between the Government of Azerbaijan and the Government of Lithuania (April 2, 2004);
- Agreement on exchange of judicial information between the Government of Azerbaijan and the Government of Kyrgyzstan (April 23, 1997);
- Agreement between the State Customs Committee of Azerbaijan and Assets Committee under the Ministry of Finance of Kyrgyzstan (December 3, 2004);

- Agreement on exchange of judicial information between the Government of Azerbaijan and the Kazakhstan (June 10, 1997);
- Agreement on customs matters between the Government of Azerbaijan and the Government of Kazakhstan (June 10, 1997);
- Agreement on cooperation between the Ministry of Interior of Azerbaijan and Ministry of Interior of Kazakhstan (June 5, 1999);
- Agreement on cooperation in customs matters between the State Customs Committee of Azerbaijan and the Government of Italy (February 24, 2005);
- MOU between the Ministries of Internal Affairs of Azerbaijan and Iran (April 13, 2003);
- Agreement between the Government of the Republic of Azerbaijan and the Government of the Kingdom of Netherlands on mutual administrative assistance for the proper application of customs law and for the prevention, investigation and combating of customs offences (January 30, 2002);
- Agreement on fight against smuggling and violation of customs rules between the State Customs Committee of Azerbaijan and State Customs Committee of Uzbekistan (February 26, 1993);
- Agreement on cooperation between the Ministry of Interior of Azerbaijan and Ministry of Interior of Uzbekistan (June 18, 1997);
- Agreement on exchange of judicial information between the Government of Azerbaijan and the Government of Uzbekistan (June 18, 1997);
- Agreement between the Government and National Bank of Azerbaijan and the Government and Central Bank of Uzbekistan (June 18, 1997);
- Agreement between the Ministry of Finance of Azerbaijan and Ministry of Finance of Pakistan (April 13, 2005);
- Agreement on customs matters between the Government of Azerbaijan and the Government of Pakistan (July 8, 2004);
- Agreement between the National Bank of Azerbaijan and the Central Bank of Pakistan (April 10, 1996);
- Agreement on banking supervision between the National Bank of Azerbaijan and the Central Bank of Russian Federation (December 4, 2006);
- Protocol between the State Customs Committee of Azerbaijan and the State Customs Committee of Russian Federation (April 10, 2002);
- Agreement between the National Bank of Azerbaijan and the National Bank of Ukraine (March 16, 2000).

Prosecutorial authorities

697. 10 bilateral agreements on cooperation were concluded between the Prosecutor General Office of Azerbaijan and prosecution agencies of foreign states, including China, Austria, Kazakhstan, Thailand and Georgia.

698. It should be noted that organisation of exchange of experience and international cooperation practices of prosecutors is a matter of high priority. In this regard a special training program for prosecutors was developed by the Council of Europe.

Law enforcement cooperation

699. The Ministry of the Interior is a party to a number of multilateral agreements within the CIS. Documents regulate relations between Interior Ministries on trans-national organised crime, international terrorism, illicit drug and arm trafficking, other crimes, as well as search matters, exchange of information, etc. The Ministry of Internal Affairs also cooperates with the relevant agencies of Turkey, China, Bulgaria, Iran, Romania, Pakistan, Austria, Latvia, Lithuania, and Estonia. Bilateral agreements on cooperation and collaboration with interior authorities of Greece,

France, Italy, UAE and Saudi Arabia are under development. The Ministry of Internal Affairs staff have participated at special training sessions and seminars devoted to various problems concerning the fight against organised crime, terrorism, drug trafficking held in Turkey, USA, France and Egypt.

FIU-FIU cooperation

700. As there is no FIU in place there is no ability to co-operate with other FIUs. It is understood, however, that requests have been received from the FIUs of Bulgaria and Georgia in 2005 and 2006. Both of these were thoroughly examined and responded to by the NBA.

National Bank of Azerbaijan

701. The development of the banking system of Azerbaijan in accordance with European Directives and Basel Principles, as well as integration to European Community is a main strategic target of the National Bank of Azerbaijan. The NBA advised that they pay considerable attention to mutual cooperation with central banks and financial institutions of the world. The Republic of Azerbaijan continues cooperation with IMF, World Bank, EBRD, ADB.

702. The NBA has developed relationships via MOUs with the Central Banks of Turkey, Russian Federation, Switzerland, United States of America, Georgia, Belarus, Moldova, Pakistan, Uzbekistan, Ukraine, Poland, as well as the Bundesbank, Bank of England, etc.. Furthermore, agreements on mutual cooperation with relevant agencies of Estonia, Czech Republic, China, Romania, Italy, Kazakhstan, Greece are under development.

703. In accordance with the above mentioned bilateral documents, the NBA is authorised to carry out information exchange, as well as provide any kind of appropriate assistance for its foreign partners. They indicated that they could provide information spontaneously though could not provide specific information where such disclosures had been made in the AML/CFT context.

State Committee on Securities

704. The supervisory authority of the capital market can provide, based on reciprocity conditions, assistance to the foreign regulating authorities in order to fulfil their tasks.

705. SCS has signed a Memorandum of Understanding with the Republic of Kazakhstan and on sharing of information with the Republics of Belarus and of Georgia.

Insurance sector

706. Azerbaijan is in the process of negotiating a Memorandum of Understanding with the International Association of Insurance Supervisors.

National Custom Authority

707. The State Customs Committee of the Republic of Azerbaijan became a member of the Financial Committee of the World Customs Organisation in June 1999. Relations between the State Customs Committee and the World Customs Organisation established a strong background for the development of cooperation with other members of this organisation.

708. The State Customs Committee cooperates through MOUs and Protocols with relevant agencies of such states as Georgia, Moldova, Uzbekistan, Ukraine, Kazakhstan, Belarus, Estonia, Russian Federation, Netherlands, Austria, Hungary, etc. and has developed over 30 bilateral agreements.

Additional elements

709. Mechanisms are said to be in place for the prompt and constructive exchange of information by any authority with non-counterparts in the context of R.40

6.5.2 Recommendation and comments

710. It appears that law enforcement authorities are developing a network of cooperation and information exchange at the intelligence level (ie outside the scope of judicial legal assistance), though no specific examples of AML/CFT cooperation of this type were given.

711. As there is no FIU in place, the range of cooperation with other FIUs is, of necessity, severely limited. The NBA has responded to some 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. The National Bank are doing what they can within the constraints of their operation.

712. Cooperation between supervisory authorities on supervision issues with their foreign counterparts is developing through bilateral and multilateral agreement, though, again, no specific AML/CFT exchanges were pointed to as yet. The information which supervisory currently possess in connection with CFT is, in any event, very limited. However, the evaluators have no reason to believe that the supervisory authorities would not be in a position to respond positively to such requests if and when they are received.

6.5.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**Partially Compliant**	• 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.
SR.V	**Partially Compliant**	• Little practice in CFT exchange of information at law enforcement intelligence level. • Little or no information on CFT issues available to supervisors.

7 OTHER ISSUES

7.1 Resources and Statistics

Recommendation 30

713. Law enforcement overall seemed adequately resourced, though whether law enforcement bodies currently have sufficient resources assigned to them for combating AML/CFT is both unclear and indeed highly debateable, given the focus that there appears to be on corruption at the expense of AML/CFT. There appeared to be a marked reluctance to provide information on the resources actually applied to AML/CFT itself. Beyond this, attention will also need to be given to the numbers and training of the FIU when it is created.

714. The other problem in the law enforcement field is the major insufficiency of training and awareness on AML/CFT issues and in financial investigation. More effort is needed here to provide more focused training on the utility of ML investigations and techniques to investigate and prosecute AML/CFT offences. Otherwise, ML will remain a dead letter as a criminal offence. Equally, more focused judicial training is required on these issues.

715. The authorities stated that the State Customs committee, the Ministry of Justice and the SCS, applied ethics codes which included rules on conflicts of interest. It was stated that these codes were applicable to all government departments. The evaluators were not provided with a copy of these codes.

716. The resources provided to supervisors seemed basically adequate, though attention will need to be paid to the resources applied specifically to AML/CFT supervision when the law is brought into force, and to their training. The numbers devoted to AML/CFT supervision will be crucial. The authorities could not point to any legislative act providing a requirement for supervisory staff to maintain high professional standards.

Recommendation 32

717. Some statistics in respect of "STRs" received by the NBA were provided, as well as information on the numbers sent to law enforcement. It was unclear as to where in law enforcement they all went, though it is thought that most (if not all) went to the Ministry of National Security. Reliable statistics should be kept and made available to those reviewing the effectiveness of the AML/CFT system as to the progress made on investigations by the relevant authorities, and this information should be available to the FIU, when it is created.

718. No real statistics were provided by law enforcement on AML/CFT investigations – either generated by the shadow "STR" systems, or in relation to any AML/CFT cases generated solely by law enforcement. Both sets of statistics should be kept to assist those that review the effectiveness of the system. Similarly, no real information was provided which was case-related in respect of confiscation and provisional measures. It is important that statistics are kept for review showing the types of cases in which confiscation orders are made and provisional measures are taken.

719. Statistics were provided on supervisory activities by the main regulators though no sanctions had been applied for AML/CFT issues and thus there were no statistics concerning this. It will be necessary for such statistics to be kept in future, showing which AML/CFT breaches have been the subject of sanctions.

720. It is necessary to review the effectiveness overall of the system periodically. As noted, under R.31 a Working Group at the policy level, reporting to government on the effectiveness of the AML/CFT system overall, would assist once the law is in place. Attention by such a group should also focus on how effective law enforcement is in addressing the AML/CFT issue.

	Rating	Summary of factors underlying rating
R.30	**Partially compliant**	• 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 and other competent authorities.
R.32	**Non compliant**	• It is not clear which authority is responsible for keeping statistics in relation to money laundering and financing of terrorism. • no review of AML/CFT system on a regular basis. • no statistics provided on where "STRs" went. • absence of authoritative statistics on AML/CFT investigations, and cases involving provisional measures and confiscation. • absence of statistics on MLA and supervisory cooperation.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating[10]
Legal systems		
1. Money laundering offence	**NC**	• The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions: - The conversion or transfer of property for the purpose of concealing or disguising the illicit origin of the property may be covered but should be clarified; - 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. - Concealment or disguise of the true nature, source, location, disposition, movement or ownership etc may not be covered (Palermo A.6(1)(a)(ii)). - Acquisition and possession appears 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 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 with 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

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

		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 monitoring	**PC**	• As no basic AML/CFT 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. • 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
25.2	**NC**	• 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, judges and other competent authorities.
31. National co-operation	**PC**	• No real mechanisms in place to co-ordinate at the working level.
32. Statistics	**NC**	• It is not clear which authority is responsible for keeping statistics in relation to money laundering and financing of terrorism. • no review of AML/CFT system on a regular basis. • no statistics provided on where "STRs" went. • absence of authoritative statistics on AML/CFT investigations, and cases involving provisional measures and confiscation. • absence of statistics on MLA and supervisory cooperation.
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 –	**N/A**	• The concept of trusts is not known and neither

beneficial owners		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).

TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	Azerbaijan authorities should establish offences of "insider trading" and "market manipulation". Furthermore the offence of "financing of terrorism" should be widened in order to enable all relevant issues to be covered as predicate offences to money laundering. Legislation should be amended to provide clear definitions for the following concepts: "financial transactions", "other transactions", "money funds" or "property" Azerbaijan should make the necessary amendments to Article 193-1 of the Criminal Code to bring it into line with the provisions of the Vienna and Palermo Conventions. The evaluators strongly advise to use the language of the Conventions. In particular it is necessary to criminalise clearly and explicitly (i) the conversion or transfer of property, knowing that such property is the proceeds of crime for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action, (ii) the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime and (as there are no basic concepts of the legal system preventing this) (iii)the acquisition and possession of property knowing at the time of receipt that such property is the proceeds of crime. Conspiracy is partly covered by association, but needs to be available to cover agreements to commit basic money laundering by others not involved in organised crime. The intentional element of the offence of money laundering would benefit from being reflected in the legislation. Legislation should be amended to bring liability of legal persons into line with modern international standards. Criminal Code to be clarified to make it clear that Azerbaijan has jurisdiction for the money laundering offence when the predicate offence was committed abroad by a foreign citizen. Azerbaijan prosecutors should test the provisions they have to prosecute money laundering as a "stand alone" crime and,

	where necessary, invite the courts to draw necessary inferences. It is also strongly advised that Azerbaijan introduces a provision in its legislation clarifying that the absence of a judicial finding of guilt in respect of the predicate offence should not preclude money laundering investigations and prosecutions. It would help if this was also coupled with a provision, which clearly indicates that the existence of the underlying predicate offence (or, indeed, the intentional element of the money laundering offence) can be established in a money laundering case by objective facts and circumstances. There needs to be a firm prosecution policy and creation of jurisprudence, particularly on the evidentiary requirements. This should be accompanied by training and awareness-raising in respect of police officers, prosecutors and judges particularly on how money laundering investigations and prosecutions have been successfully achieved in other European jurisdictions.
2.2 Criminalisation of Terrorist Financing (SR.II)	Criminal legislation should be further amended to fully ensure that the money laundering offence fully reflects the terms of the Conventions so far as is consistent with fundamental principles of domestic law, and that the terrorist financing offence is fully consistent with the 1999 Convention. The Azerbaijan authorities should reinforce their system for implementing UN SC Resolutions relating to prevention and suppression of financing terrorism (S/REC/1267 (1999) and S/REC/1373 (2001) by developing and implementing the necessary procedures and mechanisms. Additional matters which need to be covered in criminal legislation are: • liability of legal persons is not covered; • awareness of some reporting entities with respect to their role in CTF mechanism; • a specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	Legislation should clearly state that "property" covers both direct and indirect proceeds of crime. Confiscation should be legally available in respect of all predicate offences to money laundering (as defined in the Glossary to the FATF Recommendations) not only where the offences are committed in their aggravated forms, but also where they are committed in their basic forms. Confiscation of criminal proceeds should be made clearly mandatory in respect of some of the major proceeds-generating offences, like drug and human trafficking. In respect of certain serious proceeds-generating offences,

	consideration should be given to reversing the burden of proof after conviction for the criminal offence, when the court is considering the lawful origin property in the hands of the convicted person. The provision for asset sharing in corruption cases should be extended to cover confiscation in all cases.
2.4 Freezing of funds used for terrorist financing (SR.III)	A comprehensive and transparent legal structure now needs to be put in place which ensures that all the financial sector receives designations and understand their obligations under UNSCR 1267 and 1373. There should be a mechanism for conversion into Azerbaijan Law of designations under UNSCR 1267 and in the context of UNSCR 1373. Specifically, there should be a clear national authority for designations under 1373 and for consideration of foreign requests for designations. This mechanism must assess without delay whether reasonable grounds or a reasonable basis exists to initiate in Azerbaijan a freezing action (and subsequent freezing of funds or other assets) in respect of persons designated by third countries. All designations under 1267 and 1373 should be communicated promptly to all parts of the financial sector. All parts of the financial sector which may hold targeted funds should be given clear guidance on the wide meaning of funds or other assets in the context of SR.III, as defined in Criterion III.4. All of the financial sector need to understand whether the system is administrative in the sense that they are positively required to take initial freezing actions themselves, or whether they should simply notify an authority of a match with a view to an application by the competent authorities for a freezing order from the courts. There needs to be publicly known procedures for de-listing and unfreezing and for those inadvertently affected by freezing mechanisms. The Azerbaijan authorities may wish to consider the merits of a more administrative procedure for handling SR.III in its entirety, subject to proper safeguards (especially with regard to *bona fide* third Parties). All supervisors should be actively checking compliance with SR.III and sanctions should be available (to be applied by the supervisors) for non-compliance. Dedicated AML/CFT legislation is required that imposes duties on the Regulated Sector with sanctions in the event of non-compliance.

2.5 The Financial Intelligence Unit and its functions (R.26)	An FIU should be created as a matter of urgency. The FIU should be adequately structured, funded and staffed, and provided with sufficient technical and other resources to fully perform its functions. The FIU should have access to relevant registers, and it should be authorised to disseminate financial information and other intelligence both to the national law enforcement authorities and to foreign FIUs. Together with the creation of an FIU the evaluators also recommend the introduction of a legal obligation for financial intermediaries to report suspicious transactions and activity to the FIU. The FIU should keep adequate statistics on received suspicious transaction reports as well as on requests for assistance. Attention will need to be given to the numbers and training of staff when the FIU is fully established, however, the overall impression was that law enforcement is adequately resourced.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	One agency should be clearly tasked with the receipt and investigation of STRs when the Draft law is passed. If the present arrangements are retained, all STRs should be copied to the General Prosecutor so that he can actively co-ordinate their investigation. All investigation bodies responsible for detection and investigation of proceeds-generating cases need to be sensitised to the importance of the financial aspects of these cases. A concerted effort should be made now to raise awareness of the law enforcement community that money laundering is not just an adjunct to corruption cases, but that through money laundering investigations more success can be achieved in confiscation of the real indirect profits made by organised crime. To this end law enforcement and prosecutors need more training on evidential issues in money laundering cases, perhaps looking at how prosecutors in other jurisdictions tackle some of the difficult evidential issues in these cases. An approach to autonomous money laundering urgently needs to be developed – one which does not call for a prior conviction for the predicate offence in money laundering cases. More should be done to train the major investigators in modern financial investigation techniques, which will uncover laundering cases. In major cases, where the prosecutor is asked by the Police to obtain a court decision concerning coercive measures, the prosecutor should proactively consider the classification of the case – whether the case should be considered not just as one where the predicate offence only is investigated, but it is recommended that he should advise investigators, in appropriate cases, to pursue the money laundering aspects. The mindset of law enforcement and prosecutors which concentrates only on the predicate offence, whether it is

	corruption, drug or human trafficking, without considering the money laundering aspects needs to be changed if any real success in this area is to be achieved now that the money laundering offence has been extended beyond the drugs predicate.
2.7 Cross Border Declaration & Disclosure (SR IX)	There is a need for measures to strengthen the capacity of Customs to detect funds possibly linked with money laundering and financing of terrorism. Customs should be provided with indicators to detect money laundering and financing of terrorism and have clear power to detain persons such as cash couriers where money laundering or financing of terrorism is suspected, for sufficient time to question persons on money laundering and financing of terrorism, before handling them over to other authorities, as necessary. The competence of Customs to investigate money laundering and financing of terrorism, which is discovered in the context of their work, should be reviewed. It would assist the national effort if they were empowered to conduct preliminary enquiries in this area at least before handing cases over to the General Prosecutor.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	The Azerbaijani authorities should introduce proper AML/CFT legislation with a "risk based" approach.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	Introduce comprehensive AML/CFT preventive legislation without further delay. It is strongly advised that the asterisked criteria in R.5 be placed into AML/CFT legislation. CDD measures should be explicitly applied, not only when establishing business relations, but also: • when financial institutions carry out (domestic or international) transactions which appear to be linked and are above the threshold of US$/Euro 15,000; • when carrying out occasional transactions that are wire transfers; • when there is the suspicion of ML and FT regardless of any exemptions or thresholds or, • when the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data. The concept of verification of identification should be further addressed. The Azerbaijani authorities should take steps to apply an enhanced verification process in appropriate cases. Financial institutions should then determine an internal procedure for approval from senior management for categories of clients, products, services and transactions considered as

	higher risk of money laundering and of terrorism financing. Financial institutions should be advised to use not only the documents as currently prescribed by law but also to use other reliable, independent source documents, data or information for the verification of the customer's identity Azerbaijani legislation should provide a definition of "beneficial owner", on the basis of the glossary to the FATF Methodology. Financial institutions should be required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources. Financial institutions should be required to determine for all clients whether the customer is acting on behalf of a third party and, if this is the case, identity the beneficial owner and verify the latter's identity. As regards clients which are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is. Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship. The scrutiny of transactions and the updating of identification data acquired during the CDD process should be undertaken as an ongoing process of due diligence on the business relationship and this requirement should be set out by the AML Law, in order to ensure that the transactions being conducted are consistent with the financial institutions' knowledge of the client. It should be made clear to financial institution that if they are unable to satisfactorily complete CDD measures, they should consider making an STR. Financial institutions should be required by enforceable means to identify all existing clients (on the basis of materiality and risk) and to conduct due diligence on such existing relationships at appropriate times, in order to acquire all missing data and information. With regard to PEPs, measures should be put in place that require financial institutions: • to determine if the client or the potential client is - according to the FATF definition – a PEP; • to obtain senior management approval for establishing a business relation with a PEP; • to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP. In relation to cross-border correspondent banking and services, financial institutions should be required to obtain further information on: • the reputation of the respondent counterparts from

	publicly available information; • assessing the adequacy of the existing AML/CFT controls in a respondent bank; • document the respective AML/CFT responsibilities of each institution; • obtain guarantees that counterpart organisations apply the normal CDD measures to all customers that have client access to the accounts of the correspondent institutions and that it is able to provide relevant customer identification data on request. Financial institutions should be required to have policies in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies in place to address specific risks associated with non face to face transactions.
3.3 Third parties and introduced business (R.9)	The Azerbaijan authorities should cover all the essential criteria under Recommendation 9 in the AML Law and ensure that this contains rules for third party reliance or introduced business.
3.4 Financial institution secrecy or confidentiality (R.4)	Law on Providence of Heritage should be repealed on passage of the AML Law. A provision should be made for the sharing of information between financial institutions in relation to correspondent banking and in relation to identification of customers involved in cross-border or international wire transfers.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	A clear obligation to keep records of the account files and business correspondence should be introduced for all financial institutions and a provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of an authority should be included in the legislation. The information needed for domestic wire transfers should include also the originator's address and an obligation that the information included in wire transfers is meaningful and accurate should be included. The 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 must be added in the legislation. The sanctions regime concerning SR VII must be made more effective in order to be applied in practice
3.6 Monitoring of transactions and relationships (R.11 & 21)	The essential criteria in FATF Recommendation 11 should be implemented by law, regulation or other enforceable means. Recommendation 21 should be implemented by law, regulation or other enforceable means.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	Azerbaijan as a matter of the highest priority should set up a system of mandatory reporting of suspicious transactions and activities in law or regulation. The reporting obligation should relate both to suspicions concerning money laundering and to suspicions concerning the financing of terrorism. All financial institutions and

	relevant non-financial institutions covered by the FATF recommendations (or the EU Directive) should be subject to the reporting duty. The new legislation should also address the specific questions of disclosing the fact that an STR or related information is being reported to the FIU and provide for the protection from criminal or civil liability for financial institutions, their directors, officers and employees where they report suspicious transactions in good faith. Once a statutorily based STR system is in place the Azerbaijan authorities should consider the provision of adequate and appropriate feedback to reporting entities.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	The Azerbaijani authorities should consider including in law, regulation or other enforceable means a requirement for financial institutions to develop programmes against money laundering and financing of terrorism. A requirement for financial institutions to designate at least an AML/CFT compliance officer at the management level must be introduced in the legislation. Provision concerning timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant information has to be introduced. Financial institutions should be 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 needs to be addressed by the Azerbaijani legislation. Financial institutions should be required to put in place screening procedures to ensure high standards when hiring employees. A requirement for financial institutions to ensure that their foreign branches and subsidiaries pay particular attention to ensuring that AML/CFT measures applied are consistent with the Azerbaijani legislation in countries that do not or insufficiently apply the FATF Recommendations and in cases where the AML/CFT minimum standard differs should be included in local normative acts. A requirement should be introduced for financial institutions to inform their Azerbaijani supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures in the host country.
3.9 Shell banks (R.18)	Azerbaijan should review its laws, regulations and procedures and implement specific requirements covering the prohibition on the establishment or the continued operation of shell banks. Furthermore, financial institutions should be prohibited from

	entering into or continuing correspondent banking relationships with shell banks. In addition, there should be an obligation placed on financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. It would be helpful if the NBA then considered periodically seeking assurances in writing from all their banks that they have no direct or indirect correspondent relationships with shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	Azerbaijan should implement effective, proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with national AML/CFT requirements. Sanctions should be available in relation not only to the legal persons that are financial institutions or businesses but also to their directors and senior management. The range of sanctions available should be broad and proportionate to the severity of a situation. They should include the power to impose not only disciplinary, but also financial sanctions and the power to withdraw, restrict or suspend the financial institution's license for not observing AML/CFT requirements. The authorities should provide supervisors with 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. Staff of all supervisory bodies should be required to maintain high professional standards and to keep professional secrets confidential and clear ethical rules should be developed.
3.11 Money value transfer services (SR.VI)	The authorities should implement requirements in relation to Recommendations 4-11, 13-15 and 21-23 specified for the MVT service providers. The sanctioning system for infringements of the existing legislative acts requiring court decisions via application of the supervisory authorities is does not work in practice as no sanctions apart from NBA corrective measures for banks have been imposed so far. It should be amended to provide for an effective sanctioning regime. The legislation should be amended in order to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a bank.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	It is strongly recommended that the Azerbaijan authorities make all DNFBP, as defined by FATF, subject to AML/CFT obligations. It is also advised that tax advisors, lottery

	organisers and auditors are covered. Azerbaijan should fully implement Recommendations 5, 6, 8, 10 and 11 and make these measures applicable to DNFBP
4.2 Suspicious transaction reporting (R.16)	Recommendations 13 – 15 and 21 are not addressed in the Azerbaijani legislation and should be implemented for DNFBP as soon as possible
4.3 Regulation, supervision and monitoring (R.24-25)	All the relevant categories of DNFBP should be included as obliged entities under the AML/CFT regime. At the same time the relevant supervisory authorities should be designated and their powers should be defined in accordance with FATF recommendations, including powers to monitor and sanction DNFBP for deficiencies connected with AML/CFT. Guidance for DNFBP should be provided including any measures that these institutions could take to ensure that their AML/CFT measures are effective.
4.4 Other non-financial businesses and professions (R.20)	In the domestic context of Azerbaijan, the Azerbaijan authorities should consider which other non-financial businesses or professions which, may be considered to be at risk of being misused for money laundering or terrorist financing.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	Review powers should be set out in the law and regulations to ensure that known terrorist organisations would be prohibited from establishing a legitimate NPO or to becoming part of it in a later stage. The Azerbaijani authorities should periodically review NPOs/NGOs with the object of assessing terrorist financing vulnerabilities. A permanent independent audit should be carried out in order to ensure that funds are used for the stated purposes, to check if the funds have reached the intended beneficiary and to detect misdirection of the funds. The NPOs/NGOs should be required to take preventive verification measures to ensure that their entities, as well as their partner organisations are not being penetrated or manipulated by terrorists or terrorist organisations. Such preventive measures should also include special training programs for the designated authorities which are in charge of supervising the NPOs/NGOs sector. Terrorist financing

	experts should work with NPOs/NGOs supervisory authorities to raise awareness on the problems faced and to alert these authorities to the specific characteristics of terrorist financing. A further review of the Laws on NPOs/NGOs based on an assessment of the vulnerabilities and needs of the sector should be undertaken.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	When the AML Law is passed a working group at the policy level to monitor the effectiveness of its application and the effectiveness of the system overall would assist. At the working level it is advised that the newly-appointed FIU create a working group or groups which reach out to the financial sector and relevant parts of he DNFBP to assist the process of embedding the new provisions into Azerbaijani practice. Similarly, the FIU will need to co-operate in a better way than the NBA is able to do at present with law enforcement to ensure that the FIU receives feedback on the cases it sends to law enforcement and is thus able to give feedback to the reporting entities.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	Criminal legislation ratifying the Vienna and Palermo Conventions and the Terrorist Financing Convention should be further amended to fully ensure that the money laundering offence fully reflects the terms of the Conventions so far as is consistent with fundamental principles of domestic law, and that the terrorist financing offence is fully consistent with the 1999 Convention. It is recommended that Azerbaijan authorities reinforce its system for implementing UN SC Resolutions relating to prevention and suppression of financing terrorism (S/REC/1267 (1999) and S/REC/1373 (2001) by developing and implementing the necessary procedures and mechanisms. The following issues still need to be addressed: • liability of legal persons is not covered; • awareness of some reporting entities with respect to their role in CTF mechanism; • a specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	Broaden the ML and TF offences to avoid dual criminality problems The Azerbaijan authorities are recommended to consider a review of existing law and practice in this area to identify any features which may act as barriers to the development of practical co-operation of this type (R.38).
6.4 Extradition (R.39, 37 & SR.V)	Broaden ML and TF offences to avoid potential dual criminality problems

6.5 Other Forms of Co-operation (R.40 & SR.V)	Establish and FIU and apply to Egmont Establish a firm legal basis for supervisory exchanges of information in TF (and ML) and establish more practice.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	Reconsider resources for AML/CFT issues in all sectors and review and establish clear integrity standards for law enforcement and supervisors in the context of AML/CFT. More relevant AML/CFT financing required for law enforcement, prosecutors and judges. More statistics need to be available to review performance of AML/CFT systems on a regular basis. Keep comprehensive statistics on ML investigations, prosecutions and convictions and on provisional measures and confiscations in ML cases and in other major proceeds generating cases. Keep statistics on MLA and FIU to FIU cooperation when the FIU is established and keep statistics showing the range of international cooperation by the supervisory authorities with their counterparts.

TABLE 3. AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU DIRECTIVE

Azerbaijan is not a member country of the European Union. It is therefore not in a position 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: "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. Following an analysis of the findings of the evaluation and conclusions on compliance and effectiveness, recommendations and comments are made as appropriate.

1.	**Self Laundering**	**L**
Directive	Self laundering is not explicitly addressed by the Directive but is not excluded from its scope.	
FATF R. 1	Countries may provide that the offence of money laundering does not apply to persons who committed the predicate offence, where this is required by fundamental principles of their domestic law.	
Key elements	Is self laundering provided for?	
Description and Analysis	Self laundering is not provided for in legislation but it is thought to be possible.	
Conclusion		
Recommendations and Comments	The Azerbaijan authorities consider this is covered, but this still needs to be tested in practice.	

2.	**Corporate Liability**	**L**
Art. 39 of the Directive	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.	
FATF R. 2 and 17	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.	
Key elements	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.	
Description and Analysis	The Azerbaijan authorities take the view that corporate criminal liability is not possible because of fundamental principles of domestic law. They have no procedures for administrative penalties for ML.	
Conclusion		
Recommendations and Comments	If corporate criminal liability for ML is impossible as a result of fundamental principles of domestic law (which is not necessarily accepted by the examiners) the Azerbaijan authorities should at least ensure that legal persons can be held administratively liable for ML infringements committed for the benefit of the legal person by a person holding a leading position in the company in the circumstances described in A.39(3) and that legal persons can be held liable for ML	

	infringements where lack of supervision or control has made possible the infringements, as set out in A.39(4).

3.	Anonymous accounts	Fin.
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.	
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.	
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures.	
Description and Analysis	The existing legislation in Azerbaijan does not allow opening anonymous accounts in banks (Law "On Banks", article 42.1). The identification of customers is a mandatory prerequisite for banks in terms of opening accounts. The "Regulations on Opening, Carrying Out and Closing of Accounts in Banks" (issued by the National Bank of the Republic of Azerbaijan) sets out the types of accounts that it is possible to open and relevant documents needed for it. Additionally, a bank should refuse to open a bank account: 1) when the documents necessary for opening a bank account are not submitted; and 2) when the documents submitted reflect inaccurate or distorted information. Article 222.3 of The Code on Administrative Violations provides sanctions for breaches of these requirements by banks. The "Regulations on broker activity in securities market" provide some CDD measures relating to the securities market including the requirement to register all applications received under the full name of the applicant. There is no direct prohibition on providing services without identifying the customer in the securities sector. Though the "Law on Insurance Activity" requires keeping a copy of the documents confirming state and tax registration for legal persons or a copy of the identification card or passport for natural persons it is not a sufficient measure to prevent the insurance sector from providing services without identification.	
Conclusion	The existing measures do provide some safeguards against anonymous accounts or accounts in fictitious names being opened as there are requirements for identification of customers when providing services and prohibition of opening anonymous accounts in banks.	
Recommendations and Comments	Although the banks are covered there should be equivalent legal and regulatory provision to cover the insurance and securities sectors	

4.	Threshold (CDD)	Fin.
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.	
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.	
Key elements	Are transactions of EUR 15 000 covered?	
Description and Analysis	There are no basic customer identification obligations provided in the primary legislation and full customer due diligence (CDD) requirements are not implemented, which comprehensively and clearly cover both the identification and the verification process, when carrying out occasional transactions amounting to EUR 15 000 or more (as provided for in the	

	Directive).
Conclusion	At present, the Azerbaijani legislation contains a customer identification obligation but the CDD requirements as set out in the FATF Recommendations and the Directive are not yet fully implemented.
Recommendations and Comments	CDD measures should be explicitly applied, not only when establishing business relations, but also when financial institutions carry out (domestic or international) transactions amounting to EUR 15,000.

5.	**Beneficial Owner**	**Fin.**
Art. 3(6) of the Directive	The definition of 'Beneficial Owner' establishes minimum criteria 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	
FATF R. 5 (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.	
Key elements	The country follows which approach in its definition of "beneficial owner"?	
Description and Analysis	Regarding the beneficial owner there is a definition in the NBA Methodological Guidelines applicable to banks only that follows the FATF definition of beneficial owner. 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. Recapitulating, financial institutions are not obliged to determine/fully understand the ownership of customers and the person on whose behalf transactions or services are carried out	
Conclusion	There is no definition of the "beneficial owner" in the existing legislation.	
Recommendations and Comments	Azerbaijani legislation should provide a definition of "beneficial owner".	

6.	**Financial activity on occasional or very limited basis**	**Fin.**
Art. 2 (2) of the Directive	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 Article 3(1) or (2) of the Directive. Article 4 of Commission Directive 2006/70/EC further defines this provision.	
FATF R. concerning financial institutions	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. (Methodology para 20; Glossary to the FATF 40 plus 9 Rec.)	
Key elements	Does the country implement Article 4 of Commission Directive 2006/70/EC?	
Description and Analysis	According to the information provided by Azerbaijani authorities, tax advisors, external accountants, auditors and lawyers should not be held as the part of the DNFBPs and are excluded from the scope of the Directive,	

	because of a little risk of ML or TF in these spheres. These professions cover insignificant and marginal segment of non-financial sector. No deeper analysis was provided.
Conclusion	The decision to exclude certain businesses and professions from the scope of the Directive is not sufficiently supported by analysis.
Recommendations and Comments	The Azerbaijani authorities should provide thorough analysis to be the basis for the decision to exclude certain businesses and professions from the scope of the Directive.

7.	**Simplified CDD**	**Fin.**
Art. 11 of the Directive	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.	
FATF R. 5	Although the general rule is that customers be subject to the full range of CDD measures yet, there are instances where reduced or simplified measures can be applied.	
Key elements	Establish the implementation and application of Article 3 of Commission Directive 2006/70/EC which goes beyond criterion 5.9.	
Description and Analysis	Neither simplified nor reduced CDD measures are stipulated anywhere in legislation and regulation.	
Conclusion	Article 3 of Commission Directive 2006/70/EC (which goes beyond criterion 5.9.) is not applied.	
Recommendations and Comments	The Azerbaijani authorities should introduce a "risk based approach", performing enhanced and simplified CDD measures for different categories of customers, business relationships, transactions and products. When introducing simplified CDD measures, Article 3 of Commission Directive 2006/70/EC should be applied.	

8.	**PEPs**	**Fin.**
Art. 3 (8), 13 (4) of the Directive	The Directive defines PEPs broadly in line with FATF 40 (Article 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Article 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Article 2) and removal of PEPs after one year of ceasing to be entrusted with prominent public function (Article 2(4)).	
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public function in a foreign country.	
Key elements	Did the country implement Article 2 of Commission Directive 2006/70/EC, in particular Article 2(4), and does it apply Article 13(4) of the Directive?	
Description and Analysis	The Azerbaijani legislative system does not contain any enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).	
Conclusion	Article 2 of Commission Directive 2006/70/EC (in particular Article 2(4)) and Article 13(4) of the Directive are not applied.	
Recommendations and Comments	The Azerbaijani authorities should put in place measures that require financial institutions apply Article 2 of Commission Directive 2006/70/EC (in particular Article 2(4)) concerning cases where a person has ceased to be entrusted with prominent function within the meaning of the politically important person definition and Article 13(4) of the Directive in respect of transactions or business relationships with PEPs.	

9.	Correspondent banking	Fin.
Art. 13 (3) of the Directive	Concerning correspondent banking, Article 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.	
FATF R. 7	Recommendation 7 includes all jurisdictions.	
Key elements	Does the country apply Art. 13(3) of the Directive?	
Description and Analysis	There are no laws, regulations or other enforceable means, which address the issue of correspondent banking at the time of the on-site visit although during the pre-meeting in Strasbourg the evaluators were provided with an amended version of NBA "Regulations on opening, maintenance and closing of account in banks". The amendments to this document came in force after registration of by the Ministry of Justice on June 15, 2008 According to the "Regulations on Opening, Carrying Out and Closing of Accounts in Banks" in order to open correspondent accounts in the local commercial banks, foreign banks are required to submit the documents confirming the information on the AML/CFT internal control system of the foreign bank, person or group of persons who are responsible in this sphere, whether there were facts on instigation of AML/CFT proceedings and/or other measures presuming any sanctions in regard of the bank by any authority (item 6.4.7). Moreover, the agreement on the foreign correspondent account shall come into force only after the signature of the senior official (the member of the Board of Directors) (item 7.1-1). A bank should refuse to conclude an agreement when there are reasonable grounds to believe that the account will be used for the purposes of money laundering or financing of terrorism (item 7.2.6.) and when the AML/CFT internal regulations of the foreign bank, customer due diligence measures concerning those who use the correspondent (payable-through) accounts, the identification of beneficial owners and/or the implementation of the internal control system are inadequate (item 7.2.7.).	
Conclusion	Azerbaijan is not a member of the EU and therefore all foreign banking relations by their very nature are at some point outside of the EU. The introduced amendments are still limited as there are no provisions requiring financial institutions to gather sufficient information about a respondent institution to fully understand 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 other regulatory action.	
Recommendations and Comments	When deciding upon implementing AML/CFT measures concerning establishment of cross-border correspondent banking relationships Azerbaijan should take into consideration application of Art. 13(3) of the Directive.	

10.	Enhanced Customer Due Diligence (ECDD) and anonymity	Fin.
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.	
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].	
Key elements	The scope of Article 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.
Description and Analysis	Currently, 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.
Conclusion	The requirement of the Article 13 (6) of the Directive is not implemented.
Recommendations and Comments	When considering implementation of risk-based approach Azerbaijani authorities should consider the risks that arise from not only from misuse of new technologies but also ML and TF threats that may arise from products or transactions that might favour anonymity.

11.	**Third Party Reliance**	**Fin.**
Art. 15 of the Directive	The Directive allows to rely for CDD performance on third parties from EU Member States or third countries under certain conditions and categorised by profession and qualified.	
FATF R. 9	Allows reliance for CDD performance by third parties but does not categorise obliged entities and professions.	
Key elements	What are the rules for procedures for reliance on third parties? Are their special conditions, categories etc.?	
Description and Analysis	Currently legislation does not permit financial institutions to rely on third parties to perform the customer identification process on behalf of intermediaries but there is no legally binding provision to prohibit it. The examiners understood that there is no general practice of using agents in Azerbaijan.	
Conclusion	Currently the existing legislative acts do not provide for third party reliance or introduced business, but neither do they prohibit it, even though in practice this situation does not occur.	
Recommendations and Comments	As financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the authorities should cover this issue.	

12.	**Auditors, accountants and tax advisors**	**Fin.**
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.	
FATF R. 12	CDD and record keeping obligations 1. do not apply concerning auditors and tax advisors; 2. apply for accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (criterion 12.1 d).	
Key elements	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 12.1d).
Description and Analysis	According to the information provided in the MEQ tax advisors, external accountants, auditors and lawyers are not intended to be subject to AML/CFT requirements in Azerbaijan. The reason for this decision was indicated as the low risk of ML or TF in these spheres. It was explained by the authorities that these professions cover insignificant segments of the non-financial sector. Therefore, only notaries and the dealers in precious metals and stones may be considered as being subjected to the AML/CFT requirements.
Conclusion	Auditors, external accountants and tax advisors are not covered. Thus the coverage of DNFBP is not complete or in line with international standards.
Recommendations and Comments	It is strongly recommended to the Azerbaijan authorities to include auditors, external accountants and tax advisors as subject to AML/CFT obligations.

13.	**High Value Deals**	**Fin.**
Art. 2(1)(3)e) of the Directive	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.	
FATF R. 12	The application is limited to dealing in precious metals and precious stones.	
Key elements	The scope of the Directive is broader.	
Description and Analysis	Azerbaijani legislation does not apply to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.	
Conclusion	Since there is no AML Law in force as yet it should be noted, that there are no AML/CFT obligations established for any DNFBP.	
Recommendations and Comments	It is strongly recommended to the Azerbaijan authorities to establish the AML/CFT obligations also for natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.	

14.	**Casinos**	**Fin.**
Art. 10 of the Directive	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.	
FATF R. 16	The identity of customer has to be established and verified when they engage in financial transactions equal to or above EUR 3 000.	
Key elements	In which situations customers of casinos have to be identified? The Directive transaction threshold is lower.	
Description and Analysis	No casinos were said to exist as on the basis of the Decree of the President of the Republic of Azerbaijan (№730, 27.01.1998) the activity of casinos is prohibited on the territory of the Republic of Azerbaijan.	
Conclusion	Casinos are not planned to be covered by AML/CFT legislation in view of their non-existence.	
Recommendations and Comments	Though casino activity are prohibited by the legislation of Azerbaijan Republic it is advised to consider these activities to be covered in the AML/CFT legislation.	

15. Reporting of accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU	LE
Art. 23 (1) of the Directive	Option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body that shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	There is no obligation to report STRs on these professionals currently, thus the issue of indirect reporting does not arise.
Conclusion	
Recommendations and Comments	The examiners advise that when legislating the reporting obligation for these professionals that it would be prudent to follow the FATF standard in the final instance.

16. Reporting obligations	LE
Art. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Article 22). Obliged persons to refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report to FIU who can stop transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to FIU (Article 24).
FATF R. 13	Imposes reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Is there a legal framework addressing Art 24 of the Directive?
Description and Analysis	There is currently no legal framework for addressing A.22 (which also involves the reporting of facts as well as transactions), or A.24 relating to transactions.
Conclusion	
Recommendations and Comments	In introducing the reporting obligation, Azerbaijan should also actively consider an ex ante reporting system (which covers both facts and transactions) with the safeguards provided in A.24(2), where to refrain from carrying out a transaction is impossible or is likely to frustrate efforts to pursue the beneficiaries.

17. Tipping off (1)	L/LE
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off" which is the pendant to Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented?
Description and Analysis	Protection from threats or reprisals for reporting is not a feature of the Azerbaijan system.
Conclusion	
Recommendations and Comments	When the reporting obligation has been fully introduced and implemented in line with FATF Recommendations 13 and 14 the Azerbaijani authorities may wish to consider a provision along the lines of A.27.

18.	Tipping off (2)	L/LE
Art. 28 of the Directive	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 prohibition is lifted.	
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.	
Key elements	Under which circumstances apply tipping off obligations? Are there exceptions?	
Description and Analysis	The requirement not to tip off the fact that an STR or related information has been passed to the "FIU" is not yet covered, let alone extended to tipping off in respect of an ongoing ML or TF investigation.	
Conclusion		
Recommendations and Comments	Once the basic requirements of Recommendation 14 have been covered the Azerbaijani authorities may wish to consider extending tipping off to the circumstances described in A.28 of the Directives relating to ongoing ML / TF investigations.	

19.	Branches and subsidiaries (1)	Fin.
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures 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.	
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Article 34(2) of the EU Directive.	
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?	
Description and Analysis	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.	
Conclusion	The obligation provided for by Art. 34 (2) of the Directive is not in place.	
Recommendations and Comments	Azerbaijani authorities should consider the requirement for credit and financial institutions to communicate the relevant internal policies and procedures 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.	

20.	Branches and subsidiaries (2)	Fin.
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions take additional measures to effectively handle the risk of money laundering and terrorist financing.	
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.	
Key elements	What are financial institutions obliged to do in such circumstances?	
Description and Analysis	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. Though the authorities were of opinion that NBA supervises such situations no evidence was provided to prove this statement.
Conclusion	There is no provision for credit and financial institutions to take additional measures to effectively handle the risk of money laundering and terrorist financing.
Recommendations and Comments	Azerbaijani authorities should consider requiring credit and financial institutions to take additional measures to effectively handle the risk of money laundering and terrorist financing in cases where legislation of a third country does not permit the application of equivalent AML/CFT measures.

21.	**Supervisory Bodies**	**Fin.**
Art. 25 (1) of the Directive	The Directive imposes obligation on supervisory bodies to inform FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.	
FATF R.	No corresponding obligation.	
Key elements	Is Art. 25(1) of the Dir. implemented?	
Description and Analysis	As it was stated, there is no an FIU, as a national analytical centre, to which the supervisory bodies could be obliged to inform about such facts. However, there is an obligation for every supervisory body to inform about such facts directly to the law-enforcement organs. The representatives of supervisory bodies are personally obliged to inform about the evidence of money laundering (as it is considered as a crime). "Not informing intentionally about the preparation to or committing of a crime" is punishable according to the Criminal Code (art.307)	
Conclusion	Art. 25(1) of the Directive is not implemented	
Recommendations and Comments	As soon as FIU is established it should be considered that supervisory bodies inform FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing	

22.	**Systems to respond to competent authorities**	**LE**
Art. 32 of the Directive	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.	
FATF R.	There is no explicit corresponding requirement but such circumstances can be broadly inferred from Recommendations 23 and 26 – 32.	
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?	
Description and Analysis	As yet there are no systems in place to respond to enquiries from the FIU or other authorities promptly in the absence of a court order.	
Conclusion		
Recommendations and Comments	When the law is enacted the financial institutions should be obliged to respond promptly to the FIU (or other authorities) as to whether they maintain or have had a business relationship with a specified natural or legal person in the last 5 years without a court order.	

23.	Extension to other professions and undertakings	Fin.
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to ensure extension of its provisions to other professionals and undertakings whose activities are likely to be used for money laundering or terrorist financing.	
FATF R. 20	Requires countries only to consider such extensions.	
Key elements	Has the country effectively implemented Art. 4 of the Directive? Is this based on a risk assessment?	
Description and Analysis	Azerbaijani authorities have not considered any other non-financial businesses or professions to be at risk of being misused for money laundering or terrorist financing.	
Conclusion	Azerbaijan has not implemented Art 4 of the Directive.	
Recommendations and Comments	It is highly recommended that the Azerbaijan authorities consider other non-financial businesses or professions which, in the domestic context of Azerbaijan, may be considered to be at risk of being misused for money laundering or terrorist financing.	

24.	Specific provisions concerning equivalent third countries?	All
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).	
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.	
Key elements	How does the country address the issue of equivalent third countries?	
Description and Analysis	This issue is not addressed at all in Azerbaijan.	
Conclusion		
Recommendations and Comments	This issue is not considered to be relevant for the Azerbaijani system at present.	

VI. ANNEXES

ANNEX I

(Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others)

- The National Bank of Azerbaijan
- Representatives of the Azerbaijan Bankers' Association
- Representatives of UNIBank JSC
- Representatives of Azerigazbank JSC
- Ministry of Finance
- Representatives of Standard Insurance
- Representatives of Ateshgah Insurance
- Assay Chamber
- State Committee on Securities
- Representatives of Standard Capital Management
- Ministry of Foreign Affairs
- Ministry of National Security
- Ministry of Taxes
- Prosecutor General's Office
- Judges of the Supreme Court
- Ministry of Justice
- Ministry of Internal Affairs
- State Customs Committee

ANNEX II

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation (reference is made to the Criminal Code)
Participation in an organised criminal group and racketeering;	Article 34-Commitment of the crime by a group of persons, a group of persons, who cooperated, an organized group or criminal organization, Article 217-Racketeering, Article 218-Establishment of a criminal organization
Terrorism	Article 214-Terrorism
Trafficking in human beings and migrant smuggling;	Article 144-1-Human trafficking
Sexual exploitation, including sexual exploitation of children;	Article 171-Sexual exploitation of non-adults, Article 243-Sexual exploitation, Article 244-Keeping a public house
Illicit trafficking in narcotic drugs and psychotropic substances;	Article 234-Illicit preparation, production, obtainment, storage, trafficking, dispatching or sale of narcotic drugs or psychotropic substances
Illicit arms trafficking	Article 228-Illicit obtainment, transfer, sale, storage, trafficking and keeping of weapons, its integral parts, explosive equipment and elements
Illicit trafficking in stolen and other goods	Article 194 – Illicit trafficking in stolen and other goods
Corruption and bribery	Article 311-Passive bribery, Article 312-Active bribery, Article 312-1-Influence trading, Article 179-Embezzlement of a property, thus embezzlement of other person's property bestowed upon guilty person, Article 308 - Misuse of positional authorities), Article 309 - Overuse of positional authorities, Article 310 - Appropriation of the authority of the person, who holds a position
Fraud	Article 178-Fraud
Counterfeiting currency	Article 204-Preparation or sale of fake money or securities
Counterfeiting and piracy of products	Article 197-İllicit use of trade marks, Article 192-Illicit entrepreneurship, Article 205-Preparation or sale of fake credit or debit cards or other payment documents
Environmental crime	Chapter 28-Environmental crime
Murder, grievous bodily injury	Article 120-Intentional murder, Article 121-Intentional murder of the newly-born baby by his/her mother, Article 122-Intentional murder in a sudden extremely strong mental excitement, Article 123-Murder by violating a

	necessary defense level or a necessary defense level for catching a criminal, Article 124-Unintentional murder, Article 126-Getting someone to the extent of suicide, Article 127-Intentional grievous bodily injury, Article 128-Intentional non-grievous bodily injury, Article 129-Intentional grievous or non-grievous bodily injury in a sudden extremely strong mental excitement, Article 130-Grievous bodily injury by violating a necessary defense level or a grievous or a non-grievous bodily injury by violating a necessary defense level for catching a criminal, Article 131-Unintentional grievous or non-grievous bodily injury, Article 132-Beating, Article 133-Torture
Kidnapping, illegal restraint and hostage-taking	Article 144-Kidnapping, Article 145-Illegal restraint of freedom, Article 146-Illegal placement in a mental hospital
Robbery or theft;	Article 177-Theft, Article 180-Robbery, Article 183-Robbery of property of a special value
Smuggling	Article 206-Smuggling
Extortion	Article 181-Extortion, Article 182-Demand by threat
Forgery	Article 313-Positional forgery, Article 161-Forgery of election or national polling (referendum) documents), Article 210 (Wrongful actions at bankruptcy), Article 320 (Fake manufacturing or sale of official documents, state awards, seals, stamps, forms or use of counterfeit documents
Piracy;	Article 197-İllicit use of trade marks, Article 192-Illicit entrepreneurship, Article 205-Preparation or sale of fake credit or debit cards or other payment documents
Sea Piracy	Article 12.3

ANNEX III

Statute of the Department on the Supervision over the Activity of Credit Organisations (2007)

EXTRACT

"…….

4.6. Anti-money Laundering Division:

4.6.1. In cooperation with the Licensing, On-site and Off-site Supervision Divisions in order to prevent entrance of illegally obtained money to the bank sector and to prevent legalization of such funds through the banking, the Division exercises supervision in accordance with the current legislation. Carrying out its activity the Division uses the instruments allowed by the present legislation;

4.6.2. The Division considers the addresses for the permissions regarding implementation of the currency regime legislation and makes the appropriate proposals in accordance with legislation;

4.6.3. The Division makes proposals on the implementation of the obligations of the bank sector set out in the international agreements and conventions to which the Republic of Azerbaijan had acceded and makes proposals on the improvements of supervision mechanisms by learning international experience and taking into consideration the peculiarities of the financial-bank system;

4.6.4. The Division, in accordance with the orders of the management, prepares appropriate instructions for credit institutions on the measures on AML/CFT;

4.6.5. The Division receives the STRs from the credit organisations, in case of necessity makes some amendments to the processing format of the reports; makes analyses based on the reports and submits written reports that were made on the results of the analyses to the management;

4.6.6. The Division informs the management of the department on the necessity (if any) to acquire additional information from banks concerning the reports;

4.6.7. In the context of AML/CFT the Division shows initiatives to conduct thematic inspection and in case of necessity participates during the inspections in regard with the specified issues;

4.6.8. The Division makes suggestions on provision of transparency of bank activity;

4.6.9. The Division participates in drafting of normative acts and relevant acts of the National Bank on anti money laundering and financing of terrorism;

4.6.10. The Division considers inquiries and letters on the issues under its competence and answers them;

4.6.11. The Division develops proposals on implementation of sanctions and penalties against credit organisations;

4.6.12. The Division co-operates with other structures of the National Bank on the issues which its terms of reference cover;

4.6.13. The Division conducts other functions regarding the issues connected with activity of the division according the commissions of the management of the department. "

ANNEX IV

Code of Criminal Procedure of the Republic of Azerbaijan

EXTRACT

Article 124. Concept and types of evidence

124.1. Reliable evidence (information, documents, other items) obtained by the court or the parties to criminal proceedings shall be considered as prosecution evidence. Such evidence:
124.1.1. shall be obtained in accordance with the requirements of the Code of Criminal Procedure, without restriction of constitutional human and civil rights and liberties or with restrictions on the grounds of a court decision (on the basis of the investigator's decision in the urgent cases described in this Code);
124.1.2. shall be produced in order to show whether or not the act was a criminal one, whether or not the act committed had the ingredients of an offence, whether or not the act was committed by the accused, whether or not he is guilty, and other circumstances essential to determining the charge correctly.
124.2. The following shall be accepted as evidence in criminal proceedings:
124.2.1. statements by the suspect, the accused, the victim and witnesses;
124.2.2. the expert's opinion;
124.2.3. material evidence;
124.2.4. records of investigative and court procedures;
124.2.5. other documents.

ANNEX V

Criminal Code of the Azerbaijan Republic

EXTRACT

12.1. Citizens of the Azerbaijan Republic and persons constantly living on the Azerbaijan Republic without the citizenship, who have committed action (action or inaction) out of border of the Azerbaijan Republic, shall be instituted to the criminal liability under the present Code, if this action is recognized as a crime in the Azerbaijan Republic and in the state on the territory of which it was committed, and if these persons were not condemned in the foreign state.

12.2. Foreigners and persons without the citizenship, committed a crime outside of limits of the Azerbaijan Republic, shall be instituted to criminal proceedings under the present Code, in cases, if the crime shall be directed against the citizens of the Azerbaijan Republic, interests of the Azerbaijan Republic, and also in the cases, stipulated by international agreements to which the Azerbaijan Republic is a party, if these persons were not condemned in the foreign state.

12.3. Citizens of the Azerbaijan Republic, foreigners and persons without the citizenship, who have committed crimes against the peace and mankind's, war crimes, terrorism, financing of terrorism, stealing of an air ship, capture of hostages, torture, a sea piracy, illegal circulation of narcotics and psychotropic substances, manufacturing or sale of false money, attack on persons or the organisations using the international protection, the crimes connected to radioactive materials, and also other crimes, punish of which stipulated in international agreements to which the Azerbaijan Republic is a party, shall be instituted to criminal liability and punishment under the Present Code, irrespective of a place of committing a crime.

ANNEX VI

Presidential Decree 470 of the Republic of Azerbaijan

Unofficial translation

The decree of the President of the Republic of

Azerbaijan

On realisation of the UN Security Council Resolutions № 1267 dated 15 October, 1999 and № 1269 dated 19 October, 1999

1. In regard with the adoption of the UN Security Council Resolutions directed on struggle against terrorism № 1267 dated October, 15, 1999 and № 1269 dated October, 19, 1999, **I hereby to decree:**

2. To charge the Cabinet of the Republic of Azerbaijan with preparation of proposals on providing the realisation of the mentioned UN Security Council Resolutions and submission of them to the President of the Republic of Azerbaijan.

The President of the Republic of Azerbaijan

Heydar Aliyev

Baku, 15 July, 2000.

№ 470

ANNEX VII

Presidential Decree 920 of the Republic of Azerbaijan

Unofficial translation

The decree of the President of the Republic of Azerbaijan

On realisation of the UN Security Council Resolutions № 1368 dated 12 September, 2001, № 1373 dated 28 September, 2001 and № 1377 dated 12 November 2001

In regard with the provision of implementation of the UN Security Council Resolutions № 1368 dated 12 September, 2001, № 1373 dated 28 September, 2001 and № 1377 dated 12 November 2001, **I hereby to decree**:

1. "Plan of Activity on provision of implementation of UN SC Resolutions No. 1368 of 12th of September 2001, No. 1373 of 28th of September 2001 and No. 1377 of 12th of November 2001" (attached to this document) to be approved.

2. To charge the Cabinet of the Republic of Azerbaijan to settle issues reflected in this Decree and to inform the President of the Republic of Azerbaijan to this end.

The President of the Republic of Azerbaijan

Heydar Aliyev

Baku, 11 May, 2002.

№ 920

ANNEX VIII

Letters sent by the National Bank of Azerbaijan to Commercial Banks in Azerbaijan

Unofficial translation

REPUBLIC OF AZERBAIJAN
NATIONAL BANK

AZ1014, Baku, R.Behbudov küç., 32
Tel.: 493 11 22, fax: 493 55 41
E-mail: mail@nba.az

To the banks functioning in the Republic of Azerbaijan

#06/05-1973
06/11/2007

We have to inform you that the consolidated list prepared by the UN Security Council, concerning terrorist organizations of "Taliban" and "Al-Qaida", had been changed. To the changed list, you may access by Internet through the official web-site of the National Bank or http://www.un.org/russian/sc/committees/1267/consolist/shtml address.

In this regard, in addition to the previously sent letters to you, empowered by the appropriate legislation, the National Bank requires from you to freeze any transactions that have any connection with the persons mentioned in the list and in case of such attempts report on this to the National Bank promptly.

The banks and the management of the banks that do not obey the requirements specified by this letter are subjected to the appropriate measures of responsibility.

Deputy chairman of Board of Directors **R. Aslanli**

REPUBLIC OF AZERBAIJAN
NATIONAL BANK

AZ1014, Baku, R.Behbudov küç., 32
Tel.: 493 11 22, fax: 493 55 41
E-mail: mail@nba.az

To the banks functioning in the Republic of Azerbaijan

#06/05-104
28/01/2008

We have to inform you that into the consolidated list prepared by the UN Security Council concerning terrorist organizations of "Taliban" and "Al-Qaida", the names of Abdul Rahim Al-Talhi, Mahammad Abdullah Salig Sughayr and Fahd Mahammad Abd Al-Azis Al-Khashiban were added.

To the full list of these and other persons' names, as well as to the additional information about them you may access by Internet through the official web-site of the National Bank and http://www.un.org/russian/sc/committees/1267/consolist/shtml address.

Taking into consideration the UN Security Council Resolution 1373 (2001), in addition to the previously sent letters to you and empowered by the appropriate legislation, the National Bank requires from you to freeze any transactions that have any connection with the persons mentioned in the list and in case of such attempts report on this to the National Bank promptly.

The banks and the management of the banks that do not obey the requirements specified by this letter are subjected to the appropriate measures of responsibility.

Deputy chairman of Board of Directors **R. Aslanli**

ANNEX IX

Letter sent by the National Bank of Azerbaijan to Commercial Banks in Azerbaijan

Unofficial translation

REPUBLIC OF AZERBAIJAN
NATIONAL BANK

AZ1014, Baku, R.Behbudov küç., 32
Tel.: 493 11 22, fax: 493 55 41
E-mail: mail@nba.az

To the banks functioning in the Republic of Azerbaijan

#16/28-13
07/06/2006

The implementation of the international principles (that determine the basis of the prevention of legalization of dirty money in the banking) within the national legislation, is always at the field of vision of the National Bank.

For these purposes appropriate normative acts on the identification of customers and transactions, keeping of transactions documents prescribed in the FATF Recommendations had been prepared. In addition, in the context of the determination of the transactions that cause suspicions on their healthy character, there were instructions on establishing internal supervision systems, as well as on taking into consideration the "Wolsfberg Principles" during the establishment of the systems.

For the purposes of prevention of legalization of proceeds through financial sector, in conjunctions with the National Bank, important measures were undertaken and results obtained in the direction of improvement of the current legislation.

As you know, by the Presidential Decree of 24 June 2005 some amendments were made into the Civil Code. As a result, according to the added 969.2.3 article of the Civil Code, if it is not otherwise prescribed by the bank account contract and if it is proven that the account was used for illegal purposes, bank account contract may be terminated by the decision of court.

Taking into consideration the above-said, it is strongly required from you to include into provisions of the bank account contracts that are stipulating cases of unilateral termination of the contract by bank, the case when there are substantial suspicions on any relationship of a customer, beneficiary or transaction with the money laundering or terrorism financing.

At the same time, it should be mentioned that by Law of the Republic of Azerbaijan dated 12 May 2006, the Criminal Code was amended with an article on "Legalization of criminally obtained money funds and other property" (art.193-1).

Amendments of the article in the national legislation enabled the compliance of the notion of money laundering with the international requirements, and enabled the extension of this crime to all the predicative offences prescribed by the Criminal Code.

Taking into consideration such amendments to the Criminal Code and the article 42 of the Law "On Banks", to determine the attempts of money laundering through banks, banks are required to implement more improved and operative internal supervision system. In this regard, for the purposes of strengthening the supervision over the healthy character of transactions carried out, the managements of the banks are strongly required to reassess the internal supervision systems and undertake all necessary measures in this sphere. It is strictly required from all the banks functioning in the republic, to report on transactions exceeding the equivalent of USD 10`000 as well as suspicious transactions. The submitted data includes following information:

- customers' name, surname, patronymic name, date and place of birth;
- customers' citizenship;
- full information of customers' passport or other identifying documents data: number, issuing body, date of issuing and expire;
- the exact amount of money, its currency and date of transfer;
- the beneficiary and the country of the beneficiary;
- the purpose of the transactions;
- original documents which exactly confirm the purpose of transfer.

The reports are compiled and sent to NBA twice a month. Banks and the management of the banks shall be directly responsible for reliability of information reflected in the report form and its submission at the proper time.

Deputy Chairman of Board of Directors **R. Aslanli**

ANNEX X

THE LAW OF THE REPUBLIC OF AZERBAIJAN ON THE NATIONAL BANK OF THE REPUBLIC OF AZERBAIJAN

(10.12.2004)

This law determines the legal status of the National Bank of Azerbaijan Republic, its purposes, functions, responsibilities, including administration and organisational structure, and regulate the relations between the central bank, other state authorities and other legal entities.

Chapter I

GENERAL PROVISIONS

Article 1. National Bank of the Republic of Azerbaijan

1.1. National Bank of the Republic of Azerbaijan (hereinafter referred to as the "National Bank") is the central bank of the Republic of Azerbaijan.

1.2. In accordance with article 19 of the Constitution of Azerbaijan Republic, the National Bank shall be in exclusive ownership of the state.

1.3 Objectives, functions and powers of the National Bank shall be determined by the Constitution of Azerbaijan Republic and this Law. The National Bank shall in the course of its activities, be governed by other legislation acts of Azerbaijan Republic and international treaties the Republic of Azerbaijan is a party to.

1.4 Central body of the National Bank shall be located in the city of Baku.

Article 2. Legal status of the National Bank

2.1. National Bank is a legal entity, has a seal with the national emblem of the Republic of Azerbaijan and its name.

2.2. National Bank shall have an independent balance sheet, authorised capital and other property as defined by legislation. National Bank shall, in accordance with the legislation, own, use and dispose of the property on its books. It is not permitted to alienate the capital and the property of the National Bank without its consent.

2.3. The objective of the National Bank shall not be profit making.

Article 3. Territorial Divisions and representative offices of the National Bank

National Bank may open its territorial branches within the Republic of Azerbaijan, and representative offices abroad.

Article 4. Goals of the National Bank's activity

4.1. The principal goal of the National Bank's activity is to ensure stability of the national currency.

4.2. The purpose of the National Bank's activity, shall also be to ensure the development and strengthening of the banking and payment systems.

4.3. Profit making shall not be the main goal of the National Bank.

Article 5. Functions of the National Bank:

5.0. In order to achieve its goals the National Bank shall:

5.0.1 determine and implement monetary policy;

5.0.2 organise cash circulation, in accordance with 2 paragraph of article 19 of the Constitution and this Law issue, put into, and withdraw banknotes from circulation;

5.0.3 determine and announce the official exchange rate of manat;

5.0.4 implement foreign currency regulation and control;

5.0.5 maintain and manage the gold and foreign currency reserves in its charge;

5.0.6 manage the drawing up of the reporting balance of payments and participate in the drawing-up of the projected balance of payments of the country;

5.0.7 license, regulate and supervise banking activities of banks in accordance with the law of Azerbaijan Republic on "Banks", this law and other normative legal acts adopted pursuant thereto;

5.0.8 determine, coordinate and regulate activities of payment systems;

5.0.9 implement other functions stipulated by the legislation.

Article 6. Independence of the National Bank

6.1. National Bank shall be independent in discharge of its responsibilities and exercise of its authorities prescribed by the Constitution and laws of the Republic of Azerbaijan, and no state authority or self-administration body, physical person or legal entity may directly or indirectly by any reason, illegally influence or interfere with its activities. In case of any restrictions of the NBA's activity, interference with the affairs of the National Bank or any influence on the NBA senior management, the Chairman shall inform the President of the Azerbaijan Republic.

6.2. National Bank shall report only to the President of the Republic of Azerbaijan.

Article 7. Reporting of the National Bank

7.1 The National Bank shall report to the President of the Azerbaijan Republic only.

7.2 The reporting of the National Bank of Azerbaijan to the President of the Azerbaijan Republic shall consist of the following:

7.2.1 In accordance with paragraph 9 of article 109 of the Constitution of the Azerbaijan Republic, providing by the President of the Azerbaijan Republic of recommendations to the Parliament on appointment or dismissal of members of the NBA Management Board;

7.2.2 In accordance with this Law, appointment and dismissal by the President of the Azerbaijan Republic of the Chairman of the NBA Management Board, and his deputies;

7.2.3 In accordance with this Law, appointment by the President of the Azerbaijan Republic, of the auditor to check the NBA activities and if necessary to conduct extraordinary audits;

7.2.4 Reporting by the chairman of the Board of the National Bank to the President of the Azerbaijan Republic twice a year on the implementation of major objectives and functions of the NB, on the state of the banking system and submission to Him a report on the final annual financial statement confirmed by auditor's opinion and operational budget.

7.2 The Chairman of the NB must make a report before the national parliament of the Azerbaijan Republic on the state budget for the upcoming year.

Article 8. National Bank's regulations

8.1 The National Bank shall independently develop and issue normative legal acts within the area of its authority; these acts shall be binding on all banks, non-banking credit institutions, and other persons.

8.2. Normative legal acts of the National Bank shall be subject to state registration in the order specified by legislation.

8.3 Regulations relating to the National Bank's authorities and responsibilities specified in this Law, as well as financial and prudential statistical reporting formats established by the National Bank shall not be subject to state registration.

Article 9. International cooperation

9.1. Pursuant to the legislation of Azerbaijan Republic and the international treaties acceded to by the Republic of Azerbaijan, the National Bank shall represent the Republic of Azerbaijan in relations with the central banks of foreign states, as well as international financial and credit institutions in matters relating to the NBA responsibilities.

9.2. National Bank may conclude agreements on cooperation with the central banks of foreign countries concerning various areas of its activities. It may also conclude clearing and settlement agreements and other agreements with foreign public and private clearing agencies, on its own behalf and on behalf of the Republic of Azerbaijan, if appropriately empowered.

9.3. National Bank may participate in the capital and activity of international organisations for the purpose of cooperation in monetary, foreign currency and banking areas.

Chapter II

NATIONAL BANK'S CAPITAL

Article 10. Capital of the National Bank

10.1 National Bank's capital consists of its authorised capital and reserves.

10.2 The authorised capital of the National Bank is 50 bn manats.

10.3 National Bank's capital reserves make up 15% per cent of the national currency in cash put into circulation by the National Bank and these reserves are formed up by allocations from the reporting year profit.

Article 11. Profit of the National Bank

11.1 National Bank's profits shall be calculated by deducting expenditures from revenues in compliance with the IFRS.

11.2 Profit of the National Bank shall, in accordance with this Law, be formed from the income gained from its activity and from other resources obtained from other sources not prohibited by law.

Article 12. Distribution of the National Bank's profit

12.1 Reporting year profit shall, at first turn, in accordance with the norm specified in article 10.3 of this Law be used to form capital reserves of the National Bank.

12.2 Excess of the real profit of the National Bank after the reserves are formed shall be transferred to the state budget.

12.3 The transfer of the excess of the real profit of National Bank shall be carried out after being confirmed by auditor's opinion.

Article 13. Revaluation of assets and liabilities held in foreign currency and gold The difference resulting from the revaluation of assets and liabilities that are held in gold and foreign currency because of changes in the rate of the Manat and the value of gold is reflected in the capital reserves of the NB and shall not be taken into consideration in calculation of normative specified in article 10.3.

Article 14. Financial Stability of the National Bank

14.1 National Bank may not be declared bankrupt.

14.2 If the National Bank's assets fall below the level of its liabilities, the resultant capital deficit shall be covered by the state.

Chapter III

RELATIONS OF THE NATIONAL BANK

WITH GOVERNMENT AUTHORITIES

CHAPTER III

RELATIONS OF THE NB WITH THE STATE AUTHORITIES

Article 15. Basis of the National Bank's relations with the government

15.1 National Bank and the state shall not be responsible for each other's liabilities, unless they elect to assume such responsibility with the exception of case explained in Article 14 of this law.

15.2 National Bank shall be the Azerbaijan government's bank and consultant. The NB can act as a financial agent of Azerbaijan.

15.3 National Bank shall, within their powers, support the government's economic policy that corresponds to its objectives determined by this law.

Article 16. Loans of the National Bank to the state

16.1 National Bank shall not give a loan to the state directly for funding the state budget deficit.

16.2 In even of a short-term liquidity gap in the state budget, the National Bank may extend a 6 month loan to the government under an agreement with the appropriate executive power against collateral of interest-bearing government securities and on condition of repayment by the state budget for the current year. The total amount of the loans issued and of their unpaid part cannot be higher than 3% of state budget average revenues for the past three years.

16.3 The purchase of securities issued by the Azerbaijani government by the NBA is considered as an issue of credits to the state. Such transactions can be made in the secondary market only and conditions of this article of this law shall apply to them.

16.4 In cases relating to the implementation of monetary policy provisions of this article shall not apply, provided that government securities trading activities are carried out in the secondary market.

Article 17. National Bank as the government's bank

17.1. National Bank may service the state treasury accounts under an agreement with the appropriate executive power.

17.2. Where it is required to implement monetary policy, the NB can get time deposits from the state on conditions agreed upon with the relevant executive power.

17.3. The NB can serve the bank accounts of Azerbaijan Republic government bodies, state agencies, as well as non-budgetary state agencies.

Article 18. National Bank as the government's consultant

18.1 The appropriate executive powers of the Azerbaijan Republic shall consult with the National Bank on their fiscal, price, budget-tax and tariff setting measures, as well as on issues concerning the amounts and administration of the domestic and foreign debts of the state.

18.2 National Bank shall comment on draft regulations by the Parliament, President and Cabinet of Ministers of the Republic of Azerbaijan concerning finance and banking.

Article 19. The NB as a financial agent of the state

The NB can carry out the financial agent functions of the state as agreed upon with the relevant executive power. As a financial agent the NB can serve the state debt and carry out other operations with them by locating state debt securities and paying rates for them.

Chapter IV

ORGANISATIONALSTRUCTURE OF THE NATIONAL BANK AND ITS MANAGEMENT

Article 20. Organisational structure of the National Bank

20.1. The organisational structure of the National Bank shall consist of the Management Board, central apparatus, its territorial divisions and representative offices. The central office of the National Bank consists of the structural divisions determined by the Board as well as internal audit department.

20.2. Divisions and sub-divisions within the National Bank's central office shall operate in conformity with relevant regulations approved by the Board.

Article 21. Management Board of the National Bank

21.1 The National Bank shall be managed by the Management Board. The Board shall consist of 7 persons. The Board shall be composed of the Chairman of the NBA Management Board, 4 inside and 2 outside persons.

21.2 Citizens of the Republic of Azerbaijan who have higher economic and legal education, as well as professional experience in economics, law and finance or banking and have not been convicted, and especially for grave crimes, shall be eligible for membership of the Board.

21.3 Members of the Parliament of the Republic of Azerbaijan, members of the Parliament of the Nakhichevan Autonomous Republic, members of the Cabinet of Ministers of the Republic of Azerbaijan and the Cabinets of Ministers of the Nakhichevan Autonomous Republic, as well as elected members of municipal bodies, as well as persons employed at the state executive authorities or municipalities shall not be eligible for membership with the National Bank's Board.

21.4 Members of the National Bank's Board shall be appointed and dismissed in accordance with paragraph 10 of article 109, clause 15 of paragraph 1 of article 95 and paragraph 2 of the Constitution of Azerbaijan Republic.

21.5 Members of the NBA Board shall be appointed for 5 year term.

21.6 Chairman of the NBA Board shall be appointed by the President of the Republic of Azerbaijan from among the Board members for a period equal to the term of office of its member.

21.7 First Deputy Chairman of the National Bank and other deputies shall be appointed by the President of the Republic of Azerbaijan from among the Board members for periods equal to the respective terms of office of these members.

21.8 Members of the NBA Management Board during the period of employment with the NBA may not be engaged in any other remunerated activity, including entrepreneurial activity, except for scientific, pedagogical and creative work. Except for the cases stipulated by the legislation, members of the NBA Management Board working full time at the NBA may not hold positions with government bodies, as well as with the corporate bodies of legal entities.

21.9 Members of the NBA Management Board as well as their family members (including spouse, parents, in-laws, grandparents, children, adopted children, brothers and sisters) may not hold qualifying holding in the institutions over which the National Bank exercise supervision.

21.10 Board members may not be members of political parties and hold positions at public organisations.

21.11 Remuneration to the Chairman of the National Bank's Board and his deputies shall be determined in the order specified by paragraph 32 of the article 109 of the Constitution of the Republic of Azerbaijan.

21.12. Remunerations of Deputies to the Chairman and other members of the Board shall be determined by the Board after taking into consideration the remuneration of the Chairman of the Board. Remunerations of other members of the NBA Board working full time shall be determined by the NBA Board taking into consideration the remuneration of the Chairman and his deputies.

Article 22. Authorities of the National Bank's Board

22.1. Board of the National Bank shall:

22.1.1 determine and approve the monetary policy for each year;

22.1.2 decide on instruments of monetary policy, including the setting of the discount rate, interest rates on its own operations and terms of open market transactions;

22.1.3. decide on introducing bank notes of new type in circulation and withdrawing bank notes of old type;

22.1.4 approve the currency regulation and control policy, as well as the procedures for setting the exchange rate of the Manat against other currencies;

22.1.5 approve and modify the budget of the National Bank

22.1.6 set procedures for establishing and utilizing capital reserves of the National Bank;

22.1.7 approve the annual financial report of the National Bank;

22.1.8 determine the rules of holding and strategy for managing international gold and currency reserves;

22.1.9 make decision on granting or abolishing licence to commercial banks;

22.1.10 set economic (prudential) normatives (ratios) for credit institutions;

22.1.11 decide on appointment of temporary conservator for credit institutions, and termination of their conservatorship activities;

22.1.12 take decision to establish and participate in other legal entities and in their capital;

22.1.13 determine the organisational structure and internal management procedures of the National Bank;

22.1.14 approve the recruitment and evaluation of personnel policy for the National Bank, determine the positions under the jurisdiction of the Board of the National Bank, and relevant appointments to, and dismissals from such positions;

22.1.15. consent to the appointment to, and dismissal from the office of the Director of the National Bank's Division in the Nakhichevan Autonomous Republic by the Chairman of the Parliament of the Nakhichevan Autonomous Republic;

22.1.16 taking into account official remunerations of NB Chairman and his deputies which are determined by the President of the Azerbaijan Republic determine the form and amount of remuneration;

22.1.17 approve the National Bank's normative legal acts;

22.1.18 solve any other issues the Board of the National Bank is charged with hereunder.

Article 23. Board meetings

23.1 Board meetings shall be held not less than once a month.

23.2 Board meetings shall be chaired by the Chairman of the National Bank, or a member of the Management Board who is authorised to replace him in his absence.

23.3 Chairman of the National Bank shall convene Board meetings. Meetings may be convened upon demand of at least 2 other members of the Board.

23.4 Board members shall be notified of a Board meeting at least 3 days in advance, and the notice shall inform them on venue, time and agenda of the meeting.

23.5 A Board meeting shall be deemed valid if more than half of the members are present, of which one must be the Chairman or his substitute.

23.6 When an issue is included in the agenda of the session that meets the interests of a particular member, that member must provide for elaborate information on his interests in the issue, but must not participate in its discussion. That member doesn't participate in the voting and his participation is not taken into consideration when the quorum is set.

23.7 Decisions of the Board shall be adopted by a simple voting majority of the Board members. In case of a tie, the chairperson shall cast the final vote. In event of disagreement by a Board member with a decision taken by the Board, such a member may submit his written commentary with the reasoning for the objection.

23.8 Meetings of the NBA Board shall be protocolled. The protocol shall be signed by chairman of the meeting and secretary of the Board.

23.9 Secretary of the Board shall be appointed by the Chairman of the Board among officers that are not Board members.

Article 24. Chairman of the Management Board of the National Bank

24.1. Chairman of the National Bank's Board shall organise the work of the Management Board and at the same time head the executive structure of the National Bank.

24.2 Chairman of the National Bank's Board shall have the following authorities:

24.2.1 represent the National Bank in the Azerbaijan Republic and abroad without a power of attorney in the order specified by legislation;

24.2.2 signs off normative legal acts approved by the Board;

24.2.3 issue decrees and directives binding on all employees of the National Bank;

24.2.4 appoint and dismiss persons under the jurisdiction of the Board;

24.2.5 carry out a duty division among the Deputy Chairman and other executive officers of the National Bank;

24.2.6 address any other issues relating to the National Bank's activities that do not fall under the Board's jurisdiction.

24.2.7 carries out other authorities specified in this Law.

24.3 In the absence of the Chairman of the National Bank, his powers shall be delegated to his first deputy. In the absence of the first deputy, these powers shall be delegated to another deputy or member of the Board as per the procedures set by the Chairman of the National Bank.

Article 25. Premature termination of Board membership

25.1. Chairman and other members of the National Bank's Board may be released from office prior to expiry of their respective terms of office in the order specified by paragraph 10 of article 109 of the Constitution of the Azerbaijan Republic in the following cases:

25.1.1 if a resignation letter has been submitted to the President of the Republic of Azerbaijan;

25.1.2 when failure to discharge his/her responsibilities within a period of over 6 months due to an illness, which can be evidenced by an appropriate medical confirmation, provided the Board of the National Bank duly petitions the President of the Republic of Azerbaijan;

25.1.3 when considered unable to work with the decision of the court;

25.1.4 if an effective court ruling has been adopted that recognizes the person concerned guilty of felony;

25.1.5 requirements and limitations as imposed under the job descriptions in Article 22 hereof have been defaulted.

25.2 A board member who disagrees with his/her earlier termination from the office can apply to court as determined by the legislation

Article 26. Resignation of Board members

26.1 Decisions to accept or reject the resignation of the Chairman of the National Bank and any other member of the Board shall be taken within 2 months from the date a relevant application was filed. If no decision is made within this period, the person requesting resignation shall be deemed to have resigned after 3 months from the date the application was filed.

26.2 If a decision is made to reject a resignation request of the Chairman of the National Bank and any other member of the Board, the person who filed this application shall be deemed to have resigned after 1 month from the date of the decision to reject his original resignation letter, provided that this person filed another resignation letter within 2 weeks from the date of the decision to reject his original resignation letter.

Article 27. Internal audit

27.1. The internal audit division of the NBA carries out the following:

27.1.1. Assesses the control mechanisms and adequate procedures for the management of risks in the NBA, controls their implementation;

27.1.2. with the purpose of providing observance of the existing legislation it carries out the audit of structural divisions of the NBA.

27.1.3. give recommendations to the relevant structural divisions and Governing Board on permanent control procedures and mechanisms, the elimination of the drawbacks it determines during the audit.

27.1.4. Carries out other powers specified by the National Bank's Board.

27.2. The internal audit division is under subordination of the chairman of the Management Board only.

Chapter V

MONETARY POLICY

Article 28. Monetary policy

28.1. National Bank shall report on the major directions of the monetary policy for the next year to the President of the Republic of Azerbaijan not later than by the 1st of October and shall make it available for general public by the 31st of December of the current year.

28.2 When making the major directions of the monetary policy available for general public, the National Bank shall indicate the finals of the monetary policy for the current year, as well as goals and objectives of the next year's monetary policy, and other criterias of implementation of the monetary policy which depend and do not depend on the National Bank.

Article 29. Instruments of monetary policy

29.1. The following instruments shall be used to implement monetary policy:

29.1.1 implementation of open market transactions;

29.1.2 fixing of interest rates;

29.1.3 setting of required reserve requirements for credit institutions;

29.1.4 refinancing of credit institutions;

29.1.5 implementation of deposit transactions;

29.1.6 restriction of bank transactions;

29.1.7 other instruments of monetary policy accepted in the international practice.

29.2. National Bank shall use its own discretion as to utilization of any of the instruments specified in paragraph 1 above, along the lines of the goals and objective of the monetary policy.

Article 30. Open market transactions

30.1. National Bank may engage in the following open market transactions:

30.1.1 trade in, and other transactions with government securities, pursuant to Article 16 hereof; trade in, and other transactions with its own securities;

30.1.2. trade in, and other transactions with foreign currency.

30.2. For purposes of implementing the monetary policy, procedures for issuing and putting its own debt securities in circulation shall be determined by the legislation;

Article 31. Fixing of interest rates

31.1. National Bank shall fix rates and interest rates on its own transactions.

31.2 When fixing rates, applied in the economy, the National Bank shall consider the existing macroeconomic conditions in the country and the state of the financial market.

31.3. Taking into account the interest rate on its own transactions and the liquidity standpoint of the money markets, the National Bank shall set its refinancing, deposit and open market transaction interest rates, or shall define them based on demand and supply registered at auctions.

31.4. National Bank shall publicize fixed rates and interest rates on its own transactions.

Article 32. Setting of required reserves

32.1 National Bank shall compel credit institutions to maintain required reserves. Such reserves shall be calculated in percentage proportion to each bank's deposit base and maintained at the National Bank. The Board of the National Bank shall fix amounts of, procedures for calculating and maintaining required reserves.

32.2 In event of failure by a bank to meet the required reserve requirements, the National Bank may impose an official penalty to such banking institution and its senior management pursuant to Administrative Offences Code of Azerbaijan Republic.

Article 33. Refinancing of credit institutions

33.1. National Bank shall refinance credit institutions with purposes of implementing monetary policy. Loans shall be extended against collateral of government securities, guarantees and warranties issued by the government and other reliable issuers, foreign currency, gold, precious metals of different formats and other assets. Such loans shall be extended for a term not exceeding 6 month and, if necessary, this term may be renewed for 3 more month.

33.2. Board of the National Bank shall be responsible for fixing the format, procedures and conditions of refinancing.

33.3. Loans shall be extended exclusively to the head offices of credit institutions and solely in national currency (manat).

Article 34. Deposit transactions

National Bank may accept deposits from credit institutions on its own terms.

Article 35. Restriction of banking operations

Except for cases with the purpose of monetary policy, the National Bank in emergency, may temporarily suspend individual operations implemented by credit institutions, and determine more higher or lower rates on these operations.

Chapter VI

ORGANISATION OF CASH CIRCULATION

Article 36. Monetary unit

36.1 In accordance with the first part of article 19 of the Constitution of the Azerbaijan Republic, the monetary unit of the Republic of Azerbaijan is the Manat. One Manat consists of 100 kopecks. Money shall be issued in the form of bank notes and coins.

36.2 In accordance with the third part of article 19 of the Constitution of the Azerbaijan Republic, use of a monetary unit other than manat on the territory of Azerbaijan Republic is prohibited.

36.3 Bank notes issued by the National Bank, including anniversary and commemorative notes shall be accepted for any payment, deposition and money transfer in the Republic of Azerbaijan.

36.4 No official correlation shall be defined between the Manat and gold or other precious metals. Bank notes issued shall be the National Bank's debt obligations secured with all of its assets.

36.5 Persons engaged in counterfeiting and sale of counterfeit money shall be taken to responsibility in accordance with the relevant legislation of the Republic of Azerbaijan.

36.6 National Bank shall make qualified review to identify whether bank notes are counterfeit.

36.7 Counterfeit bank notes shall be surrendered to the National Bank upon completion of the trial on money counterfeit.

Article 37. Organisation of money circulation

37.0. National Bank shall take the following actions to provide money circulation in the Republic of Azerbaijan:

37.0.1 identify the demand for bank notes;

37.0.2 arrange or order production, and provide transportation and storage of bank notes;

37.0.3 create bank note reserves and dispose of these reserves;

37.0.4 determine procedures for keepingand physical transportation of cash for the National Bank and credit institutions;

37.0.5 determine procedures for carrying out of cash transaction for the National Bank and credit institutions;

37.0.6 identify signs of bank notes unfit for circulation and determine procedures for replacement of such notes.

Article 38. Issuance of bank notes into circulation

38.1 The Board of the National Bank shall decide on issuing bank notes of new types into circulation. National Bank shall be responsible for determining denominations, sizes, design, security features, as well as other artificial and technical features of bank notes issued into circulation.

38.2 Board of the National Bank may decide to issue anniversary and commemorative notes. National Bank shall arrange for sale of anniversary and commemorative notes under relevant procedures defined and at values determined.

38.3 In connection with price changes, the National Bank, with approval from the relevant state authorities, may decide to issue new bank notes (denomination).

Article 39. Withdrawal of bank notes from circulation

39.1 Except for cases of denomination, the National Bank may decide to replace bank notes and coins in circulation with notes of new type.

39.2 National Bank shall publicize its decision on replacement of bank notes in circulation, as well as the description of new bank notes and procedures for replacement of bank notes.

39.3 No limitation may be imposed on the amounts or subjects of replacement when bank notes are replaced by newly issued notes. Notes subject to replacement shall be deemed legal tender for payments during a period to be determined by the National Bank, provided that this period is not less than 1 year. Notes shall be changed by the National Bank after this period on an on-going basis.

39.4 The Board of the National Bank shall decide on withdrawal, termination of the bank noted and procedures for taking appropriate actions.

39.5 The value of counterfeit notes shall not be repaid and they are not subject to refund. This provision shall also apply to counterfeit foreign currency notes.

Article 40. Interchange of notes which are considered as legal tender

40.1 National Bank shall change notes which are considered as legal tender with no limitation. Notes that are not counterfeit, 60 % of the surface of which is preserved or if 100% of the torn peaces of one note is preserved these notes shall be considered as legal tender. Belonging of torn peaces to one note may be determined by the National Bank only.

40.2 Value of notes that are not legal tender shall not be refunded.

Article 41. Destruction of bank notes

41.1 Except for counterfeit notes,bank notes withdrawn from circulation shall be destroyed in accordance with the procedures specified by the relevant executive autorities .

41.2 National Bank shall destroy moulds and stamps used for coinage of notes withdrawn from circulation.

Chapter VII

ADMINISTRATION OF FOREIGN CURRENCY RESERVES [international reserves]

Article 42. Foreign currency reserves

42.1 The National Bank shall, within the framework of the strategy set by the Board, maintain and manage foreign currency reserves with purpose of implementation of NBA monetary policy and timely execution of international liabilities settlement.

42.2 The National Bank shall, within the framework of the strategy and rules set by the Board, maintain and manage foreign currency reserves composed of the following assets in accordance with the procedures determined by the Board:

42.2.1 gold, other precious metals and precious stones;

42.2.2 hard foreign currency in the form of paper or coinage;

42.2.3 foreign currency reserves of the National Bank on the accounts at central banks of foreign countries or other financial institutions;

42.2.4 special drawing rights of the International Monetary Fund and the reserve position with the International Monetary Fund;

42.2.5 debt securities issued or pledged by foreign countries, central banks or international financial institutions;

42.2.6 other assets internationally accepted as eligible for inclusion in reserves.

42.3 The National Bank may procure within the strategy set by the Board services of financial institutions specialized in management of foreign currency reserves.

42.4 In case of decrease of the foreign currency reserves to a level which by the judgment of the National Bank is dangerous for implementing monetary policy, timely execution of settlements on international commitments of the state or in case of such possibility, National Bank shall report to the relevant executive authorities indicating the causes of such a decrease or a possible decrease of the reserves and submits reasonable recommendations and offers.

Article 43. Information on foreign gold-currency reserves

National Bank shall periodically, but not less than once a quarter, publicize through the press the total amount of foreign gold-currency reserves.

Chapter VIII

ORGANISATION OF PAYMENT SYSTEMS

Article 44. Authorities in payment systems

44.1 For the purpose of ensuring the stable work of the national payment system, including clearing (processing) systems, the National Bank shall organise, coordinate, regulate and monitor their activities.

44.2 National Bank shall permit and supervise activities of clearing and processing institutions pursuant to applicable laws and regulations.

44.3 National Bank shall determine the rules and conditions of non-cash settlements and money transfers through credit institutions in the country as well as the form and contents of the payment documents in accordance with the Civil Code of the Republic of Azerbaijan

44.4 In accordance with legislation, National Bank shall determine types of bank accounts, procedures for opening, and closing bank accounts in accordance with the Civil Code and other normative legal acts of the Azerbaijan Republic.

44.5 National Bank may set minimum requirements for automated settlements and money transfers as well as the reliability and security of the clearing systems used by credit institutions to ensure protection of banking information in the same systems.

44.6 National Bank shall exercise other powers in the area of settlements in accordance with the applicable laws.

Article 45 Organisation of settlements among credit institutions

National Bank shall organise settlements among credit institutions by means of correspondent accounts in national currency (manat), opened by credit organisations at the National Bank or by any other methods adopted by the National Bank in accordance with the international practices and standards.

Chapter IX

RELATIONS WITH CREDIT INSTITUTIONS

Article 46. Basic principles of relations with credit institutions

46.1 National Bank shall be responsible for bank licensing, regulation and supervision in order to ensure stable operation of the banking system and to protect interests of bank creditors and depositors in the Republic of Azerbaijan in accordance with this law, Laws of the Republic of Azerbaijan on Banks, and Credit Unions, National Bank's regulations as well as internationally accepted practices of effective banking supervision.

46.2 National Bank shall not interfere in daily operations of credit institutions, unless otherwise provided by the applicable laws

46.3 National Bank and credit institutions shall not be responsible for each other's commitments.

46.4 In cases specified by this Law, National Bank may be the last resort lender for credit institutions.

46.5 National Bank may disclose information on the operations of credit institutions obtained through discharge of its functions only when permitted by the applicable laws.

Article 47. Licensing

47.1 National Bank shall have the exclusive right to grant and revoke banking licenses to credit institutions and to their branch offices in order to implement banking activities and issue and revoke appropriate permits to representative offices, as well as domestic offices of foreign banks in order to fulfill representative capacity in the Republic of Azerbaijan.

47.2 National Bank shall determine the format and contents of banking licenses and permits.

Article 48. Regulation and supervision

48.1 National Bank shall fulfil the following to regulate and supervise activities of credit institutions:

48.1.1 to adopt banking regulations;

48.1.2 to determine the rules of application of prudential ratios, as well as the methods of their calculation;

48.1.3 to determine procedures for calculation and creation of loss provisions for loans and other assets established on expenses accounts of banks, domestic branches of foreign banks and non-bank credit institutions;

48.1.4 to evaluate financial conditions of credit institutions on the basis of reports and inspection results and, in result of such reviews, to issue binding directives to credit institutions to make changes to financial statements;

48.1.5 to set forth corporate governance requirements for banks and domestic branches of foreign banks and to oversee their implementation;

48.1.6 in cases and in the order specified by law, to conduct inspections at credit institutions, and their subsidiaries;

48.1.7 to raise issues with the authorised body to prevent monopolistic behaviour at the banking market;

48.1.8 to impose, in cases and in the order specified specified by legislation, statutory corrective actions (influence measures) and sanctions to credit institutions and their administrators;

48.1.9 to attend meetings of corporate organs of credit institutions and to hold consultations with administrators of credit institutions, when this required by results of supervision measures which are conducted pursuant to legislation;

48.1.10 in cases specified by law, to determine special conditions of fulfilment of credit commitments to the National Bank under financial rehabilitation program for banks;

48.1.11 in cases specified by law, to appoint temporary administrators for banks and domestic branches of foreign banks, and to petition the court for a moratorium of a bank's obligations, when necessary;

48.1.12 to undertake appropriate statutory measures with respect to banks and domestic branches of foreign banks whose licenses were revoked;

48.1.13 to exercise other powers specified in the legislation;

48.2 When setting prudential ratios for credit institutions, the National Bank may determine different ratios and calculation methods given the types of credit institutions.

Article 49. Last resort lending

National Bank may extend fully secured loans to banks facing short-term liquidity problems on its terms and conditions, in order to protect interests of creditors and depositors. These loans shall be extended for a term not exceeding 6 months, and if necessary their term may be prolonged for 6 more month.

Article 50. Cooperation with credit institutions

For the purpose of mutual activity with the credit institutions the National Bank may set up uncompensated councils and working groups involving representatives of banks and their social unions (associations) to hold consultations on important banking issues and to design appropriate actions.

Article 51. Cooperation with off-site regulatory and supervisory bodies

51.1 For the purpose of effective discharge of its licensing, regulation and supervisory responsibilities, the National Bank may, in the order specified by legislation, conclude treaties concerning banking supervision and cooperate with bank regulators of foreign countries.

51.2 This cooperation may include exchange of information between the National Bank and bank

regulators of foreign countries on existing or proposed credit institutions and joint supervision, provided that the recipient bank regulator shall keep any information received confidential.

Article 52. Exchange of Information

National Bank may, in the order specified by legislation, lead exchange of information on institutions subject to regulation and supervision on mutual cooperation basis with government authorities executing regulatory and supervision of other segments of financial sector, providing parties ensure confidentiality of received information and use it exclusively for supervisory purposes.

Article 53. Settlement of disputes

Any dispute arising in association with the National Bank's decisions related to discharge of its licensing, regulatory and supervisory functions shall be settled through relevant courts. Filing of complaint shall not be ground for non-execution of the decision.

Chapter X

CONTRACTS AND TRANSACTIONS

Article 54. Contracts and transactions of the National Bank

54.1 In order to accomplish its objectives, the National Bank may engage in the following contracts and transactions with credit institutions of the Republic of Azerbaijan and foreign states involving:

54.1.1 acquisition, sale and storage of government securities, as well as checks, notes, precious metals and gems, including items made of such metals and jewellery;

54.1.2 sale and acquisition of foreign currency, as well as payment documents and obligations denominated in foreign currency;

54.1.3 issuing guarantees and warranties;

54.1.4 opening of accounts with banks , including deposit accounts;

54.1.5 settlements, cash and deposit transactions, and receipt of securities and other valuables for safekeeping and management purposes;

54.1.6 submission of checks and notes in any currency for payment;

54.1.7 implementation of other banking transactions and operations as defined hereunder and accepted in the international banking practices.

54.2 National Bank may charge fees for its banking services.

54.3 National Bank may render banking services to personnel of the National Bank, as well as public and social funds in accordance with the applicable laws.

54.4 National Bank may, with the purpose of supporting settlement and clearing (processing operations) open bank accounts for banks which carry out these operations.

54.5 National Bank may render banking services to governments, central banks and monetary authorities of foreign states, as well as international organisations the National Bank itself or the Republic of Azerbaijan are members of.

54.6 National Bank may acquire liquid debt securities issued by reliable issuers.

54.7 National Bank may conclude other civil – legal contracts not prohibited by the law.

Article 55. Prohibited activities

55.0. National Bank may not:

55.0.1 engage in banking transactions with legal entities and individuals other than persons specified herein;

55.0.2 engage in manufacturing, trade, insurance and, unless otherwise specified herein, in any other commercial activity;

55.0.3 purchase, sell or acquire in any other fashion full or partial ownership of real estate for purposes other than to sustain the activities of the National Bank itself and to meet social needs of the National Bank's personnel.

Chapter XI

FINANCIAL RECORDS AND REPORTING OF THE NATIONAL BANK

Article 56. Reporting year of the National Bank

A reporting year of the National Bank shall last from January 1 through December 31.

Article 57. Financial records and reporting

57.1 Financial records and reporting of the National Bank shall conform to the International Financial Reporting Standards.

57.2 Annual financial report of the National Bank shall consist of the balance sheet and income statement, cash flow statement and supporting explanatory notes.

Article 58. Audit of the National Bank

58.1 Activities of the National Bank shall be audited, in accordance with paragraph 32 of article 109 of the Constitution of the Azerbaijan Republic, once a year only by the auditor appointed by the President of the Republic of Azerbaijan for a period of one or more years.

58.2 The President of the Republic of Azerbaijan may appoint an extraordinary audit, if necessary, in accordance with paragraph 32 of article 109 of the Constitution of the Azerbaijan Republic,.

58.3 The audit of the National Bank shall be conducted in accordance with the International Auditing Standards. Expenses arising out of audit shall be paid by the National Bank.

58.4 Audited annual financial report shall be submitted to the President of the Republic of Azerbaijan..

58.5 Annual financial statement approved by the audit report shall be published in the press not later than in one month after the audit of financial report is completed

Chapter XII

FINAL PROVISIONS

Article 59. National Bank's personnel

59.1 Labour relations between the National Bank and its personnel shall be governed by the Labour Code of the Republic of Azerbaijan, with due consideration of the provisions hereof.

59.2 National Bank's employees may not engage in any other remunerated activities, except for scientific, tutorial and creative work.

59.3 Members of the National Bank's Board and officers holding positions determined by the Board may be granted loans from the National Bank only. Such employees shall inform the Management Board of the National Bank of any credit card acquired from credit institutions in the order determined by the Management Board..

59.4 Employees holding positions determined by the Board of the National Bank may not be founders and shareholders of credit institutions and their subsidiaries, and members of their corporate organs,.

59.5 National Bank employees shall be provided with the same pension system as state servicemen.

59.6 The National Bank may take actions in order to ensure social security of its staff.

Article 60. Confidentiality

Members of the Board and other employees of the National Bank may not disclose job-related information obtained through discharge of their official responsibilities, including information that constitutes or relates to state and bank secret, during or after termination of their employment with the National Bank other than in cases permitted by the law.

Article 61. Immunity from suit

No person shall be liable in damages for anything done or omitted while a member of the Board of the National Bank, or while an officer, employee or agent of the National Bank, or a conservator or receiver in the discharge or purported discharge of the functions of the National Bank under this Law on Banks unless it is shown that the act or omission was in bad faith.

Article 62. Security

National Bank shall take appropriate actions to secure its activities. National Bank's divisions engaged in safe transportation of cash and other valuables in the Republic of Azerbaijan shall be equipped with armoured vehicles, and the relevant staff members shall be equipped with weapons (firearms), munitions and special clothing.

Article 63. Data acquisition

For purposes of implementing its functions, the National Bank may request and obtain necessary statistical information from government bodies, legal entities and individual entrepreneurs in a format and within a timeframe to be determined by the National Bank.

Article 64. Publications

64.1 National Bank shall publish its annual report. The annual report by the National Bank shall reflect the macroeconomic situation in the country, finals of monetary policy which is being implemented in the country, as well as standing of the banking system, financial standing of the National Bank and its operational budget.

64.2 National Bank shall issue information bulletins concerning conditions of money and financial markets not less than once a month.

64.3 National Bank may publish statistical summaries on the banking system, as well as other information it deems appropriate and relevant.

64.4 Consolidated balance sheet of the National Bank shall be published in press each month.

Article 65. Exemptions

Pursuant to the Tax Code of the Republic of Azerbaijan, the National Bank shall be eligible for tax exemptions and shall be exempt from all kinds of state duties and levies.

Article 66. Effect of the Law

66.1 This Law shall take effect as of the publication date.

66.2 From the date this law takes effect, the National Bank shall increase its authorised capital up to the level stipulated in article 10.2 of this Law from its profit, where the profit is insufficient for that then the NB shall increase its capital from the capital reserves.

66.3 Upon effect of this Law, the Law of the Republic of Azerbaijan, No.118 IQD, on the National Bank of the Republic of Azerbaijan dated June 10, 1996, and all related amendments and additions, shall become void.

ANNEX XI

Methological Guidance on the Prevention of the Legalisation of Illegally obtained Funds or Other Property through the Banking System
Issued by the National Bank of Azerbaijan

"Approved by"
National Bank of the
Republic of Azerbaijan
Decision of 03 November 2006
Protocol # 34
Internal register # 160

METHODOLOGICAL GUIDANCE ON THE PREVENTION OF THE LEGALIZATION OF ILLEGALLY OBTAINED FUNDS OR OTHER PROPERTY THROUGH BANKING SYSTEM

Baku 2006

1. General Provisions

This Methodological Guidance was prepared on the basis of the "Law on National Bank of the Republic of Azerbaijan", "Law on Banks", international instruments to which the Republic of Azerbaijan is a party, the recommendations of the Financial Action Task Force, the principles of the Basel Committee on Banking Supervision.

This Methodological Guidance includes recommendations on the legal mechanisms (which are also related to the counter-terrorism measures) of the prevention of the legalization of illegally obtained funds or other property through the banks functioning under the jurisdiction of the Republic of Azerbaijan, their offices and branches, as well as local branches of the foreign banks (hereinafter "banks").

This Methodological Guidance includes the minimum of the activities against the legalization of illegally obtained funds or other property and provides the banks with the opportunity to undertake additional measures within their internal control systems.

2. Definitions

The definitions used in this Methodological Guidance shall mean the following:

Illegally obtained funds or other property – any money funds either movable or immovable, corporeal or incorporeal property, or legal documents evidencing title, obtained, directly or indirectly, from committing the criminal offences provided by the Criminal Code of the Republic of Azerbaijan;

Legalization of illegally obtained funds or other property – concealing or any activity aimed at concealing the real sources of illegally obtained funds or other property with the purpose of extending a legal status to them;

Operations with funds or other property – acquisition, use, or change of ownership rights of the funds or other property as a result of operations with them;

Internal control system – the complex mandatory internal control measures due to be prepared and implemented by the monitoring entities. These measures include precise identification, documentation, confidentiality, training programs, criteria for detecting the operations subject to monitoring taking account of the specialty of the monitoring entity's activity, internal audit mechanisms, appointment of responsible persons, as well as other mechanisms and rules;

Politically important person– a person presently holding or having held an important public position in any foreign country (heads of states or governments, members of governments, high ranking judicial or military officials, chief executive officials of state owned entities, officials of

political parties), their close relatives (wife, husband, parents of spouses, grandmother, grandfather, children, adopted children, sisters, brothers), agents operating on their behalf;

Customer – any natural or legal person using the services where the monitoring entities are involved and which can result in the operations with the funds or other property;

Beneficiary – 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 arrangements.

3. Internal control system of banks on the activities against the legalization of illegally obtained funds or other property

The internal control systems of banks on the activities against the legalization of illegally obtained funs or other property shall at least include the followings:

3.1.1. establishment of a centralized internal archive, which shall make it possible to identify the customers, the persons acting on behalf of a third person, the persons on behalf of whom the operations are conducted, the beneficiaries, and the operations;

3.1.2. adoption of the rules on the documentation and the confidentiality of information;

3.1.3. training of personnel on the activity against the legalization of illegally obtained funds or other property and the financing of terrorism on a permanent basis;

3.1.4. criteria of determination of suspicious transactions;

3.1.5. measures to be taken in case of the problems caused by the rejection of the executing of a transaction;

3.1.6. internal audit mechanism providing with effectiveness of the application of the mechanisms recommended by this Methodological Guidance;

3.1.7. appointment of a person or group of persons at the level of management or heads of structural units, who shall be responsible for controlling the implementation of internal rules and procedures on the activity against the legalization of illegally obtained funds or other property, for carrying out the exchange of information with the competent authority, as well as preparing and submitting reports on the suspicious transactions;

3.1.8. possession of the authority to access to any kind of information concerning all transactions of bank by the competent person or the group of persons;

3.1.9. depending on the specification of activity, in regard to the politically important persons enhanced due diligence measures, determination of any suspicious transactions including ongoing screening and hiring mechanisms, as well as other mechanisms and rules on the prevention.

3.2. The person defined in the provision 3.1.7. is recommended to report to the senior management (board of directors, director, etc) directly.

4. Identification of customers and beneficiaries based on risk categories

4.1. banks shall determine risk categories of their customers depending on the importance of the activities against legalization of illegally obtained funds or other property through banks. Classification of customers shall be based on the following criteria:

4.1.1. high-risk customers – the persons, who passed registration on a territory or a state determined by the National Bank of the Republic of Azerbaijan (hereinafter "National Bank"), politically important persons, the persons, who ordered the execution of the transactions determined in the provisions 6 and 7 of this Methodological Guidance, the persons, whose identification information was found out to be false, the person, who is suspected of acting on behalf of himself or a third party, the persons, executing transactions of whom, are suspected to be related in any way to the legalization of illegally obtained funds or other property or financing of terrorism;

4.1.2. middle-risk customers – legal persons that execute their main transactions by cash, the persons, who uses services of international money transfers that exceed the limit (hereinafter "limit") of fifteen thousands conventional financial unit; the persons executing their transactions on regularly repeated bases, the total amount of which is lower than the limit; a lawyer, an accountant or a broker acting on behalf of a third party;

4.1.3. low-risk customers – banks, state and municipal organs, the persons, who acquired serious confidence in local and foreign markets, the persons, who are not included in the high-risk and middle-risk customer categories.

4.2. Banks may precisely identify their low-risk customers and beneficiaries by the following way:

4.1.3. the identification of a legal person shall be realised on the bases of its charter and a notarized document on its state registration (the documents shall be remained in bank);

4.2.2. the identification of a natural person shall be realised on the document certifying his personality (copy of the document certifying personality shall be remained in bank);

4.2.3. the identification of a private entrepreneur shall be realised on the bases of the document certifying personality and the certificate issued by the tax organ. Copy of the document certifying personality and the original of the certificate issued by the tax organ shall be remained in bank.

4.2.4. competent persons acting on behalf of a third party, depending on being them natural or legal persons shall submit the documents indicated in the 4.2.1., 4.2.2. and 4.2.3. provisions of this Methodological Guidance, as well as the information of the persons behalf of whom they are acting on (for state and municipal organs – their names and addresses, for natural persons – name, surname, patronymic name, the information certifying personality, for legal persons – their names and the information on the document on state registration).

4.3. while identifying the middle-risk customers banks, in addition to the information provided by the documents mentioned in the 4.2. provision of this Methodological Guidance, the purpose of the establishment of business relationships, the nature of business relationships, to determine the source of funds or other property additional documents reflecting the following information:

4.3.1. working place, wage or earnings;

4.3.2. accounts in other banks;

4.3.3. credits acquired from other banks and the present status of them;

4.3.4. share in the capital of a legal person;

4.3.5. pledge rights and property burdened with pledge;

4.3.6. accounts of the banks registered outside of the Republic of Azerbaijan;

4.3.7. license of a licensed customer;

4.3.8. information about the persons who are qualifying holders in a legal person, as well as the management of the legal person.

4.4. For identification of high-risk customers, banks, in addition to the information mentioned in 4.2. and 4.3. provisions of this Methodological Guidance, shall try to acquire and verify beneficiary and executed transaction, and if possible, more precise information about funds or other property. It is recommended that directly bank's head management (board of directors, director, etc.) makes a decision about establishing business relationships with the high-risk customers.

4.5. Banks shall try to update the identification information of low-risk customers at least once in three years, of middle-risk customers once in a year, of high-risk customers once in six month.

4.6. If the total amount of a transaction is not known before its execution the categorizing of customers and beneficiaries according to the risk categories may be done when it is clear that the transaction is above the limit.

4.7. If it is impossible to identify the parties of a transaction clearly or a customer avoids submitting identification information banks shall not execute the transaction as defined by the article 42 of the "Law on Banks" of the Republic of Azerbaijan.

4.8. As defined by the article 969 of the Civil Code of the Republic of Azerbaijan, one of the bases for unilateral termination of a bank account contract by a bank without applying to a court shall be sound doubts on any relation of a customer, beneficiary or a transaction with legalization of illegally obtained money funds or other property.

5. Opening of correspondent accounts for non-residents

5.1. Special supervision by the banks' internal control system shall be applied over the opening of the corresponding accounts of non-resident banks, which passed registration outside the Republic of Azerbaijan, in the resident banks, and over the transactions involving the appropriate accounts.

5.2. To clarify the activity of a non-resident bank that is going to open a correspondent account, banks, among the obligatory documents, may require the documents reflecting the following information:

5.2.1. information about bank's management

5.2.2. bank's official address

5.2.3. information about the main activities

5.2.4. information about the internal procedures against the legalization of illegally obtained money funds and other property;

5.2.5. purpose of the account and the third parties, who is going to use it in exceptional cases;

5.2.6. information about the nature of the account and approximate amount of the transactions going to be executed.

6. Transactions subject to special monitoring

6.1. Transactions, total amount of which exceed the limit and include one of the following criteria, shall be subject to special monitoring:

6.1.1. depositing the funds into the bank account and withdrawing or transferring those funds on the same or the next operational day;

6.1.2. opening of numerous bank accounts by a customer, which are disproportional to his/her business activity and financial status, carrying out transfers between these or to other accounts;

6.1.3. operations carried out by a customer not in compliance with his/her financial status or business activity;

6.1.4. operations carried out by the customer within a day or a few days, the characters of which are particularly different from the customer's usual operations;

6.1.5. opening of a saving account for the benefit of the third party and depositing cash funds into that account;

6.1.6. bank transfers made by the legal person to the account of a natural person or the contrary;

6.1.7. depositing and withdrawing money funds to and from the bank account of a legal person which is registered less than three months ago, as well as in the absence of any bank operations from the account for six months;

6.1.8. any operations from the account of non-governmental organisations and religious organisations;

6.1.9. depositing and/or withdrawing cash funds to and from the account of natural or legal persons engaged in suspicious business activity;

6.1.10. purchase and sale of cash foreign currency;

6.1.11. any cash share investment of a natural person in the statutory capital of a legal person;

6.1.12. placement of money funds in a bank located outside of the Azerbaijan Republic as a collateral for a formalized credit;

6.1.13. for the purposes of business undertakings executing of one occasional transaction or transaction with very little amount of funds, as well as using account only for transfer of funds abroad;

6.1.14. regular depositing funds of huge amounts and maintaining high balance but without using other bank's services by a corporative customer;

6.1.15. depositing of funds on a foreign customer's account without meaningful reasons;

6.1.16. execution of payment without clear relevance to a legal contract, commodity or services circulation;

6.1.17. as defined by legislation, non-import or non-repayment of money according to a contract after prepayment was executed;

6.1.18. repayment of money that was prepaid to a non-resident in case of non-execution or termination of a contract;

6.1.19. payment of fines or other payments due to non-execution of a contract between resident and non-resident;

6.1.20. transfer of money to foreign accounts, which was previously avowed and brought into the Republic of Azerbaijan;

6.1.21. Abrupt change of volume and character of transactions on correspondent accounts;

6.1.22. import and export of cash funds by lawyers, accountants and brokers, who provide with professional services;

6.1.23. depositing of funds to credit card accounts outside of the Republic of Azerbaijan and withdrawing them from cash machines inside the Republic of Azerbaijan;

6.1.24. transactions executed through the account of the non-resident customer temporarily living in the Republic of Azerbaijan but without legal permission to undertake a business;

6.1.25. Sharp difference between one customer's transactions and the other's ones doing business on the similar field, as well as disuse of funds for daily transactions despite of depositing of cash;

6.1.26. any transaction with bearer securities.

7. Transactions subject to special monitoring irrespective of amount

7.1. Transactions with money funds or other property irrespective of amount shall be subject to special monitoring, if they possess one of the following characteristics:

7.1.1. any transaction with the funds or other property related either to a citizen, person registered or to a person, who has a residency and permanent business or has a bank account that was registered in the state (territory) suspected of either participating in illegal narcotic drug and other psychotropic substances production, financing of terrorism, or the legalization of illegally obtained funds or other property, or the state, which does not require disclosing identification information when conducting financial operations;

7.1.2. any transaction involving accounts of politically important persons;

7.1.3. repeated and regular transactions of a customer below the limit;

7.1.4. any deposit transferred from the anonymous account out of the jurisdiction of the Republic of Azerbaijan or an attempt to transfer funds to the anonymous account that is out of the jurisdiction of the Republic of Azerbaijan.

7.1.5. putting pressure upon a bank employer to avoid from submitting information;

7.1.6. refusing of submitting information about business purposes, previous bank relationships, directors and employees, place of business of an entrepreneur legal person, who just opened an account;

7.1.7. impossibility to determine the beneficiary of an account;

7.1.8. persisting in meeting with bank employee in the place different from the customer's business place;

7.1.9. existence of information about the refusal of other bank to provide a customer with services.

8. Responsibility of banks

8.1. Banks are responsible for the soundness of an executed transaction as defined by the legislation of the Republic of Azerbaijan.

8.2. It shall be taken into consideration that the National Bank of the Republic of Azerbaijan during supervision shall give ratings to banks on the existence and quality of the bank's internal control system on anti-legalization of money funds and other property, as well as during assessment of the managing skills of management shall pay special attention at the current work being done within the internal control system.

Chairman of Board **E.S.Rustamov**

ANNEX XII

Regulations on implementation of reporting system on currency transfers out of the country through the banks by natural persons

Unofficial translation

Approved by the Decree
of the Board of Directors of
the National Bank of Azerbaijan
of December 18, 2002

REGULATIONS

on implementation of reporting system on currency transfers out of the country through the banks by natural persons

1. Reports must reflect information on currency transfers out of the country in amount of above 10000 US Dollars through the banks by natural persons.

2. Reports must be submitted to the Statistical Department of the National Bank on 1st and 16th of every month surrounding 15 day period. If mentioned dates concur with holidays report shall be submitted on the next day.

3. Report form shall be filled up as follows:

- column "Natural persons" – name, surname, nationality, number and term of validity of passport of natural person shall be entirely reflected;
- column "Transferred currency" – currency, its amount and exact date of transfer shall be exactly shown;
- column "Beneficiary and state of transfer" – whole name of beneficiary and state of transfer shall be reflected;
- column "Purpose of transfer and submitted document" – exact purpose of transfer and title of document submitted as a ground, e.g. contract, invoice, bank extractions confirming transfer of currency from abroad, customs declaration on importation of cash currency; if the amount is above 50000 US Dollars, then documents confirming cash payment of relevant currency to person by banks or credit organisations of the country of transfer.

4. Bank management shall be directly responsible for reliability of information reflected in the report form and its submission at the proper time.

Model

INFORMATION
on currency transfers out of the country
through the banks by natural persons

*Name of the bank:*_____ *Responsible person:*_____ *telephone:*_____

above the equivalent of 50000 US Dollars

Number	**Natural person**				**Transferred currency**			**Beneficiary and state of transfer**	**Purpose of transfer and submitted document**
	Name, Surname	**Nationality**	**Number of passport**	**Term of validity of passport**	**Currency**	**Amount**	**Date of transfer**		

Note: equivalent to 10000 – 50000 US Dollars: sum total (by currency) _____; number of transactions (by currencies)_____
Including: - residents: sum total (by currency) _____; number of transactions (by currencies)_____
- non-residents: sum total (by currency) _____; number of transactions (by currencies)_____

SEAL

Chairman of Board of Directors: *signature*
Accountant general: *signature*

ANNEX XIII

On the currency transaction regime of residents and non-residents in the Republic of Azerbaijan

"Registered with the Ministry of Justice"
1.
2. Of Azerbaijan Republic
Registration number № 2859
13 June 2002

Minister

_____F.F.Məmmədov

"Approved by the Board of the National Bank of Azerbaijan Republic"

Approved by the decision of the Board
27 may 2002
Protocol № 12

Chairman of the Board

3. _____E.S.Rustamov

Unofficial translation

REGULATIONS
On the currency transaction regime of residents and non-residents in the Republic of Azerbaijan

(Amendments and additions dated June 28, 2004; November 03, 2004 and June 21, 2007)

1. General Provisions

1.1. These Regulations are prepared in accordance with the laws of "On the currency regulation" and "On the amendments and additions to the Law of the Republic of Azerbaijan on the currency regulation" and regulates the currency transactions' regime of residents and non-residents of the Republic of Azerbaijan via the credit organisations. The conditions explained in the regulations are not applied to the banking activities of the credit organisations of the Republic of Azerbaijan, but only applied to transactions related with their economic activities.

1.2. The definitions such as "foreign currency", "residents", "non-residents", "currency transactions" and "authorised banks" used for the aim of these regulations are assumed as explained in the Law of the Republic of Azerbaijan "On the currency regulation".

1.3. The transactions shown in these regulations, as a rule, are conducted via the credit organisations operating in the Republic of Azerbaijan and can be carried out via the bank accounts of residents and non-residents, except the conditions considered in Regulations.

1.4. These Regulations are also applied to transactions paid from 180 to 365 days, including the transactions related with the import and export of goods, works and services.

7.1.1 2. The foreign currency transactions of residents of the Republic of Azerbaijan

2.1. Receipts to Residents Accounts. The proceeds can be freely received to the foreign currency accounts of the residents of the Republic of Azerbaijan in authorised banks.

Special conditions should be obeyed to receive proceeds from the following sources:

2.1.1. The proceeds gained from services and sale of goods in the territory of the Republic of Azerbaijan;

In these cases, relevant license is required to conduct services and sell goods in foreign currency in the territory of the Republic of Azerbaijan. If the proceeds paid for the sold goods or conducted services are transferred from out of the country, these transfers are allowed.

2.1.2. Cash payments to residents by the non-residents for services, works, goods (afterwards, "goods") exported by the residents;

In these cases the following requirements should be fulfilled:

- the conduction of the payment in the form of cash, should be considered in agreement, contract or in another agreement document approving this act (afterwards, "agreement");
- the proceeds should be received from the non-resident or the physical person authorised by the non-resident purchasing the goods;
- the proceeds in foreign currency brought to the country by the non-residents (physical persons authorised by the non-residents) in advance should be declared in customs bodies.
- the proceeds in 10 days after bringing to the country and declaring in the customs body should be received to resident's cash office;
- during 2 working days after receiving proceeds to their cash office, the residents should receive it in an account in the bank.

Banks should require the following documents while receiving proceeds:

- the original export contract;
- the copy of the cash receipt;
- the custom's document confirming the bringing of proceeds to the Republic in the cash form;
- the power of attorney confirming the authorities of physical persons authorised by the non-residents;
- the document by the relevant bank or other credit organisation, of a country where they are bringing proceeds from, approving that this proceeds were given in cash (when the amount of the proceeds is more than 50 thousand USD equivalent).

After checking the correctness of documents, the bank accepts proceeds from the resident and keeps the copies of those documents. The originals of documents, proving the bringing of proceeds to the Republic, from the customs body and document given by the relevant bank or other credit organisation approving that this proceeds were given in cash, should be kept in a last bank executing these documents. If the customs declaration and certificate is not executed completely, the bank makes some notes on the original documents and keeps their copies.

2.2. Transfers from residents accounts. Amounts from the accounts of residents of the Republic of Azerbaijan may be transferred to different directions:

2.2.1. ***Within the republic:***

a) transactions addressed on behalf of residents' and non-residents' branches, representatives, other separate divisions within the Republic of Azerbaijan or any person authorised by non-resident, instead of goods imported to republic and sold in republic, also services rendered in republic or imported to republic (rendered abroad country on behalf of the resident);

b) Participation in the equity of other resident of the Republic of Azerbaijan;

c) for repayment of credits and credit interests;

d) for allocating deposits in authorised banks;

e) for being converted to manat or other currencies;

f) transfers addressed to branches and representatives within the republic of non-residents, to their other separate divisions, institutions or proposed for head offices of those institutions (in case of relevant decision's existence); If these remittance will be implemented against sale of goods (works, services), then they will be concerned to regulation circle of 2.2.1.a. sub-item of these Regulations.

g) for payment of dividends to founders;

h) remittances to non-resident's currency accounts in authorised banks;

2.2.2. ***Out of Republic:***

a) funds transferred against goods (works, services) those were brought on import contracts, also on services rendered within or imported to republic. These transaction can be proceeded as below:

- advance payments**;** goods must be entered to country, works must be done or services must be rendered within 365 calendar days against amount of the advance payment. If during that period goods are not imported, works are not done, services are not rendered or amount of the advance payment is not repaid, then authorised bank must inform National Bank through attaching all related documents (contract, invoice, payment documents, based explanation of banks and non-residents.

- after importing goods and rendering services**;** In this case and when remittances given in sub-item 2.2.1.a, 2.2.2.a of these Regulations, record keeping about payment's implementation on original (cover) import contracts and custom declaration is held, record is confirmed by signature, seal of the bank's responsible person and copies of those document are remained in bank. In case, of implementing payments are related with rendering services, document confirming that work has been done and service has been rendered against import customs declaration must be submitted to bank.

Only recipient company can pay cost of goods under the import agreements. The cost of the import agreements can be reimbursed by third person with the private permission of National Bank. If in agreement is intended to pay allocations for goods sender to the bank-book of third person, then such reimbursement can be carried out.

b) re export and mediation transferring; If such transferring is carried out until allocations to be entered from goods recipient and rendering country, in this case the regime of advance payment is used according to "a" half- paragraph of 2.2.2 paragraph of the orders;

c) allocations to be given back under unexecuted export agreements;

ch) transferring on purpose to the outside branch and representations of residents, also to the reproductive and subordinated institutions; If such transferring is carried out instead of goods selling or rendering services, then it is concerned to the balancing part of "a" half- paragraph of 2.2.2 paragraph of the orders;

d) Transferring under condition of observing the tax laws, with the object of dividends payment to the foreign founders of the residents;

e) Transferring to be directed for payment of credits and credit percents which were carried away from the foreign banks; in these case residents can carry out the transferring with presentation of original documents to the bank which confirm credit agreement and inside use of the same allocation or the importation of goods and services on these allocations account. After the transferring the copies of the documents must be kept in the bank. If the credit has been used abroad, then the private permission of the National Bank is demanded for the payment of that credit or credit percents;

ə) Transferring to be directed for payment of the financial aides of foreign institution and companies, other borrowings and their percents. In these case residents can carry out the transferring with the presentation of documents to the bank which are noted in "e" half- paragraph of 2.2. paragraph of the orders. After the transferring the copies of the documents must be kept in the bank. If the financial aides and other borrowings have been used abroad, then the private permission of the National Bank is demanded for the payment of those debts or their percents;

f) Foreign currency allocations which were transferred to Republic of Azerbaijan before; in this case the transferring can carried out without obstacles with the presentation of extract from the bank-book which proves the transferring of money allocation to the same resident's bank-book. If the transferring aim of the allocations to the resident's bank-book from outside and on the contrary is the

balancing object of "a,b,c,ch,e,ə" half- paragraphs of 2.2. paragraph of these orders, then the payments must be carried out under conforming the demands of those half- paragraphs.

g) Foreign currency allocations which were carried in cash to Azerbaijan Republic before; If the sum of foreign currency allocation to be carried in cash to the authorised bank for fulfilment of payment is in the equivalent of 10 000 (ten thousand) USA dollar, then "Passenger customs declaration" must be presented. If it is up to the equivalent of 10 000 (ten thousand) USA dollar, then "Passenger customs declaration" and "Customs card", at the same time physical person's entry visa registration passport to Azerbaijan Republic (if it is country with visa regime) must be presented. If the sum of foreign currency allocation is up to the equivalent of 50 000 (five thousand) USA dollar which was carried in cash before, in addition must be presented documents(extract from bank-book, cash-receipt and etc.) which confirm delivery of this allocation in cash to him by appropriate bank or other credit company of country to be carried currency. After the confirming registration with the signature and stamp of senior official of bank in original(on the surface) of presented documents about fulfilment of payment, the copy of those and visa registration are kept in the bank.

If the transferring aim of the allocations is the balancing object of "a,b,c,ch,e,ə" half-paragraphs of 2.2. paragraph of these orders, then the payments must be carried out under conforming the demands of those half- paragraphs.

ğ) Small transferring for the personal purposes; Every resident physical person can freely transfer abroad authorised bank accounts in the equivalent of 500 (five hundred) USA dollar foreign currency during an operation day by showing payment object.

Big transferring for the personal purposes; Every resident physical person can freely transfer authorised bank accounts up to the equivalent of 500 (five hundred) USA dollar foreign currency to relatives who live in foreign countries or temporary stay there (as relatives father, mother, husband, wife, son, daughter, brother, sister, children in-law) by showing affirmative documents. Such big transferring can carried out in the equivalent of 10 000 (ten thousand) USA dollar in a year. During the execution of big transferring for personal purposes of resident physical persons by banks must be filled application form of these orders which was shown in the addition number one and must be kept in the bank with the copies of affirmative documents.

The National Bank may allow transfers more than indicative limit amount fixed by petition of banks if there is no doubt about strong features of the transfers.

h) pensions, expenses of the courts, arbitration, notary and of other administrative entities, alimonies and other analogous transfers paid in accordance with the decisions of judicial authorities;

x) transfers in regard of capital export: residents may carry out such transfers to the member states of the organisation for Economical Cooperation and Development, to the countries signed bilateral contracts with the Republic of Azerbaijan about mutual encouragement and protection of investments and Russian Federation for the following reasons and within below conditions:

- direct investments, i.e. transfer of capital included in the Chartered Capital of the Organisation in order to get the right to get profit and take part in management of the Company;
- transfers to obtain securities;
- transfers to cover payments for getting right property on land, buildings, works, and also other property that is considered real estate;
- transfers to bank account of a resident for deposit.

Residents submit originals of documents (as well as contracts and other sustaining documents) proving purpose, amount and conditions of such operation to authorised bank. The authorised bank may make payment if documents substantiate declared purpose of operation and if there is no about strong features of the transfers. After implementation of bank operation submitted documents are being registered by bank and copy of the documents are kept with the bank.

Such operations to other countries can be carried out by the individual permission of the National Bank.

While making the capital transfer out of the country, state authorities, joint stock companies, control envelope of which belong to the government, as well as other state institutions and

organisations shall submit the above mentioned documents together with special permit to the bank given from the National Bank on the basis of the agreement from authoritative state authority.

i) with other purposes::

- participation rights at international organisations, conferences, exhibitions, fair;
- writing rights in periodic publication of foreign countries, rights of announcement ;
- taxes, duties and penalties paid abroad the republic in compliance with existing legislation;
- payment of education and medical fee and transfer for pecuniary for citizens of the republic for these purposes;
- transfer for paying fees franchise and copyrights

In such cases, original of contracts, reference letters, invoices or other confirming documents are submitted to bank, payment can be carried out, if authorised bank is sure that submitted documents are ground for announced purpose of transaction, considers them as satisfactory and in general there is no doubt for health feature of transaction. After making records of bank on submitted documents, their copies are remained in bank.

3. Azerbaijan Republic non-residents foreign currency operations

3.1 Non-residents entries into accounts

Funds might be easily entered into Azerbaijan Republic non-residents foreign currency account of authorised banks

For the funds from the following sources to be received specified conditions should be met:

3.1.1 Incomes from trading of goods and services within Azerbaijan Republic .

In such cases, license is required for trading goods and services in foreign currency within Azerbaijan Republic.

If the payments from trading goods and services within country are being transferred abroad the country such fund entrances are allowed.

3.1.2 Cash payments by the other non-residents for exporting goods and services;

In such cases following demands must be met:

Payments in cash should be considered on the contract

The funds are allowed to be received by non-residents or accordingly authorised banks

Foreign currency brought into the country should be passed through customs declaration

Funds must be received to cash office within 10 days after customs declaration

Non-residents should make transfers into bank account within 2 days after cash entrance

Banks should require the following documents for accepting the funds

- Original of export contract
- Copy of receipts
- Copy of customs documents confirming cash entrance into the country
- Letter of attorney confirming non-resident authorised physical persons authorities
- Reference confirming cash receipt of funds by cash-received country's bank or credit institutions (if amount of funds USD equivalent exceeds 50 000)
- A bank receives funds from non-residents and keeps their copy itself after checking documents.
- Original of customs documents confirming the entrance of cash into country and documents confirming cash supply by according bank or other credit institutions of the cash-received country and the latest executer should keep documents itself.

If customs declaration and reference are not fully implemented, bank makes appropriate notes on original of documents and keeps copies itself.

3.2. Remittances from accounts of non-residents of the Republic of Azerbaijan

3.2.1. ***Within the Republic:***

a) transactions addressed to the branches, representatives of other residents and non-residents operating in the Republic of Azerbaijan and to any individual authorised by non-residents instead of

goods imported to republic and sold within the republic, also services rendered within the republic or imported (rendered abroad the country on behalf of the non-residents engaged in household with the Republic of Azerbaijan) to republic;

b) participation of residents of the Republic of Azerbaijan in authorised capital;
c) grant, contribution, social assistance and sponsorship;
ç) for repayment of credits and credit interests;
d) for allocating deposits in authorised banks;
e) for being converted to manat or other currencies;
ə) remittances addressed to branches and representatives within the republic of non-residents, to their other separate divisions, institutions or proposed for head offices of those institutions (in case of relevant decision's existence); If these remittance will be implemented against sale of goods (works, services), then they will be concerned to regulation circle of 3.2.1.a. sub-item of these Regulations.
f) for payment of dividends to founders;
g) remittances to non-resident's currency accounts in authorised banks;

3.2.2. ***Out of Republic:***

a) funds transferred against goods (works, services) those were brought on import contracts, also on services rendered within or imported to republic. These transaction can be proceeded as below:

- advance payments**;** goods must be entered to country, works must be done or services must be rendered within 365 calendar days against amount of the advance payment. If during that period goods are not imported, works are not done, services are not rendered or amount of the advance payment is not repayed, then authorised bank must inform National Bank through attaching all related documents (contract, invoice, payment documents, based explanation of banks and non-residents.

- after importing goods and rendering services**;** In this case and when remittances given in sub-item 3.2.1.a. of these Regulations, record keeping about payment's implementation on orijinal (cover) import contracts and custom declaration is held, record is confirmed by signature, seal of the bank's responsible person and copies of those document are remained in bank. In case, of implementing payments are related with rendering services, document confirming that work has been done and service has been rendered against import customs declaration must be submitted to bank.

According to import contracts, good's price only can be paid by purchasing (doing work, rendering service) organisation. Payment of import contracts' price by third party is only allowed by permission of the National Bank. If in contract payment to bank of the third party of the funds which have to be paid to good supplier will be considered, such payments can be carried out;

b) transactions directed for payment of credits involved from foreign banks and credit interests; In such cases, non-residents can carry out payments through submitting to bank credit contract, orginal version of documents confirming usage of those funds within the country or import of goods and services purchased by these funds. After the transaction, copies of documents must be remained in bank. If the credit is used outside the country, then individual permission of National Bank for payment of those credits or credit interests is not required.

c) transactions directed for payment of financial assistances involved from institutions and organisations, other borrowings and their interests; In such cases, residents can carry out payments through submitting documents indicated in sub-item 3.2.2. of Regulations. After the transaction, copies documents have to be remained in bank. If involved financial assistances and other borrowings are used out of the country, then National Bank's individual permission is required for payment of those debts and their interests.

ç) funds which were transfered to Republic of Azerbaijan before; In such case, payment can be carried out without any problem through submitting extract from bank account, which is confirming former remittances to account of that non-resident. If the purpose of remittance that is carried out between non-resident account and abroad is object of regulating sub-items 3.2.2. a, b, c, e

of these Regulations, then payments have to be carried out through meeting the requirements of those sub-items.

d) foreign currency funds formerly brought to Republic of Azerbaijan in cash; if the amount of foreign currency funds brought in cash to authorized bank for implementation of payment is less than the equivalent of 10 thousand USD, then "Passenger customs declaration" has to be submitted, if the mentioned amount is more than the equivalent of 10 thousand USD, then "Passenger customs declaration" and "Customs certificate", besides passport with visa registration (if is brought from country with visa regime) that confirms entry of physical body to the Republic of Azerbaijan have to be submitted. If the amount of foreign currency funds those were formerly brought in cash are more than equivalent of 50 thousand USD, then documents (bank account extract, cash receipts and etc.) confirming that indicated funds were given in cash to relevant bank or other credit agency of the country from which currency was brought have to be submitted additionally. After confirmed registration with signature and seal of the responsible person of the bank on original (cover page) of confirmed documents is proceeded, copy of them and visa registration are remained in bank.

If the purpose of remittance is object of regulating sub-items 3.2.2. a, b, c, e of these Regulations, then payments have to be carried out through meeting the requirements of those sub-items.

e) Repatriation of foreign investment made to the economy of the republic; Under the understanding of foreign investment activity considered in laws of the Republic of Azerbaijan "About investment activity" and "About the protection of foreign investment" is deemed.

Foreign investments can be freely repatriated on condition of confirming documents (customs documents confirming bringing of funds to republic in cash, reference from relevant bank or other credit agencies of country from which currency was brought confirming that funds were sent in cash (if its more than equivalent of 50 thousand USD) or extract from personal account that confirms funds transfer to republic and confirming document about investing those funds to several types of operation). Besides, after paying relevant taxes and dues, revenues and other amounts related to the investments obtained by foreign investors on legal bases, including compensations and amounts for paying losses were permitted to be transfered out of the country. Fact of paying taxes have to be confirmed by relevant references of tax bodies and agencies.

ə) Remittances of salaries, dividends and other revenues obtained in the Republic of Azerbaijan; In this case, following documents have to be submitted:

- reference on imposing taxes from payment source when physical body is transfering non-resident dividends, interest incomes, salary and other revenues equivalent to it.
- reference of tax bodies or agencies on payment of taxes in all other cases.

f) other purposes:

- Fee for participation in international organisations, conferences, exhibitions and fairs;
- Fee for registration to periodic publications of foreign countries; fees for giving announcements;
- Taxes, duties and fines paid to abroad according the valid legislation;
- Remittances for given technical assistance to citizens of the republic with the purpose of paying the educational and medical fees;
- Remittances for paying using the copyrights and franchising.

In such cases, originals of contracts, invoices or other confirming documents confirming the purpose and amount of the payment are submitted to authorised bank, if the authorised bank will be sure that submitted documents bases announced purpose of transactions, considers them satisfactory and in general, if healthy features will not be reason for doubt, payment can be executed. After the registration of bank on submitted documents, their copies are remained in bank.

g) small transfers for personal purposes; Every non-resident physical body can freely transfer abroad the amount in foreign currency less than an equivalent of 500 USD in an operational day through their accounts in authorised banks, by indicating the payments purpose.

3.2.3. When other transactions not mentioned above have healthy features, then they can be carried out according to individual permission of the National Bank.

3.3. Non-residents can withdraw foreign currency funds in cash without any problem from their accounts in authorised banks.

3.4. Removed.

4. Processing of foreign currency transactions by physical bodies through authorised banks before opening of account

4.1. On behalf of physical bodies, transactions in foreign currencies from out of the country (from other sources) can be accepted in unlimited amount without opening of the bank account:

a) By physical body;

b) By non-resident physical body;

c) Other resident physical body.

4.1.1. In the framework of regime identified in these Regulations, resident physical bodies can transfer abroad the foreign currency funds less than the equivalent of 1000 USD without opening account. Within the framework of defined limit, during the one operational day ona such remittance can be executed by each of the resident physical bodies.

4.2. On behalf of non-resident physical bodies, transactions in foreign currencies from out of the country (from other sources) can be accepted in unlimited amount without opening of the bank account:

4.2.1. It's not allowed for non-resident physical bodies to carry out transactions abroad Republic of Azerbaijan without opening bank accounts in authorised banks.

4.3. In case of not meeting the terms of these Regulations, without opening bank account, currency funds transferred to republic on behalf of physical bodies:

- can be given in cash;
- transfer can be accepted at the authorised bank account of addressed person with his order.

4.4. In application letter for transferring foreign currency to Republic of Azerbaijan without opening account in authorised bank (Annexure 2), also in application letter for cash withdrawal or transfer to bank account of foreign currency transferred to territory of the Republic of Azerbaijan, following information has to be reflected:

a) name, patronymic, surname, ID card name of the person who is paying, serial and number of his/her ID card and information about by whom and when it was given (in case if funds were transferred to Republic of Azerbaijan from abroad);

b) name, patronymic, surname, ID card information of person to whom payment was addressed (in case if funds entered to Republic of Azerbaijan are withdrawn in cash or transferred to bank account;

c) amount and purpose of remittance;

d) date and signature the physical body;

4.5. Physical bodies have to submit their passport or ID card to authorised bank for transferring foreign currency from the Republic of Azerbaijan without opening account in authorised bank, also for cash withdrawal of foreign currency transferred to the Republic of Azerbaijan (or transfer to bank account).

In case if transaction are executed by the representative of physical body, relevant legal warrant together with ID card have to be submitted to the authorised bank.

4.6. According to internal procedures, authorised banks can require from physical bodies additional information on healthy features of transfers.

4.7. In case if there are submitted documents not meeting abovementioned requirements, if the document meeting these Regulations are not submitted, authorised bank not executes the transactions.

4.8. There must be notes in application letter (in payment order) on transfer of foreign currency from Republic of Azerbaijan without opening account at authorised bank and in order for cash withdrawal of foreign currency transferred to Republic of Azerbaijan, indicating that transactions made by physical bodies are not related to activity of entrepreneurship. For making transactions without opening account, copies of all submitted documents have to be remained in authorised bank.

5. Regime of conversion transactions

5.1. Residents and non-residents can convert all funds at their accounts through authorized banks without any limitation.

5.2. Residents and non-residents can convert cash foreign currency funds through exchanges points operating attached to authorised banks.

5.3. Residents and non-residents must submit order (Annexure 3) by declaring the purpose of buying currency to bank for getting foreign currency through authorised banks.

5.4. Commissions for conversion transactions are defined according to mutual agreement between client and bank.

6. Obtaining individual permission of the National Bank.

6.1. In cases when individual permissions of the National Bank are required according to these Regulations, then following procedures must be obeyed:

a) residents and non-residents applying to authorised bank by submitting all confirming documents, which explain features of transactions;

b) in its terms, authorised bank investigates the healthy feature of transactions and after being sure petions for the National Bank of Azerbaijan through submitting all confirming documents.

c) After reviewing the petition of the authorised bank within 10 work days, the National Bank of Azerbaijan can give permission for its implementation, in case if the operation has a healthy feature. If submitted documents do not fully grounds the health of transaction, then National Bank can require the submission of additional documents. Within 10 days of submission of the additional documents, National Bank gives its opinion to petition of authorised bank.

7. Implementation of the function of the currency control agent in the authorised banks.

7.1. The currency control agent of the authorised banks of the Republic of Azerbaijan controls the process of meeting requirements of currency transactions implemented by residents and non-residents of the Azerbaijan Republic with the existing legislation and also normative acts of the National Bank.

7.2. According to this regulation, the minimum requirements are defined by the documents for the approval of sound foreign currency transactions conducted by residents and non-residents of the Republic of Azerbaijan. In necessary cases based on own internal procedure rules and own conclusions authorised banks can require other documents for the approval of sound transactions from clients.

7.3. According to international practice authorised banks should develop the general mechanism for the prevention of the usage of the bank system in legalisation of income, acquired by crime and also define basic directions of bank policy in this field.

7.4. Authorised banks should ensure sound transactions conducted by clients to prevent the usage of transnational transactions in money-laundering**.**

7.5. Authorised banks should make the resident and non-resident clients familiar with requirements of these Regulations and inform persons conducted legal disorder about legislative enactment.

8.Final provisions.

8.1. Authorised banks, also residents and non-residents who conduct currency transactions via authorised banks and also their officials bear responsibility according to the legislation of Republic of Azerbaijan.

The National Bank as the country main currency control istitution controls the observation of requirements of the Regulation sby authorised banks and also residents and non-residents and implements legislative enactment for discovered legal disorder.

8.2. This Regulations shall be put in force on June 20, 2002.

8.3. By the date of putting in force of this Regulation, the Regulation of the National Bank of Azerbaijan Republic on residents' and non-residents' foreign currency accounts' regime in authorised banks of the Republic of Azerbaijan dated July 25, 1997 (Register # 98) and all its additions and changes lose their force.

ANNEX XIV

Code of Criminal Procedure of the Azerbaijan Republic

Extract

215.6. If in the course of the pre-trial proceedings it is established that the case concerns several investigative authorities, the following measures shall be taken by reasoned decision of the Principal Public Prosecutor of the Azerbaijan Republic or one of his deputies in order to ensure that the investigation is conducted thoroughly, completely and objectively:
215.6.1. where the criminal case is a matter for the prosecutor's office or the relevant executive authority, a joint investigating team shall be set up under the leadership of the prosecutor or an investigator from the prosecutor's office;
215.6.2. where the criminal case is a matter for several executive authorities of the Azerbaijan Republic, depending on the seriousness of the crime, a joint investigating team involving investigators from those authorities shall be set up, and a head of team shall be appointed.

ANNEX XV

Law on Banks

Article 42. Prevention of money laundering

42.1. Banks shall identify each client that they service. During making of payments, banks shall required the clients to indicate the recipient (beneficiary). No anonymous accounts can be opened, including anonymous savings accounts.
42.2. For prevention of money laundering in the banks, other provisions of the legislation of the Azerbaijan Republic may be applied in addition to those stipulated under Article 42.1 of this Law.