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

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Mutual Evaluation Report – *Executive Summary*

Anti-Money Laundering and Combating the Financing of Terrorism

SERBIA

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Serbia is a member of MONEYVAL. This evaluation was conducted by MONEYVAL and the report was adopted as a third round mutual evaluation at its 31st Plenary (Strasbourg, 7-11 December 2009).

LIST OF ACRONYMS USED

AGC	Administration for Games of Chance
APML	Administration for the Prevention of Money Laundering
BA	Bar Association
BIA	Security Information Agency
c.	Criterion
CC	Criminal Code
CDD	Customer Due Diligence
CER	Center for education and Research of the Counter Intelligence administration
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CSP	Company service provider
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]
EU	European Union
EUR	Euro(s)
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FRY	former Republic of Yugoslavia
FT	Financing of Terrorism
GDP	Gross domestic product
GRECO	Group of States against Corruption
IMF	International Monetary Fund
IN	Interpretative Note
IT	Information Technology
JSC	Joint stock company
KYC	Know your customer/client
LEA	Law Enforcement Agency
MIA	Ministry of the Interior
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NBS	National Bank of Serbia
NCCT	Non-cooperative countries and territories
NGO	Non governmental organisation
NPO	Non profit organisation
OSCE	Organisation for the Security and Cooperation in Europe
PEP	Politically Exposed Persons
PPO	Public Prosecutor’s Office
PTT	Public Enterprise of PTT Communications Srbija
RBA	Risk based approach
RES	Resolution
RS	Republic of Serbia
RSD	Official Currency of the Republic of Serbia - Dinar
SC	Security Council
SFRY	Socialist Federal Republic of Yugoslavia
SR	Special Recommendation
SRBA	Serbian Business Registers Agency

SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TAIEX	Technical Assistance and Information Exchange Instrument of the European Commission
TF	Terrorism financing
TMIS	Transaction Management Information System
UN	United Nations Organisation
UNSCR	United Nations Security Council Resolution
US	United States
VPF	Voluntary Pension Fund

EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Serbia as at the date of the on-site visit from 9-16 May 2009 or immediately thereafter. It describes and analyses these measures, and provides recommendations on strengthening certain aspects of the system. It also sets out Serbia's levels of compliance with the FATF 40 plus 9 Recommendations (see Table 1). The evaluation also includes Serbia'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 Annex and it has not been considered in the ratings in Table 1.

2. This is the second evaluation of Serbia by MONEYVAL. Since the last evaluation visit in 2003, Serbia has made a number of changes with a view to improving the legal framework as well as the AML/CFT requirements on banking and non-banking financial institutions. These include substantial changes to the criminal legislation (amendments to the ML offence, the criminalisation of the TF offence, changes to the Criminal Procedure Code covering provisional measures and confiscation), and the adoption of new legislation regarding liability of legal entities, seizure and confiscation of proceeds from crime and mutual legal assistance. The Law on the prevention of money laundering and the financing of terrorism (hereinafter AML/CFT Law) sets out the scope and basic AML/CFT obligations for financial institutions and designated non financial businesses and professions (DNFBPs). The law was adopted shortly before the on-site visit (18 March 2009) and entered into force on 27 March 2009, repealing the 2005 Law on the prevention of money laundering (hereinafter the previous AML Law). The regulations adopted on the basis of the previous AML Law continue to be applied until the adoption of regulations on the basis of the AML/CFT law in so far as they are not contradictory to the new provisions. A number of additional regulations and guidance were adopted to assist financial institutions and DNFBPs in fulfilling their obligations. The Government of Serbia also adopted a National Strategy against Money Laundering and Terrorism Financing in 2008 and established a Standing Coordination Group to monitor the implementation of this strategy.

3. As regards the money laundering situation, the Serbian authorities advised that the most significant forms of organised crime are trafficking in human beings, smuggling of narcotic drugs and of weapons, vehicle theft as an organised criminal activity and that proceeds are in general reinvested in the purchase of business companies (privatised ones), real estate, luxurious cars and are also used for lending money with high interest rates. Economic crimes are characterised by serious and complex criminal acts, particularly in banking operations, external trade and in the privatisation process. The most widespread form of economic crime is various forms of the abuse of office in all sphere of economic operations. There has been

no study on methods, techniques and trends regarding ML or TF, however, the authorities indicated that most of laundered proceeds in ML cases originate from tax evasion. Profits deriving from business activities are usually transferred from firms through fictitious domestic, foreign or offshore companies by using fictitious invoices where service or transfer of goods have never been carried out. Then the money is returned to Serbia in cash, where the legalization takes place. Fraudulent activities, unlawful privatisation and different activities of corruption can be also linked to situations of money laundering.

4. Concerning terrorist financing, there have been no criminal reports filed regarding FT according to the statistics provided and there are no confirmed cases of terrorist financing in Serbia to date.

2. Legal Systems and Related Institutional Measures

5. Since the last evaluation, with the adoption in 2005 of a new Criminal Code , the offence of money laundering is set out under Article 231 of the CC in a much broader and more complex approach than previously. The conducts that constitute the ML offence are largely in line with the material elements listed in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention. The offence extends to 'property' that derives from a criminal offence, which would appear to cover any types of property and to represent all sorts of proceeds of crime.

6. The criminalisation of money laundering has been explicitly based on an 'all crime approach'. Predicate offences for ML cover any 'criminal offence' of the CC and the range of offences set out in the CC which are predicate offences to ML include all required categories of offences with the exception of insider trading and market manipulation. The offence does not cover explicitly self laundering however this matter has been clarified both in a mandatory instruction (2008) of the Public Prosecutor's Office and by recent case practice. There are appropriate ancillary offences to the ML offense.

7. Natural and legal persons are subject to effective, proportionate and dissuasive criminal sanctions. The corporate criminal liability was introduced into the Serbian legislation by the Law on Liability of Legal Entities for Criminal Offences, which entered into force in November 2008.

8. Between 2007-2008, 5 convictions were successfully achieved and 2 final judgments were confirmed by the Supreme Court. All judgments relate to concealing of cash proceeds derived from tax evasion, legalised through use of false invoices, fictitious legal transactions, and sometimes use of fictitious companies. Perpetrators were convicted for committing abuse of office (article 359 CC) in concurrence with money laundering. The sentence applied specifically for money laundering in all cases amounted to one year imprisonment, however the consolidated sentence was higher (according to the judgments received, for instance to 2 years and 6 months in one case and to five years and six months in another case). In all cases the perpetrators were also deprived of the pecuniary benefit obtained and proceeds were confiscated. The number of yearly initiated criminal money laundering report sent to court has doubled in 2007 and remained constant in 2008 while the number of cases in which charges were brought has clearly increased.

9. Serbia ratified the UN International Convention for the Suppression of the Financing of Terrorism in October 2002. The financing of terrorism was criminalised as an autonomous offence in article 393 of the CC. However there are still several shortcomings with respect to

the implementation of the convention in the criminal substantive law. The provision or collection of funds to finance a terrorist organisation and individual terrorists does not appear to be covered. The term "funds" is not defined in the CC, nor has it been interpreted by judicial authorities, thus there is no legal certainty that the FT offence shall extend to any funds as defined in the FT Convention. Furthermore, due to references to specific criminal offences from other articles of the CC ("intended for financing of criminal offences referred to in Articles 312, 391 and 392 of the present Code"), the definition of terrorist financing requires the funds to be linked to a specific terrorist activity. Also, the offence does not fully cover the financing of terrorist organisations and the financing of individual terrorists regardless of whether the financing is for criminal activities, legal activities or general support. At the time of the on-site visit, there had been no investigations or prosecutions for terrorism financing.

10. The confiscation and the provisional measures in Serbia have gone going through a considerable change since the previous evaluation. The current legal framework is rather complex, given the parallel regimes both in terms of criminal substantive and procedural law. The recent adoption of the Law on seizure and confiscation of the proceeds from crime (2008) is undoubtedly a major step forward, however, given its recent entry into force, it has not yet been applied.

11. The current regime needs reviewing in order to ensure that the competent authorities have the necessary tools to clarify the application of the relevant provisions and regimes and ensure that they can make full use of the existing legal framework. Amendments are necessary to clarify the scope of property subject to confiscation, to ensure that value based confiscation can be applied in the case of instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences and that confiscation of instrumentalities is possible when they are held by a third party (legal entity or natural person). The statistics provided did not demonstrate the overall effectiveness of the application of provisional measures and confiscation regime.

12. The Serbian legal framework does not enable the competent authorities to take the necessary preventive and punitive measures to freeze and if appropriate, seize terrorist related funds or other assets without delay, in accordance with the relevant United Nations resolutions. There are no specific laws and procedures which would specifically implement the above-mentioned resolutions in terms of roles, responsibilities and conditions. Neither the AML/CFT law nor the Criminal Procedure Code can be applied in this respect. There have been no instances of freezing of funds or other assets of persons designated in the context of these resolutions.

13. The Administration for the Prevention of Money Laundering (APML), the Serbian FIU, is the lead agency responsible for AML/CFT issues. It is established as an administrative body within the Ministry of Finance. The AML/CFT Law clearly sets out all three core-FIU functions (reception, analysis and dissemination). The Serbian FIU has been a member of the Egmont Group since 2003.

14. The AML/CFT Law sets out the APML's role in the detection of ML and FT, international co-operation and in the prevention of ML and FT. In regard to its role in the detection of ML and FT, the APML can:
    1. request data from obligors and lawyers when it assesses that there are reasons to suspect ML or FT in certain transactions or persons ;
    2. request data from competent State bodies and public authority holders ;

3. issue written orders to obligors to temporarily suspend transactions when there are reasonable grounds to suspect ML or FT with respect to a person or transaction or to oblige obligors to monitor transactions and business operations;
4. disseminate data to competent bodies;
5. provide feedback to obligors, lawyers and state bodies;
6. co-operate internationally;

15. As regards its role in the prevention of ML and FT, the APML shall:
    1. conduct the supervision of the implementation of the provisions of this Law and take actions and measures within its competence in order to remove observed irregularities;
    2. submit recommendations to the Minister for amending this Law and other regulations governing the prevention and detection of money laundering and terrorism financing;
    3. take part in the development of the list of indicators for the identification of transactions and persons with respect to which there are reasons for suspicion of money laundering or terrorism financing;
    4. make drafts and give opinions on the application of this Law and regulations adopted based on this Law;
    5. make drafts and issue recommendations for a uniform application of this Law and regulations made under this Law in the obligor and lawyer;
    6. develop plans and implement training of APML's employees and cooperates in matters of professional education, training and improvement of employees in the obligor and lawyer in relation to the implementation of regulations in the area of the prevention of money laundering and terrorism financing;
    7. initiate procedures to conclude cooperation agreements with the State bodies, competent bodies of foreign countries and international organisations;
    8. participate in international cooperation in the area of detection and prevention of money laundering and terrorism financing;
    9. publish statistical data in relation to money laundering and terrorism financing;
    10. provide information to the public on the money laundering and terrorism financing manifestations;
    11. perform other tasks in accordance with the law.

16. The traditional tasks of the FIU (receiving, analysing and disseminating STRs) are performed efficiently by the APML, which receives an increasing number of disclosures from reporting entities and has timely access to financial, administrative and law enforcement information as well as additional information from reporting entities. It is to be noted that the FT reporting obligation only came into the remit of the FIU as of March 2009.

17. Guidance to financial institutions and other reporting entities on reporting STRs has been provided on the basis of the requirements of the previous AML Law and reporting forms have been elaborated only for banks, capital market participants and insurance companies. Additional measures are required to ensure that comprehensive and adequate guidance based on the new legislation is introduced to support obliged entities in better understanding their reporting requirements and outreach should be conducted to under-reporting sectors.

18. The APML submits a yearly progress report to the Government, which may be made available to the public only upon request. Such reports don't include information on current ML/FT techniques, methods, and trends (typologies), or sanitized examples of actual money laundering cases. It was not possible to identify how many investigations commenced as a result of FIU's disclosure in the absence of such statistics.

19. The APML's effectiveness has been strengthened comparatively to the situation in the previous evaluation round and despite concerns regarding the quality of reports received and the level of non/under-reporting by certain sectors, the APML has at its disposal an important amount of financial information, which is likely to increase once the implementation of the AML/CFT law by reporting entities is fully operational. Also, the AML/CFT Law sets out an important number of additional tasks which are likely to impact and overload the daily operation of the APML.

20. The law enforcement bodies competent for the investigation and prosecution of ML and FT offences are: the Ministry of Interior, the Tax Police, the Security Information Agency and the Public Prosecutor's Office. These bodies have all been established by law, as are their activities. In addition, there are specific arrangements regarding the designation of authorities competent to investigate and prosecute organised crime offences (including ML or FT offences), namely pursuant to the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime: the Special Prosecutor's Office for Suppression or Organised Crime (within the District Public Prosecutor's Office in Belgrade), the Service against Organised Crime (within the Ministry of Interior) and the Special Departments for processing criminal cases under this law (within the Belgrade District Court and the Belgrade Appellate Court).

21. The legal framework for investigation and prosecution of ML and FT offences and for confiscation and freezing is undoubtedly complex. Responsibilities of prosecutors and law enforcement agencies are covered in a variety of acts, that is not only in the criminal legislation but also in the Law on organisation and jurisdiction of government authorities in suppression of organised crime and the recently adopted Law on Seizure and confiscation of the proceeds of crime. The authorities are able to postpone or waive the arrest of suspects and seizure of property. The use of special investigative techniques in the Criminal Procedure Code is limited to a range of specific criminal offences that are being investigated. Competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences can compel production of, search persons and premises for and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. They also have the necessary powers to summon persons and take witness statements for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions.

22. However, the merits of creating a two tier system for investigation, prosecution and adjudication of the ML/FT offences, as the jurisdiction and competencies of law enforcement actors in the investigative and criminal process of such offences is differentiated based on the existence of an element of organised crime was questioned. Leaving aside the potential jurisdictional issues in concrete cases, the current provisions do not appear to provide for a comprehensive framework to ensure functional co-operation and communication between competent authorities.

23. Serbia has put in place measures to detect the physical cross border transportation of currency and a declaration system. The declaration system in force at the time of the on-site visit does not ensure that all persons making a physical transportation of currency and bearer negotiable instruments of a value exceeding the prescribed threshold are required to submit a declaration to the Customs authorities. New requirements were introduced with the AML/CFT law, which were not in force at the time of the on-site visit, as the law provided that they would become applicable six months later (September 2009). Based on the information gathered,

there are reservations about whether the detection of cross-border movement of currency was adequately conducted. Further action is needed to ensure that the new requirements are speedily implemented and additional measures are required to bring the current system in compliance with SR.IX, in particular as regards the introduction of effective, dissuasive and proportionate sanctions.

3. Preventive Measures – Financial Institutions

24. The AML/CFT Law sets out the scope of AML/CFT obligations for financial institutions and is supported by numerous sectoral laws, including the Law on Banks, the Law on Securities and Other Financial Instruments Market, the Law on Insurance, the Law on Voluntary Pension Funds and Pension Schemes, the Law on Financial Leasing, the Law on Foreign Exchange Operations, and the Law on Investment Funds. For the purposes of the evaluation, these laws qualify as "law or regulation" as defined in the FATF Methodology.

25. A number of additional decisions and books of rules have been issued which assist financial institutions in fulfilling their obligations under the laws mentioned above. The AML Book of Rules is the primary act that describes the methodology, requirements, and actions financial institutions are expected to undertake under the previous AML Law. The Decision on Minimal Content of the KYC Procedure and Decision on Guidelines for assessing the risk of money laundering and financing terrorism are two of the major decisions that are accompanied by many sectoral decisions. These qualify as "other enforceable means" as defined in the FATF Methodology.

26. The Republic of Serbia has not undertaken a systemic review of the ML and FT threats and risks that exist within the financial and non financial sector in Serbia. Under the previous AML Law and Book of Rules, the Republic of Serbia did not apply AML/CFT measures using a risk-based approach. The AML/CFT Law introduced requirements to conduct an analysis of the ML and FT risks, which must include a risk assessment for each group or type of customer, business relationship, or service offered by the obligor and competent supervisory bodies are required to adopt guidelines for implementation.

27. The customer due diligence (CDD) obligations are set out in the AML/CFT Law and apply equally to all obligors as identified in the law. The Decision on KYC Procedure also outlines further CDD requirements for banks; voluntary pension funds, financial leasing providers; and insurance companies, brokerages, agency companies and agents. There are only a few minor deficiencies, mostly stemming from the newness of the legislation. Competent authorities have yet to issue implementing measures for the AML/CFT Law and related guidance. In practice, there is awareness of the requirements and the application of due diligence measures, particularly in the banking sector. However, this compliance level does not cover the financial sector as a whole, since significant parts have not sufficiently implemented not only the due diligence controls of the AML/CFT Law, but also of the previous AML Law.

28. There were no requirements under the previous AML Law for financial institutions to determine whether a client is a politically exposed person (PEP) and apply enhanced measures, apart from the banking sector which was obliged to identify and apply enhanced measures to clients based on risk, which included PEP-s. The AML/CFT law covers comprehensively the requirements of Recommendation 6. Additional measures are required to ensure that Serbian financial institutions clearly understand and uniformly apply their obligations under the law to conduct enhanced on-going monitoring on business relationships

with PEPs. Furthermore, training seminars and additional guidance on risk assessment would assist financial institutions outside of the banking sector in order to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law.

29. As regards correspondent banking, prior to the AML/CFT Law, only banks were obliged to consider the AML/CFT regime of correspondents and there were no express requirements for all financial institutions to understand fully the nature of a respondent institution's business or to determine the reputation of the institution and quality of supervision, including whether it has been subject to a ML or FT investigation or regulatory action. The AML/CFT Law sets out requirements for financial institutions to follow when establishing or maintaining LORO correspondent relationships. According to the current legal framework and practice, correspondent relationships do not involve the maintenance of "payable through accounts". The banking sector demonstrated a clear understanding of the requirements of the AML/CFT Law, however financial institutions outside of the banking sector that conduct securities transactions or funds transfers demonstrated no implementation of Recommendation 7.

30. While the NBS Decision on Guidelines for assessing the risk of money laundering and financing terrorism introduce measures that require financial institutions to pay attention to money laundering and terrorism financing risks that may arise from the use of modern technologies that provide anonymity (e.g. ATMs, internet banking, telephone banking, etc) such requirements are not in place for certain financial institutions (licensed bureaux de change, investment fund management companies, persons dealing with postal communications, and broker-dealer companies).

31. The AML/CFT Law introduced the possibility for financial institutions to rely on third parties to perform CDD in specific cases. Until the Serbian authorities have determined in which countries financial institutions are permitted to reply on third parties, there can be no implementation of the respective provisions.

32. The AML/CFT Law grants adequate exceptions to Serbian secrecy requirements, particularly concerning financial institutions' ability to report to Serbian authorities as required by the law. However the AML/CFT Law does not provide for the ability of financial institutions to share information with foreign financial institutions as part of their obligations under R.7 or R.9.

33. Record keeping requirements are comprehensively covered by the AML/CFT Law, the Law on accounting and auditing and relevant regulations. The financial institutions, unlike DNFBPs, appeared to be knowledgeable of their record keeping obligations and supervisors did not report any problems with timely access to customer and transaction records and information. However, considering the limited number of inspections of financial institutions, in particular regarding non banking financial institutions, it was not possible to conclude that record-keeping requirements are effectively implemented by financial and non financial institutions.

34. Serbia has implemented some of the detailed criteria under SR. VII. However important gaps remain such as the absence of requirements for obtaining full originator information in the case of domestic payment transactions, verification of the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more, the absence of sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII. Also there was no evidence on effective mechanisms available for ensuring compliance of money transfer businesses (particularly, PTT "Srbija") with SR .VII.

35. A number of requirements are in place for financial institutions to pay special attention to complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, however these appear to be insufficient to meet the requirements of Recommendation 11 for all financial institutions.

36. Furthermore, requirements for financial institutions to examine as far as possible the background and purpose of transactions which have no apparent economic or lawful purpose, and make written findings available for authorities are not applicable to all financial institutions. Serbian authorities also need to keep up to date the list of countries that do not or insufficiently apply international standards.

37. The AML/CFT Law requires obligors to file a report to the APML whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, to develop a list of indicators to recognise persons and transactions with respect to which there are reasons for suspicion of ML or TF and to apply these lists of indicators when determining whether there are reasons for suspicion of ML or TF. There is no threshold for reporting suspicious transactions and the requirements includes the reporting of attempted (planned) suspicious transactions. Furthermore suspicious transaction reports should be filed regardless of whether they are thought, among other things, to involve tax matters. However, specific guidance on the legal definition of the reporting obligation should be provided to reporting entities, so as to prevent its possible restrictive interpretation, as well as further measures are required to ensure that obligors understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines.

38. While there has been a constant and significant increase in the number of submitted STR-s, around 97-99% of all STR-s have been filed by banks. However, along with a positive, growing dynamic of STR-s made by banks, there is a general perception of their low quality, which is indicative of an insufficient level of understanding and implementation of the reporting requirement by financial institutions, specifically non banking financial institutions. No STR-s have been made relating to suspicions on terrorism financing, which has been only introduced in March 2009.

39. The safe harbour provisions require further amendments in order to ensure that financial institutions are protected from criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML and the scope of the tipping off provisions should be expanded to include the cases where an STR or related information is in the process of being reported. Adequate guidance should be also provided to financial institutions and employees so that they are aware of and sensitive to these issues when conducting CDD.

40. The guidance and feedback provided by the competent authorities to assist financial institutions in implementing their AML/CFT obligations is insufficient.

41. Serbia has considered the feasibility and utility of a currency transactions reporting system and upon considerations that the cash economy was a serious issue, it has decided to introduce a requirement for obligors to report any cash transaction amounting to RDS equivalent of EUR 15,000 or more, with a few exemptions for certain institutions and certain types of transactions. There is an uneven implementation of the cash transaction reporting requirements by obligors.

42. The main deficiency of the AML/CFT requirements for internal controls, compliance and audit is that financial institutions with less than four employees are exempted from designating a compliance officer. In addition, not all financial institutions have internal procedures, policies and controls to prevent ML and FT, training programs lack components on CFT; and not all financial institutions conduct audits that include an AML/CFT component. There are requirements in place to ensure the application of AML/CFT controls in foreign branches and subsidiaries of Serbian financial institutions.

43. Serbian law prohibits financial institutions from maintaining relationships with shell banks and ensuring correspondents do not allow accounts to be used by shell banks by requiring all correspondent relationships to apply the same level of AML/CFT controls as Serbian banks. While Serbian law does not expressly prohibit the creation or continued operation of shell banks, the NBS requires such stringent identifying information when incorporating a bank in Serbia, that it could be concluded that shell banks were not operating within the country.

44. In Serbia, competence for the supervision of compliance with the national AML/CFT requirements does not lie with a single authority.

45. Article 82 of the AML/CFT Law designates as many as eleven bodies, which are empowered to exercise supervision over implementation of the Law, including :
    - the APML (in the capacity of the national financial intelligence unit),
    - the National Bank (in the capacity of supervisor for banks, exchange bureaus, insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, companies for the management of voluntary pension funds, and financial leasing providers);
    - the Securities Commission (in the capacity of supervisor for investment fund management companies, broker-dealer companies, as well as banks licensed by the Commission for doing custody and broker-dealer business);
    - the Ministry of Finance (in the capacity of supervisor for persons dealing with postal communications [with respect to domestic payment operations] and for persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services),
    - the Ministry of Telecommunications and Information Society (in the capacity of supervisor for persons dealing with postal communications [with respect to valuable mail operations],
    - the Foreign Currency Inspectorate (in the capacity of supervisor for persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions]).

46. None of the sectoral laws provide directly for regulatory and supervisory powers of the mentioned bodies to ensure that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing.

47. Serbian legislation defines a licensing procedure for all to-be-established financial institutions, and for those subject to the Core Principles the “fitness and properness” of management members is tested against specific criteria. However, for certain types of financial institutions the licensing/registration procedures are either non-existent, or non-functional (particularly, the PTT “Srbija”). In terms of supervisory tools such as the planning and methodology of supervision, apart from banking supervision, all other supervisors lack

well-defined and appropriately tailored instruments for the risk-based surveillance and examination of obligors both for prudential and for AML/CFT compliance.

48. The supervisory mandate of the financial supervisors is rather comprehensive and encompasses powers for general regulation and supervision, with instrumentalities such as off-site surveillance and on-site inspections, unhindered access to all records, documents, and information relevant to monitor compliance of supervised entities with applicable legislation, and enforcement and sanctioning tools.

49. Results of supervision vary throughout supervisory bodies and among types of financial institutions. In general, over the last four years of implementation of the AML/CFT legislation the whole system initiated as many as 30 AML/CFT-related inspections, which resulted in less than 30 supervisory measures such as written warnings, ordering letters, and resolutions on orders and measures, and in an unclear amount of pecuniary sanctions.

50. The AML/CFT Law directly and the respective sectoral laws indirectly establish both administrative and pecuniary sanctions for the failure to meet the requirements of the AML/CFT obligations. Infringements of the AML/CFT law are either economic offences or minor offences, and for such infringements, supervisors are obliged to refer the case to law enforcement bodies for prosecution. However, no sanctions are envisaged in case of violating provisions of certain requirements (eg. obligors' obligation to perform enhanced CDD in case of estimated high level of ML/FT risks; to ensure that the tasks of compliance officers and their deputies are carried out by persons meeting certain requirements; the prohibition for employees of obligors to tip off, etc).

51. The AML/CFT Law does not provide for any sanctions with regard to directors/senior management of financial institutions and businesses for their failure to abide by national AML/CFT requirements. Various pieces of legislation establishing enforcement and sanctioning powers of supervisory bodies contain provisions that indirectly provide for sanctioning directors/senior management of institutions for non-adherence to the requirements of national AML/CFT legislation.

52. Administrative sanctions are, although indirectly and not clearly in all cases, available under various sectoral laws governing activities of financial institutions and businesses. Usually they include supervisory measures such as: written warning, ordering letter; orders and measures to remove irregularities; order for temporary prohibition on performing all or particular activities specified in the working license, for a certain period; measures against management members, members of the supervisory board, key functionaries (in some cases, against qualified stakeholders); institution of proceedings before a competent authority; receivership; revocation of operating license of institution. In addition, some sectoral laws also provide for imposing pecuniary sanctions on obligors, which in practice leads to imposing a sum total of fines for all irregularities, including those related to AML/CFT.

53. It is considered that the distribution of sanctioning powers between supervisory bodies (NBS, Securities Commission, different ministries) – in respect to administrative and, in some cases, pecuniary sanctions available under various sectoral laws, and law enforcement bodies (prosecutors and courts) – in respect to pecuniary sanctions available under the AML/CFT Law, does not provide for an effective mechanism for a dissuasive application of the sanctions within the AML/CFT context.

54. In regards to money and value transfer services (MVT) only banks and in some cases the Post Office which may conduct international remittances. Serbia's compliance in this aspect is linked to compliance with other recommendations applicable to financial institutions. Under the AML/CFT, the Ministry of Telecommunications and Information Society has become the competent supervisor authority, but the Post Office has not yet been subject to AML/CFT supervision. There is no requirement for MVT service operators to maintain a current list of its agents which must be made available to the designated competent authority

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

55. The AML/CFT Law covers the following categories of DNFBP-s:

    1) organisers of special games of chance in casinos;
    2) organisers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks;
    3) auditing companies;
    4) licensed auditors;
    5) entrepreneurs and legal persons exercising the following professional activities:
        a. intermediation in real-estate transactions;
        b. provision of accounting services;
        c. tax advising;
    6) lawyers and lawyer partnerships.

56. DNFBPs are subject to the same requirements as financial institutions under the AML/CFT Law. Trusts and company service providers are not considered obligors under either the previous AML Law or the AML/CFT Law as domestic trusts cannot be established in Serbia. Dealers in high value goods such as metals or stones were subject to the controls set out in the previous AML Law; however they were excluded as obligors from the AML/CFT Law because they are forbidden from engaging in cash transactions that exceed the amount of 15,000 Euros. Notaries are unknown to the Serbian legal system.

57. Many of the deficiencies with the compliance of FATF Recommendations are the same for obligor -DNFBP-s as they are for financial institutions. Overall, the DNFBP sector demonstrated little awareness and understanding of obligations under the AML/CFT Law or of the previous AML Law. In particular, while the casino applied some CDD measures, it was not apparent that other operators of games of chance or any other DNFBP-s applied any CDD measures. There is no bylaw or regulation that requires DNFBP-s to screen employees to ensure a high quality of staff.

58. The deficiencies of the reporting regime impact on obligor DNFBP-s and lawyers. There are no lists of indicators developed by the APML and to be taken as basis by obligor DNFBP-s and lawyers for developing their own lists of indicators and none of DNFBP-s and lawyers have ever developed their own lists of indicators, or have been supervised for controlling compliance with the respective requirements of the law. Casinos, accountants/auditors, and lawyers have not filed a single STR either related to money laundering or terrorist financing over the whole period of implementation of the AML legislation since 2002.

59. Competent authorities entrusted with supervisory functions over compliance of DNFBP-s with the AML/CFT Law and with the task of guiding the obligors so as to ensure such compliance, are the Ministry of Finance (supervising activities of audit companies), the Tax Administration (supervising persons involved in provision of accounting services and tax

advising), the Administration for Games of Chance (supervising casinos and organizers of games of chance operated via telecommunication networks), the Ministry of Trade and Services (supervising persons involved in real estate transactions), the Bar Association (supervising activities of lawyers), and the Chamber of Certified Auditors (supervising activities of licensed auditors). None of these authorities have provided any guidance or guidelines to their supervised entities on the matters relating to ML/FT and the effective implementation of the national (and international) framework.

60. There is a lack of AML/CFT supervision of DNFBPs. The current regulatory and supervisory regime applicable to gambling institutions needs to be reviewed in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations.

61. Furthermore, as regards casinos, sanctions available under both the AML/CFT Law and the Law on Games of Chance do not appear to set out an effective sanctioning regime. The legislation in force does not define measures aimed at preventing individuals with a criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino.

62. There was limited information on the legislative provisions establishing regulatory, supervisory, and sanctioning powers of the above-mentioned bodies, as well as on the powers for applying sanctions in case of non compliance of auditing companies, licensed auditors, lawyers and lawyer partnerships, persons exercising professional activities of intermediation in real estate transactions, accounting as well as on technical and other resources of these bodies. There are no results of AML/CFT supervision of DNFBPs.

63. It was thus concluded the Serbian authorities have not taken effective measures to ensure compliance of auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and dealers in precious stones, persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements.

64. The Serbian authorities need to conduct sector-specific assessments of MT and FT risk posed by other non-financial businesses and professions, and based on those results, consider extending the requirements of the AML/CFT law to additional obligors.

5. Legal Persons and Arrangements & Non-Profit Organisations

65. The Serbian authorities have put in place a system of central registration for business entities. The Register of business entities is “a unique, central, public electronic database about business entities, established in the territory of the Republic of Serbia. The Register is managed by the Serbian Business Registers Agency (SBRA), through its Belgrade Head office and 12 branch offices throughout Serbia. It became operational as of 1 January 2005. Due to the lack of information on measures taken to ensure that the data is accurately kept in the registers and on sanctions applied so far, it remains uncertain whether the existing system achieves adequate transparency regarding the beneficial ownership and control of all legal persons.

66. In regard to non profit legal entities, there is no central system for registration and these are registered either in the Register of associations, social organisations and political organisations; in the Register of associations and social organisations; in the Register of

foreign associations or in the Register of Legacies, Foundations and Funds, depending on the legal basis according to which they operate. The laws and mechanisms in place do not require adequate transparency concerning the beneficial ownership and control of non profit legal entities. Furthermore, it was not demonstrated that the mechanism in place ensures that information registered is adequate, accurate and up to date nor that competent authorities are able to obtain in a timely fashion such information on the beneficial ownership and control of these entities.

67. In the Serbian legal framework, trusts or other similar legal arrangements do not exist. Recommendation 34 is not applicable.

68. Serbia has not reviewed the adequacy of domestic laws and regulations that relate to non profit organisations aimed at identifying the features and types of NPO-s that are at risk of being misused for terrorist financing by virtue of their activities or characteristics nor has conducted periodical reassessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities nor has implemented any of the requirements of Special Recommendation VIII.

69. There are no measures to raise awareness in the NPO sector about risks and measures available to protect them against such abuse. Legal requirements need to be introduced to ensure that NPOs maintain information on the identity of person(s) who own, control or direct NPOs activities, including senior officers, board members and trustees and that such information, as well as data on the purpose and objectives of the NPOs activities should be publicly available. Furthermore, there are no legal requirements in place for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a consistent manner with the purpose and objectives of the organisation and to make them available to appropriate authorities.

6. National and International Co-operation

70. Since the last evaluation, Serbia has taken steps towards enhancing co-operation between the various authorities. Policy level co-ordination and co-operation between all the agencies involved in the AML/CFT efforts was undertaken in the context of the work of the Permanent Coordinating Group, which resulted in the adoption of several important policy and legal proposals, and following the adoption of the AML/CFT Strategy, through the Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing established by a Government decision of 9 April 2009.

71. The authorities have reviewed the effectiveness of the system for combating money laundering in the context of the preparation of the National Strategy against Money Laundering and Terrorism Financing which was drafted in the course of 2007 and adopted on 25 September 2008. Further reviews will be undertaken under the scope of activities of the Standing Co-ordination Group, which is responsible for monitoring the implementation of the strategy. Current efforts should be pursued to develop the strategic and collective review of the performance of the AML/CFT system as a whole.

72. As regards operational co-operation, the situation has improved as of 2008, with a number of successes in handling specific cases. In particular, all operational bodies, supervisory authorities and the APML have formally appointed liaison officers in order to facilitate such co-operation. The AML/CFT law also includes a number of provisions requiring relevant

States bodies and agencies to cooperate and provide specific data to the APML on information deriving from their supervisory functions, if they establish or identify, while executing tasks within their competence, facts that are or may be linked to ML or FT. Agreements on co-operation have been signed by the APML with the NBS and with the Customs Administration. Co-operation on the basis of these agreements appeared to be satisfactory.

73. The Republic of Serbia has signed and ratified the Vienna Convention, the Palermo Convention and its additional protocols and the Terrorist Financing Convention. There remain certain gaps in the implementation of the provisions such as in particular the criminalisation of FT offence, the freezing and confiscation mechanisms, as well as the measures to address the requirements under S/RES 1267 (1999) and successor resolutions and S/RES 1373 (2001) and successor resolutions.

74. Serbia has ratified a number of international conventions, which create a thorough legal basis for international co-operation in criminal matters and has signed an important number of bilateral agreements. In the absence of an international treaty or where certain aspects are not regulated by treaty, mutual legal assistance is extended in conformity with the provisions of the Law on Mutual Legal Assistance in Criminal Matters (in force from 28 March 2009), the Criminal Procedure Code (which provides for the direct application of the Strasbourg Convention (CETS No. 141), and of the Vienna Convention in relation to criminal offences with elements of organised crime) and of the Law on Seizure and Confiscation of the Proceeds from Crime in relation to specific criminal offences.

75. Serbia is able to provide a broad range of mutual legal assistance both on the basis of the provisions of internationally ratified treaties and also in the absence of such treaties, based on the provisions set out in the national legislation. The applicable conditions do not seem to unduly or unreasonably restrict the provision of mutual legal assistance. The Ministry of Justice is the designated central authority under the Strasbourg Convention. With respect to the European Convention on Mutual Assistance in Criminal Matters and the second additional protocol, the authorities declared that regular courts and the State Prosecutors' Offices are to be considered as judicial organs. Additional authorities are competent for specific measures: the Republic Office of the Prosecutor (article 17 – cross border observations, article 18 – controlled deliveries, article 19 – covert investigations), and the Ministry of Interior (article 17 – cross border observations, article 19 – covert investigations).

76. For a better provision of mutual legal assistance, it was recommended that a system be put in place to monitor the quality and speed of executing requests and to set out explicitly clear timeframes in which MLA requests have to be handled. Also, Serbia should consider lifting the dual criminality requirement for less intrusive and non compulsory measures and clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence.

77. Additionally, as regards providing extradition related assistance, the recently enacted legislation and information provided did not enable an assessment of the effectiveness of the extradition procedure. The evaluation team advised that in cases of non-extradition of its own citizens, the Serbian authorities should ensure that internal criminal proceedings are instituted efficiently and in a timely manner and take steps to improve the overall effectiveness of the extradition framework, develop general reference materials, models forms and circulars or

practical guidelines which cover practical aspects of extradition and issue commentaries on the existing legal provisions.

78. A thorough review of the legal framework which governs international co-operation and information exchange of other competent authorities (law enforcement and supervisory bodies) is required, with relevant amendments as appropriate to the existing laws governing the scope of action of all competent financial sector and non financial sector supervisory authorities, in order to ensure that they allow the widest range of co-operation and that these bodies can exchange information both spontaneously and upon request in line with the FATF standards under Recommendation 40, without subjecting such co-operation to disproportionate or unduly restrictive conditions.

7. Resources and Statistics

79. Not all required statistics are kept by the relevant Serbian authorities and the collective review of the performance of the system as a whole and risk assessment of the various sectors in relation to ML and FT risks need development.

80. Additional measures should be taken by the authorities to adequately fund and staff the APML. There remained concerns regarding the operational autonomy and independence of the prosecution service to ensure freedom from undue influence or interference as well as the framework applicable to law enforcement and prosecution to ensure that they are required to maintain high professional standards, including high integrity, and be appropriately skilled. In regards to human and technical resources, a particular concern was that the judicial system and specialised law enforcement services as a whole experienced a heavy workload - some of them due to the lack of sufficient human resources (unoccupied posts, high turnover) and lack of sufficient technical (premises, equipment etc) resources, to fully and effectively perform their functions. Also, information provided by supervisory bodies did not enable the evaluation team to conclude on the adequacy or sufficiency of such resources. Additional requirements are necessary in providing for professional standards, including confidentiality and integrity requirements and expertise/skills of the staff of the supervisory bodies. Lack of training is a major problem throughout all supervisory bodies and needs to be addressed.

81. In the light of the information received, it appears that the resources allocated to relevant authorities should be increased in order to ensure that they have the capacity to adequately perform their functions.