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Anti-Money Laundering and Combating the Financing of Terrorism

ARMENIA

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ACRONYMS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
APC	Administrative Procedure Code
BL	Banking Law
BCP	Basel Core Principles
CC	Criminal Code
CBA	Central Bank of Armenia
CDD	Customer Due Diligence
CPC	Criminal Procedure Code
CSP	Company Service Provider
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
FMC	Financial Monitoring Center
FSAP	Financial Sector Assessment Program
FSRB	FATF-style Regional Body
IAIS	International Association of Insurance Supervisors
KYC	Know your Customer/client
LBS	Law on Banking Secrecy
LEAs	Law Enforcement Agencies
LEG	Legal Department of the IMF
LOSA	Law on Operational and Search Activities
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MFD	Monetary and Financial Systems Department of the IMF
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
ML	Money Laundering
MLA	Mutual Legal Assistance
NSS	National Security Service
NPO	Nonprofit Organization
NGO	Non Governmental Organizations
PEP	Politically-Exposed Person
PSO	Payment and Settlement Organizations
PSS	Payment and Settlement Systems
RA	Republic of Armenia
ROSC	Report on Observance of Standards and Codes
SRC	State Revenue Committee
SRO	Self-Regulatory Organization
STR	Suspicious Transaction Report
TF	Terrorism Financing
TTR	Transaction Threshold Report
UN	United Nations Organization
UNSCR	United Nations Security Council Resolution

EXECUTIVE SUMMARY

Introduction

This assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Armenia is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the 2004 AML/CFT Methodology. The assessment was conducted by a team of assessors composed of staff of the International Monetary Fund (IMF) and two experts acting under the supervision of the IMF¹. It is based on the information obtained on site during their mission from February 23 to March 10, 2009, and other verifiable information subsequently provided by the authorities.

The report provides a summary of the AML/CFT measures in place in Armenia and of the level of compliance with the Financial Action Task Force (FATF) 40+9 Recommendations (see Table 1), and contains recommendations on how the AML/CFT system could be strengthened (see Table 2). The evaluation also includes Armenia's compliance with *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 "3rd EU AML 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* (hereinafter "Implementing Directive 2006/70/EC"). However, compliance or non-compliance with the 3rd EU AML Directive and the Implementing Directive 2006/70/EC has been described in a separate Addendum but it has not been considered in the ratings in Table 1.

The mutual evaluation report, its executive summary and the addendum on compliance with the EU directives were adopted by the MONEYVAL plenary on September 22, 2009.

Key Findings

1. Armenia has made considerable improvements in its AML/CFT framework in a relatively short timeframe, particularly by replacing a first AML/CFT law, enacted in 2005, with a more comprehensive law, which was passed in 2008. The new law needs to be implemented effectively, especially by DNFBPs. The authorities have not yet conducted a systemic assessment of ML and TF threats and risks in Armenia to support the development and implementation of a robust AML/CFT regime.
2. Armenia's financial system remains small and bank-dominated. Total assets of the banking sector accounted for approximately 91 percent of the assets in the financial system. Most banks are domestically owned but there is a major foreign presence in the system. The non bank financial sector plays a small role in financial intermediation.
3. The risk that the financial system can be used in the "layering" stage of ML or to launder proceeds is not high (although certain financial instruments, such as bearer securities pose a risk of

¹ The assessment team consisted of: Giuseppe Lombardo (LEG, team leader); Francisco Figueroa (LEG); and Gabriele Dunker and Lisa Kelaart-Courtney (both LEG consultants). Mr. Boudewijn Verhelst (Deputy Director, Belgian FIU) joined the IMF team and acted as assessor for MONEYVAL during the on-site visit to address the provisions of relevant EU Directives that are not within the Fund's AML/CFT mandate (see Addendum).

being used for ML). Armenia appears to be more vulnerable to the “integration” stage of ML, because of the highly cash-based economy, the significant volume of remittances from abroad, the relevant level of proceed-generating crime and the lack of adequate AML/CFT mechanisms in certain sector, such as real estate.

4. Although Armenia has established a mechanism to boost coordination among the various authorities responsible for AML/CFT, in the form of an Interagency commission, and political commitment in fighting against ML and TF is strong, more focus should be placed on an overall assessment of the risk of ML Armenia is exposed to because of the above mentioned vulnerabilities.

5. The risk of TF is extremely low.

6. The Financial Intelligence Unit – the Financial Monitoring Center (FMC), established within the Central Bank of Armenia – is a young though very knowledgeable and active FIU. However it is understaffed to properly undertake the new responsibilities assigned to it by the new AML/CFT law.

7. The money laundering offence is criminalized broadly in line with the international standard. A range of technical deficiencies have been identified with respect to the terrorism offense. The seizure and confiscation framework needs to be further strengthened, in particular with respect to the predicate offenses. Armenia should revisit its response to UNSCRs 1267 and 1373 as the current mechanism is inadequate.

8. The Vienna, Palermo and SFT Conventions have been ratified by Armenia and many, albeit not all, provisions of the Conventions have already been implemented.

9. The Armenian AML/CFT preventive measures for financial institutions operating in the financial system are comprehensive, provide for risk-based elements, and relatively close to the FATF Recommendations. However, implementation across all sectors is evolving, particularly for the non-banking sectors. In general, the supervisory authorities are conducting AML/CFT on-site inspections which are largely focused on regulatory compliance.

Legal Systems and Related Institutional Measures

10. Armenia’s criminal provisions for money laundering are basically sound and address many criteria under the FATF standard. Although there are some convictions, it has not yet been ascertained through a court judgment that money laundering can be prosecuted as an autonomous stand alone offense and in the absence of a conviction for the predicate offense. Legal persons are not subject to criminal liability under Armenian law. The number of ML criminal investigations, prosecutions and convictions is low if compared to the number of criminal investigations, prosecutions and convictions for the main proceeds-generating predicate offenses. The standard of proof applied by the courts to establish that assets originate from crime remains a challenge.

11. The criminal provisions relating to terrorism financing are broadly in line with the TF Convention. However, the provisions should be amended to be applicable to all nine Conventions and Protocols Annexed to the TF Convention and to cover the notion of “funds” as defined in the Convention. Moreover, the TF criminal provision is not in line with FATF Special Recommendation II, because it does not extend to situations in which property or funds are provided to individual terrorists or terrorist organizations without the intention or knowledge that the funds will be used in the commission a specific act of terrorism.

12. The provisions relating to the confiscation of property involved in the commission of money laundering, terrorism financing and predicate offenses meet several albeit not all criteria of the international standard. Most notably, confiscation is not available for all FATF designated predicate offenses. Armenian financial secrecy is regulated by a number of different provisions, which have not been harmonized and in practice are interpreted in the most restrictive way. This creates some

uncertainties in the application of the legal framework and limits the power of law enforcement agencies to identify and trace property that is or may become subject to confiscation, especially prior to the identification of a suspect or where the information sought relates to a person other than the suspect. The confiscation and seizing provisions do not seem to be implemented effectively.

13. The freezing mechanism applied by Armenia to address its obligations under UNSCR 1267 and 1373 is deficient; the AML/CFT law provides for the freezing of terrorist-related assets only for a limited period of time, after which domestic proceedings for a specific offense must be instigated, including in the case of designations pursuant to UNSCR 1267.

Preventive Measures—Financial Institutions

14. The AML/CFT Law establishes the principal preventive obligations for financial institutions broadly in line with the FATF Recommendations. The AML/CFT legal provisions are implemented through detailed requirements contained in the regulation issued by the Central Bank of Armenia (CBA), the sole regulatory authority of financial institutions. Other sector specific laws complement the AML/CFT obligations. Both laws and the implementing regulations are enforceable and sanctionable in accordance with the provisions established in the applicable AML/CFT Law and financial sector laws. The CBA, through the FMC, issues guidance to financial institutions to improve the implementation of the preventive measures.

15. The AML/CFT law and regulations cover all financial institutions and activities as set out under the FATF definition of financial institution, and impose detailed AML/CFT requirements on the financial sector for; inter alia, CDD including for PEPs, record-keeping, correspondent banking, unusual, large and suspicious transaction reporting, internal controls, compliance management arrangements, and training. However, there are a number of areas where the requirements do not comply with the FATF Recommendations. These include the lack of: prohibition for opening a business relationship through or using bearer bank records or other bearer securities; effective risk management procedures concerning conditions under which a customer is permitted to utilize the business relationship prior to CDD verification; and CDD measures to existing customers on the basis of materiality and risk. In addition, there are no requirements with respect to third parties and introduced business. Finally, measures dealing with compliance management arrangements and internal programs and control are deficient.

16. Implementation of the preventive/regulatory requirements by financial institutions varies, for example, slightly more advanced in the banking sector, but less so in other important and risky sectors (i.e., securities, insurance, foreign exchange offices, and money remitters). The AML/CFT Law and regulations provide for risk-based elements for purposes of CDD. Going forward, these risk-based provisions could be better supported with sector-specific guidelines, and refinements to the simplified CDD regime allowed for in the regulations. CDD requirements for introduced business and third parties should also be revised to provide for more comprehensive measures. There is a clear obligation to report suspicions of ML and FT; however, the level of suspicious transaction reports is very low and restricted mainly to the banking sector.

17. The CBA, through the Financial Supervision Department (FSD) is the sole supervisory authority responsible for AML/CFT compliance supervision and for the enforcement of the preventive requirements of the AML/CFT Law and regulation. The CBA has broad powers to obtain access to and inspect financial institutions under its jurisdiction and to sanction for noncompliance. In practice, the CBA has applied administrative sanctions, including fines for noncompliance with the AML/CFT Law and implementing regulations. The FSD has implemented a fairly comprehensive system for supervision; however, it could enhance this system by updating supervisory tools like the examination manual and related examination procedures to incorporate risk-based elements and the requirements of the 2008 AML/CFT Law.

18. This supervisory process could benefit from the introduction of more risk-based processes and updated examination manuals/procedures in line with the 2008 AML/CFT Law and implementing regulation. The Armenian authorities acknowledge the need to update their supervisory manuals and examination procedures in line with their risk-based approach to supervision and the 2008 AML/CFT Law (e.g. for the credit organizations, securities, insurance, foreign exchange offices, and money services sectors).

Preventive Measures—Designated Non-Financial Businesses and Professions

19. All DNFBPs as described in the FATF definition are encompassed within the AML/CFT Law as reporting entities. The preventive measures for DNFBPs set forth in the AML/CFT law are similar to those for financial institutions; however the additional regulations, rules or guidance in place for financial institutions to complement the requirements of the AML/CFT law are not applicable to DNFBPs. Consequently, the DNFBPs legal regime of preventive measures is substantially deficient. No obligations for the treatment of politically exposed persons (PEPs) or any other high risk customer or business transaction is in place and there are no legal or regulatory measures to prevent criminals or their associates from holding or being beneficial owners of a significant or controlling interest, holding a management function, in or being an operator of a casino.

20. Implementation of preventive measures by DNFBPs is inadequate across the sector and no DNFBP has ever yet filed a suspicious transaction report. A number of DNFBPs including independent lawyers and firms providing legal services, dealers in precious metals or dealers in precious stones and independent accountants and accounting firms are unlicensed and unsupervised for compliance with AML/CFT obligations. Further, the licensing and monitoring regime in place for the remaining DNFBPs is not focused on AML/CFT or in some instances such as advocates (attorneys) there is a complete absence on a supervisory or monitoring framework. Overall, minimal resources of authorities, and in some instances limited technical expertise, were in place, with a view to improving AML/CFT compliance. The trust and company service providers (TCSP) sector is not established in Armenia, although TCSPs are subject to the AML/CFT law.

21. For the most part, the effectiveness of implementation of the existing requirements and obligations is marginal with DNFBPs on a whole reflecting very little knowledge or understanding of their obligations and very little evidence of practice of their obligations.

Legal Persons and Arrangements & Non-Profit Organizations

22. Armenia has measures in place that ensure that information on beneficial ownership of legal entities is obtained and maintained. However, due to the very recent enforcement of those measures, it could not be determined that they are already implemented effectively. Armenian law does not recognize trusts or any other forms of legal arrangements. Armenia is also not a signatory to the Hague Convention on Laws Applicable to Trusts and on their Recognition.

23. Both foreign and domestic NPOs operating within Armenia are required to be registered with the Legal Persons State Register of the Republic of Armenia Ministry of Justice (State Register). NPOs take the form of charities, foundations or other social organizations, and over 5500 NPOs were registered with the State Registry at the time of the assessment. Although no vulnerabilities to abuse for TF purposes were identified by authorities when a review of the applicable laws was undertaken, it is recommended that the authorities undertake outreach to, and a review, of the sector.

National and International Co-operation

24. Significant improvements in the national cooperation framework and practices have taken place over the past few years with the establishment of a national body with a wide mandate in relation

to financial crime. Known as the “*Interagency Standing Commission on Fight against Counterfeiting Currency, Plastic Cards, and Other Payment Instruments, against the Money Laundering, as well as Financing terrorism in the Republic of Armenia*” (Interagency Commission), it is the principal forum for cooperation and coordination between domestic authorities. The Interagency Commission’s membership represents all relevant authorities although consultation with the financial institutions and other businesses subject to supervision for AML/CFT purposes is passive with only the Association of Banks of Armenia formally represented.

25. The Interagency Commission’s mandate includes but is not limited to AML and CFT policy considerations and directives; the oversight and evaluation of the effectiveness of implemented policies and programs on AML/CFT, information sharing on trends and methodologies and educational programs. However, the Interagency Commission has not undertaken an analysis of the risk of ML/TF in Armenia to determine vulnerabilities, sectors at risk, types of predicate offenses committed in Armenia that could generate proceeds. Such assessment should serve as a basis for streamlining its AML/CFT strategy and further develop the work already undertaken.

26. Additionally, formal gateways are in place through bilateral Memorandums of Understanding (MoUs), specific to ML and TF, between the financial intelligence unit, known as the Financial Monitoring Center, and the National Security Service, the Police, State Revenue Service and the Prosecutor’s Office. The MoUs all have the same parameters for co-operation in relation to the exchange of information on suspicious ML/TF transactions; joint discussions on suspicious ML/TF transactions; mutual assistance in drafting the rules, guides and other methodological materials on combating the ML/TF; joint activities on maintaining case statistics and development of typologies; and the implementation of joint training, education and consulting programs on combating the ML/TF.

27. The legal framework for mutual legal assistance (MLA) and extradition is sound and the provision of MLA is not subject to any unreasonable or unduly restrictive conditions. Even though not required by law, in practice Armenia provides any form of MLA only subject to dual criminality. This also entails that the shortcomings noted with respect to the money laundering and terrorism financing provisions may impact Armenia’s ability to provide mutual legal assistance, for example if the request involves a legal entity. Equally, the limitations noted in regard to provisional measures (including seizing, freezing and tracing), confiscation and financial secrecy can affect the provision of MLA. Both ML and TF are extraditable offenses under Armenian law. Armenia has not received or made any requests for MLA, including extradition request, relating to ML or FT.

Other Issues

28. The lack of comprehensive and meaningful statistics precluded a meaningful assessment of the level of effectiveness of AML/CFT measures across all sectors. There is also a present need for additional human resources, particularly in the area of AML/CFT supervision and within the FMC, and need for specific AML/CFT training for law enforcement authorities, particularly the NSS.