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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

AZERBAIJAN

10 December 2014

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LIST OF ACRONYMS USED

ACD	Anti-Corruption Department with the Prosecutor General of Azerbaijan
AIC	Administrative Infringements Code of Azerbaijan
AML/CFT	Anti-money laundering/combating the financing of terrorism
BCR	Report on physical cross-border transportation of currency valuables
BLR	Report on transactions with countries in NCCT list
BO	Beneficial Owner
CARICC	Central Asian Regional Information and Coordination Centre
CBA	Central Bank of the Republic of Azerbaijan
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CIS	Commonwealth of Independent States
CPC	Criminal Procedural Code
CPI	Consumer Price Index
CSC	Civil Service Commission of Azerbaijan
CTR	Cash Transaction Reports
DGK	State Customs Committee of Azerbaijan
DNFBP	Designated Non-Financial Businesses and Professions
DT	Report on the transactions related to religious charities
ECDD	Enhanced Client Due Diligence
ESW	Egmont Secure Web
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FI	Financial Institution
FIR	Report on transactions in which it was detected that the identification of a customer or a beneficial owner was not correct
FIU	Financial Intelligence Unit
FMR	Report on suspicions that the client does not act on his/her behalf
FMS	Financial Monitoring Service
GDP	Gross Domestic Product
GPO	General Prosecutor's Office
GRECO	Secretariat of the Group of States against Corruption
GUAM	Organization for Democracy and Economic Development
HR	Human Resources
IMF	International Monetary Fund
INTERPOL	International Police Organization
IOSCO	International Organization for Securities Commissions
IT	Information Technology
LAN	Local Area Networks
LEA	Law Enforcement Agency
MCIT	Ministry of Communications and Information Technologies
MER	Mutual Evaluation Report
MFA	Ministry of Finance of the Republic of Azerbaijan
MJA	Ministry of Justice of Azerbaijan
MLA	Mutual Legal Assistance
MNS	Ministry of National Security of Azerbaijan
MoFA	Ministry of Foreign Affairs
MOU	Memorandum of Understanding

MVT	Money Value Transfer
NBA	National Bank of Azerbaijan
NGO	Non-Governmental Organization
NPO	Non-Profit Organisation
NCCT	Non-cooperative Countries or Territories
OSCE	Organization for Security and Cooperation in Europe
OJSC	Open Joint Stock Company
PEP	Politically Exposed Person
QHT	Report on transactions related to non-governmental organisations
SECO	State Secretariat for Economic Affairs
SRO	Self-Regulatory Organisation
SCS	State Committee for Securities
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TFR	Report on funds related to terrorist financing
UNODC	United Nations Office on Drugs and Crime
UNR	Report on persons subject to sanctions
UNSCC	United Nations Security Council Committee
UNSCR	United Nations Security Council Resolution

I. PREFACE

1. This is the fourth report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 32, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The 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 17 to 22 February 2014, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Azerbaijan. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL experts in criminal law, law enforcement and regulatory issues and comprised: Mrs Christine FOX (Legal Adviser, Law Officers' Department, Jersey) who participated as a legal evaluator, Mrs Iskra IVANOVSKA STOJANOSKA (Senior Advisor, "The former Yugoslav Republic of Macedonia") and Mr Ante BILUŠ (Head of Service for Financial Intelligence Analytics, Anti-Money Laundering Office, Croatia) who participated as financial evaluators, Mr Ionut Sorinel GABOR JITARIU (Head of Risk Analysis and Operative Analysis Department, National Office for Prevention and Control of Money Laundering , Romania) who participated as a law enforcement evaluator and Mr John BAKER, Mr Dmitry KOSTIN and Mr Fatih ONDER, members of the MONEYVAL Secretariat. The experts 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 (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

   1. General information
   2. Legal system and related institutional measures
   3. Preventive measures - financial institutions
   4. Preventive measures – designated non-financial businesses and professions
   5. Legal persons and arrangements and non-profit organisations
   6. National and international cooperation
   7. Statistics and resources

   Annex (implementation of EU standards).
   Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report[1] (as adopted at MONEYVAL's 28th Plenary meeting – 8-12 December 2008), which is published on MONEYVAL's website[2]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 17-22 February 2014 or shortly thereafter.

[1] http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL%282008%2927Rep-AZE3_en.pdf

[2] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Azerbaijan at the time of the 4th round on-site visit (17-22 February 2014) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of evaluations is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Azerbaijan received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations 2003 and 9 Special Recommendations 2001, but is intended to update readers on major issues in the AML/CFT system of Azerbaijan.

2. Key findings

2. **Azerbaijan's strategic position is attractive for criminals and organised crime groups, this being strengthened by the existing transportation infrastructure.** The main risks presented by the location of the country are connected above all with drug trafficking (mostly originating from Afghanistan with the destination in Europe or Russia) and human smuggling (where Azerbaijan figures both as a transit country and the country of origin). The most common predicate offences for money laundering are theft, fraud, tax evasion, embezzlement, drug and weapons production and trafficking, smuggling and corruption. The most common predicate offences, based on the structure of the disclosures received by law enforcement agencies from the Financial Monitoring Service (FMS), are tax evasion, counting for more than 75%, followed by corruption (almost 10%), embezzlement, fraud, drug crimes and cybercrime.

3. **Although Azerbaijan has taken steps to address the recommendations made in the 3rd round report related to the criminalisation of money laundering and the financing of terrorism, deficiencies remain.** Acquisition, possession or use of property is criminalised only with respect to "significant amounts", provided that the purposive element of "concealing or disguising the illicit origin of the funds or other property" is satisfied. The law does not provide explicitly that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. With regard to the financing of terrorism, the Criminal Code does not provide a definition of individual terrorist or terrorist organisation, nor does it refer to the Terrorist Financing Law for such definitions.

4. **Criminal liability for money laundering and the financing of terrorism has not been extended to legal persons.** This has an impact in limiting prosecutions for money laundering and the financing of terrorism and also in the provision of mutual legal assistance.

5. **The criminalisation of money laundering has not been effectively applied.** There a low number of convictions for money laundering and no cases of stand-alone and autonomous money laundering.

6. **Confiscation of proceeds and instrumentalities is now mandatory when a conviction has been secured for a proceeds-generating crime and confiscation is available for all predicate offences to money laundering**. However, property can only be taken from third parties when they knew or ought to have known that it had been obtained by criminal means, regardless of whether they obtained it for value or not. There is a lack of clarity on whether confiscation of indirect proceeds and corresponding value are routinely made. Also, the effectiveness of confiscation in predicate offences to ML was not demonstrated to the evaluators

7. **The Financial Monitoring Service (FMS) has been established as the national centre to gather, analyse and submit financial information to relevant law enforcement agencies**. The

FMS appears to be well resourced and operating effectively. However, the authority of the FMS to disseminate reports is limited to the General Prosecutor's Office (GPO) and the Ministry of National Security. There is a lack of safeguards for removing the FMSs management from office and this could generate vulnerabilities for the system towards risks of undue influence or interference.

8. **The AML/CFT Law prescribes obligations for reporting entities to apply preventive measures, including customer due diligence and identification of politically exposed persons.** Although financial institutions appeared to have a good understanding of the requirements, they still establish business relationships in circumstances where a foreign legal person who is a beneficial owner is not identified.

9. **Reporting requirements have been introduced and reports are being received by the FMS.** However no suspicious transaction reports have been submitted by DNFBPs and only one by a non-banking financial institution. This brings the effectiveness of the regime in the non-banking sectors into question.

10. **Sanctions available for infringements of the AML/CFT preventive regime are not effective, proportionate or dissuasive**. Very few sanctions had been applied in practice, with no sanctions at all being applied to senior management.

11. **There is inadequate AML/CFT supervisory over the operations of post offices**. Other supervisors are in the process of adopting risk-based supervision.

12. **The AML/CFT Law contains an exemption for small businesses from implementing an internal control system.** This provides an exemption from a number of controls for smaller businesses. This exemption could increase the vulnerability of small businesses to the risk of being used for the purposes of money laundering and the financing of terrorism.

13. **There is no requirement for information on beneficial ownership to be collected or made available by state authorities.** The registration system does not provide adequate access to up-to-date information on beneficial ownership in a timely manner. Barriers are in place which make it difficult for financial institutions to request ownership information from state registers of legal persons.

3. Legal Systems and Related Institutional Measures

14. The Law of the Republic of Azerbaijan, No 973-IIIQ, "On amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism" (adopted by the Parliament of the Republic of Azerbaijan on 5 March 2010) has amended the Criminal Code and addressed many of the recommendations made in the 3rd round report.

15. Although both "conversion and transfer" and the "concealment or disguise" of property are deemed to be covered, there still appear to be some deficiencies in the provisions in respect of the offence of acquisition, possession or use of property in the Criminal Code where there is reference to acquisition, possession and use "in significant amount". The definitions of "criminally obtained funds", "funds and other property" fully complies with the definition provided under the UN Convention for the Suppression of the Financing of Terrorism and the FATF standards and the AML/CFT law clarifies that it is applicable in the context of the Criminal Code. However, the evaluators consider that for the sake of clarity the Criminal Code should make a direct reference to the AML/CFT law with respect to the definition of funds or other property.

16. The Criminal Code extends criminal liability for money laundering to legal persons. However, the relevant provisions are not yet in force as it awaits the adoption of relevant amendments to the Code of Criminal Procedure. The law does not provide explicitly that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. The evaluators note

that no cases of autonomous ML have been recorded in Azerbaijan and consider that this principle should be reflected clearly in the law in order to dispel any doubt amongst domestic practitioners. the Criminal Code imposes a classification of crimes depending on the nature and the degree to which an offence is considered as a public danger, however, money laundering is not considered to be a serious crime as the maximum penalty provided for under the law is less than seven years of imprisonment.

17. The evaluators consider that there is a lack of certainty from prosecuting authorities as to whether a conviction for a predicate offence is a prerequisite to obtaining a conviction for money laundering. Since the 3rd Round evaluation the authorities report that there have been 16 indictments for ML, 10 convictions in the first instance and 9 final convictions, all of which were for self-laundering offences. The evaluators consider that the system is still not effective and are concerned by the low number of convictions for money laundering and absence of cases of stand-alone and autonomous money laundering.

18. Amendments adopted in 2010 introduced a new definition of the terrorist financing offence into the Criminal Code. While the new definition addresses most of the technical deficiencies identified in the third round report some issues are yet to be addressed. The terrorist financing offence, as amended, covers financing of individual terrorists or terrorist organisations. However, the Criminal Code does not provide a definition of individual terrorist or terrorist organisation, nor does it refer to the Terrorist Financing Law for such definitions. Also, the legislation extending criminal liability for terrorist financing to legal persons has yet to come into force.

19. There have been two terrorist financing cases which resulted in imprisonment for three people. The cases were subject to an appeal in the appeal court with the Appeal Court upholding the decision of the first instance court.

20. The amendments adopted in 2010 also amended the legal provisions in respect of confiscation. As a result, confiscation of proceeds and instrumentalities is now mandatory when a conviction has been secured for a proceeds-generating crime and confiscation is available for all predicate offences to money laundering. It was, however, noted that property can only be taken from third parties when they knew or ought to have known that it had been obtained by criminal means, regardless of whether they obtained it for value or not.

21. The data provided indicates that when money laundering is pursued, provisional measures and confiscation of property is also ordered. Furthermore, the data above on the amounts of property seized, confiscated and recovered following conviction for money laundering show an improving trend, however, the effectiveness of confiscation in predicate offences to ML was not demonstrated to the evaluators. The evaluators were also concerned that there was a lack of clarity on whether confiscation of indirect proceeds and corresponding value are routinely made.

22. Azerbaijan has taken steps to set-up a dedicated structure to freeze and confiscate terrorist assets implementing United Nations Security Council Resolution (UNSCR) 1267 and 1373. Nonetheless a number of shortcomings were identified. In particular, the freezing action provided by the law does not extend to funds or other assets of persons acting on behalf of, or at the direction of designated persons, nor does it prohibit that these or other funds or assets are made available, directly or indirectly for such persons' benefit by their nationals or by any persons within their territory, as per UNSCR 1267 and similar concerns were expressed in regard to UNSCR 1373.

23. It was noted that the designation criteria provided to implement UNSCR 1373 are too restrictive as they require that criminal proceedings have been instituted or that a conviction has been secured against a person. Also, there was no formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373.

24. The various technical deficiencies identified have the potential to inhibit effectiveness. It was noted that a foreign request to add to the domestic list has been received from the US and was addressed but that no assets have yet been frozen as a result of this request. Also the assets of two people were frozen pursuant to UN resolution 1267 but that this subsequently turned out to be a case of mistaken identity due to similar names and the assets were then unfrozen.

25. The Financial Monitoring Service (FMS) has been established as the national centre to gather, analyse and submit financial information to relevant law enforcement agencies. The FMS appears to be appropriately resourced both in terms of financial, technical and human resources. It was, however, noted that there was a lack of safeguards for removing the FMSs management from office and this could generate vulnerabilities for the system towards risks of undue influence or interference.

26. The FMS has increased the number of disseminations to the General Prosecutor’s Office and the Ministry for National Security. It was reported that these disseminations had resulted in two prosecutions for ML and 33 prosecutions for tax evasion during 2013. Also, serious effort has been applied by the FMS to increase the level of awareness of the reporting entities on the obligations they have under the AML/CFT legislation and the increasing number of STRs seems to indicate positive results in this respect. However, this only applies to financial institutions (that do show an increased awareness on their reporting obligations) as there are still virtually no STRs submitted by designated non-financial businesses and professions (DNFBP).

27. The authority of the FMS to disseminate reports is limited to the General Prosecutor’s Office (GPO) and the Ministry of National Security. This is a consequence of the way the competence for investigating money laundering and terrorist financing is regulated in Azerbaijan. In practice however, the Anti-corruption Directorate, which is the unit within the GPO designated to deal with disseminations coming from the FMS, is mainly specialised on investigating money laundering associated to corruption cases. The Ministry of Internal Affairs, which is the investigative body for the vast majority of serious predicate offences, receives no financial disseminations from the FMS.

28. As regards the investigation of money laundering and terrorist financing, the evaluators noted that the level of awareness and training is relatively low at the level of law enforcement bodies. It was also noted that law enforcement agencies had limited access of law enforcement to financial information affects its ability to identify, trace and seize proceeds of crime The evaluators were informed that every time any of the investigative bodies come across any suspicions of ML they have to refer the case to the GPO. Overall it was considered that there was a low level of investigations, prosecutions and convictions on money laundering and terrorist financing as opposed to the general volume of proceeds-generating crimes.

29. Although a declaration system is in place in Azerbaijan in relation to physical cross-border transportation of currency or bearer negotiable instruments, the legal act enforcing the system leaves out of its scope the national currency of Azerbaijan. There is no clear legislative provision requiring the customs authority to stop or restrain currency valuables when indications of money laundering or terrorist financing are present and no provision requiring the State Customs Committee to report suspicions of money laundering and terrorism financing to the FMS. In terms of effectiveness, the exchange of information with counterparts is limited to situations when reasons to believe that a serious customs offence will be committed in the territory of another state. Also it was noted that no money laundering and/or terrorist financing investigations had been instigated based on action taken by the State Customs Committee.

4. Preventive Measures – financial institutions

30. The new AML/CFT Law prescribes obligations for reporting entities to apply preventive measures (including customer due diligence (CDD) and identification of politically exposed persons) which are

largely in line with the FATF Recommendations. CDD must be conducted in full before entering into a business relationship with a customer. It was noted that the provisions regarding to application of simplified CDD measures could lead to misinterpretation which was compounded by the lack of published guidance on simplified CDD. It was also noted that these was no requirement to verify the identity of beneficiaries of life insurance policies at time of pay-out or the time when the beneficiary intends to exercise vested rights under the policy.

31. Overall the financial institutions met during the on-site visit displayed a good understanding of their obligations to identify and verify the identity of their customers. The one concern that was raised was that it was stated that identification of beneficial owners, especially when the customer is a foreign legal person or domestic legal person owned by a foreign legal person, is causing significant problems for monitoring entities, and in some cases they stated that they continue business relationships with customers for which they did not identify a natural person(s) who ultimately owns or controls the customer.

32. The provisions in the AML/CFT Law are in line with international standards concerning politically exposed persons (PEP). However, as previously stated, some reporting entities continue business relationship with customers for even when they had not identified a natural person(s) who ultimately owns or controls the customer, which could result in failing to identify that the beneficial owner was a PEP.

33. Although the AML/CFT Law does not contain any requirement for monitoring entities with respect to correspondent relationships, the FMS has issued Requirements on Internal Control Systems, which specifically establish requirements on correspondent relationships. However, these requirements do not require monitoring entities to document or have a clear understanding of the respective AML/CFT responsibilities of each institution during the relationship. Monitoring entities are required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions and these shall apply both when establishing customer relationships and when conducting ongoing due diligence.

34. The AML/CFT Law clearly states that banking and other legally protected secrecy regimes may not be invoked as grounds to reject submission of information. It was noted that there was an apparent conflict between the provisions in the AML/CFT Law and secrecy law applying to the securities market. And that there was no clear provision in legislation which would require banks to share information about their customers CDD to correspondent banks. However, during the on-site visit the authorities confirmed that they had not experienced any unnecessary constraints on access to information.

35. the AML/CFT Law requires monitoring entities to maintain documents on due diligence measures, documents on transactions with funds or other property, documents on politically exposed person of foreign countries and documents on unusual transactions in the information carriers or in an electronic format. Details of transactions are required to be retained for five years and account opening information is required to be retained for five years after closing the account. The only deficiencies relating to record keeping were that there is no obligation for monitoring entities to ensure that all customer and transaction records and information are available on a timely basis to law enforcement authorities and business correspondence and other relevant documents are only required to be kept for at least five years following the completion of a transaction.

36. The AML/CFT Law has introduced comprehensive reporting requirements that are in line with the standards. An electronic reporting regime has been introduced which as improved efficiency of reporting. All financial institutions interviewed appeared to be aware of their reporting obligations which appears to be the result of the awareness-raising initiatives and training programmes delivered by the FMS which included a focus on STR reporting. However, although there has been a gradual increase in the number of suspicious transaction reports (STR) submitted, only one report was

submitted by a non-banking financial institution. It was also noted that the number of STRs received is very low against the overall number of reports received by the FMS.

37. The AML/CFT Law has introduced an exemption for businesses which have a quarterly turnover of less than 50,000 Manats (approximately €47,000) from implementing an internal control system this has a direct impact on the requirement to implement internal controls but also . This potentially has an impact on the reporting requirements under Recommendation 5, the record keeping requirements under Recommendation 10 and internal control requirements under Recommendation 22. The authorities explained that this exemption was intended to give relief to small businesses and has no impact on financial institutions as all relevant financial institutions have a quarterly turnover in excess of 50,000 Manats.

38. Responsibilities for AML/CFT Supervision are set out in the AML/CFT Law. The CBA and State Committee for Securities (SCS) Ministry of Finance (MFA) and Ministry of Communications and Information Technologies (MCIT) have all adopted a risk-based approach for supervision. However as the CBA, MFA and MCIT had only adopted recently adopted the risk-based approach to supervision, it was not possible to assess its effectiveness. The division of the supervision powers of the CBA and the MCIT is not appropriate, and undermines the overall effectiveness of the supervision of Azerpost and no on-site supervision of Azerpost had been undertaken.

39. The evaluators did not consider that the sanctions available for infringements were effective, proportionate or dissuasive and were concerned that few sanctions had been applied in practice, with no sanctions at all being applied to senior management. With regard to market entry, there is no requirement to prevent persons who are associated with criminals 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 in financial institutions.

40. Wire transfer services can only be provided by banks, local branches of foreign banks and the national postal operator (Azerpost). The only shortcoming identified against the standards was that there is no requirement that intermediary financial institutions in the payment chain should ensure that all originators information that accompanies a cross-border wire transfer is transmitted with the transfer. The main concerns related to the effectiveness of supervision. The Central Bank of Azerbaijan (CBA) is responsible for licencing and supervising Azerpost when performing money and value transfer services, however, MCIT is the supervisory authority over the Azerpost for compliance with the AML/CFT requirements in accordance the AML/CFT Law

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

41. The new AML/CFT Law has also prescribed obligations for DNFBPs to conduct CDD measures as well as other preventive measures. The AML/CFT Law applies to: natural and legal persons engaged in buying and selling of precious stones and metals, as well as jewellery or other goods made of precious stones and metals; the lottery organiser; and natural and legal persons providing intermediary services on the buying and selling of real estate. There are no casinos operating in Azerbaijan. The requirements for CDD, record keeping, submitting of information to FMS and non-face to face business relationships also apply to lawyers, notaries, other persons providing legal or audit services when they prepare for or carry out transactions for their customers with respect to the following activities: buying and selling of real estate; managing of customer funds, securities or other property; managing of customer bank and securities accounts and creation, operation or management of legal persons, buying and selling of legal persons, organisation of contributions for the creation, operation or management of legal persons. Accountants are not subject to the AML/CFT Law.

42. The same deficiencies as highlighted for financial institutions above, also apply to the preventive regime for DNFBPs. There are same concerns regarding effective implementation of requirements to identify the beneficial owner of customers for DNFBPs and no effectiveness was demonstrated regarding the identification of the beneficial owner of customers, especially foreign legal entities and

domestic legal entities owned by foreign legal entities. This was a particular concern in the sector of legal services companies offer a wide range of financial and legal services to their customers. It appears that awareness among DNFBPs to conduct prescribed CDD measures is relatively new for monitoring entities. Taking into consideration the abovementioned, no effectiveness was demonstrated concerning implementation of Recommendation 6, 8, 10 and 11. However, the Chamber of Auditors displayed a good understanding of the AML/CFT obligations set out for auditors and accountancy practices.

43. Whereas the exemption for businesses which have a quarterly turnover of less than 50,000 Manats (approximately €47,000) from implementing an internal control system had little practical impact on financial institutions, it had a significant impact on DNFBPs, providing an exemption from a number of controls for smaller businesses. This exemption could increase the vulnerability of small businesses to the risk of being used for the purposes of money laundering and the financing of terrorism.

44. During the on-site visit the representatives of DNFBPs met by the evaluators appeared to have a good understanding of their reporting responsibilities. However, the fact that no STRs had been submitted by DNFBPs does raise questions on the effectiveness of the reporting regime.

45. All of the DNFBPs are subject to AML/CFT supervision with the responsibilities being set out in the AML/CFT Law as follows:-

- Azerlotereya Open Joint Stock Company (OJSC) - SCS;
- Notaries - Ministry of Justice;
- Persons providing legal services - Ministry of Taxes;
- Lawyers - Bar of Lawyers of the Republic of Azerbaijan;
- persons providing audit services - Chamber of Auditors of the Republic of Azerbaijan;
- Real estate agents and pawnshops - FMS; and
- Natural and legal persons engaged in buying and selling of precious stones, precious metal, as well as jewellery or the other goods made of precious stones and precious metals and dealers in precious metals – MFA.

46. The FMS and Chamber of Auditors had conducted on-site visits. However, no on-site visits have been performed by the Ministry of Justice and the Lawyers Bar Association and no disciplinary action was taken. Likewise, the MFA had not performed any on-site supervision for AML/CFT purposes towards the dealers in precious metal and precious stones and no sanctions or measures have been applied to these entities. Although the Ministry of Taxes had performed their supervisory function for AML/CFT purposes over persons that performed other legal services it was considered that this had been conducted at a low level.

6. Legal Persons and Arrangements & Non-Profit Organisations

47. There is no requirement for information on beneficial ownership to be collected or made available by state authorities and the registration system does not provide adequate access to up-to-date information on beneficial ownership in a timely manner. Information may only be demanded from monitoring entities by the criminal investigation bodies in the course of criminal proceedings. In this case, information may be disclosed only on the basis of a court decision that has come into force.

48. Amendments to the 2005 Law on Commercial Information, which were adopted in 2012, prohibit government officials from distributing information about companies if doing so "*contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defence of public order, the health and moral values of the people, or harms the commercial or other interests of individuals*." The amendments also make release of information contingent upon receiving permission from all individuals named in the records. It was considered that this places an

unnecessary barrier to financial institutions and DNFBPs from obtaining and verifying beneficial ownership information, in particular, the requirement to receive permission from all individuals named in the records could cause significant delays in accessing information.

49. The non-profit organization (NPO) sector is now subject to monitoring and to the provisions of the AML/CFT Law and as such has been included within the definition of "monitoring entities". The authorities have conducted two reviews of the NPO sector to consider the vulnerabilities of the sector. These reviews included consideration of the vulnerability of the sector to being utilised for the financing of terrorism. A number of training seminars have been conducted by the FMS and the Ministry of Justice for the protection of the sector from terrorist financing abuse and for raising awareness in non-profit organisations about the risk of terrorist abuse. The Ministry of Justice is designated as the supervision authority for NPOs' compliance with the AML/CFT requirements. The Ministry of Justice advised that identified deficiencies were the subject of warnings, which have the status of an order. Only foundations are obliged to publish an annual report regarding utilisation of their property although all NPOs submit an annual financial report to the MFA.

7. National and International Co-operation

50. At a policy level, the FMS under the Central Bank of Azerbaijan is the state authority empowered to provide implementation of the state policy in the sphere of prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism, to improve the inspection system and to coordinate the activity of the relevant state authorities. Very good bilateral cooperation relationships were observed between the FMS and other actors with AML/CFT responsibilities during the on-site visit. Direct meetings to discuss improvements to the legislative framework in the field have been organised, with attendance of specialists from the FMS. Also, a number of meetings have been organised with officials from the President Administration and Cabinet of Ministers regarding state policy on AML/CFT and legislative development. Nevertheless the AML/CFT system appears to be lacking an overarching policy coordination mechanism dedicated to revision and strategic coordination of all its components.

51. The Vienna, Palermo and Terrorist Financing Conventions have all been signed and ratified. However, there are remaining deficiencies in respect of the confiscation of indirect proceeds of crime, value confiscation and third party confiscation as well as deficiencies in respect of the offence of acquisition, possession or use of property and a lack of legislative confirmation of the practice of inferring the intentional element of money laundering from factual circumstances. Issues identified in respect of compliance with the Terrorism Financing Convention include a deficiency in criminalising all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist *Financing* Convention, a lack of legislative confirmation of the practice of inferring the intentional element of terrorist financing from factual circumstances and the fact that liability of legal persons is not yet covered.

52. The Ministry of Justice in Azerbaijan is the central authority which deals with mutual legal assistance (MLA) and cooperation matters. The authorities are in a position to provide MLA in respect of AML/CFT Investigations. Under that provision, MLA can be rendered to another state on the basis of the Criminal Procedure Code, other laws applicable in Azerbaijan or provisions in an international treaty executed to this effect to which Azerbaijan is a party. Azerbaijan's Law on Legal Assistance in Criminal Matters makes provision for assistance in the absence of a treaty with Azerbaijan and provides for assistance based upon the principle of reciprocity. Nonetheless, international cooperation in the area of ML could in some instances suffer from the remaining gaps identified in compliance with the Palermo and Vienna conventions; in particular, the lack of corporate liability could impede effective mutual legal assistance. Also, no formal arrangements for co-ordinating seizure and confiscation actions are in place.

53. No significant concerns were raised by any jurisdictions in response to MONEYVAL's request for input with the regard to the provision of assistance by Azerbaijan. However, a lack of statistics on mutual legal assistance impeded the assessment of effectiveness.

54. The general legal framework for other forms of international cooperation on AML/CFT matters is provided by the AML/CFT Law. Based on these provisions the authorities carrying out their activity in the AML/CFT field, shall cooperate with the competent authorities of foreign states on AML/CFT matters including exchange of information on committed crimes, execution of court decisions and criminal prosecution in accordance with the legislation of the Republic of Azerbaijan and the international treaties to which the Republic of Azerbaijan is a party. The wording of the current legislative framework is wide enough to allow the FMS to provide the widest range of international cooperation to foreign counterparts, both spontaneously and upon request.

55. International cooperation on AML/CFT issues by the General Prosecutor's Office is carried out by the Anti-corruption Directorate mainly within the framework of mutual legal assistance mechanism. The General Prosecutor's Office, has established a focal point that has direct communication channels with counterparts in other jurisdictions. The Ministry of Internal Affairs conducts information exchange through INTERPOL.

56. The signing of a Memorandum of Understanding (MOU) or a cooperation agreement is a mandatory precondition for the CBA to be able to exchange information with other Central Banks although there is no constraint on responding to requests related to ML/TF issues. There is no provision in legislation that prescribes clearly that the CBA should provide exchange of information in a rapid, constructive and effective way. There are no restrictions on responding to incoming requests for information from foreign counterparts with which the SCS does not have any agreements.

57. The FMS has managed to implement a secure and consistent for the exchange of information with foreign financial intelligence unit although, information exchanged is still in relatively low volumes. Information exchanged by law enforcement authorities is still in relatively low volumes. The statistics provided by the authorities on the exchange of information performed in the AML/CFT field by supervisory authorities were not adequate to allow for an evaluation of the efficiency of the legal channels in place.

8. Resources and statistics

58. The FMS appeared well staffed and the dedicated software solution used seemed to support an increased capacity in processing the current volumes of financial information received, both for intelligence analysis and supervision functions. None of the employees of the FMS appeared to have previous experience in financial or criminal intelligence analysis, although this was compensated for by allowing its analysts to participate in training programmes dedicated to tactical analysis. The Anti-Corruption Department of the General Prosecutor's Office appeared properly staffed and positive opinions were expressed during the on-site visit on the adequacy of the technical and financial resources available.

59. The CBA, SCS and MFA all appeared to have adequate resources both in terms of staff and facilities to perform AML/CFT supervision. Regular training is provided on AML/CFT issues for staff of the CBA and SCS. However, MCIT did not appear to have sufficient resources to properly undertake AML/CFT supervision of the post offices and no statistics were provided indicating that employees of the MCIT participated or had active role in any seminar or workshops regarding AML/CFT matters.

60. The FMS provided a comprehensive set of statistics and appeared to be making good use of these statistics to analyse trends and draw strategic conclusions. Statistics were provided in respect of money laundering and financing of terrorism investigations, prosecutions and convictions which

showed whether convictions are for self or third party laundering but these statistics did not include any analysis of penalties. Detailed statistics on property seized, confiscated and recovered following conviction for ML/FT were provided. The evaluators consider that these statistics should be utilised, along with statistics on the level of funds-generating crime, to determine strategic priorities in developing the AML/CFT regime.

61. The supervisory authorities maintained statistics on the number and nature of AML/CFT supervision as well as sanctions applied, but there were no statistics available on cooperation and exchange of information with other supervisory bodies both domestically and internationally. Statistics on mutual legal assistance were not readily available which could prevent the authorities from identifying trends in connection with the provision of mutual legal assistance.

III. MUTUAL EVALUATION REPORT

1 GENERAL

General Information on Azerbaijan

1. This section provides a factual update of the information previously detailed in the third round mutual evaluation report on Azerbaijan covering the general information on the country, the key aspects of its international relations, economy, system of government, legal system and hierarchy of norms, transparency, good governance, and measures against corruption. For the purpose of this report, the evaluation team has not assessed the situation in the areas of Azerbaijan in which the Government of Azerbaijan does not exercise effective control.
2. Azerbaijan is located in the Caucasus region and is, given its extension of 86,600 km^2, the largest country in the region. It is bordered by the Caspian Sea to the east, Russia to the north, Georgia to the northwest, Armenia to the west and Iran to the south. The country is divided into 65 regions and one autonomous republic, the Nakhichevan Autonomous Republic. Parts of its territory (the Nagorno Karabakh region and 7 adjacent districts) are not under government control.
3. The population of Azerbaijan was 9,298 million of inhabitants according to the World Bank estimation in 2012, of which more than 20% live in the capital city, Baku. The major ethnic groups remain the same as at the time of the 3rd round evaluation, with the most significant group being the Azerbaijanis, counting for more than 90% of the population, followed by Lezgins (2,2 %), Russians and Armenians (both 1,6 %). The official language is Azerbaijani.

International relations

4. Azerbaijan is a member of the United Nations, Organisation for Security and Co-operation in Europe (OSCE), Council of Europe, the Commonwealth of Independent States (CIS), the Organisation of the Islamic Cooperation (OIC) and many others. In July 2011 the Financial Monitoring Service (FMS) (the financial intelligence unit (FIU) of Azerbaijan) was accepted as a member into the Egmont group.
5. The country also maintains close relations with the European Union; Azerbaijan was included in the European Neighbourhood Policy and since 2009 it participates in the Eastern Partnership of the European Union.

Economy

6. The official currency is the New Manat (AZN), with the currency at 1.07 New Manat for one Euro in January 2014.
7. According to the World Bank, Azerbaijan's Gross Domestic Product (GDP) was US$ 66.6 billion in 2012, which is almost 36% more than at the time of the last evaluation (US$ 48.85 billion).

Table 1: Key economic indicators in Azerbaijan in the years 2009 to 2012

	2009	2010	2011	2012
Real GDP growth (%)	9.3	5.0	0.1	2.2
Inflation (change in CPI) (%)	1.5	5.7	7.9	1.1
Unemployment Rate (%)	5.7	5.6	5.4	5.2
Government budget balance (%	-0.5	-0.9	0.6	-0.3

of GDP)				
National debt (% of GDP)	7.7	7.3	7.7	9.1
Nominal GDP (million USD)	44,291	52,906	65,953	66,605
GDP per capita (USD)	4,950	5,843	7,190	7,164

8. Foreign trade is a key factor for the economy of Azerbaijan. The foreign trade turnover to GDP ratio was about 49% in 2012; trade with non-CIS countries accounted for 92.7% of the total volume of trade. Azerbaijan has trade relations with 155 countries.

9. Azerbaijan's economy is heavily reliant on natural gas and oil sector, with hydrocarbon production and related services accounting for about 60%–70% of GDP. Given the high degree of control the state exercises over this sector, hydrocarbon export revenues have enabled the government to substantially increase budget revenues and expenditure. This has boosted growth in other sectors of the economy and created business opportunities for financial institutions, which cater mainly to non-hydrocarbon businesses.

10. The effect of the global crisis, felt mainly through falling hydrocarbon export prices, was mitigated by increased oil production and a strong fiscal stimulus for the non-hydrocarbon sectors. As a result, economic growth stabilised at around 10% in 2008–2009. Minor changes occurred later, only in oil production, which caused economic growth to slide to 5% in 2010 and 0.1% in 2011, whilst non-hydrocarbon growth reached 7.9% in 2010 and 9.4% in 2011. Monetary stability was preserved throughout, although consumer prices were susceptible to global food and commodity price fluctuations. In 2012, GDP growth accelerated again.

11. At the time of the 3rd round evaluation (in 2008) inflation was at its peak at 20.8%. Since then the values decreased significantly, with a slight rise in the years 2010 and 2011, but in 2012 inflation has decreased to 1,1%.

<u>System of Government, Legal System and Hierarchy of Laws</u>

12. No significant changes have been reported in relation to the system of government, the legal system and hierarchy of norms, the reader is therefore referred to pages 18 and 19 of the third round mutual evaluation report (paragraphs 5-13) for more detail on this topic.

<u>Transparency, good governance, ethics and measures against corruption</u>

13. In October 2010, Secretariat of the Group of States against Corruption (GRECO) adopted two 3rd round evaluation reports with regard to Azerbaijan, concerning the topics "Incriminations" and "Financing of Political Parties". In January 2013, a compliance report following both of the themes was adopted.

14. In the evaluation reports, GRECO pointed out several remaining deficiencies, such as the lack of criminalisation of bribery of foreign officials, the insufficiency of the definition of "officials", which did not cover all different types of civil servants, or the requirement for dual criminality, which inhibits the correct functioning of international cooperation.

15. In the second part GRECO stated that it is difficult to evaluate the system of funding of political parties, when opposition political parties completely lack funding, due to which there are few parties active between the elections. It was also pointed out that the legal provisions on the transparency of funding of political parties required more precise wording to ensure correct application.

16. According to the GRECO compliance report, most of the recommendations formulated had been implemented at least partially by the authorities, with more deficiencies remaining currently in

the sector of political party financing, where GRECO again noted, that Azerbaijan still lacks a truly pluralistic party landscape, and urged the country to continue in the efforts to implement all the remaining recommendations.

17. Azerbaijan became a party of the Additional Protocol to the Criminal law Convention on Corruption in August 2013 having withdrawn numerous of its reservations to the Convention. This was welcomed by GRECO in the compliance report. The Government is currently implementing the "National Anti-Corruption Action Plan 2012-2015", which has been preceded by the 2004–2006 and 2007–2012 anti-corruption programmes.

18. As a result of the efforts made by Azerbaijan in the past years, it was ranked 127th (out of 175 states) in 2013 on the Transparency International Corruption Perception Index, compared to the 150th (out of 179 states) position at the time of the last evaluation.

General Situation of Money Laundering and Financing of Terrorism

Money laundering

19. The close geographic proximity to Iran, which remains listed by the FATF as a high-risk and non-cooperative jurisdiction, also presents a potential money laundering and terrorist financing threat. The FMS conducts thorough research in relation to transactions received into its database that relate to Iran and they are regularly analysed and kept under control. The Central Bank confirmed that transactions with Iranian nationals are closely supervised and transfers of funds to Iran are prohibited.

20. Azerbaijan's strategic position on the border between Asia and Europe has been favourable to the development of commercial and transportation routes, which connect the two continents and pass through the country. The strategic position is nevertheless also attractive for criminals and organised crime groups, this being strengthened by the existing transportation infrastructure.

21. Illicit narcotics trafficking through Azerbaijan remains a significant concern, exacerbated by the country's location along major drug trafficking routes from Afghanistan and Iran to Europe and Russia although it is considered that the proceeds from these crimes are not normally laundered through Azerbaijan. Drug use and cultivation exist on a relatively small scale in Azerbaijan and are less significant problems[3]. Azerbaijan is also a source, transit, and destination country for men, women, and children subjected to forced labour and sex trafficking[4].

22. To prevent illegal drug consumption and trafficking, targeted legal and institutional measures were implemented and the relevant authorities in the Republic of Azerbaijan implement a risk-based approach.

23. Moreover, the Program against Illegal Trafficking of Drugs, Psychotropic Substances and their Precursors and Spreading of Drug Addiction for the years 2013-2018 was approved in June 2013.

24. According to the authorities, the most common predicate offences investigated for money laundering are theft, fraud, tax evasion, embezzlement, drug and weapons production and trafficking, smuggling and corruption. However, the most common predicate offences, based on the disclosures disseminated to law enforcement agencies from the FMS, are tax evasion, counting for more than 75%, followed by corruption (almost 10%), embezzlement, fraud, drug crimes and cybercrime. The authorities have provided the table below, which reflects the statistics available for the period 2008-2013 on the reported cases covering the FATF designated categories of offences.

[3] US State Department International Narcotics Control Strategy Report 2014
[4] US State Department Trafficking in Persons Report 2013

Table 2: Cases reported – breakdown per FATF designated categories of offences (2008-2013)

	2008	2009	2010	2011	2012	2013*
FATF designated categories of offences						
Participation in an organised criminal group and racketeering	118	298	78	34	91	59
Terrorism, including terrorist financing	1		3	2	1	1
Trafficking in human beings and migrant smuggling	76	80	70	69	89	74
Sexual exploitation, including sexual exploitation of children	310	233	142	98	128	123
Illicit trafficking in narcotic drugs and psychotropic substances	2,786	3,160	3,161	2,771	2,559	2,337
Illicit arms trafficking	213	234	275	225	269	252
Illicit trafficking in stolen and other goods	10	15	9	4	6	6
Corruption and bribery	137	172	198	217	217	168
Fraud	1,294	1,330	1,188	1,588	1,716	1,701
Counterfeiting currency	9	16	32	38	12	21
Counterfeiting and piracy of products		4	2	1	5	2
Environmental crime	127	126	153	135	117	106
Murder, grievous bodily injury	383	403	461	516	566	524
Kidnapping, illegal restraint and hostage-taking	27	39	18	23	25	23
Robbery or theft	3,770	3,994	4,162	5,325	4,488	4,219
Smuggling	121	194	250	206	190	183
Extortion	50	26	24	17	13	30
Forgery	264	280	204	187	159	136
Piracy	1	1				
Insider trading and market manipulation						1
Total FATF designated categories of offences	9,697	10,605	10,430	11,456	10,651	9,965
Other recorded criminal offences crime						
Tax evasion	335	309	594	540	408	552
Other non-financial recorded crime	11,660	11,916	11,986	12,267	10,838	7,543
Total	21,692	22,830	23,010	24,263	21,897	18,060

* To 1 November 2013

25. The FMS has also identified several means used by criminals to launder proceeds of criminal activities; they particularly presented the following patterns: suspicious transfers of funds from various persons to a single person, large value fund transfers from a legal person to a natural person, use of false documents to open accounts and transactions that seem obscure and do not match the customer's profile. These examples all show that the main cases of money laundering suspicions in Azerbaijan are usually at some point connected to the official banking sector.

Financing of Terrorism

26. Terrorist attacks in Azerbaijan occur relatively frequently, as in the past few years the authorities handled several cases of either undertaken attacks or attempted attacks.

27. Shortly after the last evaluation, an explosion occurred in the Abu-Bakr mosque in Baku, committed by a terrorist group "Forest Brothers". Following the attack, 26 members of the group were detained and sentenced to imprisonment. At the beginning of 2012, several investigations and arrests took place in relation to a number of planned attacks. One of these cases was an attempted attack during the Eurovision song contest, also in Baku, where the authorities managed to prevent the attack and initiate criminal proceedings, which resulted in 9 persons convicted.

28. The threats emanating from Iran are shown in various particular cases presented by the US Department of State's reports, which show that just in 2012, two of the cases of planned attacks were related to Iranian citizens.

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

Financial sector

Table 3: Number of financial institutions operating in Azerbaijan in the year 2013

Financial Institutions		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Acceptance of deposits and other repayable funds from the public	Central Bank	43 Banks
2. Lending	Central Bank	189 Banks (43) Non-bank credit organisations (146)
3. Financial leasing	Central Bank	43 Non-bank credit organisations (29) Leasing organisations (14)
4. The transfer of money or value	Central Bank Ministry of Communications and Information Technologies	44 Banks (43) National postal operator (1)
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Central Bank	43 Banks (43)
6. Financial guarantees and commitments	Central Bank	43 Banks
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange;	Central Bank	43 Banks

(c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading		
8. Participation in securities issues and the provision of financial services related to such issues	Central Bank SCS	58 Banks (43) Securities issues participants (15)
9. Individual and collective portfolio management	Central Bank SCS	44 Banks (43) Securities issues participants (1)
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Central Bank	43 Banks
11. Otherwise investing, administering or managing funds or money on behalf of other persons	Central Bank SCS	44 Banks (43) Securities issues participants (1)
12. Underwriting and placement of life insurance and other investment related insurance	Central Bank Ministry of Finance	Life Insurance 3
13. Money and currency changing	Central Bank	43 Banks

Credit institutions

29. According to an assessment made by the Asian Development Bank, the banking sector in Azerbaijan accounted for 93% of the financial sector assets in 2012.

30. In September 2013, there were 43 banks operating in Azerbaijan, with the majority being relatively small. The exception is the only state-owned bank, the International Bank of Azerbaijan (IBA), which accounts for about 34% of banking sector assets. The weak implementation of the rule of law and democratic principles in Azerbaijan (referred to in Section 1.1 of this report) might have an impact on the IBA, as a state-owned bank, making it vulnerable to misuse for ML/FT purposes. While 22 banks have some foreign shareholding, only 7 are majority foreign owned; as can be seen from the table below. Foreign investment has so far come mainly from international financial institutions, the Russian Federation, Turkey, and Middle Eastern countries.

Table 4: Ownership structure of commercial banks between the years 2008 and 2013

	2008	2009	2010	2011	2012	2013
Foreign ownership more than 50%	7	7	7	7	6	7
Foreign ownership less than 50%	14	14	13	14	14	13
Resident Shareholders 100%	23	23	23	21	21	21

Foreign Branches	2	2	2	2	2	2
Total number of banks	46	46	45	44	43	43

31. At the end of 2013, banking sector assets were equivalent to 34% of GDP, whilst loans accounted for 74% of assets, and loans to households and service sectors together account for 52% of total loans. Azerbaijan is not considered to be an offshore financial centre.

32. Regarding the non-banking credit institutions, the sector has been growing significantly since the 3rd round evaluation. In September 2013, there were 111 credit unions holding a licence issued by the CBA, compared to 77 credit unions in 2007. Also the assets held by the credit unions grew from 13 million AZN (€12.1 million) in 2007 to 54 million AZN (€50.4 million) in 2012.

33. An even more significant increase presented by microfinance institutions. Their number grew from 18 to 35 between the years 2007 and 2012 and the value of the assets held by them from 128 million AZN (€120 million) to 408 million AZN (€381 million). At the time of the 3rd round evaluation a draft Law on Non-bank Credit Institutions was being prepared to regulate microfinance institutions, this law has since been adopted.

The insurance sector

34. The life insurance sector in December 2012 comprised 3 insurers, all of whom sold direct to customers. In general, the sector does not present a high concentration of business. The largest institution, which is state-owned, has a share of 45% of total premiums; whilst the largest two institutions have a combined market share of 83%. None of the insurers have foreign shareholding.

35. The sum of total assets of the life insurance companies was 113 million AZN (€106 million). The life insurance sector is therefore still relatively small, with its assets accounting for only 0.19% of the GDP. The government has started to support the sector by providing tax incentives and introducing mandatory insurance.

Securities sector

36. As of September 2013, 15 broker companies and one asset management company were operating in Azerbaijan, of which only one was funded by foreign capital. It should be noted that the majority of the ownership of these companies is held by banks, which are operating in Azerbaijan. Only 4 companies are owned by other legal and physical persons than banks.

37. For the companies to be able to operate on the market, they are required to hold a responding licence, issued by the State Committee on Securities. In 2013 there were 34 such licences granted, of which 14 were for broker and 13 for dealer activities.

38. The securities market is relatively small, as the trading volume of financial securities amounts only to 2% of the GDP. Nevertheless, its size has grown significantly in the past years, the value of corporate securities in 2013 (1,329 million AZN (€1,242 million)) is almost three times the size of the market in 2008.

39. The basic institutional framework for the securities market has been in place for more than a decade. The pool of enterprises that could issue securities in Azerbaijan is not small; out of a total of more than 80,000 enterprises, about 1,200 are joint stock companies with more than 20 shareholders and about 250 of them have more than 100 shareholders. According to the assessment of the Asian Development Bank, the low participation on the securities market is caused above all by the fact that many larger companies are still state owned, therefore they have alternative sources of funding and the government has not yet started to list them.

40. The authorities, with the support of World Bank, have developed the State Program for the Development of Securities Markets for 2011–2020, in order to expand the volume of the market, as well as to strengthen the legal and regulatory framework.

Designated Non-Financial Businesses and Professions (DNFBP)

Table 5: Number of Designated Non-financial Businesses and Professions in Azerbaijan in 2013

Type of business	Supervisor	No. of Registered Institutions
Casinos (which also includes internet casinos)	SCS	1 SCS (Lottery organiser)
Real estate agents	FMS	70
Dealers in precious metals and precious stones	Ministry of Finance	341
Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to 'internal' professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering	Ministry of Justice Chamber of Auditors Ministry of Taxes Bar of Lawyers	57 notaries 96 auditors 158 lawyers
Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere	N/A	None

41. At the time of the 3rd round evaluation, the DNFBPs were not subject to any AML/CFT obligations. Pursuant to the adoption of the AML/CFT Law, AML/CFT obligation were expanded to cover all the entities necessary according to the FATF recommendations and supervisory entities were defined, as presented in the table below.

42. No other significant changes have been reported regarding the structure and status of the DNFBPs, the reader is therefore referred to the pages 26 and 27 of the 3rd round mutual evaluation report (paragraphs 47-55) for more detail on this topic. It should, however, be noted that there has been a significant decrease in the number of real estate agents, dealers in precious metals and stones legal professionals and notaries operating in Azerbaijan.

43. Pursuant to a presidential decree from 1998, casino and gaming activities are prohibited in the territory of Azerbaijan. There is however one lottery organiser operating in the country, Azerlotereya OJSC, which is fully owned by the state. Azerlotereya OJSC is subject to supervision and regulation of the State Committee on Securities and is regulated by the Law on Lotteries.

Supervision over obligated entities

44. Following the adoption of the AML/CFT Law, the Presidential Decree on the Application of the AML/CFT Law in 2009 designated the supervisory authorities with regard to all obligated entities.

45. The new legislation maintained the majority of the supervisory duties within the institutions, which were undertaking it at the time of the previous evaluation. Supervision over commercial banks remains therefore in the competence of the National Bank of Azerbaijan; the Ministry of Finance remains the supervisory authority for the insurance sector, as well as its newly acquired competence over dealers in precious stones and metals. Other appointed supervisors can be observed in the summary table of obligated entities and their respective supervisors as presented below.

Table 6: Supervisory authorities with regard to the different types of obligated entities

Obligated entity	Supervisory authority
Commercial banks	Central Bank of Azerbaijan
Insurance sector	Ministry of Finance (State Insurance Supervision Division)
Dealers with precious stones and metals	Ministry of Finance
Brokers, who professionally participate in the securities market	State Committee for Securities
Entities engaged in the management of assets	State Committee for Securities
Post offices	Ministry of Communications and Information Technologies
Notaries	Ministry of Justice
Auditors	Chamber of Auditors
Pawnshops	Financial Monitoring Service
Real estate dealers	Financial Monitoring Service
NPOs	Ministry of Justice

Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

46. As no major changes have been reported, the reader is referred to pages 27 and 28 of the 3rd round mutual evaluation report (paragraphs 56-65) for more detail on this topic.

Non-profit organisations

47. Azerbaijan has 575 registered churches and religious communities, which are supervised by the State Committee for the Works with Religious Associations. There are also 3,007 non-governmental organizations (NGOs) of which 195 are funds.

Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

48. Following its establishment in 2009, the FMS developed a mid-term National Strategy for 2010-2013, intending to strengthen the AML/CFT regime. The Strategy determined key activities for the following three years and required the involvement of the relevant authorities. It covered the aspects of the AML/CFT system and included specific measures regarding:

- improvement of the legislation;
- development of institutional capacity (in particular the FMS, but also the law enforcement, judiciary and reporting entities);
- improvement of supervision over financial institutions and DNFBPs;
- development of the system of personnel education and training for AML/CFT purposes;

- enhancement of international cooperation.

49. Similar goals were set forward also in the Annual Report 2012 of the FMS with an emphasis on pursuing efforts with regards to the objectives achieved and developing their potential. (For example regarding international cooperation, capacities of the staff of the institutions and IT background of the authorities).

50. Furthermore, the President of the Republic of Azerbaijan approved the "National Action Plan against Corruption 2012-2015" in September 2012. The Action Plan amongst others covers matters concerning AML/CFT measures, especially in a separate section entitled "Preventing money laundering and consolidating institutional mechanisms". Becoming a party to Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), establishing national mechanisms on asset recovery and setting up integrated AML/CFT statistical database are the major targets of this Action Plan.

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

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

Financial Monitoring Service

52. The FMS was established within the Central Bank of the Republic of Azerbaijan by a Decree of the President of the Republic in February 2009, as a result of the adoption of the AML/CFT Law. Its statute was approved in July of the same year and the Director and Deputy Director were appointed in October by a Presidential Decree.

53. The FMS serves as a national centre for receiving (requesting), analysis and dissemination of STRs and other information regarding potential money laundering or terrorist financing. Its tasks also comprise the implementation of the state policy, improvement of the supervision system and coordination of the activities of relevant state authorities in the AML/CFT area. The FMS is also in charge of international relations with regard to money laundering and terrorist financing.

54. Apart from the above mentioned duties, the FMS is also the supervisory authority for pawnshops and dealers in real estate sector.

Office of the General Prosecutor

55. Pursuant to the Presidential Decree on Application of the AML/CFT Law in 2009, the Office of the General Prosecutor was officially granted the authority to investigate money laundering cases.

56. In 2011, by an order of the President of the Republic, the Anti-Corruption Department (ACD) of the Office of the General Prosecutor has been expanded to a hundred employees (compared to 40). This is of particular importance as this specific department also has the competence to investigate money laundering issues.

The Ministry of Justice

57. 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. According to the AML/CFT Law, the Ministry of Justice was appointed as the supervisory authority for notaries and non-profit organisations. 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.

Ministry of Taxes

58. The Ministry of Taxes is the central executive authority for the implementation of State tax policy, and collection of taxes. The Ministry supervises other persons providing legal service. The 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 Finance

59. The Ministry of Finance, in addition to the insurance sector over which it has already been exercising supervision, also has under its competence dealers in precious metals and stones.

Ministry of National Security

60. Pursuant to the Presidential Decree on Application of the AML/CFT Law in 2009, the Ministry of National Security was officially granted the authority to investigate terrorism and terrorist financing cases.

State Committee for Securities

61. The State Committee for Securities is the central executive authority responsible for implementation of state policy and supervision in the securities market. Therefore, it is the supervisory authority for brokers, who professionally participate in the securities market and those, who are engaged in management of assets.

State Customs Committee

62. In addition to its original competencies, the State Customs Committee was authorised in 2009 by the Presidential Decree on Application of the AML/CFT Law to detect physical cross-border transportation of currency and bearer negotiable instruments. The same year the State Customs Committee presented a declaration form for currency brought into or out of Azerbaijan, which was subsequently approved by an Ordinance of the Cabinet of Ministers.

Other institutions

63. As a consequence of the adoption of the AML/CFT Law, there are several institutions which are newly relevant to the AML/CFT system exclusively due to their function as supervisory authorities. These institutions are Ministry of Communications and Information Technologies, which exercises supervision over post offices, the State Committee for the Works with Religious Associations in respect of religious associations and Chamber of Auditors in respect of auditors.

64. For further detail about the above mentioned institutions, as well as about other institutions, which take part in ensuring the correct application of AML/CFT measures and procedures (such as the Ministry of Internal Affairs, Ministry of Foreign Affairs), the reader is referred to pages 29 to 31 of the 3rd round mutual evaluation report (paragraphs 73-85), as no other major changes have taken place.

c. The approach concerning risk

65. Azerbaijan has decided to undertake a national AML/CFT risk assessment and it has already taken several steps. A special working group, which will be in charge of the national risk assessment, was established for this purpose in 2012 and the Word Bank risk assessment methodology was chosen. Currently, the major technical and financial issues have already been agreed with World Bank project managers and the national risk assessment in the AML/CFT field is expected to be conducted throughout the years 2014 and 2015.

66. Pursuant to the Law on Amendments to Individual Legislative Acts of the Republic of Azerbaijan from March 2010, provisions dealing with PEPs, unusual transactions and non-face to face business relationships were set out in the AML/CFT Law.

67. Azerbaijan has adopted the Regulation on Establishment of Internal Control System, which introduces a "risk-based approach" performing enhanced and simplified customer due diligence measures for different categories of customer, business relationships, transactions and products.

d. Progress since the last mutual evaluation

68. Since the 3rd round on-site visit in April 2008, Azerbaijan has taken several measures to develop and strengthen its AML/CFT system. The main AML/CFT legislative development has been the adoption of the Law of the Republic of Azerbaijan on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism (the AML/CFT Law). This law was adopted in February 2009 and is intended to address the deficiencies identified in the 3rd round mutual evaluation report. Given the extent and importance of this Law, the reader is referred to the corresponding parts of the report for more detail.

69. Also in February 2009, the FMS was established under the Central Bank of the Republic of Azerbaijan in accordance with the Decree of the President of the Republic. Its competence comprises the implementation of the state policy in the AML/CFT sphere, improvement of the supervision system and the coordination of the activity of the relevant state authorities in this field. In addition, the FMS serves as a national centre for the receiving (requesting), analysis and dissemination of STRs and other information regarding potential money laundering or terrorist financing.

70. Following the adoption of the AML/CFT Law, several other legislatives acts (such as the Law on Notaries, Law on Lottery, Criminal Code, Code of Administrative Infringements, and others) were amended in July 2009 aiming to align them with the international AML/CFT requirements with introducing criminal liability for "tipping off" in the Criminal Code and administrative liability for all other breaches of the AML/CFT legislation in the Code of Administrative Infringements. The latter liability measures cover failing to report cash transaction reports (CTRs) and STRs, failing to perform CDD measures, to apply internal control mechanisms and other elements as well.

71. In July 2009, a declaration form for currency brought into or out of the Republic of Azerbaijan, submitted by the State Customs Committee, was approved by the Cabinet of Ministers of the Republic of Azerbaijan.

72. In the same month, the statutes of the supervisory authorities were amended by a presidential decree to provide them with competencies adequate to the roles assigned to them by the AML/CFT Law.

73. In March 2010, Azerbaijan adopted the Law on Amendments to Individual Legislative Acts of the Republic of Azerbaijan to Enhance the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism, which amends the key laws concerning AML/CFT, in order to further implement the recommendations made in the 3rd round MER. Pursuant to this Law, the Criminal Code was amended establishing the criminal offences of insider trading and market manipulation and thus covering in its legislation all the predicate offences required by international standards.

74. The Law also amended the Criminal Code together with the AML/CFT Law and the Law on Combating Terrorism, intending to ensure the compliance with the UN Convention for the Suppression of Financing of Terrorism, by introducing new provisions regarding the scope of the financing of terrorism offence.

75. Regarding customer due diligence measures, the above mentioned Law amended the AML/CFT Law. The amendment was intended to introduce a number of changes regarding this issue, such as the prohibition of anonymous accounts, listing the variety of situations when CDD measures

are to be applied, introducing a definition of beneficial and ultimate owners and requirements for the obligated entities to identify such a person.

76. Alongside the entry into force of the AML/CFT Law, several regulations were prepared and came into force in the years 2010 – 2012.

- Regulation on the procedure of listing and de-listing of designated persons under the relevant UNSCRs (June 2010);
- Regulation on the procedure of approval of the Non-cooperative Countries or Territories (NCCT) list (June 2010);
- Regulation on submission of data by FIs and DNFBPs to the FMS (May 2010);
- Regulation on requirements to professional skills of compliance officers (June 2010);
- Regulation on supervising the observance of requirements of the AML/CFT Law by pawnshops and real estate agents (July 2010);
- Regulation on establishment of the internal control system by FIs and DNFBPs which are legal persons (September 2010);
- Regulation on submission of statistical information to the FMS concerning AML/CFT legislation infringements (February 2011);
- Central Bank of the Azerbaijan Republic Regulation «On supervision over the activities on the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism in the banks» (February 2011);
- Regulation on the inspection of the activities of the securities market participants (September 2011);
- Criteria for detection of cases that cause suspicions or create sufficient grounds for suspicions on their being linked to criminally obtained funds or other property or terrorist financing (red flags) (December 2011);
- Methodological guidance on Know Your Customer policy (July 2012);
- Regulations on informing of monitoring entities and other persons involved in monitoring in response to submission of information to the FMS.

77. One of these regulations is the Regulation on Establishment of Internal Control System, which contains a risk-based approach by introducing enhanced and simplified customer due diligence measures for different categories of customer, business relationships, transactions and products. According to this Regulation, each reporting entity should establish the rules and procedures that allow detection of all types of risks related to customers, business relationships, transactions and products. Moreover, the reporting entities may determine additional risk types for identifying and assessing the risks related to money laundering or terrorism financing along with risk types specified by this Regulation.

78. In 2010, the FMS signed several MoUs with other state authorities, which conduct supervision functions in the AML/CFT field, as well as with law enforcement agencies. These MoUs designate the key directions for the future inter-institutional cooperation, such as mutual exchange of information, joint use of databases, responding to mutual legal assistance requests, conduct of joint studies and preparation of analytical and methodological materials, organising conferences, seminars and trainings.

79. In 2010, the FMS was granted observer status within the Egmont Group and, as has already been mentioned above, it was accepted as a full member in July 2011.

80. The Criminal Code was again amended in March 2012. In particular, the amendment introduces criminal liability of legal persons, setting forward a range of applicable sanctions, although at the time of the on-site visit this had yet to be brought into force. Additionally, a non-conviction based confiscation procedure has been established.

81. Originally, the FMS was using a locally developed IT system "azAML". Aiming to ensure the correct functioning of the FMS, "goAML" analytical system developed by international experts was introduced and installed for use in 2012. The "goAML" analytical software, a product of the United Nations Office on Drugs and Crime (UNODC), enables receiving, processing and analysing reports submitted by reporting entities to the FMS.

82. Between the years 2010 and 2013, experts from the FMS and other relevant authorities (the judiciary, law enforcement) participated in a number of trainings organised for them by a number of international organisations (IMF, World Bank, OSCE). They also participated in several workshops and visited FIUs of other countries in search for best practices (Netherlands, Russia).

83. The FMS has also created an e-learning portal within its website. Undertaking the on-line courses may be concluded by taking a final exam, which certifies a successful participant as a national AML/CFT expert.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

Criminalisation of Money Laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

84. In the 3rd round MER Azerbaijan was rated NC for R.1 inter alia, due to the following shortcomings:

- not all of the designated predicate offences were covered; and
- the physical and material elements of the ML offence did not fully comply with the Vienna and Palermo Conventions.

Legal Framework

85. The Law of the Republic of Azerbaijan, No 973-IIIQ, "On amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism" (adopted by the Parliament of the Republic of Azerbaijan on 5 March 2010) has amended the Criminal Code and addressed many of the recommendations made in the 3rd round report. These amendments have also been analysed in the context of the Progress Report and written analysis by the Secretariat of Core Recommendations dated 14 December 2011 (the Progress Report) which was adopted at MONEYVAL's 37th Plenary meeting.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

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

> *Article 193-1.* ***Article Legalization of criminally obtained funds or other property***
>
> *193-1.1. Legalization of funds or other property, knowing that such funds or other property is the proceeds of crime, that is:*
>
> > *193-1.1.1. the conversion or transfer of funds or other property, knowing that such funds or other property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the funds or other property or of helping any person who is involved in the commission of any crime to evade the legal consequences of his or her action, or accomplishment of financial transactions or other deals for the same purposes by using funds or other property, knowing that such funds or other property is the proceeds of crime;*
> >
> > *193-1.1.2. the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to funds or other property, knowing that such funds or other property is the proceeds of crime — shall be punished by a fine at a rate from 2000 up to 5000 AZN 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, committed:*

193-1.2.1. by group of persons in a preliminary conspiracy;

193-1.2.2. repeatedly;

193-1.2.3. by a person using 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 it.

193-1.3. The acts provided for by articles 193—1.1 or 193—1.2 of this Code, committed:

193-1.3.1. by organized group or criminal community (criminal organization);

193-1.3.2. 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.

Article 194. ***The acquisition, possession, use or disposition of funds or other property, knowing, at the time of receipt, that such funds or other property is the proceeds of crime.***

194.1. Beforehand not promised acquisition, possession or use of funds or other property in ***significant*** *amount, knowing, at the time of receipt, that such funds or other property is the proceeds of crime, or disposition of funds or other property, knowing that such funds or other property is the proceeds of crime, without the purpose not to conceal or disguise the illicit origin of the funds or other property—shall be punished by the fine from one thousand up to three thousand AZN or with the imprisonment for the term up to four years with confiscation of property.*

194.2. The acts provided for by Article 194.1 of this Code, committed:

194.2.1. by group of persons in a preliminary conspiracy or organized group;

194.2.2. by a person using his/her official position;

194.2.3. by person, who have been convicted earlier for this crime;

194.2.4. in large amount—shall be punished by imprisonment for the term from three up to seven years with confiscation of property.

87. Further to the above-mentioned amendments, both “conversion and transfer” and the “concealment or disguise” of property are deemed to be covered. However, there still appear to be some deficiencies in the provisions in respect of the offence of acquisition, possession or use of property in Article 194.1 of the Criminal Code, namely (i) there is reference to acquisition, possession and use “in significant amount”. The authorities have explained, in this connection that this is understood to refer to an amount ranging from 1,000 up to 7,000 AZN (€930 and €6,550 respectively) which suggests that acquisition, possession or use in respect of amounts under 1,000 AZN (€930) would not be illegal. There is also a separate reference to a purpose for such acquisition, possession or use, though the use of the word “*not*” makes its ambit unclear. It is noted that the required standard prohibits acquisition possession and use for all purposes.

The laundered property (c.1.2)

88. The authorities have informed the evaluators that “criminally obtained funds”, “funds and other property” referred to under Articles 193 and 194 of the Criminal Code are defined under Article 1.01 of the AML/CFT Law.

1.0.1. criminally obtained funds or other property *– funds of every kind, property, whether movable or immovable, corporeal or incorporeal, tangible or intangible, legal documents evidencing the title to such property, obtained directly or indirectly through the commission of an offence provided by the Criminal Code of the Republic of Azerbaijan;”*

89. This definition fully complies with the definition provided under the UN Convention for the Suppression of the Financing of Terrorism and the FATF standards. While Article 1.01 of the AML/CFT law clarifies that it is applicable in the context of the Criminal Code, the evaluators consider that for the sake of clarity the Criminal Code should make a direct reference to the AML/CFT law with respect to the definition of funds or other property.

Proving property is the proceeds of crime (c.1.2.1)

90. The authorities have informed the evaluators that, according to Azerbaijani Legal Doctrine, all articles of the Criminal Code may serve as a basis for criminal prosecution on their own. Therefore, the absence of a judicial finding of guilt in respect of the predicate offence does not, in principle, preclude money laundering investigations and prosecutions. However, as will be elaborated further under the section on effectiveness, the evaluator notes that the statistics as well as the case examples provided by the authorities show that in practice ML is always prosecuted together with the underlying predicate offence/s and that there have been no cases of stand-alone ML. This brings into question the effective implementation of criteria c.1.2.1.

The scope of the predicate offence (c.1.3) and threshold approach for predicate offences (c.1.4)

91. Azerbaijan follows an "all crimes" approach to money laundering. Further to the amendments of Law 973-IIIQ, the offences of insider trading and market manipulation have now been introduced in the Criminal Code and all designated categories of predicate offences to ML are now fully criminalised in Azerbaijan, in accordance with the FATF standards.

Extraterritorially committed predicate offences (c.1.5)

92. Under Article 11 of the Criminal Code, the criminal law applies to crimes that began, continued or terminated in the Republic of Azerbaijan. The authorities have informed the evaluators that when a predicate offence is committed in another country and ML takes place domestically, the perpetration of the ML offence is considered to be continued or ended in the territory of the Republic of Azerbaijan and falls under national jurisdiction.

93. Furthermore, under Article 12 of the Criminal Code citizens of the Republic of Azerbaijan and stateless persons permanently living on the territory of the Republic of Azerbaijan are criminally liable for an act committed abroad on a dual criminality basis and if the person has not been condemned in a foreign state. Foreigners and stateless persons who have committed a crime outside of the Republic of Azerbaijan are criminally liable if the crime is directed against the citizens of the Republic of Azerbaijan, interests of the Republic of Azerbaijan, as well as in cases, stipulated by international instruments to which the Republic of Azerbaijan is a party, provided they were not condemned in a foreign state. Furthermore, citizens of the Republic of Azerbaijan, foreigners and stateless persons who have committed crimes provided for under international instruments to which the Republic of Azerbaijan is a party are criminally liable in Azerbaijan, irrespective of the country in which the crime was committed.

94. Under Article 2.2 of the AML/CFT law, this Law applies to the activities related to ML and financing of terrorism outside the jurisdiction of the Republic of Azerbaijan in accordance with the international instruments to which the Republic of Azerbaijan is a party.

95. These provisions appear to give an explicit basis for ML jurisdiction when the funds in question have been criminally obtained outside Azerbaijan (on a dual criminality basis). However, the evaluators note that there have been no convictions for money laundering which are related to predicate conduct in another jurisdiction and authorities have advised that they lack experience in investigating these types of offence. This point is further elaborated under the section on effectiveness.

Laundering one's own illicit funds (c.1.6)

96. Article 139-1 of the Criminal Code criminalises ML regardless of whether the predicate offence has been committed by the money launderer or by a third party. Moreover, the authorities have not pointed to any fundamental principle of their domestic law which would hinder the prosecution of self-money laundering. The evaluators note that they have been provided case examples of convictions for self-laundering.

Ancillary offences (c.1.7)

97. The 3rd round report concluded that ancillary offences to ML were indeed criminalised however, conspiracy and association were only available in the context of organised crime. Notably, a combination of Articles 27, 28 (preparation of crime) and 29 (attempt) of the Criminal Code (CC) can provide a functional equivalence to the common law offence of conspiracy for minor serious and especially serious crimes and when prosecuting offences committed by organised crime. While conspiracy to commit basic ML is not explicitly provided for, it is accepted that this can be covered either as preparation or attempt (Article 27, 28, 29 CC). Although aiding, abetting, facilitating and counselling the commission of ML is not specifically provided for, it is deemed to be covered both by the general part of the CC (Articles 31 and 32 (accomplice and types of accomplice) and, further to the amendments of law No 973-IIIQ, under Article 32.5 of the CC:

> 32.5. *A person who has aided in the commission of a crime by advice, instructions and information, means or instruments in committing a crime or by of obstacles, as well as a person beforehand promising to conceal a criminal, means or instruments of commission a crime, traces of a crime or criminally obtained funds or other property, to acquire, possess, use or dispose of criminally obtained funds or other property as well, shall be admitted as the facilitator).*

98. The evaluators note that there have been no convictions for ancillary offences.

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

99. The authorities state that dual criminality is a principal norm of the criminal proceeding in Azerbaijan which suggests that they do not think this is possible.

Recommendation 2 (rated PC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

100. In the 3rd round MER Azerbaijan was rated PC for R.2 due to the following reasons:

- criminal liability for ML did not extend to legal persons;
- the practice of allowing the intentional element of the ML offence to be inferred from factual circumstances was untested in practice; and
- the effectiveness of the provisions was called into question as there had been no investigations, indictments or court decisions.

Legal Framework

101. The Law of the Republic of Azerbaijan "On amendments to the Criminal Code of the Republic of Azerbaijan" (adopted by the Parliament of the Republic of Azerbaijan on 7 March 2012) extends criminal liability for money laundering to legal persons. However, it is not yet in force as it awaits the adoption of relevant amendments to the Code of Criminal Procedure.

Liability of natural persons (c 2.1)

102. As noted in the 3rd round report, natural persons are subject to criminal liability for the money laundering offence. The mental element of the offence of money laundering is based on the general principles set out in Article 25 of the Criminal Code:

"*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 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.

103. Money laundering cannot be prosecuted on the basis of a "should have known" or negligence standard.

The mental element of the ML offence (c 2.2)

104. As noted in the 3rd round report, the law does not provide explicitly that the criminal intent, knowledge or purpose can be inferred from objective factual circumstances. Nevertheless, the Azerbaijani authorities have stated that with the ratification of the Palermo Convention, Azerbaijan has accepted this principle. The authorities are of the view that in practice under Article 124 and 145 of the Code of Criminal Procedure, the intentional element of the offence of money laundering may be inferred from factual circumstances and that the Azerbaijani prosecutors may rely upon both direct and circumstantial evidence such as time and place of the crime and motive of the perpetrator to prove their case in any criminal prosecution.

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 (…)

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.

Article 145. ***Assessment of evidence***

145.1. All evidence shall be assessed as to its relevance, credibility and reliability. The content of all evidence Collected for the purposes of prosecution shall be assessed in terms of whether it is sufficient to substantiate the charge.

145.2. The preliminary investigator, investigator, prosecutor, judge and jury shall assess the evidence according to their personal conviction on the basis of a thorough, full and objective examination of its content, guided by the law and their conscience.

145.3. If suspicions which emerge during the process of proving the charge cannot be removed by other evidence, they shall be interpreted in favor of the suspect or accused.

105. As was the case in the third round, the evaluators consider that the formulation of Article 124 does not support this interpretation. The possibility to infer the intentional element of ML from

objective and circumstantial evidence is a key in prosecuting cases of autonomous ML, where the underlying predicate offence has not necessarily been identified. In the view of the evaluators, this has an impact on the effectiveness of the system and they note that, indeed, no cases of autonomous ML have been recorded in Azerbaijan and consider that the above-mentioned principle should be reflected clearly in the law in order to dispel any doubt amongst domestic practitioners.

Liability of legal persons (c 2.3)

106. The third round report noted that legal persons could not be held criminally liable in Azerbaijan. The evaluators considered it a positive development that the law on "*Amendments to the Criminal Code of the Republic of Azerbaijan*" of 7 March 2012 extends criminal liability for money laundering to legal persons, it regrets however that at the time of the on-site visit the provisions on criminal liability of legal persons had not yet entered into force (as they awaited the entry into force of the amendments to the Code of Criminal Procedure). These provisions, therefore, cannot be analysed for the purpose of this report.

Liability of legal persons should not preclude possible parallel criminal, civil or administrative proceedings (c 2.4)

107. This recommendation is not applicable as the liability of legal persons is not yet in force.

Sanctions for ML (c 2.5)

Natural persons

108. Articles 193-1 and 194 of the Criminal Code provide the following sanctions for ML offences:

Article 193-1.1 *conversion or transfer, and concealment or disguise shall be punished by a fine at a rate from 2000 to 5000 AZN* (€1,900 to €4,700) *or imprisonment from two to five years with deprivation of the right to hold certain posts or to engage in the certain activities for the term up to three years;*

Article 193-1.2 *the above-mentioned offences committed by a group of persons in a preliminary conspiracy, repeatedly or by a person using his/her official position - shall be punished by imprisonment from five years up to eight years with deprivation of the right to engage in certain activities and to hold certain posts for up to three years;*

Article 193-1.3 *the above-mentioned acts committed by an organised group or criminal community (criminal organisation) in a large amount (exceeding 45000 AZN)* (€42,000) *(- shall be punished by imprisonment from seven up to twelve years with deprivation of the right to hold the certain post or to engage in the certain activity for up to three years;.*

Article 194.1 *acquisition, possession, use of disposition - shall be punished by the fine from one thousand up to three thousand AZN or restriction of liberty for the term up to three years or with the imprisonment for the term up to four years;*

Article 194.2 *the above-mentioned acts committed by a group of persons in a preliminary conspiracy or organised group, a person using his/her official position, a person having been convicted earlier for the crime, in a large amount - shall be punished by imprisonment for the term from three up to seven years.*

109. Confiscation as a criminal legal measure is also applicable to the ML offence.

110. As noted in the 3rd round, Article 15 of the Criminal Code imposes a classification of crimes depending on the nature and the degree to which an offence is considered as a public danger; they are classified as follows: crimes which are not a big public danger, less serious crimes, serious

crimes and especially serious crimes. Under Article 15, less serious crimes are those for which the maximum punishment does not exceed seven years of imprisonment and serious crimes are those for which the maximum punishment does not exceed twelve years of imprisonment. It follows that money laundering is not considered to be a serious crime as the maximum penalty provided for under the law is less than seven years of imprisonment. Money laundering is considered to be a serious crime only when a sentence of more than seven years is imposed under Article 193-1.2 or Article 193-1.3.

111. As noted in the third round, pursuant to Article 63(2) of the Criminal Code the penalty for the offence of preparation regarding money laundering cannot exceed half of the maximum limit for the punishment provided by the provision for the completed crime. Pursuant to Article 63(3) of the Criminal Code penalty for the offence of attempting to commit money laundering cannot exceed three quarters of the maximum. According to Article 33(1) of the Criminal Code the criminal liability of accomplices shall be defined by the nature and degree of the actual participation of each of them in the committing of a crime. Therefore the punishment for accomplices may be somewhat less than for the person committing the crime.

Legal persons

112. As mentioned in the paragraphs above, pending the enactment of the amendments to the Criminal Code, legal persons are not yet criminally liable for ML.

Recommendation 32 (money laundering investigation/prosecution data)

113. The Tables 7 and 8 below set out the money laundering investigations opened, the number of indictments and the convictions handed down in the period between 2009 to the first half of 2014, as well as the sanctions imposed, which are the combined penalty for at least another predicate offence. The authorities have clarified that they are all cases of self-laundering and that the underlying predicate offences are: embezzlement, fraud, misuse of official power and organisation of illegal gambling.

Effectiveness and efficiency

114. Since the 3rd Round evaluation the authorities report that there have been 14 indictments for ML, 13 convictions in the first instance and 12 final convictions. The authorities have informed the evaluators that all convictions were for self-laundering and that, to date, there have been no convictions for stand-alone, autonomous or third party money laundering. This represents a clear improvement as compared to the situation described in the third round report, where no investigation on ML had been initiated. At the same time, when compared to the overall number of investigations and convictions initiated for predicate offences (see Table 2 above), the numbers still appear to be too low.

Table 7: Investigations and Convictions for Money Laundering Offences

Articles of the Criminal Code	Number of opened cases		Number of prosecuted cases		Convictions (First Instance)		Acquittals		Number of convicted persons		Convictions (Final)	
	2013	2014 (6 mon)	2013	2014 (6 mon.)	2013	2014 (6 mon.)	2013	2014 (6 mon.)	2013	2014 (6 mon.)	2013	2014 (6 mon.)
Article 193-1 Legalization of criminally obtained funds	1	4	1	3	1	2			1[a]	2		2[b]

or other property												
Article 194 Acquisition, possession, use or disposition of funds or other property, knowing, at the time of receipt, that such funds or other property is the proceeds of crime	6	4	6	4	6	4	1		5	6	6[c]	4[d]
Article 214-1 Financing of terrorism	1		1		1				4		1[e]	

Penalties

[a] Imprisonment for 7 years (84 months)

[b] Both convicted persons were imprisoned for 7 years (84 months). The average imprisonment period applied to convicted persons was 84 months.

[c] 4 years (48 months) of imprisonment for one person, 1,300 AZN (€1,200)penalty for one person, 4,000 AZN (€3,750) penalty for one person, 1,500 AZN (€1,400) penalty for one person, 1,800 AZN (€1,700) penalty for one person. Average penalty for one person is 2,150 AZN (€2,000).

[d] 7 months of imprisonment for one person, 4,500 AZN (€4,200) penalty for two persons, 2 years 11 months and 28 days (35 months 28 days) imprisonment for one person, 3 years (36 months) imprisonment for one person, 1 year 10 months and 26 days (22 months 26 days) imprisonment for 1 person. The average imprisonment period applied to convicted persons was 25 months; the average penalty amount was 4,500 AZN (€4,200).

[e] 3 persons were imprisoned for 11 years (132 months) and one person for 10 years (120 months). The average imprisonment period applied to convicted persons was 63 months.

Table 8: Money laundering investigations, prosecutions and convictions

	Investigations		Prosecutions		Convictions (First Instance)		Convictions (Final)	
	Cases	Persons	Cases	Persons	Cases	Persons	Cases	Persons
2009	2	2	1	1	1	1		
2010	3	5	1	1			1	1
2011	1	2	3	6	1	3	1	3
2012	3	3	3	3	1	1	1	1
2013	7	10	7	10	7	10	6	7

115. The evaluators consider that the low number of convictions is the consequence of certain factors:

- There appears to be uncertainty as to whether a conviction for a predicate offence is a prerequisite to obtain a conviction for money laundering. Whilst a number of judges of the Supreme Court have confirmed to the evaluators that this was not necessary, there seemed to be a lack of certainty on the point from the GPO. It was subsequently confirmed that the GPO

do not consider that this would be an impediment to an investigation and that, in fact, an investigation into ML with no underlying predicate offence was being considered. The evaluators note, however, that the low number of ML cases opened and the absence of autonomous money laundering prosecutions/cases could be indicative of persisting uncertainties on the subject;

- The absence of investigations/convictions for ML which are related to predicate conduct in another jurisdiction. The authorities have informed the evaluators that, indeed, they lack experience in this connection. This seems to be particularly problematic to the evaluators in light of the fact that Azerbaijan is located along a major drug trafficking route and illicit trafficking in drugs represents one of the most important categories of predicate offences; and the highest number of STRs received by the FIU relate to countries in the NCCT list.

116. The absence of criminal liability of legal persons for money laundering certainly also contributes to the low number of investigations/prosecutions/convictions for ML.

2.1.2 Recommendations and comments

Recommendation 1

117. The deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property (acquisition, possession and use "in significant amounts" and the purposive element) should be addressed in order to bring them fully in line with the requirements of the Vienna and Palermo Conventions.

118. Article 194.1 of the Criminal Code should be clarified to make it clear that acquisition, possession or use are criminalised regardless of whether the purpose is to conceal or disguise the illicit origin of the funds.

119. The ML provisions should make a direct reference to the AML/CFT law with respect to the definition of funds or other property.

120. Lack of investigations and prosecutions other than for self-laundering indicates that there is greater need of education and training with regard to third-party ML and stand-alone ML.

121. The authorities should clarify that a conviction for a predicate offence is a not prerequisite to obtaining a conviction for money laundering. This could be achieved by way of training for prosecutors and judges.

122. The authorities should provide training to law enforcement/prosecutors/judiciary in relation to ML which is related to predicate conduct in another jurisdiction.

Recommendation 2

123. The practice of inferring the intentional element of money laundering from factual circumstances should be tested in practice.

124. The Azerbaijani 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.

125. The Azerbaijani authorities are strongly encouraged to enact the amendments which extend criminal liability to legal persons.

Recommendation 32

126. Money laundering statistics should include an analysis of whether they refer to cases of self-laundering, third-party laundering or autonomous laundering and indicate the underlying predicate offences. They should also clearly indicate whether the penalties imposed refer exclusively to money laundering.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• Acquisition, possession or use of property is criminalised only with respect to "significant amounts"; **Effectiveness** • Low number of convictions for ML and absence of cases of stand-alone and autonomous ML and no cases which relate to predicate offences conducted in another jurisdiction; • Lack of certainty as to whether a conviction for a predicate offence is a prerequisite to obtaining a conviction for money laundering.
R.2	**PC**	• The legislation extending criminal liability to legal persons for money laundering is not yet in force; **Effectiveness** • The principle that criminal intent, knowledge or purpose can be inferred from objective factual circumstances is not tested in practice in relation to the money laundering offence.

Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

127. In the third round MER Azerbaijan was rated PC for SR.II due to the following shortcomings:

- the FT offence did not cover the financing of individual terrorists or terrorist organizations;
- it was unclear whether funding of all activities of terrorist organizations were covered, including legitimate activities;
- the FT offence did not cover all the elements of SRII defined as terrorist offences in the Annex of the TF Convention; the law did not explicitly provide that the offence covered the use of legitimate funds;
- it was unclear whether the concept of funds complied with the TF Convention;
- it was unclear whether knowledge could be inferred from objective, factual circumstances;
- it was unclear if the law required that funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act; and
- there was no criminal liability of legal persons.

Legal framework

128. The Law of the Republic of Azerbaijan, No 973-IIIQ, "On amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism" (adopted by the Parliament of the Republic of Azerbaijan on 5 March 2010) has introduced a new definition of the terrorist financing offence into the Criminal Code. While the new definition addresses most of the technical deficiencies identified in the third round report, some issues, however, are yet to be addressed.

Criminalisation of financing of terrorism (c.II.1)

129. The terrorist financing offence has been redefined in Article 214-1 of the Criminal Code as follows:

"Article 214–1. Financing of terrorism
Wilful provision or collection funds or other property by any means, in full or in part, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to finance the preparation, organisation or carrying out by a person or by a group (organisation, community) of persons of an act which constitutes a crime within the scope and as defined in Articles 102, 214, 215, 219, 219-1, 226, 227, 277, 278, 279, 280, 282 of the Criminal Code, or by an individual terrorist or by a terrorist organization shall be punished by imprisonment for the term from ten up to twelve years with the confiscation of property.
Note:
1. Terrorist financing offence shall not require that the funds or other property were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.
2. The person who has committed act, provided by the article 214-1 of this Code shall be released from a criminal liability if he/she had warned authorities or in different way promoted prevention of commitment of such act and if in his/her actions there were no attributes of structure of other crime."

130. The TF offence as amended covers financing of individual terrorists or terrorist organizations. The evaluators consider that it would be beneficial to spell out that the provisions indeed extend to:

individual terrorists or terrorist organizations who/which attempt to commit terrorist acts; participate as an accomplice in terrorist acts organizes or direct others to commit terrorist acts or contributes to the commission of terrorist acts by a group of persons (…).

131. Article 214-1 prohibits, inter alia, the *provision or collection funds or other property by any means, in full or in part, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to finance the preparation, organisation or carrying (..)* of acts of terrorism as per Article 214.

Article 214. Terrorism

214.1. 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 organizations, 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.

132. The evaluators have been informed by the authorities that all of the offences defined in the treaties listed in the Annex of the TF Convention have been implemented in the Azerbaijani legal order through separate laws and criminalised under the Criminal Code as follows:

Convention for the Suppression of Unlawful Seizure of Aircraft (1970)	**Article 219. Stealing of airship, ship or railway train**	Law “On joining the Convention for the Suppression of Unlawful Seizure of Aircraft” Baku, 9 November 1999№ 744-IQ Law “On joining the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation” Baku, 9 November 1999 № 740-IQ-IQ Law “On joining the 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” Baku, 9 November 1999 № 741-IQ
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971)		
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 (1988)		
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973)	**Article 102. Attack on persons or establishments, which use international protection** **Article 277. Attempt on life of the state or public authority (act of terrorism)**	Law “On joining the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents” Baku, 2 February 2001 № 61-IIQ
International Convention against the Taking of Hostages (1979)	**Article 215. Capture of the hostage**	Law “On joining the International Convention against the Taking of Hostages” Baku, 9 November 1999№ 743-IQ
Convention on the Physical Protection of Nuclear Material (1980)	**Article 226. Illegal handling with radioactive materials** **Article 227. Plunder or extortion of radioactive materials**	Law “On joining the Convention on the Physical Protection of Nuclear Material” Baku, 9 December 2003 № 547-IIQ

Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988), Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988)	**Article 219-1. Sea robbery**	Law "On joining the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation Baku, 9 December 2003 № 548-IIQ Law "On joining the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf" Baku, 9 December 2003 № 549-IIQ
International Convention for the Suppression of Terrorist Bombings (1997)	**Article 214. Terrorism**	Law "On joining the International Convention for the Suppression of Terrorist Bombings" Baku, 2 February 2001 № 60-IIQ

133. The evaluators consider that the provisions of the Criminal Code referred to in the table above duly implement the offences provided under the following Conventions:
    - Convention for the Suppression of Unlawful Seizure of Aircraft;
    - International Convention against the Taking of Hostages (1979);
    - International Convention for the Suppression of Terrorist Bombings (1997);
    - Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988).
134. As concerns the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973), Articles 102 and 277 of the CC, do not seem to cover kidnapping of an internationally protected person; as concerns the Convention on the Physical Protection of Nuclear Material (1980), the offence provided under its Article 7(1)(d) and (e) do not appear to be duly covered by Articles 226 and 227 of the CC:

    (d) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;
    (e) a threat:
    (i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or
    (ii) to commit an offence described in sub-paragraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act (...) shall be made a punishable offence

135. Lastly the provisions referred to in the table do not seem to duly implement the following Conventions:
    - 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
    - 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;
    - 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf.

136. As a result and as mentioned above, the prohibition to finance terrorism does not include all of the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention.

137. As concerns criterion II.1.b, the previously used and criticised concepts of “money resources”, “money” and “other property” are no longer used. The authorities have clarified that “funds or other property” referred to under Article 214-1 is defined under the FT law as follows:

> ***funds or other property*** *– means assets of every kind, from a legitimate or illegitimate source, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders.*

138. This definition is in line with that provided for under the TF Convention. The TF provision as amended now also clearly refers to any funds, whether they come from legitimate or illegitimate sources and clarifies that it does not require that they were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.

139. As already stated in the third round report, the common ancillary offences are also applicable in the TF context. Reference is made to the general part of the CC, in particular Articles 27 and 29 of the Criminal Code for attempt, Articles 31, 32 and 33 for participation as an accomplice Articles 32 and 32.5 for the role of organizer, instigator and helper.

Predicate offence for money laundering (c.II.2)

140. Azerbaijan applies an all crimes approach to determine predicate offences for money laundering. Therefore, terrorist financing offences are predicate offences for money laundering, as far as it is criminalised and bearing in mind the deficiency identified with respect to Article 2(1)(a) of the TF Convention.

Jurisdiction for Terrorist financing offence (c.II.3)

141. As noted above in respect of the ML offence, Articles 2.2 of the AML/CFT Law and Article 12.3 of the CC appear to give an explicit basis for prosecuting TF with an international element.

The mental element of the FT (applying c.2.2 in R.2)

142. The comments made in respect of Recommendation 2 apply equally here.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

143. The comments made in respect of Recommendation 2 apply equally here.

Sanctions for FT (applying c.2.5 in R.2)

144. Article 214-1 of the Criminal Code provides that the sanction for natural persons found guilty of a terrorist financing offence is imprisonment for ten to twelve years and the confiscation of property. Terrorist Financing is therefore classified as a “serious crime”. Confiscation as a criminal legal measure is also applicable to the FT offence (Article 99-5.1.4 of the Criminal Code) and freezing provisions under SR.III may also be applied.

145. The comments made in respect of Recommendation 2 in respect of legal persons apply equally here.

Recommendation 32 (terrorist financing investigation/prosecution data)

146. Statistics have been provided in respect of terrorist financing investigations, prosecutions and convictions.

Effectiveness and efficiency

147. The evaluators were pleased to note that there has been one terrorist financing case which has resulted in life imprisonment for three people with other members of the criminal group sentenced to imprisonment for different terms. The case was subject to an appeal in the appeal court, although not all of the defendants have appealed. The Appeal Court upheld the decision of the first instance court. There have also been some convictions for terrorism but without any associated terrorist financing charge. The authorities pointed to difficulties in proving the intention of obtaining money to finance terrorism as a barrier to successfully convicting for terrorist financing.

2.2.2 Recommendations and comments

Special Recommendation II

148. All of the offences defined in the treaties listed in the Annex of the TF Convention should be duly transposed into Azerbaijani legislation. The offences listed in Article 214-1 of the Criminal Code should accordingly be expanded to include all the elements required by SR.II, namely all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention.

149. The practice of inferring the intentional element of financing of terrorism from factual circumstances should be tested in practice.

150. The Azerbaijani authorities should ensure that legislation extending criminal liability for terrorist financing to legal persons comes into force without further delay.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• The FT offence does not cover all elements of SRII, defined as terrorist offences in the Annex of the FT Convention; • The legislation extending criminal liability for terrorist financing to legal persons has yet to come into force.

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

2.3.1 Description and analysis

Recommendation 3 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

151. In the third round MER Azerbaijan was rated PC for R.3 in view of the fact that not all predicate offences had an associated power of confiscation, with the exception of the money laundering offence confiscation was generally not available for the basic form of predicate offences carrying less than two years imprisonment, there were effectiveness issues in that there was little evidence or orders in respect of indirect proceeds or of value confiscation and there was no clear power to confiscate laundered property in a stand-alone money laundering offence.

Legal framework

152. The Law of the Republic of Azerbaijan “On amendments to the Criminal Code of the Republic of Azerbaijan” (adopted by the Parliament of the Republic of Azerbaijan on 7 March 2012 with entry into force on 15 March of the same year) amends the legal provisions in respect of confiscation. As a result, confiscation of proceeds and instrumentalities is now mandatory when a

conviction has been secured for a proceeds-generating crime and confiscation is available for all predicate offences to ML.

Confiscation of property (c.3.1)

153. The recently amended Chapter 15-1 of the Criminal Code sets out special confiscation procedures as follows:

*"**Article 99-1. Special confiscation***

99-1.1. Special confiscation, as a criminal measure, is the mandatory and non-compensable forfeiture of following property by the state on the basis of court decision;

99-1.1.1. tools and instrumentalities belonging to condemned person which are used in, intended for use in commitment of crime (except tools and instrumentalities which shall be returned to its owner);

99-1.1.2. funds and other properties obtained by the perpetrator which are obtained by criminal activity, including income, profits or other benefits from these funds and other property (except funds other property which shall be returned to its owner);

99-1.1.3. funds and other property obtained by criminal activity or part of them, which were fully or partially transferred by means of concluding civil-law acts;

99-1.1.4. funds and other property intended or used for financing of terrorism, illegal armed units or groups or organized groups and criminal organizations;

99-1.2. For each criminal case courts decide about the existence of property subject to confiscation which is envisaged in the Article 99-1.1 of this Code. Special confiscation can be applied to both legal and natural person;

99-1.3. Funds and other properties envisaged in the Article 99-1.1 of this Code, which were alienated or given to third parties by condemned person, shall be confiscated, if the recipient of this property new or should have known that this property had been obtained by criminal means.

Article 99-2. Value confiscation

In cases when forfeiture of property obtained by criminal means is not possible since that property is used, alienated or because of some other reason, the other property owned by condemned person which is equivalent to the value of the same property shall be confiscated.

Article 99-3. Reimbursement of damage caused by crime using confiscated property

99-3.1. When deciding the issue of confiscation, the caused damage to owner of property as a result of crime shall be reimbursed first.

99-3.2. Unless condemned person owned any property besides confiscated property, the caused damage to owner of property as a result of crime shall be reimbursed by confiscated property and after that the rest of property shall be made subject to forfeiture by the state."

154. In respect of c.3.1, the evaluators note that Article 99-1.1 provides for the confiscation of property which has been laundered or which constitutes proceeds from, instrumentalities used in and instrumentalities intended for use in the commission of any ML, FT or other predicate offences, and property of corresponding value.

155. As concerns the confiscation of property of corresponding value, Article 99-2 only appears to make reference to proceeds and laundered property, therefore instrumentalities used in or intended for use are not encompassed.

156. In relation to Criterion C.3.1(a), indeed, the provision extends confiscation to property that is derived directly or indirectly from proceeds of crime, including income, profits or other benefits from the proceeds of crime.

157. Criterion C3.1.1(b) requires that property should be confiscated regardless of whether it is held or owned by a criminal defendant or by a third party. While Article *99-1.3.*clarifies that such property can be confiscated even if it is owned or held by a third party, the property subject to confiscation only extends to property which has been transferred to a party by "the condemned person" and not by any other person. This appears to restrict the scope of criterion C3.1.1(b). Furthermore, it appears to the evaluator that Article 99-1.3 appears to be more generous than the standard, because property can only be taken from third parties when they knew or ought to have known that it had been obtained by criminal means, regardless of whether they obtained it for value or not. Authorities should be able to attack property held by third parties where there is a gift made or inadequate value in exchange for the property.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

158. The statutory provisions on provisional measures appear unchanged since the 3rd round evaluation. As noted in the 3rd round report, Article 177 of the Code of Criminal Procedure provides for the right to 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 attach 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).

159. 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 under the criminal law (Article 241.1) and so the property is valued to ensure that sufficient property is attached (Article 250). 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 to the defendant's share of the property (Articles 248.2 and 248.3). If there is sufficient evidence that joint property was used in committing an offence or was acquired or enhanced by committing the offence, the whole property or the greater part thereof shall be attached (Article 248.3). Attachment may not apply to food which is essential to the owner of the property and his family, fuel of little market value, specialist books and equipment used for carrying on a professional activity, frequently used kitchen utensils and supplies or other essentials (Article 248.4).

160. If the property attached is a bank deposit, then the attachment order prevents any further transactions on the account (Article 248.1.3). Attachment of property consists of making an inventory of the property, which shall be left with the owner or holder, and where necessary prohibiting its use (Article 248.1.2). Except for immovable property and large objects, attached property shall, as a rule, be removed. Precious metals and stones, pearls, money in local and foreign currency, securities (shares, bonds, cheques, treasury notes, loan certificates, lottery tickets, etc.) shall be given to the State Bank of the Azerbaijan Republic for holding. Other objects removed shall, if possible, be packed, sealed and kept on the premises of the investigating authority or court as the case may be, or handed over for safe-keeping to a representative of the relevant state authority, who shall be warned of his statutory liability. Property that is attached but not removed shall be 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 shall be warned of the statutory liability incurred for doing so. (Articles 251.7 and 251.8).

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

161. The evaluators are advised that provisional measures, in particular the freezing and seizure of funds and other property can be applied with or without notice to the asset holder and that, in all urgent cases, provisional measures such as freezing and seizure of funds and other property have to be applied without any notification to the asset holder and *ex parte*.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

162. In addition to the investigative procedures referred to in the context of c.3.2 above, Article 177 of the Code of Criminal Procedure also provides applications for the body search of a person other than a detained or arrested person against his or her will, the confiscation of postal, telegraphic or other messages and the interception of conversations held by telephone or other means and of information sent via communication media and other technical means.

163. Special investigative techniques are also available in respect of certain crimes pursuant to the Law of the Republic of Azerbaijan "On Operative Search Activities". This law regulates legal relations relating to the implementation of operative search activities which are carried out in order to protect life, health, human rights and freedoms of the person, legal interests of legal entities, state secrets and national security from criminal attacks. Article 10 of this law provides for such measures to include surveillance of citizens, listening to telephone calls, inspection of postal, telegraphic and other items, the extraction of information from technical communication channels and other technical means, controlled dispatch and monitoring of buildings. The evaluators are advised that, in most instances, a judicial decision is required. However, certain activities, such as listening to telephone calls and checking mail, telegraphs and other items, can be conducted without such a decision in order to prevent serious crimes against a person or especially dangerous crimes against the state.

Protection of bona fide third parties (c.3.5)

164. Again the provisions in this regard are unchanged from the 3rd round report. 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 (Code of Criminal Procedure, Article 254.1). 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 (Code of Criminal Procedure, Article 253).

165. 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 and legal persons. An individual or legal entity whose property is damaged shall have the right to file a civil claim during criminal proceedings if, for example, the damage was caused directly by an act provided for in criminal law or connected with the commission of an act provided for in criminal law. 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 to enforce contractual terms or to obtain compensation for breach.

Power to void actions (c.3.6)

166. The Azerbaijan authorities advise that Article 181 of the Code of Criminal Procedure provides a basis for the court to void fictitious/fraudulent actions. The procedure in terms of Article 181 may

be used by the State on its own behalf which would include where it is necessary to prevent or void action which would prejudice the authorities in their ability to recover property subject to confiscation. In terms of Article 181.6, during criminal proceedings, the prosecutor shall file and argue a civil claim in order to protect state property or uphold the rights of an individual entitled to make a civil claim but cannot defend his legal interests personally. The reference to state property is to property owned by the State rather than property which might be recovered by the State should confiscation occur. A claim for compensation for non-pecuniary damage may be made by the prosecutor only at the request of the victim. In accordance with the provisions of Article 181.7, during criminal proceedings the prosecutor shall file and argue a claim against the accused or the person who is liable for his actions in respect of the claim in order to defend the state's interests at the request of a state authority, institution or organisation. However, the authorities have not been able to point to any examples of these provisions being used in practice to achieve the effect contemplated by c.3.6.

167. In addition, if a third party is in collusion with the perpetrator in safeguarding criminal proceeds, the person could be committing an offence as aiding and abetting ML making the property recoverable in a criminal proceeding.

Additional elements (c.3.7)

168. Article 99-1.1.4 of the Criminal Code provides for confiscation of property intended or used for financing of terrorism, illegal armed units or groups or organised groups and criminal organisations.

169. There appears to be no civil recovery of criminal property without conviction.

170. 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 the property.

Recommendation 32 (statistics)

171. Some statistics on property seized, confiscated and recovered following conviction for ML/FT and for predicate crimes have been provided. As concerns the data on confiscation in respect of predicate crimes, this does not clarify the specific predicate offences for which confiscation was ordered. No statistics were provided in relation to cases and the amounts of property frozen and seized in respect of predicate crimes.

Effectiveness and efficiency

172. The statistics provided on property seized, confiscated and recovered following conviction for ML/FT show an improving trend in seizures and confiscations

Table 9a: Property seized and confiscated

Year	Property Seized	Property Confiscated	Property Recovered Following Conviction
2009	10,000	10,000	10,000
2010	1,180,000		
2011	761,928	194,526	194,528
2012	86,773	1,180,000	1,180,000
2013	894,633	133,682	164,689

Total	2,933,334	1,518,208	1,549,217

Table 9b: Property confiscated in relation to predicate crimes

2008 year	2009 year	2010 year	2011 year	2012 year	2013 year
2 cases 14,000 AZN	4 cases 274,000 AZN	3 cases 902,293AZN	2 cases 2,608,072 AZN	7 cases 9,716,662 AZN	3 cases 3,357,497 AZN

173. The data provided in the tables above, when analysed together with the statistics on the number of convictions of ML, seems to indicate that when ML is pursued, provisional measures and confiscation of property is also ordered. Furthermore, the data above on the amounts of property seized, confiscated and recovered following conviction for ML show an improving trend. Notably, for ML between 2008 and 2013 2,933,334 AZN (c. €2,741,000) of property was seized, AZN 1,518,110 (c. €1,419,000) of property was confiscated and AZN 1,549,217 (c. €1,448,000) of property was recovered following conviction. The evaluators reiterate, however, that the low number of ML cases also impacts negatively the effectiveness and efficiency of the confiscation regime with respect to ML.

174. The evaluators note that the Azerbaijani authorities have not provided any information about confiscation of indirect proceeds, value confiscation or third-party confiscation in order to demonstrate that this occurs in practice.

175. The low number of confiscations ordered in respect of predicate crimes seems to indicate that these measures are not used as a central tool for combating predicate offences. The technical deficiencies identified in this section, as well as the lack of criminal liability of legal persons may also inhibit effectiveness of the confiscation regime.

2.3.2 Recommendations and comments

176. It should be irrelevant that the property subject to confiscation has been transferred or sold by the convicted person or by other third parties.

177. The Criminal Code should be amended to allow for the confiscation of property held by third parties where there is a gift made or inadequate value in exchange for the property.

178. Value confiscation of instrumentalities to ML, FT and other predicate crimes should clearly be provided for by the law.

179. Consideration should be given to reversing the burden of proof after conviction for the criminal offence, when the court is considering the lawful origin of property in the hands of the convicted person.

Recommendation 32 (statistics)

180. The authorities should maintain statistics on the number of seizures and confiscations related to predicate offences to ML. Information on confiscation of indirect proceeds, value confiscation and third-party confiscation should also be collected.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• Property can only be confiscated from third parties if they knew or ought to have known that it had been obtained by criminal means, regardless of whether they obtained it for value or not;

		Effectiveness • Lack of clarity on whether confiscation of indirect proceeds and corresponding value are routinely made; • Effectiveness of confiscation in predicate offences to ML is not demonstrated.

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

2.4.1 Description and analysis

Special Recommendation III (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

181. In the 3rd round MER Azerbaijan was rated NC for SR.III, due to the following shortcomings:

- The absence of a dedicated CFT structure for the conversion of designations into Azerbaijan Law under UNSCR 1267 and 1373, including designations by third countries;
- Lack of a clear designating authority for UNSCR 1373;
- it was unclear whether a court-based freezing mechanism was applicable;
- There were no clear requirements on the financial sector as to their duties on notification of designations;
- Designations were not being promptly received by all of the financial sector from the Azerbaijani authorities;
- There were no publicly known procedures for considering de-listing, unfreezing and for persons inadvertently affected;
- There was no guidance on the scope of "funds or other assets";
- It was unclear whether a freezing order in the criminal process would ultimately be effective to sustain or maintain freezing of assets of all designated persons;
- There was an effectiveness issue in that no freezing orders had been recently made and there was no active supervision by all the regulators of compliance with SR.III and no clear capacity to sanction in the event of non-compliance.

Legal framework

182. The United Nations Security Council Resolution (UNSCR) 1267 and successor resolutions and the UNSCR 1373 are now implemented through Regulation No. #124 "On approval of the General List of natural or legal persons designated on the basis of relevant United Nations Security Council Resolutions, as well as legislation of the Republic of Azerbaijan and international instruments on counter terrorist financing to which the Republic of Azerbaijan is a party", adopted on June 25, 2010, together with the AML/CFT law.

Freezing assets under S/Res/1267 (c.III.1)

183. Under Article 2 and 3 of Regulation No. 124 a General list comprising a Domestic list and an International list are provided for in order to implement UNSCR 1267 and 1374:

> *3. **General List** shall consist of the Domestic List of natural or legal persons designated on the basis of the legislation of the Republic of Azerbaijan and international instruments to which the Republic of Azerbaijan is a party (hereinafter – **Domestic List**), and International List (hereinafter – **International List**) determined according to the Consolidated List of natural or legal persons designated by the United Nations Security Council Committee established pursuant to UNSCR S/RES/1267 on 15 October 1999 (hereinafter – Sanctions*

Committee) in accordance with the UNSCR S/RES/1267 on 15 October 1999, and in the context of the UNSCR S/RES/1373 on 28 September 2001 (hereinafter – Consolidated List).

184. Under Article 12 of the Regulation, the Ministry of Foreign Affairs (MoFA) has responsibility over the “International List”, which transposes the designations of persons and entities made under UNSCR 1267 by the UN Sanctions Committee. The MoFA regularly updates the list further to any amendments made by the Sanctions Committee. Under Article 4 of Regulation No. 124, both the International List and the Domestic list (together the General list) are published on the FMS website and in the official gazette and are sent by the FMS to all the supervisory authorities. The list is also sent to FIs and DNFBPs, either directly or through the relevant supervisory authority.

185. The evaluators were informed by the authorities that the current freezing mechanism of terrorist assets is based on the temporary suspension of transactions in accordance with the provisions of Regulation No.124 and the AML/CFT Law, and the subsequent use of the provisions of the Code of Criminal Procedure to maintain the freezing order in force. More specifically, Article 26 of Regulation No. 124 provides that, *pursuant* to the AML/CFT law, FIs and DNFBPs are obliged to freeze without delay and without prior notification, the funds or assets of natural and legal persons on the General list (which includes the International List and the domestic list) and make an STR in relation to such funds or assets to the FMS. The evaluators note, however, that under the AML/CFT Law no freezing obligation is provided for in respect of funds or other assets, reference is only made to the suspension of suspicious *transactions*. Notably, under its Article 7(2) FIs and DNFBPs are obliged to submit an STR to the FMS providing information on funds or other property, a transaction or attempted transactions involving persons on the “international” or “domestic” lists regardless of the amounts involved. Article 11 of the AML/CFT law further provides that such transactions must be reported to the FMS before their execution, that they should be suspended for a period of two days pending the decision of the FMS. Furthermore, under Article 19, based on the information obtained, the FMS may within two business days suspend the transaction and decide to prolong such suspension for three additional days (72 hours); The FMS’ decision to freeze and any relevant documents must immediately be forwarded to the Ministry of National Security of Azerbaijan (MNS), who may prolong the freeze based on and subject to the requirements under the provisions of the CPC. A criminal investigation may therefore be initiated and the seizure will remain in effect until the completion of the case.

186. In short, whereas Regulation No. 124 provides the general framework for the freezing of funds or other assets of persons designated under UNSCR 1267, the actual procedure necessary to carry out the asset freeze is not clearly provided for by the law, as the AML/CFT law only refers to the suspension/freeze of transactions. The evaluators are concerned that this may create confusion and hamper the effective implementation of Regulation No. 124. Furthermore, Regulation No. 124 does not clarify what is meant by “*freezing without delay*”.

187. Article 27 of Regulation #124 clarifies that the freezing actions referred to in Article 26 extend to “*funds or other financial assets wholly or jointly owned or controlled, directly or indirectly*” 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*”. The evaluators note that this provision does not extend the freezing action to funds or other assets of persons acting on behalf of, or at the direction of designated persons, nor does it prohibit that these or other funds or assets are made available, directly or indirectly for such persons’ benefit by their nationals or by any persons within their territory, as per UNSCR 1267. Mention of this is made under Article 5 and 5.1 of the Regulation

This Regulation is intended to be preventive in nature, and in accordance with the presumption of innocence targets taking the following preventive measures:

5.1. freeze without delay the funds and other financial assets of the designated persons derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets are made available, directly or indirectly for such persons' benefit, or by their nationals or by persons within their territory.

188. However, the evaluators consider that it would be clearer if this provision was situated in the context of Article 27, as the current formulation may have an impact on the effective application of the provision in line with UNSCR 1267.

189. Lastly, the evaluators note that the approach of linking the freezing measures to domestic criminal proceedings is problematic as it would mean that the issuance of a domestic freezing order is within the discretion of the Azeri courts, while under UNSCR 1267 countries do not have any discretion to freeze property of designated individuals or entities.

Freezing assets under S/Res/1373 (c.III.2)

190. Regulation No. 124, in addition to setting out a process for the implementation of UNSCR 1267 also provides for a mechanism to implement UNSCR 1373. Notably, Under its Articles 6 and 7, the MNS issues a domestic list which includes the following persons and legal entities:

- legal entities in relation to which a court decision on their liquidation has been issued due to their involvement in terrorist activities;
- persons sentenced for preparation, organization or carrying out certain crimes which constitute a crime within the scope and as defined in the articles 102, 214, 214-1, 215, 219, 219-1, 277, 278, 279, 280, 282 of the Criminal Code (including terrorism and terrorism financing);
- persons subject of a criminal investigation or prosecution for certain crimes (as above), including terrorism and terrorism financing; and
- persons convicted in a foreign state for their involvement in terrorist activities.

191. The evaluators note that persons included in the domestic list are subject to the same freezing measures as described under cIII.1 in the context of UNSCR 1267. Therefore the shortcomings identified above apply here as well. In addition, the evaluators would like to stress that in implementing UNSCR 1373, Azerbaijan relies primarily on the criminal justice system and this may hinder its efficient implementation. For instance, difficulties in securing sufficient evidence during the criminal case may result in a terrorist being acquitted and his/her funds unfrozen; this would frustrate the objective of the Resolution.

192. The evaluators are also concerned that the identification criteria provided for under the Domestic list is too restrictive. Under Article 7, in fact, criminal proceedings or a conviction for terrorist activities and terrorism financing are a prerequisite for placing a person or a legal entity on a Domestic list. As is specified in the Best Practices Paper on SRIII, the standard of proof which is required to initiate an action under a freezing mechanism is "reasonable grounds" or "reasonable basis". Criminal proceedings are not a requirement because the designation/freezing procedure serves as a preventive/disruptive tool when criminal action is either not possible or practical.

193. Furthermore, it is not clear whether preparation and or organization of terrorist acts/terrorism financing would also encompass attempt to commit terrorist acts or participation in or facilitation of terrorist acts.

194. Again, there is no reference in Article 26 or 27 of Regulation No.124 to persons (and, for c.III.2, entities) acting on behalf of, or at the direction of designated persons. There is also no reference in Article 5, 26 or 27 of Regulation No 124 to the funds of entities owned or controlled directly or indirectly by such persons.

195. The crimes listed under Article 7 of Regulation No.124 are the same as those listed in Article 214-1 of the Criminal Code and do not appear to include all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention.

Freezing actions taken by other countries (c.III.3)

196. Article 28 of Regulation No. #124 provides that the FMS must examine and give effect to actions initiated under the freezing mechanisms of other jurisdictions when so requested, and ensure the prompt determination whether reasonable grounds or a reasonable basis exist to initiate a freezing action in the Republic of Azerbaijan. The evaluators, however, note that there are no statutory provisions, regulations or policies that set forth a procedure to be followed when there is a formal request from another jurisdiction to designate a particular person under the Azerbaijan freezing mechanism.

197. It is also not clear when the authorities would deem that there are reasonable grounds or a reasonable basis to initiate a freezing action, given that for the purposes of freezing initiated domestically a conviction or a criminal proceeding is required.

198. The Domestic List may include "*natural or legal persons with regard to whom there are legally binding court decisions of the foreign state on their involvement in terrorist activities as duly defined*".

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

199. Regulation No. 124 in its Article 26 refers to the freezing of "*funds or other assets*" of natural or legal persons in the General list, whereas in Article 27 it specifies that the freezing action should extend to:

- *funds or other <u>financial assets</u> wholly or jointly owned or controlled, directly or indirectly, by natural or legal 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.*

200. In addition to the contradiction in terminology noted above, the evaluators note that the wording of Article 27 is partially in line with c.III.3 which clarifies that such actions should extend to "*funds or other assets*" (…). The reference to financial assets might in fact restrict the scope of the standard as it may not encompass all "*assets*". Furthermore, the law does not provide a definition of "*funds or other assets*" or of "*funds or other financial assets*". The concept of "*funds or other property*" is now defined under the law on the suppression of Terrorism further to the 2010 amendments in line with the FATF standards. Regulation 124, however, does not explicitly refer to the latter – the evaluators consider that it should do so for the sake of clarity.

Communication to the financial sector (c.III.5)

201. As indicated under C.III.1, under Article 4 of Regulation No. 124 the General List (i.e. the International and the Domestic List) is published on the FMS website and in the Official Gazette and is sent by the FMS to all supervisory authorities as well as FIs and DNFBPs, either directly or through the relevant supervisory authority. The authorities have also confirmed that information on UNSCRs and any updates is disseminated immediately to financial institutions, DNFBPs and supervisory authorities.

Guidance to financial institutions and other persons or entities (c. III.6)

202. The Azerbaijani authorities advise that the AML/CFT Law and Regulation No. 124 provide sufficient guidance to FIs and DNFBPs concerning their obligation in respect of designated persons. They have also referred to the Regulations "*on submission of data by monitoring entities and other persons involved in monitoring to the Financial Monitoring Service* " (see Annex XI)

which provides financial institutions and other reporting parties with guidance regarding the manner of reporting, including reporting and freezing of assets of designated persons. As concerns training provided on terrorist financing reporting, reference is made to the comments made under SRIV which highlight that further training is needed for the financial sector in this respect, as the number of STRs seems low in relation to the context of the terrorist threat for the country.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

203. As concerns de-listing requests from the International list, Article 18 of Regulation No. 124 provides that natural or legal persons may submit a petition for de-listing either to the UN Sanctions Committee directly or through the MoFA. A standard form for the submission of a de-listing request is available both on the FMS and MoFA websites. Under Article 19, the petitioner needs to provide justification for the de-listing request.

204. Should the petition be lodged through the MoFA, Article 20 of Regulation No. 124 requires that the MoFA forward the relevant documents to the MNS and FMS so that they can issue a legal opinion. The MoFA is also required to take measures to obtain additional information and conduct consultations for de-listing with the jurisdiction that initiated the person's inclusion to the Consolidated List, or with the jurisdiction of the person's citizenship or permanent residence if appropriate. The petition for de-listing is reviewed by the MoFA within 2 months, and during that period the submitted documents shall be sent to the Sanctions Committee in conjunction with the final legal opinion on petition for de-listing endorsed by the MNS and FMS.

205. The MoFA is further required to take all possible measures to notify the petitioner, in writing and without delay, regarding the decision of the Sanctions Committee (Article 23). Persons de-listed from a UN List are to be taken off the International List without delay (Article 24), and their funds and other assets are to be unfrozen (Article 25).

206. In relation to persons included in the Domestic List, Article 9 of Regulation No. 124 provides that s/he is to be removed without delay, either upon initiative by the MNS or upon request by the listed person or a competent authority when the relevant criminal case in respect of which they are under investigation is terminated, or when s/he is acquitted, the court sentence in relation to him/her is annulled or the listed person has served or been spared from serving the prison sentence imposed by the court. However, where a prison sentence has been served, a person should remain on the Domestic List where it is reasonably believed that they continue to be involved in terrorist activity.

207. As previously mentioned above, the evaluators note that the premise is flawed as a conviction and/or a criminal proceeding should not be the *conditio sine qua non* to place a person on the Domestic list. Therefore the requirements under Article 9 for the de-listing would also not comply with the FATF standards. Furthermore, there does not appear to be an equivalent provision to Article 25 for the Domestic List, i.e. a provision stating that, once a person is removed from the Domestic List, their assets shall be unfrozen.

208. The MNS is obliged under Articles 11 of Regulation No. 124 to inform the designated person in writing within one day of the grounds for the listing as well as the procedures to initiate a de-listing request.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

209. Under Article 25 of Regulation No.124 persons whose funds or other financial assets have been frozen, as well as bona fide third parties can challenge the measure with a view to having it reviewed in court. No specific mechanism is provided for persons inadvertently affected. The evaluators note that this provision applies only to the International List so it is not clear that a similar procedure would apply in respect of the Domestic List. Furthermore, it is not clear before

which courts it would be possible to challenge the freezing measure and whether the procedure would be timely as required by the FATF standards.

210. At the same time, the Azerbaijani authorities have advised that an application to lift a freezing measure could be made to the Court pursuant to Article 253 of the Criminal Procedure Code.

Article 253. ***Complaints of mistaken attachment of property***

Anyone who considers that property not belonging to the accused has been attached in error shall have the right to request the prosecuting authority to release the property from attachment. If the prosecuting authority refuses the request or fails to respond to the applicant's request within 10 (ten) days of its receipt, the applicant shall be entitled to apply to the civil courts for the release of the property from attachment. The civil court shall decide the issue of the ownership of the property, and its decision concerning the release of the property from attachment shall be binding on the investigator, the prosecutor in charge of the procedural aspects of the investigation and the court examining the criminal case.

211. In this connection, here too apply the comments made previously in this section that criminal proceedings should not be a requirement to initiate a freeze of funds or other assets of terrorists, those who finance terrorism and terrorist organizations; it follows that there should be other ways to challenge a freezing measure, other than in the context of criminal proceedings.

Access to frozen funds for expenses and other purposes (c.III.9)

212. Currently there are no written procedures or guidelines on how to access funds that were frozen based on UNSCR 1267 or UNSCR 1373. The evaluators are advised that guidance has been prepared and is under consideration.

Review of freezing decisions (c.III.10)

213. The considerations made under c.III.8 apply also in this context.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

214. Comments in respect of c.3.1-3.4 and 3.6 in R.3 would apply equally to the freezing of terrorist assets.

Protection of rights of third parties (c.III.12)

215. The considerations made under c.III.8 apply also in this context.

Enforcing obligations under SR.III (c.III.13)

216. The authorities have informed the evaluators that Article 6.4 of the AML/CFT Law provides that FIs and DNFBPs that violate any of the provisions of that law (including measures in respect of designated persons) may have their license revoked by the competent supervisory authority or be subject to any other measures provided for under the laws of the Republic of Azerbaijan. Furthermore, under Article 348-3 of the AIC fines of up to 1,500 AZN (€1,400) (for natural persons) and 15,000 AZN (€14,000) (for legal persons) are imposed in case of a violation by FIs and DNFBPs of the requirements under Articles 7 and 11 (on STR reporting) of the AML/CFT Law.

217. The evaluators note however, that the obligation to freeze funds or other assets of persons included in the General list is provided for under Regulation No. 124 and that, in principle, the AML/CFT law applies with respect to the suspension of transactions of persons included in the General list. Civil, administrative or criminal sanctions should therefore be provided for violation of Regulation No. 124.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14)

218. It would appear that no steps have been taken in respect of this additional element.

Implementation of procedures to access frozen funds (c.III.15)

219. It would appear that no steps have been taken in respect of this additional element.

Recommendation 32 (terrorist financing freezing data)

220. Statistics on property frozen pursuant to under UN resolutions relating to terrorist financing have been provided.

Table 10: Cases of persons or entities and amount of property frozen pursuant to or under UN resolutions relating to terrorist financing

Property frozen					
Year	**Number of Cases**	**Natural persons**	**Legal persons**	**Amount in EUR and/or type of assets**	**Legal basis (relevant UN resolution)**
2008	0				
2009	0				
2010	2	2		600	UNSC Res. 1267
2011	0				
2012	0				
2013	0				

Effectiveness and efficiency

221. The various technical deficiencies identified above have the potential to inhibit effectiveness. The evaluators have been advised that a foreign request to add to the domestic list has been received from the US and has been addressed but that no assets have yet been frozen as a result of this request. The authorities also advise that the assets of two people were frozen pursuant to UN resolution 1267 but that this subsequently turned out to be a case of mistaken identity due to similar names and the assets were then unfrozen.

222. The evaluators further note that, whilst the authorities and the private sector demonstrated awareness of these measures, the evaluators felt that officers at the Ministry of Foreign Affairs would, due to recent changes in personnel, perhaps benefit from some further training in this area.

2.4.2 Recommendations and comments

Special Recommendation III

223. The evaluators are pleased to note that Azerbaijan has taken steps to set-up a dedicated structure to freeze and confiscate terrorist assets implementing UNSCR 1267 and 1373. Nonetheless a number of shortcomings have been identified which require remedial action by the authorities which should be addressed.

224. The authorities should provide a clear procedure to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations implementing the obligation under Regulation No. 124. They should also specify the time-line to freeze funds (without delay).

225. In order to comply with UNSCR 1267, the authorities should extend the freezing action to funds or other assets of persons acting on behalf of, or at the direction of designated persons and prohibit that these or other funds or assets are made available, directly or indirectly for such persons' benefit by their nationals or by any persons within their territory.

226. In order to comply with UNSCR 1373, the authorities should extend the freezing action to: funds or other assets of persons acting on behalf of, or at the direction of designated persons; and to funds of entities owned or controlled directly or indirectly by such persons as per UNSCR 1373.

227. The authorities should consider how to ensure freezing and confiscating terrorist assets without relying solely on the criminal justice system.

228. The authorities should ensure that criminal proceedings or a conviction are not a requirement for the designation of persons and legal entities and for the subsequent freezing procedure under UNSCR 1373.

229. The crimes listed in Article 7 of Regulation #124 are the same as those listed in Article 214-1 of the Criminal Code and do not appear to include all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention.

230. The authorities should put in place a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373.

231. In respect of c.III.4, the authorities should amend Regulation No. 124 so that it extends the freezing action to funds or other assets, in line with the standard. They should also provide a definition of funds and other assets under the law.

232. The authorities should provide guidance to FIs and DNFBPs concerning their obligations in taking action under freezing mechanisms which supplement the legislation.

233. The authorities should introduce a provision stating that, once a person is removed from the Domestic List, their assets shall be unfrozen.

234. The authorities should ensure that, other than in the context of criminal proceedings, there are effective and publicly known procedures to unfreeze funds or other assets in a timely manner for persons inadvertently affected, other persons whose assets or other funds have been frozen, and bona fide third parties.

235. Appropriate procedures should be introduced to authorise access to funds or other assets that were frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses

236. Civil, administrative or criminal sanctions should be provided for by the law for breach of Regulation No. 124.

Recommendation 32

237. Statistics on property frozen pursuant to under UN resolutions relating to terrorist financing have been provided.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• Absence of a procedure detailing the asset freezing obligation provided for under Regulation No. 124 and lack of specification as what is intended by "freezing without delay"; • The freezing action provided by the law does not extend to funds or other assets of persons acting on behalf of, or at the direction of designated persons, nor does it prohibit that these or other funds or assets are made available, directly or indirectly for such persons' benefit by their nationals or by any persons within their territory, as per

		UNSCR 1267; • The freezing action provided by the law does not extend to: funds or other assets of persons acting on behalf of, or at the direction of designated persons; funds of entities owned or controlled directly or indirectly by such persons as per UNSCR 1373; • Reliance on the criminal justice system risks creating problems with the effective implementation of UNSCR 1267 and 1373; • The designation criteria provided to implement UNSCR 1373 are too restrictive as they require that criminal proceedings have been instituted or that a conviction has been secured against a person; • The crimes listed in Article 7 of Regulation #124 do not appear to include all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention; • There is no formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373; • Regulation No. 124 restricts the freezing action to funds or other “financial” assets, thereby potentially limiting the implementation of the standard. A definition of funds and other assets/financial assets is not provided for under the law; • With regard to c.III.6, there is no formal guidance in place which supplements the legislation; • Other than in the context of criminal proceedings, there are no other effective and publicly known procedure to unfreeze funds or other assets in a timely manner for persons inadvertently affected, other persons whose assets or other funds have been frozen, or bona fide third parties; • There does not appear to be a provision stating that, once a person is removed from the Domestic List, their assets shall be unfrozen; • There are no procedures in place for authorising access to funds or other assets that were frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses; • No civil, administrative or criminal sanctions are provided for by the law for breach of Regulation No. 124.

Authorities

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

2.5.1 Description and analysis

Recommendation 26 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

238. In the 2008 Mutual Evaluation Report, Recommendation 26 was rated "*non-compliant*" based on the fact that at that moment there was no Financial Intelligence Unit in Azerbaijan that would meet the international standards.

Legal framework

239. The general legal framework defining the work of the FIU is:

- Law of the Republic of Azerbaijan "*On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism*", no. 767–IIIQ of 10 February 2009, Published in «Azerbaijan» official newspaper no. 44, dated 25 February, 2009;
- Decree of the President of the Republic of Azerbaijan, "*on application of the law of the Republic of Azerbaijan on the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism*", no.66 of 23 February 2009, Published in «Azerbaijan» official newspaper № 44, dated 25 February 2009;
- Decree of the President of the Republic of Azerbaijan "*on approval of the Statute of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan*", no 122/ 16 July 2009, Published in «Azerbaijan» official newspaper no. 154, dated 17 July 2009;
- Law of the Republic of Azerbaijan "*On amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism*" no. 973–IIIQ, dated 5 March 2010, Published in «Azerbaijan» official newspaper no. 64, dated 21 March 2010.

Establishment of an FIU as national centre (c.26.1)

240. The FMS was established as the FIU of Azerbaijan by the adoption of the AML/CFT Law. Section III of this normative act regulates the organisation of the activity of the *financial monitoring organ* which is authorised, to gather, analyse and submit financial information to relevant law enforcement agencies. The national authority that carries out the powers of the *financial monitoring organ* is designated in accordance with the provisions of Article 17.1 that reads "*The state authority that carries out powers of the financial monitoring organ is defined by the relevant executive authority".*

241. For the implementation of the AML/CFT Law, on 23 February 2009, the Decree of the President of the Republic of Azerbaijan, no. 66 "*on application of the law of the Republic of Azerbaijan on the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism"* was adopted. Article 1 of this act provides for the establishment of the FMS under the Central Bank of the Republic of Azerbaijan "*in order to provide implementation of the state policy in the sphere of prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism, to improve the inspection system and to coordinate the activity of the relevant state authorities in this field".* Also, the FMS is designated to carry out the authorities of the *«financial monitoring organ»* envisaged by the AML/CFT Law (article 4.9 of the Decree).

242. In accordance with the provision of its Statute approved by the Decree of the President of the Republic of Azerbaijan no 122 of 16 July 2009, the FMS *is the state authority, which implements competences stipulated by the AML legislation in the sphere of prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism in the Republic of Azerbaijan (article 2).* To this end, the FMS *is guided in its activity by the Constitution of the Republic of Azerbaijan, international agreements to which the Republic of Azerbaijan is a party, the AML Law and other normative legal acts, relevant international standards, as well as its Statute (article 3).*

243. The powers of the FMS, as the Azerbaijani FIU, are provided both in the AML/CFT Law and its Statute. Article 17.2 of the AML/CFT Law empowers the FMS to gather and analyse the information submitted by the monitoring entities, other persons involved in monitoring (i.e. lawyers, notaries, other persons providing legal or audit services), supervision authorities and the State Customs Committee.

244. Upon receiving information on transactions which are subject to monitoring, the FMS may request monitoring entities, other persons involved in monitoring, supervision authorities and the State Customs Committee to submit information for the purposes of inquiry. Also within the framework of analysis and its own authority the financial monitoring organ may obtain from mentioned bodies or other state authorities additional information needed to properly undertake its functions (article 17.3 of the Law). These powers are reinforced by articles 11.4-11.5 of the Statute of the FMS.

245. As regards analysis, according to the methodological guidance in place, the process is applied to incoming reports and information related to such reports from the following sources:

- Information submitted by monitoring entities and other persons involved in monitoring;
- Information submitted by the State Customs Committee under the AML/CFT Law;
- Mass-media and internet resources;
- Information held by other government agencies;
- Information from foreign jurisdictions; and
- Other sources.

246. The stages of analysis are carried out through the GoAML software solution, in accordance with the division of powers and workflow approved by a relevant order of the FMS Director. At the time of the on-site visit the approved workflow was as follows:

REPORTS EVALUATION - WORKFLOW

№	Stage	Authority	Comment
1.	**Report Received**	Head analyst	The head analyst receives a notification on a new STR/TFR/FIR/FMR/UNR/PEP report (see the list of acronyms) and gets familiar with it.
2.	**Report Assigned**	Head analyst	By the decision of the Head Analyst a list of reporting entities is assigned under the responsibility of each analyst within the Analysis Department. As a general rule, the Head Analyst assigns the received reports to the relevant analyst for analysis, according to this list. If the report relates to other received reports or if a more experienced analyst is needed, it is assigned by the Head Analyst to the relevant analyst.
3.	**Initial Observation**	Analyst	The analyst conducts search in the goAML database about the parties mentioned in the report and other sources and notes the search results in “Journal” and/or “Analyst`s Remarks” section(s) of the report.

4.	**Recommendation**	Analyst	On the basis of the preliminary search results, the opinion and recommendations for next actions related to the report is presented by the analyst to the head analyst.
5.	**Recommendation Rejected**	Head analyst	The head analyst who does not agree with the preliminary results of the study resents it to the analysts for reconsideration. According to authorities any disagreement is discussed by the Head Analyst with the analyst in charge.
6.	***Freeze/Don't freeze***	*Head analyst*	*Taking into account the opinion and recommendations of the analyst(s), the head analyst, if he/she agrees, presents the recommendation on suspension or execution of the transaction(s) to the Director of the FMS.*
7.	***Freeze***	*Director*	*Taking into account the head analyst's recommendation or on his/her own decision, the director takes the decision on suspension of the transaction(s) and notifies the head analyst.*
8.	***Don't freeze***	*Director*	*Taking into account the head analyst's recommendation or on his/her own decision, the director takes the decision on non-suspension of the transaction(s) and notifies the head analyst.*
9.	**Recommendation approved**	Head analyst	Irrespective of the fact that the transaction was suspended or not, the Director's decision on opening a case or head analyst's decision on the basis of the analysis conducted by the analyst is approved. Decisions possible: • open a case - a case is opened on the instruction of the head analyst, • close the report – no further action is taken and the report is available within the FMS central database, • keep the report under review – the report is reviewed after six months.

CASE RELATED WORKFLOW

№	Stage	Roles	Comment
1.	**Case Open**	Analyst	The case is opened on the basis of the relevant report.
2.	**Reports Added**	Analyst	Other information related to the persons mentioned in the report are searched for in the goAML analytical database and added to the case.

3.	**Refer to HA**	Analyst	The case opened by the analyst in charge is referred to the head analyst for initial review together with added information.
4.	**Check goAML**	Head analyst	The analyst who opened the case or a new analyst is assigned to proceed with the case.
5.	**Prepare Initial Analysis**	Analyst	The information in the case is summarized, initial hypotheses are put forward and recommendations on next actions are presented to the head analyst.
6.	**Uncompleted Investigation**	Head analyst	The head analyst who does not agree with the outcomes of the preliminary analysis instructs the analyst reconsider the case.
7.	**Recommend RFI (request for information)**	Analyst	Recommends the head analyst to send request for information
8.	**Redo Initial Intel**	Head analyst	In case there are doubts that the response to the request would be relevant and/or another analyst's opinion and recommendations are sought, the case is sent to the same or another analyst. In such a case, links 2-5 may be repeated.
9.	**RFI Transmitted**	Head analyst	The analyst's recommendation on sending the request is approved by the head analyst.
10.	**Analyse RFI**	Analyst	The materials obtained as a result of the request are analysed.
11.	**İntel Hypothesis**	Analyst	Following the completion of the entire analysis process, submits the outcome to the head analyst.
12.	**Approve Hypothesis**	Head analyst	The head analyst who reviews the analysis and its results accepts and approves the analyst's recommendation.
13.	**Redo Hypothesis**	Head analyst	If the head analyst does not agree with the analysis outcome, then he/she redirects the case to the analyst for reconsideration. The stages from Step 10 onward are repeated. According to Azerbaijani authorities disagreement is always discussed by the Head Analyst with the analyst in charge
14.	**Approve Closing Case**	Head analyst	On the basis of the analysis outcomes, the head analyst takes a decision to close the case.

15.	**Case Closed**	Analyst	In accordance with the instruction, the case is closed.
16.	**Pass Director's Decision**	Head analyst	After the head analyst accepts and approves the hypotheses put forward by the analyst, the case is sent to the Director for him/her to take a decision.
17.	**Review intel report**	Director	The Director accepts the document and gets familiar with the case.
18.	**Record Feedback**	Director	The Director notifies the head analyst of his approval to disseminate the case to law enforcement agencies if he/she agrees with the analysis and its outcomes.
19.	**Completed**	Head analyst	The analyst who has been in charge is informed of the Director's decision and the case is completed.
20.	**Redo Hypothesis**	Director	If the Director does not agree with the analysis outcomes, then he/she redirects the case to the head analyst for reconsideration. The stages from Step 13 onward are repeated.
21.	**Approve Closing Case**	Director	On the basis of the analysis outcomes, the Director informs the head analyst of his/her decision to close the case.
22.	**Case Closed**	Head analyst	The analyst is informed and the case is closed.

247. As regards the dissemination powers, where the FMS, within the framework of analysis determines that *the transaction being executed is related to the legalisation of criminally obtained funds or other property and the financing of terrorism*, the information on the legalisation of criminally obtained funds or other property shall be submitted to the General Prosecutor Office, and the information on the financing of terrorism shall be submitted to the Ministry of National Security of the Republic of Azerbaijan (article 17.5 AML/CFT Law). This provision is reinforced by the provisions of the FMS' Statute (article 10.9) in the sense that "*when within the framework of analysis FMS detects* the elements of a crime in transaction, *submits information on legalisation of criminally obtained funds or other property to the General Prosecutor's Office of the Republic of Azerbaijan, and information on the financing of terrorism to the Ministry of National Security of the Republic of Azerbaijan and gets feedback from them*". Both provisions seem to relate the dissemination power of the FMS to anomalies indicating crime into a financial transaction.

248. In addition to its basic functions, both the AML/CFT Law and the Statute of the FMS attribute additional powers to this authority. Such powers relate to:

a. the protection of financial information received through the creation of an information protection system (17.4 of the AML/CFT Law);
b. the authority to conduct supervision and cooperate with supervision authorities in order to enforce the measure provided by the AML/CFT Law for the monitoring entities and other persons involved in monitoring (article 17.6 of the AML/CFT Law);

c. the adoption of regulations and collection of statistical data in the AML/CFT field (article 17.8 & 18 of the AML/CFT Law);
d. freezing of the execution of suspicious transactions for ML/TF (article 19 of the AML/CFT Law);
e. the elaboration of legislative proposals in the AML/CFT field (article 11.1 of the FMS' Statute);
f. the cooperation with relevant agencies of other states in the AML/CFT field (article 11.6 of the FMS' Statute);
g. the setting up of interagency cooperation, consultative bodies and working groups in the AML/CFT field (article 11.9 of the FMS' Statute);
h. the determination and publication of the NCCT list (10.5 of the FMS' Statute);
i. the authority to publish special bulletins and other editions, to establish periodicals in accordance with the legislation (article 11.10 of the FMS' Statute).

249. It is the opinion of the evaluation team that the general powers attributed by the AML/CFT Law and the Statute to the FMS create for this authority the framework for acting as a national centre for receiving, analysing and disseminating disclosures of STR and other relevant information concerning suspected ML or TF activities, in compliance with Essential Criteria 26.1.

Guidance to financial institutions and other reporting parties on reporting STRs (c.26.2)

250. Article 17.8 of the AML/CFT Law empowers the FMS to adopt regulations in the AML/CFT field, including regulations on what is to be reported and what is the procedure monitoring entities must follow. The provision is reinforced by article 10.4 of the Statute of the FMS that authorises the unit to "*determine the regulation of submission of information stipulated by the AML Law by monitoring entities and other persons involved in monitoring*".

251. Based on this authority, on 31 May 2010, the FMS issued the "*Regulation on submission of data by monitoring entities and other persons involved in monitoring to the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan*". This regulation provides indications on the data to be submitted to the FMS (Section 3), the form and means of data submission (Section 4), the procedure for filling in the reporting form (Section 5), the timeframes for the submission of data (Section 6) and also the procedure for the submission of information on the basis of the request of the FMS (Section 7).

252. According to the Regulation, there are three categories of data that monitoring entities must submit to the FMS (Article 3.3):

a. data on currency transactions – cash transactions with funds or property equivalent or above 20,000 AZN (c. €18,700);
b. data on suspicious transactions; and
c. data on cases where it is impossible to identify the parties according to the provisions of the AML/CFT Law, or in case of failure to provide identification information by the customer or beneficiary, if there are doubts about the veracity of previously obtained customer identification data.

253. Other persons involved in monitoring (i.e. lawyers, notaries, other persons providing legal or audit services) are only obliged to submit data on the last two categories and only when they relate to:

- transactions on buying and selling of real estate;
- transactions on managing of customer funds, securities or other property;
- transactions on managing of customer bank and securities accounts; and

- transactions on creation, operation or management of legal persons, buying and selling of legal persons, organisation of contributions for the creation, operation or management of legal persons.

254. For all these categories of reporting, monitoring entities and other persons involved in monitoring must submit to the FMS a specific set of data that include:

- type/date/sum/currency of transaction;
- identification data of the customer involved;
- information on the beneficiary/representative;
- nature/purpose of transactions; and
- grounds stipulating the suspiciousness of the transaction.

255. As regards the reporting procedure, data must be entered by the monitoring entities into a form which is in an Annex to the regulation, and may be submitted to FMS by the following reporting channels: (1) as a hard-copy being signed and sealed by the compliance officer of the monitoring entity and other persons involved in monitoring or (2) by software means affirmed by enhanced electronic signature bearer approved via electronic signature. For the second option the software version of the reporting form is available on the website of the FMS. The regulation describes in detail the way the fields of the form should be filled in.

256. As regards the access of monitoring entities and other persons involved in monitoring to these reporting channels, the FMS' website contains a procedure for registering as a monitoring entity, based on which, every new reporting entity submits to the FMS a request for a user account and it usually takes 24 hours, for that entity to be able to submit its reports via the on-line channel. During that interval, mandatory reports may be submitted in signed and sealed hard-copy format to the premises of the FMS. Also, in situations of urgency, data regarding suspicious transactions and missing identifiers may be submitted to the FMS orally, followed by an urgent submission in writing of the mandatory form. The reporting channels seem to be supportive for a prompt submission of mandatory information from the financial and non-financial sector to the FMS.

257. According to information provided by the Azerbaijani authorities, since 2012 (following full implementation of the GoAML software solution) no reports have been submitted to the FMS in hard-copy format. For the same interval however there were very few reports coming from monitoring entities other than banks (which usually are Internet resourceful).

258. As soon as the FMS identifies that any of the mandatory fields of the reporting form were not filled, the data is wrong or the information was received in a form which is different than the one provided by the regulation, it has the authority to send the report back to the monitoring entity via the communication channel it was received in. The monitoring entities have two days to remedy the deficiencies indicated by the FMS.

259. In practice, the reporting component of the GoAML software solution used by the FMS works on a system based on rejections rules list. Whenever one of the rules is activated (ex. the date of birth for the reported subject is not correctly filled in, etc.) the report is directed into a special panel which is used by the analysts involved in data processing. Analysts go through the reports that have activated the rejection rules and get in contact with the reporting entity that sent the report to correct it accordingly.

260. A situation of possible conflict was raised by the evaluation team on the way the two day non-execution time interval (which is mandatory for the monitoring entities once they submitted a STR) works when the report submitted to the FMS is incomplete. Representatives of the FMS argued that it is in the interest of the monitoring entity to remedy the deficiencies in the report as soon as possible and send it back to the FMS within the two business day interval. They also confirmed that the two day non-execution time interval provided by the law starts when the report is received by the FMS with all the fields correctly filled in.

261. During on-site interviews, evaluators were told that the GoAML solution implemented (in 2012) by the FMS allows for two types of feedback that is being provided, in relation to reporting, to the monitoring entities:

   i. Daily feedback – on the receipt of any type of report submitted to the FMS by the monitoring entities and other persons involved in monitoring; and
   ii. Monthly feedback – on the quality and outcome of such reports.

262. The spirit of essential criteria 26.2 places over the FIU the responsibility to ensure that the reporting entities within the AML/CFT system know at any moment *WHEN* to report, *HOW* to report and *WHOM* to report to (the *WHAT* is covered under Recommendation 25). The AML/CFT Law, Statute of the FMS and the Reporting Regulation provide for clear answers to all these questions. However, for the efficiency of the system, the monitoring entities and other persons involved in monitoring (i.e. lawyers, notaries, other persons providing legal or audit services) must be made aware of the obligations incumbent to them in this respect and must have easy access to the reporting channels. During on-site interviews the evaluation team noticed the extensive effort put in by the FMS to raise the awareness of the reporting component over these two aspects.

Access to information on timely basis by the FIU (c.26.3)

263. The legal basis for the FMS' access to information is placed under Article 17.3 of the AML/CFT Law and Article 11.5 of the Statute. The first legal text empowers the FMS to obtain, within the framework of analysis and on its own authority, additional information from the monitoring entities, other persons involved in monitoring, supervision authorities and the State Customs Committee or other state authorities, needed to properly undertake its functions. The second provision grants the FMS the authority to require, when necessary, from monitoring entities, other persons involved in monitoring, supervision authorities and other state authorities, by sending relevant inquiry, additional information needed to properly undertake its functions.

264. Another relevant provision for this criterion is article 11.4 of the Statute of the FMS which, for the purposes of the AML/CFT Law empowers the unit to use the databases of other state authorities in accordance with the legislation of the Republic of Azerbaijan. Based on these provisions the FMS signed MOUs and it has currently direct access to the following informational resources:

- Entrance, exit and registration interagency information and search system operated by Ministry of Internal Affairs;
- Criminal record database under the Ministry of Internal Affairs;
- State registry of convicted persons under Ministry of Justice;
- Migration database under State Committee of Migration;
- State registry of Azerbaijan population under Ministry of Justice;
- State registry of legal persons under Ministry of Taxes and Ministry of Justice, in respect of commercial legal persons and NGO's;
- Real estate database under State Committee of Property;
- State registry of convicted persons under Ministry of Justice;
- Loan registration system of the Central Bank of Azerbaijan.

265. According to the Azerbaijani authorities, although the AML/CFT Law clearly grants the Financial Monitoring Service access to informational resources held by other state authorities, Memoranda of Understanding provide for technical details on how exactly the general rule within the law should be applied in practice (ex. designation of a point of contact, use of a specific network, etc.). It was confirmed that the lack of an MOU does not mean that FMS cannot get information from a specific state authority.

266. During on-site interviews the evaluation team was informed that the FMS has also indirect access (through a letter of request) to the following resources:

- Tax declarations of natural and legal person's database held by the Ministry of Taxes;
- Customs database;
- Registration of immovable properties database; and
- Registration of vehicles database.

267. In practical terms, the FMS holds the potential of knowing at any moment both the criminal history of any subject under its analysis or whether such subject is under investigation with any of the law enforcement bodies in the country. In this respect, according to Article 1 of the Law on "*Entrance to and exit from country and passports*" when a person becomes a suspect or is accused under a criminal case, is convicted or medical coercive measures are applied against it, this person is included into the border crossing restriction list, until the criminal proceedings are over, the sanction is finished or the sanction is rescinded or medial coercive measures are reversed. The cross border restriction list is, in its turn, a subcomponent of the *Entrance, exit and registration interagency information and search system* operated by Ministry of Internal Affairs to which the FMS has direct access. According to the authorities this system holds information on both the identification of a suspected person and the elements one is suspected for. Also details of an ongoing investigation are available to the Financial Monitoring Service upon a letter of request sent to the relevant investigative body.

268. Also, the resources holding administrative information available for the FMS seem to allow for an easy identification of natural and legal persons (*State registry of Azerbaijan population*, *State registry of legal persons*), their assets/ liabilities (*Real estate database*, *Loan registration system*, *Registration of immovable properties database*, *Registration of vehicles database*), their fiscal history (*Tax declarations of natural and legal person's database*) as well as some of their movements (*Migration database*, *Customs database*).

269. In respect of access to financial information, in addition to the mandatory reporting database, the FMS has direct access to the databases of the Ministry of Taxes, where the information on all the bank accounts of the entrepreneurs and legal persons are stored and also to the *Loan registration system of the Central Bank of Azerbaijan*, comprising information on persons getting loans from the banks in Azerbaijan. These two sources of information are considered by the FMS to cover all the bank accounts, which are potentially involved in large and therefore risky transactions from an AML/CFT point of view. Any financial information which is not accumulated in the online databases is available to the FMS indirectly (through a letter of request) in accordance with the provisions of article 17.3 of the AML/CFT Law.

270. As regards timely access to information, the evaluation team regarded this within the context of the FMS' powers. In this sense, the FMS has two business days to suspend or not the execution of a transaction reported to it. From this point of view, FMS has timely access to information held by monitoring entities or other persons involved in monitoring as following implementation of the GoAML solution the unit has direct, on-line and secured communication channels with registered monitoring entities and based on the regulation on submission of data, this entities are obliged to answer to its requests within one day.

271. As regards information held by other state authorities, both articles 17.3 of the AML/CFT Law and 11.5 of the Statute state that the FMS has access to such information *"needed to properly undertake its functions*". Also, in accordance with article 1 of the Decree on the implementation of the AML/CFT Law, the FMS *coordinates the activity of the relevant state authorities in the field.* Based on these two provisions, the Azerbaijani authorities argued that the FMS is empowered to state clear deadlines for the information that has to be provided by other state authorities. During on-site visit, the FMS provided specific examples where the unit indicated a

clear deadline for submission of data by other state authorities, and that deadline was met, some within the same day.

272. Essential Criteria 26.3 provides for three essential powers of the FIU:

- access to three categories of information;
- that this information is proper for the FIU to carry out its functions; and
- that access should be timely.

273. Access to financial, administrative and law enforcement informational resources is essential for high added value intelligence products, as financial data alone is often meaningless without contextual/background information. From this perspective the evaluation team was satisfied with the FMS' access to the three categories of information and considers that the informational resources available for the FMS are proper for the unit to carry out its intelligence role within the Azerbaijani AML/CFT system. At the same time, although not explicitly stated within the law, the legal provisions regulating FMS' access to information together with the operational processes implemented by the unit demonstrated to the evaluation team a timely access to information.

Additional information from reporting parties (c.26.4)

274. The FMS may request additional information directly from reporting parties pursuant to Article 17.3 of the AML/CFT Law and Article 11.5 of the FMS Statute. Article 17.3 reads that "*upon receiving information from the known sources, on transaction which is subject to monitoring, FMS may request monitoring entities, other persons involved in monitoring, supervision authorities and State Customs Committee to submit information defined in the article 11.1 of the AML Law for the purposes of inquiry, also within the framework of analysis and its own authority the FMS may obtain from mentioned bodies or other state authorities additional information needed to properly undertake its functions*. The first thesis of this provision is too narrow in scope to meet the requirements of essential criteria 26.4, as it restricts access to cases when previous information was received and limits the categories of information that could be requested (defined by article 11.1 of the AML/CFT Law). However, the wording in the second part of article 17.3 is sufficiently wide to grant the FMS *the authority to obtain from reporting parties additional information needed to properly undertake its functions.* Article 11.5 of the FMS Statute reinforces this, as it gives the FMS the right *to require from monitoring entities, other persons involved in monitoring, supervision authorities and other state authorities, by sending relevant inquiry, additional information needed to properly undertake its functions, with a view of examination of received information concerned with legalisation of criminally obtained funds or other property and financing of terrorism <u>or when necessary</u>.*

275. The procedure for submission of information on the basis of the request from FMS is provided under section 7 of the *Regulation on submission of data.* In this respect, article 7.3 obliges the monitoring entities and other persons involved in monitoring (i.e. lawyers, notaries, other persons providing legal or audit services) to submit the information requested by the FMS within one working (business) day. This time interval seems to be in line with the requirement of essential criteria 26.4 (*to properly undertake its functions)* as the monitoring entities are obliged by regulation to report suspicious transactions before their execution and, after that, the FMS has a two business day time interval to decide whether to suspend its execution or not.

276. Monitoring entities and other persons involved in monitoring may submit information and documents, which are not indicated in the request of the FMS, but may be useful for combating money laundering and financing of terrorism (Article 17.4 of the Regulation). Also, banking or other legally protected secrecy regimes cannot be invoked as a ground to reject submitting information to the FMS (Article 16.1 of the AML/CFT Law). Any provision of information by the monitoring entities, under the AML/CFT Law exempts them from any liability for breach of

any restriction on disclosure of the bank or other legally protected secrecy, as well as causing any material and moral damage emerged as a result of the disclosure of information.

277. The Azerbaijani authorities provided the following statistics on requests for additional information submitted by the FMS to monitoring entities.

278. **Table 11: Number of requests for additional information submitted by the FMS to monitoring entities**

Year	Number of additional request to reporting entities
2010	19
2011	16
2012	50
2013	140

279. The figures indicate a strong increase of such requests in 2012 and 2013 which is attributed by the Azerbaijani authorities to the implementation of the GoAML solution in July 2012. A specific component (Message Board) of this software solution provides for a protected link between the FMS and the compliance officer within the requested monitoring entity.

280. Failure by monitoring entities or other persons involved in monitoring to meet their obligation to submit information to the FMS upon the request of this authority is an administrative offence under article 348-3 of the Administrative Infringements Code of Azerbaijan. In specific terms, *failure to carry out in time or incomplete execution by the monitoring entities and other persons involved in monitoring of the written instructions of the FMS or supervision authorities given in order and cases stipulated by the Law entails imposition on official persons of penalty at a rate from 800 AZN up to 1,500 AZN and on legal persons of penalty at a rate from 8,000 AZN up to 15,000 AZN* (Article 348–3.0.4). The relevant supervisory bodies are entitled to sanction the monitoring entities and other persons involved in monitoring.

281. Following analysis, the evaluation team was satisfied with the fact that the FMS has both the power to obtain directly from monitoring entities and other persons involved in monitoring additional information needed to properly undertake its functions and also the channels to enforce such power in case of misconduct of reporting entities. This is in line with Essential Criteria 26.4.

Dissemination of information (c.26.5)

282. The authority of the FMS to disseminate information is provided under Article 17.5 of the AML/CFT Law and Article 10.9 of its Statute. The first legal text states that when within the framework of analysis, the FMS determines that the transaction being executed is related to the legalisation of criminally obtained funds or other property and the financing of terrorism, information on ML shall be submitted to the General Prosecutor Office, and information on TF shall be submitted to the relevant executive authority, designated by the Decree no.66/23 February 2009, as the Ministry of National Security of the Republic of Azerbaijan. The second provision (Article 10.9 of the FMS' Statute) reads that *when within the framework of analysis, FMS detects the elements of a crime in transaction, submits information on ML to the General Prosecutor's Office of the Republic of Azerbaijan, and information on the TF to the Ministry of National Security of the Republic of Azerbaijan and gets feedback from them.*

283. The wording in the afore-mentioned provisions is different in respect of the condition that needs to be met in order for the FMS to disseminate information to law enforcement authorities. Article 17.5 requires that *the transaction being executed is related to the legalisation of criminally obtained funds or other property and the financing of terrorism*, while the Statute of the FMS requires the *detection of elements of a crime in transaction*. Both provisions link the dissemination process to a "*transaction*" which is defined by article 1.0.3 of the AML/CFT Law as *transaction aimed at acquisition, exercising, change or termination of civil rights to the funds or other property as a result of transactions with them*.

284. Although these provisions seem to limit the dissemination powers of the FMS to indications of a crime in relation to a transaction in progress, they are supplemented by the texts of article 2.2 (*"Scope of application of the AML/CFT Law*") and article 7.2 *("Transactions with funds or other property subject to monitoring")* of the AML/CFT Law. The first text includes within the scope of the AML/CFT Law *activities related to legalization of the criminally obtained funds or other property and the financing of terrorism* outside the jurisdiction of the Republic of Azerbaijan. The second obliges monitoring entities to submit to the FMS not only information on transactions (as defined by article 1.0.3 of the AML/CFT Law*), but also* *information on funds or other property, or attempts to carry out transactions* *with such funds or property, regardless of their amount*.

285. Following the spirit of Essential Criteria 26.5, the evaluation team looked for any restrictions that may limit the authority and autonomy of the FMS to disseminate financial information to domestic authorities, for investigation or action, when grounds of ML/TF are identified. The corroboration of the afore-mentioned legal texts were considered by the evaluation team in compliance with the evaluated criteria as the unit has the authority to disseminate intelligence on ML/TF to the competent investigative bodies whenever there are grounds to suspect ML/TF in relation to simple funds or property, attempted transactions, transactions being executed with such funds or property, or activities related to the legalization of criminally obtained funds or other property and the financing of terrorism carried out outside the jurisdiction of Azerbaijan.

286. During on-site interviews, representatives of the FMS confirmed that the AML/CFT Law is interpreted in a broad sense and that the unit has no problems in disseminating relevant ML/TF intelligence to their beneficiaries, regardless of whether a transaction is involved or not and whether the predicate crime has been perpetrated domestically or abroad, aspects which have been confirmed by the main beneficiaries.

287. As regards the internal dissemination procedure, cases prepared by the analysts are forwarded to the head of the FMS for a decision on the dissemination. During on-site interviews with the FMS, the evaluation team was informed that the dissemination decision is taken by the Director of the FMS following open discussions with the analyst preparing the case and the head of the Analytical Division. The disseminated cases include information about the suspicious persons, indicators on the suspicion, diagram about the transactions, and sometimes indications about the suspicion related to the predicate crime. The content of disseminations sent by the FMS has also been confirmed by the beneficiaries.

Operational independence and autonomy (c.26.6)

288. The FMS, under the Central Bank of the Republic of Azerbaijan, was established in order to provide implementation of the state policy in the sphere of prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism, to improve the inspection system and to coordinate the activity of the relevant state authorities in this field (Article 1). The unit was designated to carry out the authorities of the "*financial monitoring organ" (FIU)* envisaged by Article 17.1 of the AML/CFT Law.

289. The FMS possesses an independent balance sheet and its maintenance and functioning is financed by the Central Bank of the Republic of Azerbaijan and other sources stipulated by the existing legislation. Since its creation, the FMS has only received technical assistance and every year the budget has been financed by the Central Bank. Also, the FMS has state property under its disposal, accounts in banks, a seal with the State Emblem of the Republic of Azerbaijan and its title engraved on it, respective stamps and letterheads. The unit is located in Baku city and has no territorial offices.

290. The FMS is headed by a Director who is appointed and dismissed by the President of the Republic of Azerbaijan (Article 12 of the Statute) and who bears the responsibility for fulfilling

the duties and implementing the functions entrusted to the FMS. The status of the Director is equivalent to the status of the first Deputy Chairman of the Central Bank. According to the Statute of FMS, the Director:

- manages the activity of the Financial Monitoring Service and organises its current functioning;
- determines the official responsibilities of the Deputy Director of the Financial Monitoring Service;
- appoints and releases from the position other employees of the Financial Monitoring Service;
- approves statutes on organisational divisions of the Financial Monitoring Service and its employees' job descriptions, supervises their activity;
- gives imperative orders and decrees regarding the activity of the Financial Monitoring Service, as well as approves (signs) by–laws, organises their implementation and carries out the supervision;
- cancels unlawful orders and decisions of the Financial Monitoring Service's officials;
- without a power of attorney represents the Financial Monitoring Service in relations with state authorities and other persons of the Republic of Azerbaijan and foreign countries;
- ensures efficient utilisation of funds allocated for the Financial Monitoring Service;
- submits the report on the activity of the Financial Monitoring Service to the President of the Republic of Azerbaijan every three months; and
- implements other responsibilities in accordance with the legislation of the Republic of Azerbaijan.

291. The Director of FMS is seconded by a Deputy Director who is also appointed and dismissed by the President of the Republic of Azerbaijan, and to whom powers could be delegated in the absence of the Director. His status is equivalent to the status of the Deputy Chairman of the Central Bank. The employees of the FMS have a status equivalent to the status of the employees of the Central Bank, and in this respect, the Chairman of the Central Bank approves the structure, staff list and estimate of expenditures of the FMS.

292. The current management of the FMS has been appointed by the Order of the President of the Republic of Azerbaijan no. 517 of 17 October 2009, from among senior officials within the Central Bank.

293. During the on-site visit there were no indications for the evaluation team that the FMS lacks the authority and capacity to carry out its functions freely or that the autonomy of the decision to analyse, request and/or forward or disseminate intelligence would be affected. Moreover, discussions held with actors situated downstream (law enforcement) or upstream (reporting) in the AML/CFT system are supportive of the FMS' independence in engaging with the national authorities with attributions in the field. In this respect, there were no reports on any instances of (attempted) undue influence or interference with the FMS. Furthermore, there are no provisions in law for a public official to be empowered to cancel orders issued by the FMS director.

294. However, an issue that raised the attention of the evaluation team was related to the mechanism provided by the legislation on the designation of the management of the FMS. The Director and Deputy Director of FMS are directly appointed and dismissed by a political authority in the Republic of Azerbaijan (Order issued by the President). Moreover, there appear to be no legal safeguards in place to prevent their removal from Office. During on-site interviews, the authorities argued that it is a matter of culture in the Azerbaijani system not to have safeguards in place for the positions appointed by the President of the Republic and different examples have been provided in this respect (e.g. the General Prosecutor of Azerbaijan). Also, it was stated that no operational independence issues have emerged so far, both for the FMS and other authorities with management appointed by the President of the Republic. Although the evaluation team

accepts the specificity of the public management in Azerbaijan and reiterates that no indications of operational independence have been observed on-site, the opinion that the appointment mechanism combined with this lack of safeguards makes the system very vulnerable to risks of undue influence or interference.

Protection of information held by the FIU (c.26.7)

295. Essential Criteria 26.7 requires that information held by the FIU should be securely protected and disseminated only in accordance with the law. The requirement regards both the physical and the legal protection of information processed by the FIU.

296. In relation to this criterion, Article 17.4 of the AML/CFT Law states that information held by the FMS shall be securely protected and used solely for the goals of the Law and to this end the FMS shall create an information protection system. Also, according to article 10.17 and 10.18 of the Statute of the FMS, the unit securely protects information obtained as a result of its activity, establishes the information protection system and stores and protects archive documents.

297. As regards the physical protection of information processed, the FMS is equipped with modern IT technologies and program maintenance. Information held by the unit is regularly backed up in a secondary facility which is located 300 km outside of Baku in order to ensure their completeness and secure them from being lost. The evaluation team did not visit this facility. The system of reporting available for monitoring entities is secure. The messages are encrypted and can only be accessed by the analytic department of the FMS. The server room is always code-locked and only authorised personnel are allowed to enter. Independent and completely isolated Local Area Networks (LANs) are set up within the FMS. The internal network of FMS has no external connections and there is a log history to record all the queries made by the analysts. Access to the internal network within the FIU is restricted to certain FMS staff members as designated by the Director of the FMS. Electronic IDs are used to access the building and codes to enter the rooms. The FMS' premises are located in a separate building which is guarded by one security agent, has a security alarm system and secured doors that limit the access to FIU staff only. Surveillance cameras and fire extinguishing systems are also in place. The evaluation team was satisfied with the physical protection of information at the visited premises.

298. As regards the legal protection of information, the spirit of essential criterion 26.7 is that a confidentiality obligation should be provided for all the categories of information processed within the FIU and that a proper sanctioning regime, together with the authority to enforce it, is in place for dealing with breaching of such obligation.

299. According to information provided by the Azerbaijani authorities, there are four categories of information that are processed within the FMS:

- Bank secrecy information – information on bank account and bank deposit, operations on the account and information about the client (Article 967 of the Azerbaijani Civil Code);
- Commercial secrecy data - 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 (Article 2.0.1. of the Law of the Azerbaijani Republic on Commercial Secrecy);
- State secret information - information linked to military, foreign-political, economic, espionage, counter espionage and operation-investigation activities of state, protected by state, distribution of which may damage security of the Republic of Azerbaijan (Article 1.0.1 of the Law of the Azerbaijani Republic on State Secret); and
- Personal data - the total of private and family information (Article 38.2 of the Law on Personal Data).

300. Covering the protection of these categories of data, there are two general provisions that are applicable to the employees of the FMS. The first is provided by article 10 of the Labour Code of

the Republic of Azerbaijan which reads that *employees have basic obligations of keeping state secrets and the employers' trade secrets confidential under the rules and terms established by law.* Intentional failure in maintaining the confidentiality of state, production and commercial secrets or failure to fulfil the obligation of keeping these secrets confidential is regarded as a gross violation of the job description (Article 72 of the Labour Code). The second is provided by article 60 of the Law of the Republic of Azerbaijan on the National Bank of the Republic of Azerbaijan - 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.*

301. In addition to the afore-mentioned provisions, based on the provisions of article 17.4 of the AML/CFT Law, the FMS implemented a system where every employee of the unit signs a confidentiality agreement with the Director of the unit, which comprises the prohibition to disclose service information both during employment and after the cessation of their agreement with the unit. During on-site interviews it was confirmed to the evaluation team that the Director and Deputy Director of the FMS do not sign such a confidentiality agreement. Also all the security protocols of the unit are regulated by the Guidance "*On the information security*" approved by Director of FMS and all employees must take responsibility to comply with the safety protocol during the whole period of employment and after that.

302. The wording of the afore-mentioned provisions together with the legal protection system implemented by the FMS is considered by the evaluation team wide enough to provide for an indefinite obligation for the unit's personnel to protect the information they come across during their service.

303. As regards enforcement of this obligation, the Criminal and Administrative Infringements Code of the Republic of Azerbaijan, provide specific penalties for breaching the regime applicable to any of the categories of information processed by the FMS:

- Article 202.2 of the Criminal Code - *Illegal use or disclosure of a data which is commercial or bank secret, without consent of their owner, committed on mercenary or other personal interest with causing damage in the large amount (>= 7.000 AZN)— is punished by the penalty at fine from five hundred up to one thousand manats, or corrective works for the term up to two years, restriction of freedom for the term up to six months;*
- Article 223 of the Administrative Infringements Code - *Illegal use or disclosure of data which is commercial or bank secret, without consent of their owner, committed on mercenary or other personal interest with causing damage in the little amount (<= 7.000 AZN) - entails imposition on individuals of penalty at a rate from 20 manats to 25 manats, official persons of penalty at a rate from 40 manats up to 55 manats, on legal persons of penalty at a rate from 50 manats up to 200 manats*;
- Article 284.1 of Criminal Code - *Disclosure of the data, making state secret, by a person to whom it was trusted or it became known on service or work, at absence of traits of treason for state — is punished by imprisonment for the term from two up to five years with deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years;*
- Article 156 of the Criminal Code – *Illegal collection of information on personal data as well as on private life, which are personal or family secrets of the person, and distribution of, sale of and provision to other person, the documents, videos, photo-copies and audio-records reflecting such information — is punished by fine of hundred manat up to five hundred manat, or by public works for the term from two hundred forty hours up to four hundred eighty hours, or by corrective work for the term of up to one year.*

304. Although following analysis, these texts have a general application to any subject under the law, and they do not provide for time limitations, the wording used by articles 202 of the Criminal Code and 223 of the Administrative Infringements Code seem to the evaluation team too narrow in scope to be in full compliance with the requirements of Essential Criterion 26.7. This is because all the conditions imposed for making the sanctions applicable seem cumulative which means that whenever one element is missing the behaviour would not be a breach of the law. Also, negligent disclosure is not covered.

305. Overall, as regards the legal protection of information held by the FMS, there are general provisions is this respect applicable to all the staff, in relation to all the categories of information processed by the unit and there are also mainly criminal enforcement means available for those who breach this obligation. Some of these means however are narrower in scope that one would expect, to be in compliance with Essential Criterion 26.7.

Publication of periodic reports (c.26.8)

306. In accordance with the provisions of Articles 10.13-10.15 of the Statute of FMS, the unit prepares relevant statistics reports within the scope of its activity, releases periodically publicly available reports that include statistics, typologies and trends as well as information regarding its activities and provides the monitoring entities and other persons involved in monitoring that are required to submit information, with adequate and appropriate feedback.

307. When accessing the FMS' website[5], the evaluators identified yearly reports for the interval 2010-2012, published under a designated section - *Publications and reports*. The same section also contained information bulletins, articles and books. The latest report (2012) available both in Azeri and English contains information on the activity of the unit and relevant statistics on the information received by FMS and its use. Research on the website also revealed that the 2011 activity report contains a section dedicated to money laundering and terrorist financing typologies and trends.

308. After the evaluation visit, the 2013 Annual Report of the FMS has been published and this material also contains a specific section dedicated to ML/TF typologies. In addition to that, based on the article 10.3 of the Statute on the Financial Monitoring Service a *Guide on criteria on determination of transactions subject to monitoring (red flags)* has been prepared by the FMS and disseminated to monitoring entities. According to the Azerbaijani Authorities this Guide has been updated based on ML/TF trends and patterns identified by the FMS.

309. The FMS also releases information bulletins dedicated to increasing the awareness of monitoring entities, stakeholders and civil society on AML/CFT issues. These information bulletins usually include information on latest development in the fight against ML/TF, court cases, international standards, etc.

310. Having regard to the fact that the Azerbaijani AML/CFT system is rather young, periodic publication of typologies is mandatory in order to ensure that the monitoring entities are able to recognise relevant ML/TF suspicious situations. The evaluation team was satisfied with the effort put in place by the FMS in this respect. However the unit has to maintain its outreach towards industry, as during on-site interviews with the representatives of the financial institutions, the need for more ML/TF typologies from the FMS was clearly expressed.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

[5] www.fiu.az

311. On its official website, the Egmont Group of Financial Intelligence Units indicates Azerbaijan as one of its members. In this respect, in 2010 the FMS was granted observer status and in July 2011 the Financial Intelligence Unit of Azerbaijan was accepted as a full member.

312. Article 20.1 of the AML/CFT Law, empowers the FMS to cooperate with the competent authorities of foreign states in the sphere of combating legalisation of criminally obtained funds or other property and the financing of terrorism, exchange of information on committed crimes, execution of the court decisions and criminal prosecution in accordance with the legislation of the Republic of Azerbaijan and the international treaties to which the Republic of Azerbaijan is a party. Also, the Statute of the FMS authorises the unit to ensure relations of the Republic of Azerbaijan with foreign states and international organisations, to cooperate with relevant agencies of other states, in accordance with the legislation, to conclude international instruments, as well as to apply for membership in the specialised international institutions. The legislation reviewed does not condition the international exchange of information by the FMS to the concluding of a MOU.

313. According to the authorities, the FMS takes the Egmont principles into account when exchanging information with its counterparts and responds within the determined timelines and in all confidentiality. All foreign requests are scrutinised and answered. The information is kept confidential. The average interval of response to the foreign requests tends to be within one month, if otherwise is not considered in the request itself, and is carried out regardless of whether an MOU exists with that counterpart or not.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

314. The organisation of the activity of the FMS is governed by Section V of the Statute of the unit. Article 17 empowers the Chairman of the Central Bank of Azerbaijan to approve the structure, staff list, and estimates of expenditures of the FMS. Also, the Statute gives the Director the power to approve the statutes on the organisational divisions of the FMS and its employees' job descriptions as well as to appoint and release from their positions other employees of the unit.

315. The FMS is composed of the Director, Deputy Director, Secretariat and eight Departments (with a total of 40 established posts), which are the following:

- Executive Office;
- Analytical Department;
- Supervision Department;
- Organizational Department;
- International Cooperation Department;
- Legal and Methodological Department;
- IT Department; and
- Accounting Group.

316. The employees of the FMS have previous experience in working for the Central Bank of the Azerbaijan Republic (CBA) or the banking system as well as in various governmental institutions. Out of 40 current employees 5 have previous experience in working for the CBA, 5 for Ministry of Economy and Industry, 4 for Ministry of Justice, 3 employees came from banking system and others from various financial institutions.

317. The current organisational structure of the FIU is indicated in the chart below:

318. The main department within the FMS is the **Analytical Department,** responsible for collecting, processing and analysing information received from monitoring entities. As necessary, it seeks additional information and submits the suspicious cases to the head of the FMS. It is also responsible for exchanging information with foreign FIUs. Within the Analytical department there are 11 employees, including the head of the department. Two analysts deal with data processing, six with operational analysis and other two with strategic intelligence.

319. **The Supervision Department** is responsible for supervision over real estate agents and pawnshops. It is composed of the director and two staff.

320. **The Legal and Methodological Department** is responsible for drafting laws, normative acts, guidelines, and recommendations for the implementation of the AML/CFT Law. It contributes to the drafting and review of relevant draft laws and decrees. It participates in the cooperation between the FMS and international or regional organisations. It is composed of the head of department and three staff.

321. **The International Cooperation Department** is responsible for the implementation of international cooperation, establishing cooperation with foreign counterparts and international organisations, taking appropriate measures for signing international agreements, when needed, coordinating the technical assistance provided to the FMS and monitoring its use, ensuring protocol service. It is composed of the director and two staff.

322. **The IT Department** is responsible for IT, security and developing the software for the collection and analysis of information. It is composed of the director and two staff.

323. **The Executive Office** supervises the execution of tasks given by the management, maintaining records and correspondence and dealing with human recourses issues. It is composed of the director and three staff.

324. **The Organizational Department** is responsible for logistical support. It is also responsible for physical security of the premises. It is composed of the director, six staff, and one security guard.

325. **The Accounting Group** is responsible for the organisation and management of the financial accounting, in accordance with international standards, manages the budgetary processes and conducts the financial supervision. It is composed of the director and one staff member.

326. In terms of financial resources, the budget of the FMS is approved by the Chairman of the Central Bank of Azerbaijan, and is managed by the Director of the unit. According to the statistics provided, the overall budgets were as follows:

Table 12: Annual budget of the FMS

Year	Budget in USD
2009	496,795
2010	4,354,300
2011	5,708,602
2012	3,070,256
2013	2,123,538

327. Out of these figures the evolution of salaries budget was as follows:

Table 13: Annual salary budget of the FMS

Years	Budget in USD
2010	1,024,000
2011	1,201,000
2012	1,235,000
2013	1,235,000

328. In terms of technical resources, FMS uses the GoAML, software solution developed by UNODC, which receives and processes the data from the reporting entities electronically. Also, all employees of the FMS are equipped with computers. The analytical department's staff are equipped with 2 computers each, one for open source research and the other for analytical purposes.

329. Overall the FMS seems well staffed and public information available on the dedicated software solution used (GoAML) is supportive for an increased capacity in processing the current volumes of financial information received, both for intelligence analysis and supervision functions. This was also the opinion of the FMS representatives, expressed during on-site interviews. However, being a young system and as the volumes of financial information register an ascending trend, the FMS should constantly evaluate the appropriateness of its human analytical capabilities.

Integrity of FIU authorities (c.30.2)

330. The staff of the FMS are recruited by the Director in accordance with the provisions of the procedure provided by the Guidance "*On hiring FMS employees*". According to this procedure, candidates should pass a written exam and interview before admission. A special commission composed of heads of various departments has been established to deal with employee hiring. The General requirements for the candidates applying for a job with the FMS are mentioned below:

- Citizenship of the Republic of Azerbaijan;
- Higher education (except for the vacancies not requiring higher education)
- Knowledge of national legislation in the field of combating the legalization of criminally obtained funds or other property and financing of terrorism;
- General knowledge of international standards and requirements in the field of combating the legalization of criminally obtained funds or other property and financing of terrorism;
- Foreign language skills (the requirement for speaking foreign languages is higher for the candidates who apply for a position within International cooperation department);

- Computer skills;
- Skills of working with documentation; and
- Analytical thinking skills;

331. In order to ensure high professional standards, including standards concerning confidentiality and integrity the employees sign an agreement with the head of FMS regarding prohibition of disclosure of service information. All security protocols are regulated by the Guidance "*On the information security*" approved by Director of FMS and all employees must take responsibility to comply with the safety protocol during the whole period of employment and after that. Also, in order to ensure high ethical standards, "*Rules of ethical conduct of the FMS staff*" were adopted by the Head of FMS.

Training of FIU staff (c.30.3)

332. According to the statistics provided, during 2009-2013 the staff of the FMS participated in 62 training events and workshops, both domestically and abroad, organised by MONEYVAL, IMF, World Bank, UNODC, Egmont Group, USAID, US Department of Treasury, OSCE and State Secretariat for Economic Affairs (SECO) as well as by foreign FIUs. These events were related to various AML/CFT topics, such as tactical analysis, ML/TF typologies, mutual evaluations, legal and regulatory issues, international cooperation, the use of technology solutions in analysis and FIU and IT security.

333. Based on information provided, none of the current employees of the FMS seems to have previous experience in financial or criminal intelligence analysis. This seems to be indicative of the fact that the selection procedure itself does not take into consideration such aspects. The FMS compensated that by allowing its analysts to participate in training programmes dedicated to tactical analysis. However it is the opinion of the evaluators that on-going training programmes should be provided to analysts within the Analytical Department on operational and tactical analysis issues.

Recommendation 32 (FIU)

334. In accordance with the provisions of Article 10.11 of its Statute, the FMS provides the application of centralised electronic-information systems for the purpose of single collection of received information in the relevant sphere and others. Also, the FMS defines the form of submission of statistical information on the offences related to ML and TF, after being agreed with the General Prosecutor's Office and the Ministry of National Security. The Analytical Department within the FIU is in charge of gathering the statistical data.

335. Statistics on the information received by the FMS and on the outcome of their activity are set out in the activity reports and information bulletins. Also, during on-site interviews, representatives of the FMS confirmed that every three months a report containing statistical information is presented to the President of the Republic of Azerbaijan.

336. The FMS provided the following statistics.

Table 14: Information received by the FMS

Type of report	Reporting entities	Number of transactions in the reports			
		2011	**2012**	**2013**	**TOTAL**
Report on physical cross-border transportation of currency valuables (BCR)	State Customs Committee of Azerbaijan (DGK)	352	377	521	1,250
Report on the transactions related to	Bank			535	535

religious charities (DT)					
Report on transactions related to non-governmental organisations (QHT)	Bank			34,732	34,732
Report on transactions with countries in NCCT list (BLR)	Bank	23,519	17,538	18,202	59,259
	Notary public	25	3	20	48
	Insurance		1	3	4
	Post	7	12	18	37
Cash Transaction Reports (CTR)	Bank	218,657	247,937	309,631	776,225
	Non-banking credit organisations	35	14	38	87
	Insurance	9	4	4	17
	Securities	17	13	93	123
	Leasing	51	31	8	90
	Real estate agents	10	9	5	24
Report on transactions in which it was detected that the identification of a customer or a beneficial owner was not correct (FIR)	Bank	4	2		6
Report on suspicions that the client does not act on his/her behalf (FMR)	Bank	8	16	13	37
Report on Politically Exposed Person (PEP)	Bank	181	216	214	611
Suspicious transaction report (STR)	Bank	314	496	590	1,400
	Non-banking credit organisations			1	1
	Securities		4		4
Terrorist financing report (TFR)	Bank		8	13	21
Report on persons subject to sanctions (UNR)	Bank	10	1		11
TOTAL		243,199	266,682	364,641	874,522

Table 15: Number of transactions in reports received by the FMS

Year	Number of transactions in reports		
	Received	Rejected	Rejection rate (%)
2011	243,199	2,380	0.98
2012	266,682	2,064	0.78
2013	364,641	1,838	0.50

TOTAL	874,522	6,282	0.72

Table 16: Number of cases opened by the FMS

Year	Opened cases	Cases under review	Disseminated cases		
			ML	FT	Total
2010	21	8	1	12	13
2011	66	58	4	4	8
2012	66	56	4	6	10
2013	98	36	44	18	62
2014	7	4	1	2	3
TOTAL	258	162	54	42	96

Table 17: Number of requests for information

Number of requests to:[6]		
Year	Reporting entities	National authorities
2010	19	16
2011	16	17
2012	50	52
2013	140	39
2014	4	8
TOTAL	229	132

Table 18: Predicate offences for cases disseminated by the FMS to the GPO

Hypothetical predicate offences of the disseminated cases on ML	No.
Cybercrime	1
Corruption	11
Drugs trafficking	1
Tax evasion	39
Fraud	2
TOTAL	54

Table 19: Criminal prosecution based on FIU disseminations

YEAR	ML	FT	Other crimes	Total
2010				
2011				
2012	1			1
2013	2		33[7]	35
2014				
TOTAL	3		33	36

[6] Numbers of the requests do not only reflect those related to disseminated cases, but also reflect the numbers related to the cases, which were under investigation of the FMS.

[7] The "33 other crimes" all relate to tax offences.

Effectiveness and efficiency

337. The effectiveness of a financial intelligence unit resides in its capacity to deliver actionable intelligence to the law enforcement beneficiaries. Having regard to that, the evaluation team tried to identify whether the FMS is effective in adding value to the information it receives from the financial and non-financial sector and whether the intelligence generated is delivered to law enforcement for investigation in a relevant and timely manner.

338. First of all, the FMS under the Central Bank of the Republic of Azerbaijan is an administrative type of FIU with no investigative powers, although it does have the power to postpone the execution of financial transactions. Based on statistics provided, the FMS has rarely used this function. During the reference period there was only one suspended transaction in 2012, which was linked to subjects on international sanctions lists. This may relate to the fact that, although legally the rule is that STRs should be submitted to the FMS before the execution of the transactions, in practice however, statistics provided by the Azerbaijani authorities indicate for the evaluated period that only a maximum of 10% of STRs are reported to the FMS before the execution of the transaction by the monitoring entity.

339. According to the Azerbaijani authorities this mainly relate to the fact that monitoring entities and other people involved in monitoring have a tendency in interpreting practical situations as falling under the exception provided by the AML/CFT Law for the timing of reporting (art. 11.3 - *“Where non–execution of a transaction is impossible or where it is known that non–execution of the transaction may cause impediments for identification of the beneficial owner, after execution of the transaction the monitoring entities shall immediately inform the financial monitoring organ”*). Also it was argued that the majority of *a priori* reports relate to terrorism financing suspicions, highlighting that important issues are alerted to the FMS in due time. Although the evaluation tem accepts the arguments provided, the opinion that this behaviour restricts the opportunity for the FMS to actually block transactions with a potential ML/TF purpose is maintained. Also, the FMS should increase its outreach to the sector over this issue, as so far, apparently no sanctions have been applied to monitoring entities and other persons involved in monitoring for late reporting.

340. During on-site interviews with all the actors involved it became clear that the FMS has taken the lead in coordinating the components of the Azerbaijani AML/CFT regime and the evaluators were satisfied with the level of domestic cooperation between the FMS and other components within the system.

341. The unit is highly efficient in receiving and collecting mandatory reports from entities within both the financial and non-financial system. As informed during on-site interviews 99.9% of the information that enters the FMS comes electronically. Also, based on reporting templates provided on-site, the evaluators noticed a high level of structuring for incoming information. This means that the data model FMS has implemented, allows for complex queries over an increased number of data concepts which is very helpful both for compliance and analysis processes.

342. The increasing trend in STR reporting is without doubt the result of the effort paid by the FMS to increase the level of awareness of monitoring entities and other persons involved in monitoring the obligations they have under the AML/CFT legislation (see the table below). However, this only applies to financial institutions (that do show an increased awareness of their reporting obligations) as there are still no STRs submitted by designated non-financial businesses and professions (DNFBP). This means that further training and awareness raising initiatives have to be put in by the FMS in order to increase the reporting component of the system.

Table 20: Reports received by the FMS

Type of Suspicious Reporting	Number of Transactions in the Reports

	2011	2012	2013	TOTAL
BLR (reports on transactions with countries in NCCT list)	23,551	17,554	18,243	59,348
FMR (reports on suspicions that the client does not act on his/her behalf)	8	16	13	37
PEP (reports on transactions from bank accounts of PEPs)	181	216	214	611
TFR (reports on funds related to terrorist financing)	-	8	13	21
STR (reports on funds that are the proceeds of criminal activity)	314	500	591	1,405
UNR (reports on persons subject to sanctions)	10	1	-	11

343. As regards access to information, the representatives of the FMS stated that current informational resources are sufficient for the analysis processes of the unit. Although this opinion is embraced by the evaluation team, the lack of centralised informational resource on the accounts held by natural and legal persons with financial institutions in Azerbaijan, means that for those categories of subjects which are not registered into the databases available to the FMS, the unit has to send letters of requests to all banks in the country in order to identify their accounts. What this means is that the identification of relevant information is difficult in this scenario. From an operational perspective this is not a problem for the FMS since all the monitoring entities are obliged to respond to its requests for information within one day. However, a greater effectiveness impact is generated for the law enforcement component of the AML/CFT system which is further developed under Recommendation 27. Overall it is the opinion of the evaluation team that both the FMS and especially the law enforcement authorities could benefit from a centralised informational resource on the accounts held by natural and legal persons in Azerbaijan.

344. The analytical processes of the FMS are carried out both for operational and strategic purposes. Also, as a practice, following consultations with the head of the analytical department, the Director of the FIU has set up analytical working groups that are dealing with specific subjects (e.g. transactions to and from Iran). The functionalities of the newly implemented GoAML solution are used for all types of analysis.

345. According to the operational procedure in place, operational analysis is conducted upon informational priorities, based on the ML/TF risk level of every report received. The highest priority is attributed to reports on transactions with persons designated pursuant to relevant UNSCRs, followed by reports on suspicious transactions. The last in the order of priorities is information contained in currency transaction reports submitted by reporting entities. The Director of the FMS has the authority to establish the order of priorities in analysis, based on application from the head of the Analytical Department. Although during on-site interviews it was mentioned that reports coming from the State Customs Committee are analysed, this category of information is not mention by the operational procedure as a trigger for analysis.

346. In terms of operational analysis, statistics provided by the authorities indicate an interesting situation (please see the table below). During 2011 and 2012, only 15% of the cases opened by the FMS ended up in disseminations to law enforcement. This is for the evaluation team

indicative of possible difficulties that FMS faced in evaluating the ML/TF risk of incoming information. This situation changed in 2013, when 63% of cases analysed were disseminated, possibly due to the full implementation of the GoAML solution, which allows for better information management.

347. Also looking at statistics, there seems to be discrepancies between the number of incoming reports and the cases opened by the FMS. For instance in 2013, 98 cases were opened on a total of 591 STRs. Since the evaluation team was satisfied with the capacity of the unit to process incoming information this raises questions over the relevance of the reporting component. However, the Azerbaijani authorities argued that information from multiple reports is used in a single opened case and in addition the goAML system provides for an *"under review"* status where reports that did not initially result in a case being opened are regularly reviewed every six months. No statistics were provided to the evaluation team on the number of reports used for the cases opened by the FMS.

Table 21: FIU Cases

	Under analysis at year end	Archived in reference year	Reports disseminated for investigation
2009	1	1	X
2010	20	7	13
2011	66	58	8
2012	66	56	10
2013	98	36	62

348. Another issue raised by the evaluation team during on-site interviews was related to the apparent low confirmation rate with law enforcement of the FMS' disseminations. Statistics provided show that during 2009-2013 the Anti-corruption Directorate has carried out *ex officio* 13 prosecutions that resulted in 5 convictions, and only three prosecutions based on FMS disseminations. At a first glance, it seems that this body has the knowhow for investigating ML but not enough investigative relevance is included in the disseminations from the FMS for a case to be open. However, both the FMS and the investigative bodies confirmed that AML/CFT is, for everybody in Azerbaijan, a new domain. In this respect, the ACD within the General Prosecutor's Office, which is the structure designated to investigate ML in Azerbaijan, indicated that in order to open up a case they do need some more evidence than that which is comprised in the disseminations received from the FMS. At the same time, the ACD admitted to lacking some expertise in dealing with money laundering cases especially when an extraterritoriality element is present. The bottom line is that there are a very low number of prosecutions based on FIU disseminations (see the table below) and the FMS should continue working with its beneficiaries in increasing the relevance of their financial intelligence disseminations for the needs of law enforcement.

Table 22: Criminal prosecution based on FIU disseminated cases

YEAR	ML	FT	Other crimes	Total
2010				
2011				
2012	1			1
2013	2		33	35
TOTAL	3		33	36

349. As regards terrorist financing, the FMS seems to need some more experience to build up in this field, as the Ministry of National Security indicated that the disseminations they receive from the FMS relate to transactions with persons on the sanctions lists. It is essential for the FMS not only

to make sure that known terrorists or terrorist organisations (listed entities) are deprived of funding, but also that information available in the financial and non-financial sectors is used to identify new threats from this perspective and the way they get funded. This is especially important under the terrorism risks which are present in the proximity of Azerbaijan.

350. Another issue that, in the opinion of the evaluation team, affects the effectiveness of the AML/CFT system in Azerbaijan is that, under both the AML/CFT Law and the Statute of the FMS, the dissemination authority of the unit is limited to the General Prosecutor's Office and the Ministry of National Security. This is a consequence of the way the competence for investigating money laundering and terrorist financing is regulated in Azerbaijan. In practice however, the Anti-corruption Directorate, which is the unit within the GPO designated to deal with disseminations coming from the FMS, is mainly specialised on investigating money laundering associated to corruption cases. As such, opinions were expressed by the ACD representatives on difficulties encountered in dealing with FMS disseminations when relating to other categories of crime (e.g. tax crimes).

351. At the same time, the Ministry of Internal Affairs, which is the investigative body for the vast majority of serious predicate offences (i.e. drug trafficking, fraud, etc.) and the money laundering offence provided by article 194 of the Criminal Code receives no financial disseminations from the FMS. This is, in the opinion of the evaluation team, an insufficient *exploitation* of the valuable intelligence the FMS could generate, an opinion which was also expressed during on-site interviews by the representatives of the Ministry of Internal Affairs stating that greater benefits could be achieved if financial intelligence from the FMS could be disseminated to them also.

352. Overall, although relatively newly constituted, the FMS has put a lot of effort in playing its pivotal role in the Azerbaijani AML/CFT system. Not only does it perform the functions of a typical administrative financial intelligence unit, but it is also a repository for all relevant data relating to money laundering and terrorist financing and as such also fulfils the intelligence function for the system. It is adequately staffed with qualified personnel and conducts operational and strategic analysis of the STR information it receives. It has established a relationship of trust with the reporting entities and puts a lot of effort into raising the awareness of entities covered by the AML/CFT Law.

2.5.2 Recommendations and comments

Recommendation 26

353. The FMS should adopt measures aimed at increasing the percentage of suspicious transactions reported before the execution of transaction. Further training and awareness raising initiatives have to be put in by the FMS in order to increase the reporting component of the system.

354. Consideration should be given by the FMS together with other stakeholders on the benefits of a centralised informational resource on the accounts opened by natural and legal persons in Azerbaijan.

355. Based on the intrinsic level of risk reports coming from the State Customs Committee, these should be regarded by the FMS' operational procedure as a trigger for analysis.

356. Consideration should be given to a mechanism to prevent the discretionary removal of the Management of the FMS. This could include a clear dismissal and appeals procedure. Such procedures should set out the grounds on which the Management of the FMS could be dismissed.

357. Sanctions should be introduced for negligent dissemination of information by FMS staff.

358. The FIU should identify issues that have an impact on the quality of its analytical reports and should properly assess the reasons for the low confirmation rate with law enforcement of such reports.

Recommendation 30

359. Internal training to FIU staff, especially on intelligence analysis should be provided on a regular basis.

2.5.3 Compliance with Recommendation 26

	Rating	**Summary of factors underlying rating**
R.26	**LC**	**Effectiveness** • Low number of cases taken forward based on FIU dissemination.

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

2.6.1 Description and analysis

Recommendation 27 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

360. Recommendation 27 was rated PC in the 2008 MER. The deficiencies identified related to the fact that law enforcement responsibilities were fragmented and unclear in AML/CFT investigation and prosecution, there was an ineffective pursuit of STRs and law enforcement had not generated any money laundering cases at the time of the evaluation.

Legal framework

361. The legal framework governing money laundering and terrorist financing investigations is set out under the:

i. Criminal Procedure Code of the Republic of Azerbaijan;
ii. The Law of the Republic of Azerbaijan "*on operation-search activity*";
iii. Decree of the President of the Republic of Azerbaijan "*On implementation of the Law of the Republic of Azerbaijan on adoption and entry into force of the Criminal Procedure Code of the Republic of Azerbaijan and related legal regulation matters*" no.387/25 August 2000.

Designation of Authorities ML/TF Investigations (c.27.1)

362. According to information received on-site, the crime investigation system in Azerbaijan is based on eight investigative bodies, namely:

- the General Prosecutor's Office (has both investigation and prosecution powers);
- the Ministry of National Security;
- the Ministry of Internal Affairs;
- Ministry of Taxes;
- Ministry of Justice;
- State Customs Committee;
- State Border Service;
- Ministry of Emergency Situations.

363. The investigative competence of these bodies is determined, on the one hand by the provisions of the Criminal Procedural Code (article 215 – empowers the General Prosecutor's Office to conduct investigation of certain criminal cases) and on the other by the Presidential Decree #387, dated 25 August 2000, "*on implementation of the Law of the Republic of Azerbaijan On adoption and entry into force of the Criminal Procedure Code of the Republic of Azerbaijan and related legal regulation matters"*. Each of these bodies seems to have competencies for investigating proceeds-producing crimes.

364. As regards prosecution, the Criminal Procedure Code identifies the General Prosecutor's Office as the prosecution authority for all offences stipulated in the special part of the Criminal Code. In this respect, within the General Prosecutor's Office there are specialised divisions, responsible for supervising the investigation and prosecution of cases that are put forward by the afore-mentioned investigative bodies. Also, as a general rule, there is a distinct specialised department within the GPO that presents cases to the courts.

365. The money laundering offence, provided by articles 193.1 and 194 of the Azerbaijani Criminal Code, is investigated, by the General Prosecutor's Office, in accordance with the provisions of article 215.3.1 of the Criminal Procedure Code. The preliminary investigation for offence under article 194 (*acquisition, possession or use of property*) falls also under the authority of the Ministry of Internal Affairs, in accordance with the provisions of article 3 of the Decree on the implementation of the Criminal Procedure Code. The GPO is also in charge of the prosecution of the ML offence. In practice, based on an order of the General Prosecutor of Azerbaijan, the structure within the GPO that is investigating ML is the Anti-corruption Directorate.

366. The Anti-corruption Directorate conducts investigations for money laundering offences both on the basis of notifications disseminated by the FMS and at its own initiative. As explained under Recommendation 26, based on the provisions of article 17.5 of the AML/CFT Law, followed by an order of the General Prosecutor of Azerbaijan, all the FMS' notifications related to money laundering are disseminated to the Anti-corruption Directorate within the General Prosecutor's Office for investigation. Further considerations on this mechanism are presented under the effectiveness section.

367. As regards terrorist financing, the Decree of the President of the Republic of Azerbaijan "*on implementation of the Law of the Republic of Azerbaijan on adoption and entry into force of the Criminal Procedure Code of the Republic of Azerbaijan and related legal regulation matters*" no.387/25 August 2000, attributes the investigation power in respect of terrorism in general and terrorist financing to the Ministry of National Security. The prosecution of this crime is also under the mandate of the General Prosecutor's Office. A specialised division within the GPO has been set up and is dealing directly with supervising and prosecuting cases put forward by the Ministry of National Security. Prosecuted cases are presented to the court by another department within the GPO.

368. Similarly to the money laundering system, the Ministry of National Security conducts investigations for terrorism financing, both on the basis of notifications disseminated by the FMS and at its own initiative. Once the FMS *determines that the executed transaction is related to financing of terrorism,* the information is submitted to the Ministry of National Security (designated authority in accordance with the provisions of article 4.10 of the Decree of the President of the Republic of Azerbaijan no. 66/23 February 2009).

369. The main authority investigating proceeds producing crimes in Azerbaijan is the Ministry of Internal Affairs. On-site interviews were conducted with representatives of the Department against Organised Crime which is the body in charge with investigation for crimes such as trafficking in drugs, weapons, human beings, kidnapping, forgery, blackmail and other major crimes related to organised crime (in accordance with the provisions of Item 3 of the Presidential

Decree #387, dated 25 August 2000). Their investigative authority is supervised by a special department within the General Prosecutor's Office that also conducts prosecutions over cases put forward by the department. The Department against Organised Crime also has investigation authority over the money laundering offence provided by article 194 (*acquisition, possession or use of property*) of the Criminal Code. As regards the offence under article 193.1 (*conversion or transfer, and concealment or disguise*) or terrorist financing crimes, according to the representatives interviewed on-site, once indications for such illegal behaviour are identified during investigations they have to present the case to the supervising prosecutor who may decide to defer the case to the Anti-corruption Department within the GPO. Further considerations on this mechanism are presented under the effectiveness section.

370. As already mentioned, in addition to the General Prosecutor's Office, the Ministry of National Security and the Ministry of Internal Affairs, there are other five investigative bodies in Azerbaijan. Some of these bodies (e.g. Ministry of Taxes, State Customs Committee, State Border Service and the Ministry of Justice) are competent for investigating some categories of proceeds producing crimes that could generate illegal capital to be laundered in money laundering offences or to be used for terrorist financing purposes.

371. As no information was provided to the evaluation team on the activity of these authorities, a practical situation was raised by the evaluation team in relation to the legal course of action an investigative body should take when elements of money laundering/terrorist financing emerge during the investigation of a proceeds producing crime. According to the Azerbaijani authorities, the provisions of article 215 of the Criminal Procedure Code are applicable in such cases. Based on this text, the authority investigating the proceeds producing crime has to present the case to the relevant prosecutorial authority. In its turn, this authority will create a joint investigation team comprising prosecutors/investigators from the GPO (in charge of ML investigations) and investigators that conducted investigation on those proceeds producing crimes. Further considerations on this mechanism are presented under the effectiveness section.

Ability to Postpone/Waive Arrest of Suspects or Seizure of Property (c.27.2)

372. According to the Criminal Procedure Code, arrest of suspected persons or the seizure of the property may be conducted if evidence collected in the criminal case provides sufficient grounds for doing so. Both arrest of suspected persons and the seizure of the property are the investigative means in the possession of investigators and prosecutors. The Azerbaijani authorities indicated that both investigators and prosecutors use their discretion in determining the point in time when to use this power or not, based on whether evidence they have justifies such kind of actions. This approach is, for the evaluation team, in line with the essential criteria 27.2.

Additional Element – Ability to Use Special Investigative Techniques (c. 27.3)

373. Investigative techniques in Azerbaijan are regulated by the provisions of the Law on *operations and search activity.* In accordance with the provisions of article 10.1 of this legal act, the investigative techniques available for all investigative bodies provided by the Criminal Procedure Code, are:

1) Questioning of people;
2) Making inquiries;
3) Tapping telephone conversations;
4) Examination of postal, telegraphic and other correspondence;
5) Retrieving of information from technical channels and other technical means;
6) Checking the letters of convicts;
7) Examination of transport vehicles;
8) Entering and inspecting buildings, including dwelling premises, as well as other closed buildings, constructions sites and land plots;

9) Monitoring buildings, including dwelling premises, as well as other closed buildings, constructions, land plots and transportation means;
10) Shadowing people;
11) Identification of persons;
12) Controlled purchase of goods;
13) Examination of objects and documents;
14) Collection of samples for comparative analysis;
15) Controlled delivery;
16) Infiltration into criminal groups or marginal associations;
17) Incorporation of a legal person; and
18) Conducting investigatory experiments, i.e. application of model simulating the criminal behaviour.

374. Based on the information provided by the Azerbaijani authorities, controlled delivery of the proceeds of crime or funds intended for use in terrorism and undercover operations are special investigative techniques available to investigators and prosecutors in accordance with the afore-mentioned law. Except for controlled delivery of narcotic and psychotropic materials and substances, other type of controlled delivery may be used in any circumstances, as there is no limitation provided by the legislation.

375. As regards, undercover operations, such actions may only be allowed in relation to suppression and uncovering of serious crimes prepared and committed by organised criminal groups, dangerous crimes against state and for the purpose of identifying of persons who prepare, intend to commit or committed such crimes. According to article 15.4 of the Criminal Code, serious crime is a deliberate and careless action(s) punishable by law with a maximum penalty of 12 years imprisonment. Hence the money laundering offence committed under article 193-1.1 is not a serious crime in the sense of the Criminal Code. Therefore, undercover operations may be applied only in relation to the money laundering offences that fall under the provisions of articles 193-1.2 and 193-1.3 of the Criminal Code.

376. Moreover, the conditions imposed by the law on *operations and search activity* for the use of undercover operations are limitative in nature having regard to the fact that it requires for a serious crime to be committed by an organised criminal group. In practice, for any ML case that was not perpetrated by an organised criminal group, undercover operations would be unavailable as an investigative tool.

Additional Element – Ability to Use Special Investigative Techniques (c. 27.4)

377. There were no statistics provided to the evaluation team on the use of special investigative techniques when conducting investigations of ML/TF and underlying predicate offences. This meant that it was not possible to establish the extent of use of such investigative techniques in ML/TF cases or predicate offences.

Additional Element – Specialised Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5)

378. According to information provided on-site, depending on the type of investigation, the Anti-corruption Directorate may invite experts into complex investigation teams. Usually, joint investigations include representatives of ACD, Customs, Police, Ministry of Taxes and Ministry of Justice. These teams sit in the premises of Anti-corruption Directorate and are responsible directly to the head of this authority.

379. In this respect, the Azerbaijani authorities indicated that the provisions of article 215 of the Criminal Procedure Code were the legal basis for such joint investigating teams. According to this text, "*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*, *or (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”.*

380. In respect of the co-operative investigations with appropriate competent authorities in other countries, Azerbaijani authorities indicated that such cooperation may be conducted based on bilateral agreement between the competent authorities. Some special investigative techniques may also be used with foreign counterparts using the channels available within legal aid mechanism.

381. There were no statistics provided to the evaluation team on the use of afore-mentioned cooperation mechanisms, when conducting investigations of ML/TF and underlying predicate offences which made it impossible to establish the extent of use of such initiatives.

Additional Element – Review of ML and TF Trends by Law Enforcement Authorities (c. 27.6)

382. According to information provided on-site, the FMS regularly reviews money laundering and terrorist financing methods, techniques and trends and the outcome of such reviews are discussed with law enforcement authorities. Also, information on money laundering, the relevant predicate offences, including financing of terrorism, the methods and techniques used, as well as their trends are regularly reviewed and kept in focus by the competent operational and analytical departments within the Ministry of National Security. Outcomes of these reviews are discussed with the law enforcement authorities using the available information exchange channels.

Recommendation 32 (Statistics – law enforcement and prosecution)

383. On 9 February 2011, the “*Form of submission of statistical information on the offences related to the legalisation of criminally obtained funds or other property and the financing of terrorism to the FMS*” was approved and included to state registration. According to Item 2 of this Form, the Ministry of National Security and the General Prosecutor’s Office submit statistical information on the offences related to the legalisation of criminally obtained funds or other property and the financing of terrorism once in six month to the FMS. By using this information, FMS generalises this information and uses it for strategic analyses.

384. Based on statistics provided by the Azerbaijani authorities, during the reference period 10 investigations on ML were started by law enforcement independently without a prior STR which resulted in 11 prosecutions, followed by 5 first instance convictions and 3 final convictions. In terms of terrorist financing, there were 2 investigations which resulted in one prosecution with no conviction yet.

Recommendation 30 (Adequate financial, human and technical resources – law enforcement and prosecution) (rated PC in the third round MER)

Adequacy of resources to law enforcement and prosecution (c.30.1)

Anti-corruption Directorate within the General Prosecutor’s Office

385. The Anti-corruption Directorate under the General Prosecutor’s Office of the Republic of Azerbaijan was established pursuant to Presidential Decree (28 October 2004) on the implementation of the *Law on fight against corruption.* Starting with March 2011, 7 divisions were established and the number of operative employees was increased to 100 job positions with 45 technical employees, deployed into the following structures:

- Organisational and information support;
- Preventive measures and enquiry division;
- Investigation division;
- Internal security service;
- Detective division;
- Detective support division;
- Group of specialists.

386. The Anti-Corruption Department under the auspices of the General Prosecutor is financed from the state budget through the funds allocated to General Prosecutor's Office. For the interval 2011-2013 the unit's budget was increased from 1.4 million Manats (€1,3 million) to 6,3 million Manats (€5,9 million). During the on-site visit no indications of undue influence or interference over the operations of the Anti-Corruption Department were observed by the evaluation team. Also, the unit seems properly staffed and positive opinions were expressed during on-site interviews on the adequacy of the technical and financial resources available.

<u>Ministry of National Security</u>

387. No detailed information was provided by the Azerbaijani authorities to the evaluation team on the resources available for the Ministry of National Security in investigating terrorist financing offences. However, the Azerbaijani authorities consider that this structure has adequate human resources and technical capacity to properly carry out its mission.

<u>Ministry of Internal Affairs</u>

388. According to Azerbaijani authorities, the structures within the Ministry of Internal Affairs, responsible for the investigation of the offence provided by article 194 (*acquisition, possession and use*) of the Criminal Code are the Main Department of Investigation and Inquiry, Main Criminal Search Department, Main Anti-Organized Crime Department, Main Anti-Drug Department, Main Anti-Human Trafficking Department as well as city, regional and district police and traffic police departments. No detailed information was provided to the evaluation team on the resources available for these structures in investigating proceeds producing crimes. However, the Azerbaijani authorities consider that these structures have adequate human resources and technical capacity to properly carry out their mission.

Integrity of law enforcement authorities (c.30.2)

389. Azerbaijani authorities indicated that staff of all competent authorities designated by the AML/CFT Law are considered to be civil servants. Relations between the Azerbaijani state and civil servants as well as issues related to the legal status of civil servants are regulated by Law of the Republic of Azerbaijan "*On Civil Service*". Article 18.0.8 of this Law requires civil servants to keep confidential information revealed during performance of official duties and not demand such information except for cases provided by the Law of the Republic of Azerbaijan "*On Civil Service*".

390. Additionally, article 18.0.12 of the same Law requires civil servants to observe the ethical conduct rules. For this matter, the Law of the Republic of Azerbaijan "*On rules of ethical conduct of civil servants*" determines the ethical conduct rules in relation to civil servants, as well as legal framework to be compliant with the ethical conduct rules. According to article 17.3 of the mentioned Law civil servants shall not use the information obtained during his/her term of service for his/her private interests.

391. Also as regards the Ministry of Internal Affairs, the Azerbaijani authorities indicated that according to Article 12 of the Law on Police, anti-corruption measures within the Ministry are implemented both by the Ministry itself and prosecution authorities. In the latter case, the prosecution authorities supervise the Ministry. According to the Code of Ethics of the Ministry of

Internal Affairs' staff, the Ministry of Internal Affairs' employee shall not use their official position to promote personal interests. In this respect there is an internal control system in place.

392. As regards the General Prosecutors Office, the behaviour of the staff of the prosecutorial bodies is regulated by the Law "*On prosecutorial bodies*", the Law "*On service in prosecutorial bodies*" and the Code of Ethics for the officials of the prosecutorial bodies of the Republic of Azerbaijan. According to information provided, an oath is taken by any prosecution official upon his/hers employment which includes the commitment to perform duties with honour and dignity. The text of the oath is signed by the official that took it and is kept with their professional dossier.

Training of law enforcement staff (c.30.3)

393. For the period of reference, authorities provided detailed statistics on training sessions attended by staff of the General Prosecutor's Office (3 sessions), Ministry of National Security (10 sessions) and Ministry of Internal Affairs (50 sessions), aimed at increasing the efficiency of investigations in general while some of them were dedicated to increase the capacity to fight against money laundering and terrorism financing (see Annex XXIV).

394. Based on information received during on-site interviews, it is the opinion of the evaluation team that further training is needed for the investigative bodies in Azerbaijan on investigating ML/TF crimes and especially on financial investigations. Although a good level of knowledge in this respect was noticed in the Anti-corruption Directorate and the Ministry of National Security, opinions were expressed by these bodies that the domain is new for everybody and problems are faced especially when investigating ML/TF where an extraterritoriality element is present. Moreover, although the other investigative bodies in Azerbaijan hold no investigative competence for ML/TF, proper training in recognising such criminal behaviour and dealing with the procedural issues under the current Criminal Procedure Code would be highly beneficial for the whole AML/CFT system.

Additional element – Special training for judges (c.30.4)

395. According to information provided by the Azerbaijani authorities, since 2010, judges have attended 8 trainings in AML/CFT sphere (topics - AML/CFT Law, asset tracing and recovery, international standards, AML/CFT investigation, national risk assessment, etc.). During the on-site interviews, however, law enforcement representatives expressed a view on the need to train judges on matters regarding money laundering in general and especially on ML as autonomous offence.

Effectiveness and efficiency

396. Although the AML/CFT system is still young, statistics provided by the Azerbaijani authorities indicate an increase, since the third evaluation round, on the number of ML cases which have been tested before the court and resulted in convictions. This situation is welcomed by the evaluation team and is an indication of the commitment of the actors involved, in fighting these categories of crime.

Table 23: Money laundering cases

Year	Prosecutions commenced		Convictions (first instance)		Convictions (final)	
	ML	TF	ML	TF	ML	TF
2008	X	X	X	X	X	X
2009	**1**	X	**1**	X	X	X
2010	**1**	X	X	X	**1**	X
2011	**3**	X	**1**	X	**1**	X
2012	**3**	**1**	**1**	X	**1**	X

2013	**7**	X	**7**	X	**6**	X

397. As already mentioned under Essential criteria 27.1, the money laundering offence is investigated in Azerbaijan by the Anti-corruption Directorate within the General Prosecutor's Office, which holds exclusive competences in relation to ML investigations (both article 193.1 and 194 of the Criminal Code). This designated authority initiates investigations on ML based on both notifications disseminated by the FMS and also under its own initiative.

398. Statistics available show that few disseminations sent by the FMS to the Anti-corruption Directorate result in prosecution and none in convictions. In numbers, during 2009-2013, 93 reports sent by the FMS resulted in two prosecutions and no convictions (please see the table below). Although, the evaluation team is aware of the fact that usually convictions for ML are time consuming, on-site interviews revealed also a set of problems that have an impact over the effectiveness of the system.

Table 24: FIU Cases

	FIU Cases in the reference year	**Related judicial proceedings in reference year – Number of cases**					
		Prosecution (based on FIU disseminated cases)			**Convictions (final)**		
	Reports disseminated for investigation	**ML**	**FT**	**Other criminal offences**	**ML**	**FT**	**Other criminal offences**
2009	X	X	X	X			
2010	13	X	X	X			
2011	8	X	X	X			
2012	10	1	X	X			
2013	62	2	X	33	X	X	X

399. First of all, as regards ML, the Anti-corruption Directorate of the GPO is the only beneficiary of disseminations sent by the FMS. Although this authority is highly specialised on investigating corruption cases, under the current mechanism it is in charge of investigating money laundering regardless of the predicate offence that generated the laundered proceeds. It is the opinion of the evaluation team that this situation could generate possible operational problems for the Anti-corruption Directorate in investigating cases of laundering proceeds generated from crimes other than corruption. Generally the ML techniques are similar regardless of the origin of the illicit capital, but the lack of expertise over other predicate offences (i.e. drug/human trafficking, theft, robbery, forgery, etc.) could hamper the investigative effort in relation to ML.

400. The issue on the FMS' dissemination powers was raised during on-site interviews with representatives of the Ministry of Internal Affairs. Under the provisions of the Azerbaijani Criminal Procedure Code and the Decree for its implementation, in addition to the General Prosecutor's Office, *internal affairs (police) authorities of the Republic of Azerbaijan* are competent to conduct preliminary investigations on criminal cases under article 194 (*"acquisition, possession, use or disposition"*) of the Criminal Code. Despite this, no information had been disseminated to the Ministry of Internal Affairs by the FMS at the time of the on-site visit. Moreover, the representatives of the FMS do not consider the police as a major stakeholder in the AML/CFT system. Although this is not a technical compliance issue in relation to EC 26.5, as the GPO has exclusive authority in deferring a FMS dissemination to the police if it relates to a case under article 194 of the Criminal Code, it does have an important impact on effectiveness which was acknowledged by the representatives of the police met on-site and this is further developed under the Effectiveness section below.

401. Another aspect relates to the use of special investigative techniques for ML/TF cases. Although, in accordance with the legislation, there are a wide array of such techniques available for the investigative bodies in Azerbaijan, interviews with the Anti-Corruption Directorate indicate a low level of use of special investigative techniques and they are mainly deployed for corruption cases, which is the investigative speciality of this unit. Also, for some of these techniques there are legal limitations that only make them applicable to ML committed in certain circumstances. In relation to financial investigation as a mean of identifying and tracing proceeds, opinions were expressed that more training and a better access to financial information is needed for the Anti-Corruption Directorate.

402. In addition to access to investigative techniques, the efficiency of the ML investigative effort of the Anti-corruption Directorate is also affected by its lack of proper access to financial information. According to information provided on-site, as a general rule this authority has access to financial information held by banks only after an official investigation has been started, based on a court order. Specifically for corruption cases, this access is also granted to the Anti-corruption Directorate in the pre-investigative phase, based on an order issued by the General Prosecutor. In practical terms this means that whenever the Anti-corruption Directorate is investigating a money laundering offence that is not related to corruption, the unit has no access to financial information until the official investigation has been started.

403. This situation also relates to the fact that, based on the provisions of the AML/CFT Law, the ML/TF investigating authorities in Azerbaijan have no authority to request financial information from the FMS, in order to be used in ML/TF or predicate offence investigations. Although cases were presented where FMS has positively answered requests for information from the Anti-corruption Directorate, it is unclear to the evaluation team what was the legal mechanism used for such disseminations.

404. Also, even when legal conditions are met in respect of access to financial information, it is very difficult for the investigators to locate the relevant information. This is a consequence of the fact that there is no centralised informational resource available with the accounts opened by natural or legal person with financial institutions in Azerbaijan. As indicated on-site, in practice, investigators and even the FMS send out letters of request to all the banks operating in Azerbaijan to identify any accounts held by an investigated person.

405. The general consequence of this is that the law enforcement component of the Azerbaijani AML/CFT system is basically "*starved*" of valuable financial information; an aspect that was acknowledged by the two main investigative authorities in the country – General Prosecutor's Office and the Ministry of Internal Affairs.

406. Another aspect that may affect the confirmation rate of the FMS' disseminations is related to the perception of law enforcement over their investigative relevance. Statistics provided show that during 2009-2013 the Anti-corruption Directorate has carried out *ex officio* 13 prosecutions that resulted in convictions, and only two prosecutions based on FMS disseminations. At a first glance, it seems that this body has the knowhow for investigating ML but not enough investigative relevance is included in the disseminations from the FMS for a case to be open. However, both the FMS and the investigative bodies confirmed that AML/CFT is, for everybody in Azerbaijan, a new domain. In this respect, the Anti-corruption Department within the General Prosecutor's Office indicated that in order to open up a case they do need some more evidence than what is being comprised in the disseminations received from the FMS. Also, the Department is specialised in investigating cases that are related to domestic money laundering and admitted to lacking some expertise in dealing with money laundering cases especially when an extraterritoriality element is present, which is common for FMS disseminations. However it is the opinion of the evaluation team that the current cooperation level between the two authorities will have positive effects in coping with these issues.

407. In addition to disseminations from the FMS, the Anti-corruption Directorate also investigates its own money laundering cases that are related to corruption (please see the table below). Based on the statistics provided the number of such investigations is fairly low having regard to the overall number of investigations on corruption. This is for the evaluation team an indicator that not enough focus is placed during the investigation of predicate crimes, on the identification and recovery of the proceeds of crime. During on-site interviews, representatives of the Anti-corruption Directorate argued that money laundering investigation is a new field for them and they are mainly focused on fighting it in the field of corruption. Also the need for more training in general and on financial investigation in particular was put forward, together with difficulties encountered before courts. In this respect, interviews with judges indicated that, according to the Criminal Procedure Code, the courts in Azerbaijan are not allowed to decide on any issue that was not put before the court by the prosecution. In simple terms, if the prosecution accuses a person for committing a predicate offence but not for committing ML the court is not entitled to convict that person for ML. Under such circumstances it is the responsibility of the investigative/prosecution bodies to test the judicial system by putting forward before courts as many ML cases as possible.

Table 25: Cases investigated by the Anti-Corruption Department

Year	Corruption/ Bribery investigations	ML Investigations by law enforcement carried out independently without prior STR	Prosecutions commenced	Convictions (first instance)	Convictions (final)
2008	137	X	X	X	X
2009	172	2	1	1	X
2010	192	3	1	X	1
2011	217	1	3	1	1
2012	217	3	3	1	1
2013	168	1	3	2	X

408. There is also an issue of legal competence that is affecting the overall efficiency of the law enforcement component of the AML/CFT system in Azerbaijan. In accordance with the provisions of article 215.3.1 of the Criminal Procedure Code, the General Prosecutor's Office (Anti-corruption Directorate) is the authority responsible for investigating ML. Discussions held with other investigative bodies (i.e. Ministry of Interior, Ministry of Taxes, etc.) showed that whenever they come across indications of money laundering in a case under their investigation, they have to present that case to the prosecutor who may decide to take the case away and pass it to the authority responsible for investigating ML. In practice this aspect has a powerful deterrent impact over the willingness of investigative bodies, other than the Anti-corruption Directorate, to look for money laundering indications in cases they investigate. It is the opinion of the evaluation team that this is the main factor leading to the very low number of money laundering investigations in comparison to the criminal threats that are affecting Azerbaijan (please see the table below). During interviews, representatives of the Ministry of Internal Affairs expressed their opinion that the investigative competence over ML should be enlarged to other investigative bodies also and that these bodies should be awarded with the right investigative techniques and resources to fight it.

Table 26: Reported criminal offences

	2008	2009	2010	2011	2012	2013*
Reported criminal offences	9,697	10,605	10,430	11,456	10,651	9,965
ML prosecutions	x	1	1	3	3	7

*To 1 November 2013

409. Another effect of the ML/TF investigative competence in Azerbaijan is related to the fact that the FMS has no authority to disseminate financial intelligence beyond the General Prosecutor's Office and the Ministry of National Security. This system deprives other investigative bodies in Azerbaijan (e.g. Ministry of internal Affairs, Ministry of Taxes) of a valuable resource that could bring a positive impact on the overall identification and confiscation rate of criminal proceeds.

410. As regards terrorist financing, the Ministry of National Security holds exclusive investigation powers. This authority can investigate TF *ex officio* or following notifications sent by the FMS. Statistics provided by the authorities show a very low number of TF investigations carried out during the reference period (please see the table below). This comes to a certain extent in contradiction with the overall terrorist threat in Azerbaijan and also with the fact that public information is available on attempted terrorist acts prevented by the Azerbaijani authorities. Also, on-site interviews with representatives of Ministry of National Security highlighted the fact that a series of convictions for terrorism have been passed by the criminal courts in Azerbaijan. This raises for the evaluation team the question of how the people involved in those cases were funded and whether sufficient focus is placed by the competent authorities on financial flows related to terrorism.

Table 27: Financing of terrorism investigations

Year	TF Investigations by law enforcement carried out independently without prior STR	Prosecutions commenced	Convictions (first instance)	Convictions (final)
2008	X	X	X	X
2009	X	X	X	X
2010	X	X	X	X
2011	X	X	X	X
2012	1	1	X	X
2013	1	1	1	1

411. A possible problem affecting the overall efficiency of the system was raised during interviews with representatives of the Ministry of National Security stating that in order to charge an offender with terrorism financing, they need to prove the presence of the intentional element to finance such acts and also to prove the channels used by terrorists in this respect. This seems to be contradictory to the spirit of FATF Special Recommendation II requiring that the TF offence should not require that the funds: (a) were actually used to carry out or attempt a terrorist act(s); (b) be linked to a specific terrorist act(s). However, opinions were expressed on the fact that usually the courts require a very high standard of proof in order to charge a person with TF. Consequently, people involved in investigation are inclined to charge people with crimes other than terrorism which are easier to prove before the court.

412. As regards disseminations sent by the FMS, the evaluation team was informed that they mainly relate to transactions carried out by or with persons that are present on the international/domestic sanctions lists. What this mean in practice is that the countering terrorist financing (CTF) processes of the FMS are focused on making sure that known terrorists or terrorist organisations (listed entities) are deprived of funding. This is however insufficient as financial information existent at the financial and non-financial sector level is a valuable resource for identifying funds linked to terrorist or terrorist organisations that are not known to the international/regional or domestic community.

2.6.2 Recommendations and comments

Recommendation 27

413. On-going training should be provided to all the investigative bodies in Azerbaijan in recognising ML criminal behaviour and in dealing with the ML procedural issues under the current provisions of the Criminal Procedure Code.

414. The Azerbaijani authorities should consider extending the competence for investigating money laundering offences to other investigative bodies; especially the Ministry of Internal Affairs and the Ministry of Taxes, as proceeds-producing crimes investigative bodies could have an important input for the efficiency of the system.

415. Measures should be taken to ensure that investigative bodies in Azerbaijan are equipped with a proper *toolbox* of investigative techniques that assist the investigation of money laundering and terrorist financing. Also, the legal conditions for deploying such techniques should not be limited in nature (e.g. only applicable when the ML/TF crime is perpetrated by an organised criminal group).

416. Measures should be taken to provide law enforcement with the authority to request from the FMS financial information when investigations for ML/TF or predicate offences are conducted.

417. Consideration should be given by the Azerbaijani authorities on the benefits of a centralised informational resource on the accounts opened by natural and legal persons in Azerbaijan.

418. Law enforcement together with other actors in the AML/CFT system should conduct periodical reviews to determine the reasons for the low number of ML/TF investigations, prosecutions and convictions. Such reviews should also include the outcome of disseminations from the FMS.

419. Stronger focus should be placed by the investigative bodies competent to investigate proceeds-producing crimes on the identification and recovery of proceeds of crime.

420. Revisions of the ML/TF typologies and trends should be disseminated among all investigative bodies in Azerbaijan. Consideration should be given to share such sanitised revisions with the private sector also.

421. Investigative authorities should increase the number of TF cases put forward before the courts.

Recommendation 30

422. Regular training on money laundering and terrorist financing substantial, procedural and investigative issues should be provided to the judiciary system.

2.6.3 <u>Compliance with Recommendation 27</u>

	Rating	Summary of factors underlying rating
R.27	**PC**	**<u>Effectiveness</u>** • Competence in investigating money laundering is affecting the effectiveness of the AML/CFT system; • Limited access of law enforcement to financial information affects its ability to identify, trace and seize proceeds of crime; • Legal limitations on the use of special investigative techniques in ML cases may impact on the ability of law enforcement agency (LEA) to act; • Divergent interpretation between law enforcement and judiciary on the level of proof required to convict a person of TF; • Low level of investigations, prosecutions and convictions on money

		laundering and terrorist financing as opposed to the general volume of proceeds-generating crimes.

Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

Special Recommendation IX (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

423. SR IX was rated partially compliant in the 3rd round MER on the basis of the following deficiencies:

- 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; and
- No reporting requirement on suspicions of AML/CFT to other law enforcement bodies or the Central Bank.

Legal framework

424. The relevant legal framework comprises:

- The Customs Code of the Republic of Azerbaijan;
- The Law on "*Regulation of currency"* of the Republic of Azerbaijan;
- Law of the Republic of Azerbaijan "*On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism*", no. 767–IIIQ of 10 February 2009 Published in «Azerbaijan» official newspaper # 44, dated 25 February 2009; and
- Regulation "*on bringing currency valuables by natural persons into and taking out of the Republic of Azerbaijan*", adopted by the Decision (Minutes no. 06) of the Board of Directors of the Central Bank of the Republic of Azerbaijan (dated 18.03.2002) and registered under registration number 2778/02.04.2002 by the Ministry of Justice of the Republic of Azerbaijan with the agreement of the State Customs Committee of the Republic of Azerbaijan.

Declaration system (c.IX.1)

425. Article 146 of the Customs Code states that all goods and vehicles transported over the custom border of the Republic of Azerbaijan must be declared to the customs authorities. Pursuant to subparagraph 1.0.34 of Customs Code of the Republic of Azerbaijan, the definition of "goods" includes any movable property, as well as means of transportation – air, railway, maritime, internal waters, vehicle transportation means used for international transportation of passengers and cargo as well as containers and other transportation equipment including currency, gas, oil, electric energy passed through the customs border. The authority empowered to conduct customs clearance is the State Customs Committee. The declaration is done by providing in a specified form (oral, paper-based, electronic) the information required by the customs procedures applicable to goods and vehicles as well as other information that may be necessary for customs purposes.

426. In respect to currency and bearer negotiable instruments, Regulation no. 2778/2 April 2002 establishes a declaration system for getting currency valuables into and out of the Republic of Azerbaijan. The concept of currency valuables is defined by the provisions of the Law on currency regulation and 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; and
- precious stones.

427. According to article 15 of the Law "*on currency regulation*" the State Customs Committee is the competent authority which carries out control over carriage of national and foreign currency, as well as other currency valuables, by Azerbaijani citizens and non-residents through the customs borders of the Republic of Azerbaijan. Precise thresholds regarding the carriage of currency valuables in cash are indicated in the Regulation no. 2778/2 April 2002 as follows:

Table 28: Thresholds for the carriage of currency valuables in cash

Residents

Incoming:

USD1 – USD 10,000	Shall be declared and registered by "Passenger Customs Declaration"
>USD 10,000	Shall be declared and a "Passenger Customs Declaration" together with a "Customs Clearance Bill", certifying that the sum has been brought to Azerbaijan in cash, must be submitted.
>USD 50,000	Additional documents proving that the cash was given by foreign bank are needed

Outgoing

USD1 – USD 10,000	Shall be declared without producing any documentation
USD 10,000 – USD 50,000 (if previously brought in by cash)	Shall be declared and a "Passenger Customs Declaration" together with a "Customs Clearance Bill", certifying that the sum has been brought to Azerbaijan in cash, must be submitted
USD 10,000 – USD 50,000 (if previously 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
>USD 50,000	By bank transaction only (by presenting the certificate from the bank or credit institution of the country from which the currency was brought that confirms this amount was given to the resident)

Non-residents

Incoming:

USD1 – USD 10,000	Shall be declared and registered by "Passenger Customs Declaration"
>USD 10,000	Shall be declared and a "Passenger Customs Declaration" together with a "Customs Clearance Bill", certifying that the sum has been brought to Azerbaijan in cash, must be submitted.
>USD 50,000	Additional documents proving that the cash was given by foreign bank are needed

Outgoing:

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 previously brought in by cash)	Shall be declared and a "Passenger Customs Declaration" together with a "Customs Clearance Bill", certifying that the sum has been brought to Azerbaijan in cash, must be submitted
USD 1,000 – USD 50,000 (if previously 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
>USD 50,000	By bank transaction only (by presenting the certificate from the bank or credit institution of the country from which the currency was brought that confirms this amount was given to the same person)

428. Although a declaration system is in place in Azerbaijan in relation to physical cross-border transportation of currency or bearer negotiable instruments, the legal act enforcing the system leaves out of its scope the national currency of Azerbaijan. This situation is further accentuated by the AML/CFT Law that obliges the State Customs Committee to submit to the FMS certain categories of information on *currency valuables.* Operationally, this means that whenever one carries cash over the state border of Azerbaijan, in amounts that exceed the threshold set by Regulation no. 2778/02.04.2002, information on such physical movement of value does not get to the FMS. Under these circumstances the opinion of the evaluation team is that the system falls short of the requirements of Essential Criteria IX.1.

In the case of discovery of a false declaration or absence of declaration, authority to request and obtain from the courier additional information concerning the origin of the funds or bearer negotiable instruments (c.IX.2)

429. Article 206 of the Azerbaijani Criminal Code provides that transportation of goods and other items (as well as currency), on a large scale, without declaring them or by falsely declaring them at the customs border of the Republic of Azerbaijan is considered the offence of smuggling and is punishable with imprisonment for up to five years. "Large scale" means the amount more than 4,000 AZN (. The investigation of the facts of criminal nature linked with the non-declaration or

false declaration of currency is conducted by customs authorities and the pre-trial investigation is carried out by Investigation Department of State Customs Committee.

430. In case of non-declaration or false declaration of currency valuables, in amounts less than 4,000 AZN (€3,740), article 261.1 of the Code of Administrative Infringements provides for the confiscation of property or a penalty equivalent to between 30% and 100% of the non-declared or falsely declared value.

431. Since, depending on the amount involved, both the false declaration and failure to declare are offences or infringements under the Azerbaijani law, they represent the trigger for either a criminal investigation or for an administrative procedure under the Administrative Infringements Code. The customs authorities are entitled to seize the currency or currency valuables from the offenders for investigation purposes, both under the criminal (article 242, 243 of the Criminal Procedure Code) and administrative (article 404 of the Administrative Infringement Code) procedure. According to authorities, customs officials can check information in the customs declaration and the submitted documents, request for additional documents and request for additional information on the origin and intended use of the currency or currency valuables.

Power to stop or restrain currency or bearer negotiable instruments (c.IX.3)

432. Essential criterion IX.3 provides for the authority to stop and restrain currency or bearer negotiable instruments for a reasonable time. In the case of Azerbaijan, as already mentioned, depending on the value involved, both false declaration and failure to declare currency and/or currency valuables are offences or infringements under the Azerbaijani law and such actions trigger either a criminal investigation or an administrative procedure.

433. Based on articles 242 and 243 of the Criminal Procedure Code, in such cases customs authorities are entitled to seize, from the offender, goods and other items (as well as currency and currency valuables) which are the subject of the offence. Also, according to article 148 of the Criminal Procedure 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 from the moment the person was detained, he/she shall be immediately released. Even if a decision to commence a criminal investigation is taken, the detention of the person may not exceed 48 hours.

434. As regards the administrative procedure, the Customs agencies are entitled to seize currency or currency valuables, from offenders, for investigation purposes, in accordance with the provisions of article 404 of the Code of Administrative Infringements. Also, based on the same normative act (article 399) persons who violate the state border control (including customs regime) may be detained for a period up to 24 hours in order to clarify the circumstances of the administrative violations and for identification, or by a decision of a judge, for a period up to three days in the absence of any identification documents.

435. Although the afore-mentioned provisions regulate situations that fall under the requirements of essential criteria IX.3, they do fall short of the scope of this criterion. The essence of the standard is to allow the competent authority the necessary interval to ascertain whether evidence of money laundering or terrorist financing may be found both when a false/failure to declare is present or when, for example, a set of indicators are present that raise suspicions regarding a possible ML/TF offence although the person lawfully declared the currency.

436. For situations when no legal provision on currency declaration was breached but ML/TF suspicions are present, the Azerbaijani authorities indicated that the State Customs Committee holds investigative powers for crimes that are under its competence in accordance with the provisions of the Criminal Procedure Code. As such, whenever officials of the customs come across suspicions of a crime, they have the authority to take any necessary law enforcement actions. These actions include 18 search activities provided by the Law *on operation and search*

activity (e.g. surveillance, interviews, etc.) and even the power to retain a person for three hours in order to gather more information.

437. Although the evaluation team accepted this explanation as applicable for customs offences, no money laundering or terrorism financing are crimes under the investigative authority of the State Customs Committee. Under these circumstances it is unclear to the evaluation team whether, in cases where suspicions for such crimes are identified by the customs officials, they have the power to use law enforcement actions and deploy activities under the *Law on operation and search activity*, or they have to defer the information to the relevant investigative authority, namely the General Prosecutor's Office or the Ministry of National Security.

438. Since there is no clear legislative provision requiring the State Customs Committee to stop or restrain currency valuables when indications of ML/TF are present, it is unclear to the evaluation team what would be the course of action the Customs authorities would take in such situations. Moreover, the provisions indicated by the Azerbaijani authorities have never been tested in practice which makes it difficult for the evaluation team to ascertain whether the State Customs Committee could use them successfully in compliance with the requirements of essential criteria IX.3.

439. This deficiency was also raised during the third evaluation round but apparently it has still not been addressed by the Azerbaijani authorities.

Maintaining collected information (c.IX.4)

440. In relation to data collection, the Azerbaijani authorities indicated that in accordance with the provisions of 1 July 2011 Regulation *"on the recording of the offences and the drafting of relevant statistic reports through the "Offences" section of the Integrated Automated Management System (IAMS - Offences) of the customs service at the customs authorities of the Republic of Azerbaijan*", copies of procedural documentation significant for criminal cases, related to transportation of goods and other items (including currency) over the customs border of the Republic of Azerbaijan, without declaring or by falsely declaring them, are kept for 3 years, while materials of administrative cases are kept for 5 and 10 years. All the information is recorded under the "*Offences"* section of the Integrated Automated Management System.

441. Also, pursuant to article 8.2 of the AML/CFT Law of the Republic of Azerbaijan, the information on currency valuables passing through the customs border of the Republic of Azerbaijan is submitted on regular basis to the FMS. This information contains data on the surname, name, patronymic name, citizenship, passport number and series of natural persons who transport currency through the customs border of the Republic of Azerbaijan, date of passing the customs border and amount of currency held, and is recorded into the Integrated Automated Management System of the State Customs Committee.

Disclosure of information to the FIU (c.IX.5)

442. There are two categories of information that the State Customs Committee sends to the FMS, following the provisions of Article 8 of the AML/CFT Law:

Based on objective suspicious indicators:

i. information on transportation of currency values into or out of the Republic of Azerbaijan by the citizens of a jurisdiction that do not or insufficiently comply with the international standards on prevention of the legalisation of criminally obtained funds or other property, financing of terrorism, or suspected in support of the dangerous trends of transnational organised crime, armed separatism, extremism and mercenary, participation in illegal narcotic drug dealership and other psychotropic substances production or circulation thereof, or the countries that do not require disclosing identification information when conducting financial transactions (Article 8.1.1);

ii. information on transportation of the currency values, into or out of the Republic of Azerbaijan by any person, the initial source of which is such a country (Article 8.1.2).

Systematic transmission:

- the information on currency values transported through the customs boundary of the Republic of Azerbaijan (Article 8.2).

443. In this respect, "*The form for drafting reports submitted to the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan on the currency movement to and from the Republic of Azerbaijan*" was approved by Ordinance 112 dated 28 July 2009 of the Cabinet of Ministers of the Republic of Azerbaijan.

444. The reports based on objective suspicious indicators are promptly sent by the State Customs Committee to the FMS. To this end, as a currency regulation authority the State Customs Committee sends to the customs border authorities "*the list of countries (territories) that are suspected in either legalisation of criminally obtained funds or other property, financing of terrorism, support of the dangerous trends of transnational organised crime, armed separatism, extremism and mercenary, participation in illegal drug dealership and other psychotropic substances production or circulation thereof, or the countries (territories) that do not require disclosing identification information when conducting financial transactions*", in accordance with the letters from the FMS.

445. The reports on currency valuables transported over the customs border of the Republic of Azerbaijan are sent by the State Customs Committee, to the FMS, on a monthly basis.

446. Although Azerbaijan implemented both of the systems mentioned by the essential criteria IX.5, the reporting of suspicious cross-border transportation incidents is narrower in scope than the requirements of the criteria. Basically, the customs authority is required to report to the FMS movements of currency valuables carried by residents, destined or originating from NCCT list countries. However, when indicators of ML/TF are present but there is no link to such a country, there is no provision in place that would require the State Customs Committee to report suspicions of money laundering and terrorism financing, to the FMS. In addition, all the reporting obligations of the State Customs Committee under the AML/CFT Law relate to currency valuables. This concept does not cover amounts transported in Manats. Basically, information on amounts transported over the Azerbaijani border, in the national currency, is not reported to the FMS.

447. Part of this matter was also raised during the third evaluation round but has still not been addressed.

Coordination between the competent authorities (c.IX.6)

448. Pursuant to Article 12 of the Customs Code of the Republic of Azerbaijan, in order to fulfil duties related to customs administration, customs authorities are empowered to mutually cooperate with other government bodies, legal and natural persons. The officials of state authorities are obliged to create necessary conditions for customs authorities to fulfil their duties.

449. During on-site interviews a satisfactory cooperation level between the State Customs Committee and the FMS was observed by the evaluation team. This cooperation seems to extend beyond the simple provision of information based on article 8 of the AML/CFT Law, and included periodical meetings with the FMS and even the presence of a liaison officer within this structure. This cooperation is however bilateral and does not seem to extend to immigration and other related authorities, on issues related to the implementation of SR IX, as the criterion requires.

Cooperation and mutual legal assistance at international level (c.IX.7)

450. The Azerbaijani authorities indicated that bilateral and multilateral agreements, protocols and memoranda have been concluded between the Government of the Republic of Azerbaijan and the State Customs Committee and the customs services of more than 30 countries and a number of international organisations. These agreements are applied in the daily activity of the State Customs Committee. Moreover, this authority cooperates with the World Customs Organisation, United Nations Office for Drugs and Crime, World Health Organisation, World Intellectual Property Organisation, Islamic Cooperation Organisation, Organization for Democracy and Economic Development (GUAM), Central Asian Regional Information and Coordination Centre (CARICC) and other international organisations.

451. Also, by the adoption of the Law no. 267 – IIQ dated 19 February 2002, the Republic of Azerbaijan became a party to International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention 9 June 1977). Based on this international instrument the State Customs Committee conducts requests and exchanges information with the customs services of foreign jurisdictions and international organisations on a regular basis, 350 such requests being received during 2009-2012. Furthermore, the State Customs Committee conducts exchanges of information with all member countries' customs services via the World Customs Organisation's Customs Enforcement Network (CEN).

452. Although there seems to be a good level of cooperation between the State Customs Committee and foreign counterparts, the Azerbaijani authorities confirmed that no data has been provided to the evaluation team to support that the cooperation agreements and international legal instruments the Azerbaijani customs authority is party to, have not yet been used for information exchange on cross border transportation of currency and bearer negotiable instruments issues.

Sanctions in case of false declaration (c.IX.8)

453. As already mentioned, based on the provisions of article 206 of the Criminal Code, transportation of goods and other items (as well as currency and currency valuables) on a large scale without declaring them or by falsely declaring them at the customs border of the Republic of Azerbaijan is considered to be an offence of smuggling and is punishable with imprisonment for up to five years. "Large scale" means the amount more than 4,000 AZN (€3,740).

454. Also, non-declaration or false declaration of currency or goods, when committed in such circumstances that it is not a crime, carries administrative penalties under Article 261.1 of the Code of Administrative Infringements. These penalties consist of confiscation of the property (in case of small amounts) or a penalty equivalent to between 30% and 100% of the non-declared/falsely declared value.

455. It is the opinion of the evaluation team that the sanctions are effective, proportionate and dissuasive.

456. For both categories of breaches, the State Customs Committee is the authority in charge for enforcing the applicable sanctions, in accordance with the provisions of article 242, 243 of the Criminal Procedure Code and article 404 of the Administrative Infringement Code.

457. The Azerbaijani authorities indicated that during 2009-2012, pursuant to the Law "*On Currency Regulation*" and other legislative acts, the customs authorities seized US$ 2,200,247, €222,378, 35,127,817 Russian rubbles, 713,000 Japanese Yens and 255,700 AZN from individuals who violated currency legislation. Also legal measures were taken against such persons. The breakdown of these amounts is provided in the following table:

Table 29: Currency seized

Year	Currency seized on criminal cases	Currency seized on administrative cases
2012	USD 93,908	USD 244,064

	Russian Ruble 1,8328,333	Russian Ruble 187,767 €12,738
2013	USD 183,341 €39,033	USD 160,039 €20,002

Sanctions in case of physical transportation of currency or bearer negotiable instruments in connection with terrorism financing or money laundering operation (c.IX.9)

458. In relation to this essential criterion, the Azerbaijani authorities indicated that the provisions of article 206 (*"smuggling"*) of the Criminal Code and Articles 261.1 (*"non-declaration/false declaration*) and 261.2 (*"providing false information to customs authority*") of the Code of Administrative Infringements are applicable. However, the evaluation team noticed that the indicated legal provisions only cover situations related to failure to declare or false declarations of goods to the customs authorities, and thus fall short of the requirements of Essential criterion IX.9.

459. Customs representatives indicated that for the practical situation when a person is carrying out of or into Azerbaijan a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing or money laundering and rightfully declare them, the provisions of the Criminal Code in relation to the ML and TF crime are applicable. However, the State Customs Authority, although an investigation body on customs matters, has no competence whatsoever in investigating ML and TF and, as already mentioned, there is no clear legislative provision requiring customs authority to stop or restrain currency valuables when indications of ML/TF are present. Under these circumstances it is unclear to the evaluation team whether customs officials have the power to restrain the currency or currency valuables involved and defer them together with the information collected to the General Prosecutor's Office or the Ministry of National Security, competent authorities for investigating ML/TF.

460. Having regarded that, although criminal sanctions are available for cross-border transportation of currency valuables related to terrorist financing or money laundering, the State Customs Committee has no authority in enforcing them. This competence rests with the criminal courts in Azerbaijan, provided that the prosecution manages to successfully secure a conviction for ML/TF. Operational aspects in relation to this essential criterion are further developed under the effectiveness section.

Application of Recommendation 3 (c.IX.10)

461. The evaluation team was informed that the customs authorities do not have the power to confiscate currency or bearer negotiable instruments that are related to terrorist financing or money laundering. This authority rests only with the criminal courts in Azerbaijan.

462. However, based on the provisions of articles 242 and 243 of the Criminal Procedure Code and article 404 of the Code of Administrative Infringements, the customs authorities are entitled to seize currency or currency valuables from offenders, for investigation purposes, when legal provisions on the customs regime have been breached. The evaluation team however noticed that the provisions indicated by the Azerbaijani authorities only apply when breaches of the declaration system are identified.

463. During on-site interviews, the Azerbaijani authorities indicated that should a case of terrorist financing or money laundering be detected by customs officials, the currency related to terrorist financing or money laundering is seized, the persons who physically transport them over the border are detained and the materials gathered are passed in accordance with their investigation relevance. It is however unclear to the evaluation team how the seizing mechanism works in practice since there is no explicit legal provision in place that would mandate the customs

authorities to restrain currency or currency valuables when suspicions of ML/TF arise separate of any breach to the declaration system.

464. Statistics available seem to confirm the concerns of the evaluation team in the sense that all the amounts seized by the customs officials during 2008-2013 are related to breaches of the declaration system. Also, no cases have been presented to the evaluation team on investigations generated by information on ML/TF suspicious transportation of currency or currency valuables, collected by customs officials and subsequently deferred to the competent investigative body.

Application of SR III (c.IX.11)

465. In relation to this criterion, Azerbaijani authorities indicated that information received from the FMS on the list of NCCT countries as well as the sanctions list (see under SR.III above) is regularly disseminated by the State Customs Committee to the local customs authorities and measures are taken accordingly.

466. The current system in Azerbaijan implies that whenever funds or other assets (including currency and currency valuables) related to a person or country in the NCCT list or sanctions list are identified at the state border, information is disseminated by the customs authority to the FMS.

467. This however is, in the opinion of the evaluation team, insufficient to comply with essential criterion IX.11. From an operational perspective, although under the AML/CFT Law the State Customs Committee is obliged to immediately submit information on such funds to the FMS, the lack of a legal provision in place that would mandate the customs authorities to restrain currency or currency valuables when suspicions of ML/TF arise, would make any follow-up action of the FMS ineffective. Moreover, the two-day non-execution interval provided by article 11.4 of the AML/CFT Law once an STR has been submitted to the FMS is not applicable to categories of information submitted by the State Customs Committee. In addition, there are no provisions under the AML/CFT Law that would allow the FMS to impose a suspension order for the State Customs Committee, over a cross-border currency transportation operation that has been reported.

468. As already mentioned, in the practical situations envisaged by essential criterion IX. 11, the provisions of the Criminal Code in relation to the ML and TF crime are applicable. References on this mechanism may be found under essential criteria IX.9 and IX.10.

Unusual cross-border transportation of gold, precious metals or precious stones (c.IX.12)

469. In February 2002, the Republic of Azerbaijan became a party to the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention 09.06.1977). In accordance with this Convention, the customs authorities of the Republic of Azerbaijan were provided with the right to conduct exchange of information with customs authorities of other countries on transportation of goods and other items (as well as the currency or currency valuables) over the customs border.

470. In accordance with Annex I to the above mentioned Convention, the customs administration of a Contracting Party shall, on its own initiative, communicate to the Customs administration of the Contracting Party concerned, any information of a substantial nature which has come to light in the course of its normal activities and which gives good reason to believe that a serious Customs offence will be committed in the territory of the other Contracting Party. The information to be communicated shall concern, in particular, the movements of persons, goods and means of transport.

471. The indicated legal instrument limit the information exchange to situations where the State Customs Committee has good reasons to believe that a serious customs offence will be committed in the territory of the other state and thus falls short of the requirements of Essential criteria IX.12. Also, no data has been provided to the evaluation team to support that such

cooperation has been used for cases involving cross-border movement of gold, precious metals or precious stones.

Guidelines to the use of data (c.IX.13)

472. In accordance with the legislation in force, the State Customs Committee is obliged to ensure the protection of information systems under its management. In this respect, Article 41 of the Customs Code of the Republic of Azerbaijan regulates the protection of information:

41.1. The customs authorities may only use the information obtained from state authorities, legal and natural persons as well as the customs authorities of other states for conducting their service duties;
41.2. The customs authorities shall ensure the protection of secret and confidential information they obtained or they were presented. Except for the cases specified by law, those information shall not be disclosed by customs authorities without the direct permission of the person or body that provided it;
41.3. The customs authority officials who illegally used or disclosed the state or commercial secret as well as other confidential information protected by law are liable in accordance with the relevant legislation;
41.4. The rules for providing the information which is a state secret to other states and international organisations are regulated by the Law of the Republic of Azerbaijan "On State Secret";
41.5. Protection of information and the rights of the subjects involved in the process of exchange of information is ensured through the use of special software and technical devices;
41.6. The protection level of the information shall conform to its category. The protection of the information in accordance with its category shall be ensured by the customs authorities that hold that information resources;
41.7. The supervision over observance of the requirements on the exploitation of technical devices used for information protection is conducted by the relevant executive body;
41.8. The relevant executive body conducts widest possible consultations with all interested parties on the application of information technologies.

Training, data collection, enforcement and targeting programmes at a supra-national approach (c. IX.14)

473. According to the Azerbaijani authorities, Following the UN Development Program Project "*Modernization of Customs Service in the Republic of Azerbaijan*", the Target Determination Centre was established at the State Customs Committee level. This body deals with the activities on establishment of databases necessary for automated risk analysis and application of modern technologies. The Centre serves as an additional tool in detecting customs violations in foreign trade turnover, when transporting goods and vehicles over the Azerbaijani border or by natural persons who do not follow customs rules. Also, information collected within the centre is analysed in order to improve customs controls and the efficiency in combating customs offences.

474. The response provided by the authorities partially covers the requirements of essential criteria IX. 14. Although the Target Determination Centre is a research centre that collects and analyses data for better target identification in customs matters it seems to lack a continuous (program) training and enforcement component as required by the criterion.

Access to additional information at a supra-national approach (c.IX.15)

475. N/A.

Additional element – implementation of the Best Practice Paper for SR.IX (c.IX.16)

476. The Azerbaijani authorities indicated that the FATF Best Practices paper on SR.IX is studied by the customs authorities and regular measures are taken for its practical application.

Additional element – access to a computerised data base for AML/CFT purposes (c.IX.17)

477. The Azerbaijani authorities indicated that measures have been taken by the relevant structural unit of the State Customs Committee (General Department of Statistics and Information Technologies) to ensure access of competent authorities to information on cross-border transportation of currency valuables. Access to this resource is granted upon request and specific software has been commissioned in this respect since April 2012.

Recommendation 30 (Customs authorities)

478. At the time of the on-site visit, the State Customs Committee had approximately 3,000 staff that were deployed across 25 border crossing points, local customs departments and the headquarters. Also, a special department responsible for currency control at the border has been set up at the State Customs Committee level.

479. Based on information provided by the authorities, customs officers have been appointed with responsibilities on filling in and signing the information forms related to money laundering and terrorist financing at customs border checkpoints. Also, specific software was created in this respect and the technical issues were solved. It was indicated to the evaluation team that the customs authorities of the Republic of Azerbaijan operate in full independence free from any unnecessary influence and intervention, are sufficiently structured, funded, and provided with fully professional staff and sufficient technical and other resources.

480. To fulfil the functions assigned to them completely and effectively, the customs authorities of the Republic of Azerbaijan are provided with proper facilities and modern technical control tools and other equipment. A special program is being carried out at the level of the State Customs Committee to ensure the protection and confidentiality of the information and that staff observe the high professional standards.

481. In respect of professional standards, Article 53 of the Customs Code provides for the requirements that have to be met by persons that want to become officials of the customs authority in Azerbaijan. These requirements relate to education, professionalism, health conditions, working, physical and moral capabilities and fluency in the official language.

482. In terms of training, the following programs have been indicated to the evaluation team:

- Technical Assistance project on Anti-Money Laundering organised by the International Monetary Fund (June 2012);
- training on detecting potential terrorist activity and money laundering cases with the joint organisation of Office of Technical Assistance of the US Department of Treasury and US Embassy in the Republic of Azerbaijan (June 2012);
- Anti-Money Laundering Symposium organised in Baku by Office of Technical Assistance of the US Department of Treasury and US Department of State (September 2012); and
- training organised by the World Bank (February 2013).

483. As regards integrity, according to information provided, the personnel of the customs authorities perform their job responsibilities on the basis of the requirements of the "*Code of Honour of the customs officer of the Republic of Azerbaijan*". This instrument determines the ethical principles and behaviour rules for the customs officer. Apart from identifying accurately and clearly the ethical norms for the official of the customs authority, this Code determines the principles for personal responsibility, observance of the law, attitude towards himself/herself and others, and reflects the duties related to the resolution of ethical and other issues in relations with the public.

Recommendation 32

484. In relation to statistics, the Azerbaijani authorities indicated that based on the NCCT and sanctions lists, monthly reports are prepared by the State Customs Committee on cross-border

transportation of currency and/or currency valuables, the number of natural persons that made declarations and the amount of currency involved.

485. During 2008-2013, there were 15,675 declarations on incoming currency and 122,580 declarations on outgoing currency. For the same interval there were no declarations on bearer negotiable instruments, although assets with a Euro equivalent of €4,482,385 were restrained. No information has been provided by the Azerbaijani authorities on the outcome of the assets restrained.

Table 30: Cross border transportation of currency and bearer negotiable instruments

Year	Number of declarations or disclosures				Suspicious cross border incidents			Assets restrained (amount in EUR)
	Incoming		Outgoing					
	Currency	Bearer negotiable instruments	Currency	Bearer negotiable instruments	Suspicions of ML	Suspicions of FT	False declarations	
2008	3,858		13,629					128,000
2009	2,895		17,172				15	176,546
2010	2,586		15,879				23	2,005,741
2011	2,713		7,011				15	1,079,994
2012	623		25,553				108	806,756
2013*	547		43,336				61	285,348

* To October 2013

486. The amounts involved in the declaration provided by the table above are included into the table below:

Table 31: Declarations

Period.	Number of declarations	İncoming currency		Number of declarations	Outgoing currency	
		Name	Amount		Name	Amount
2008	3,858	US $	280,058,348	13,629	US $	127,539,312
		€	2,628,250			
		£	6,605			
		Rus.Rub.	14,480,410			
2009	2,895	US $	133,314,992	17,142	US $	155,289,098
		€	1,826,605			
		£	88,500			
		Rus.Rub.	7,280,000			
2010	2,586	US $	120,211,744	15,879	US $	111,806,635
		€	1,481,420			
		Rus.Rub.	1,574,497			
		£	84,000			
2011	2,713	US $	122,254,612	7,011	US $	50,421,411
		€	3,069,705			
		Rus.Rub.	5,972,580			
		£	1,800			

2012	623	US $ € Rus.Rub.	25,839,040 1,416,945 13,403,560	25,533	US $	197,306,369
2013	1,052	US $ € Rus.Rub.	156,197,152 3,083,781 30,025,550	48,845	US $ € Rus.Rub.	333,038,014 16,620,217 228,059,140

Effectiveness and efficiency

487. During the on-site visit the evaluators were informed by the authorities about the reliance on cash in the Azerbaijani economy, although efforts are being taken to increase bank operated transactions. Also, an important community of ethnic Azerbaijanis live in neighbouring Iran (more than the aggregate population present in Azerbaijan) and the country faces problems posed by drug trafficking originating from Iran. By corroborating all these premises with the figures on proceeds-producing crimes, the evaluation team considers that it is fair to presume that there is a volume of illicit funds that are moved in cash both within Azerbaijan and over its borders. This conclusion also seems to be supported by the statistics provided by the Azerbaijani authorities, indicating that during 2008-2013, there were 15,675 declarations on incoming currency valuables and 122,580 declarations on outgoing currency valuables.

488. Under such circumstances and having regard to this volume of currency movements, for the reference period, there are virtually no money laundering and/or terrorist financing investigations started based on action/information coming from the State Customs Committee.

489. Although an investigative body for criminal offences regarding the customs regime in Azerbaijan, the State Customs Committee has no authority in investigating money laundering or terrorist financing and it has no legal power to stop or restrain assets when ML/TF suspicions are identified. This means that whenever customs officials come across suspicions of money laundering and/or terrorist financing that do not relate to a breach of currency declarations provisions, they have to refer the case to the General Prosecutor's Office or the Ministry of National Security as the authorities that hold exclusive competences in investigating these categories of crimes. In practice, this could generate reluctance for customs officials who would be more inclined to focus on the crimes under their direct competence. In addition, the current system seems to be too lengthy for an effective application of the sanctioning regime provided by the Criminal Code.

490. Statistics provided by the authorities seem to confirm this conclusion as, during 2008-2013 assets equivalent to €4,482,385 were restrained by the State Customs Committee, although there were no amounts seized on the basis of ML/TF suspicions where no legal provisions on currency declaration had been breached.

491. A possible cause for this may be linked with the general impression of the evaluation team that the customs authority in Azerbaijan mainly rely on making sure that the provisions of the cash declaration system are met by natural persons at the border and not enough focus is placed on the core issue – to actually identify money laundering and terrorism financing cases based on information available at the borders of Azerbaijan.

492. Another issue that came to the attention of the evaluation team was related to the discrepancies between the number of incoming and outgoing declarations of currency at the border. Outgoing declarations exceed almost ten times the number of incoming disclosures. During the on-site interviews the authorities indicated as the reason for this discrepancy the fact that in recent years people take more money out of Azerbaijan for personal purposes (shopping and leisure). Although, the evaluation team accepts this change in behaviour as a possible explanation, it may also relate to the fact that it seems that not enough effort is being put in by the Azerbaijani

authorities to increase the awareness of persons over the declaration obligations they have. Upon arrival on the Baku International Airport, there were two electronic information points that contained some information on the obligation to declare currency held upon entry but this information was not easily accessible. At the same time, no awareness raising or inquiries were performed by the customs officials on these issues.

493. Although the level of AML/CFT awareness of the State Customs Committee representatives met on-site was impressive, the opinion of the evaluation team is that further training is needed for customs officials deployed at cross-border points. Also this awareness raising effort should be accompanied by a cultural shift in customs authorities on the importance of identification of ML/TF cases outside any relation to a customs offence or infringement.

2.7.2 Recommendations and comments

494. Measures should be taken to extend the applicability of the declaration system to amounts transported over the borders in the national currency of Azerbaijan (AZN).

495. Clear legislative provisions should be implemented in order to grant the State Customs Authority the authority to stop or restrain currency valuables when indications of ML/TF are present.

496. Measures should be taken to ensure that information on ML/TF suspicions in relation to cross-border transportation of currency and currency valuables are immediately reported by the customs authority to the FMS.

497. Measures should be taken to ensure for the State Customs Committee the authority to exchange information with counterparts for AML/CFT purposes.

498. The authorities should develop and implement training, data collection and enforcement programs on AML/CFT issues.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• The declaration system does not cover physical transportation of currency in AZN; • There is no clear legislative provision requiring customs authority to stop or restrain currency valuables when indications of ML/TF are present; • No provision in place that would require the State Customs Committee to report suspicions of money laundering and terrorism financing to the FMS; • There are no programs on training and enforcement; **Effectiveness** • Information exchange with counterparts is limited to situations when reasons to believe that a serious customs offence will be committed in the territory of another state; • There are no money laundering and/or terrorist financing investigations started based on action taken by the State Customs Committee.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal framework and developments since the third evaluation

499. Since the adoption of the third round MER in December 2008, Azerbaijan has taken significant legislative and regulatory measures in order to address the main deficiencies identified in the third round report. These developments are set out in detail under the description of each of the relevant recommendations.

Law, regulations and other enforceable means

500. Azerbaijan has a broadly sound legal structure for the preventive measures. A more detailed description of each of the legal framework is set out in Section 1.1 of this report.

Scope

501. The AML/CFT Law applies to all activities and operations defined in the Glossary to the FATF Methodology in relation to financial institutions.

Customer Due Diligence and Record Keeping

Risk of money laundering or terrorist financing

A country may decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is a low or little risk of money laundering or terrorist financing. Similarly, as set out in R.5, financial institutions may, in certain circumstances determine the degree of risk attached to particular types of customers, business relationships, transactions or products. In section 3.1 countries should set out the basis upon which they have taken a decision not to apply certain required AML/CFT measures to a particular financial sector. Where there are specific references to risk in individual Recommendations (see Instructions to Assessors) the issue of risk for those Recommendations should be described in the relevant section of the MER i.e. sections 3.2, 3.8, 3.13 and 4.1, 4.4 and 4.5. See AML/CFT Methodology 2004, paragraphs 17-18.

502. Limited information was provided on the ML/TF risks in Azerbaijan since no formal national risk assessment was carried out by the authorities.

Money laundering

503. Azerbaijan's strategic position on the border between Asia and Europe has been favourable to the development of commercial and transportation routes, which connect two continents and pass through the country. The strategic position is nevertheless also attractive for criminals and organised criminal groups, this being strengthened by the existing transportation infrastructure. The main risks presented by the location of the country are connected above all with drug trafficking (mostly originating from Afghanistan with the destination in Europe or Russia) and human smuggling (where Azerbaijan figures both as a transit country and the country of origin) although there is little evidence of the funds generated being laundered through Azerbaijan.

504. According to the authorities, the most common predicate offences for money laundering are theft, fraud, tax evasion, embezzlement, drug and weapons production and trafficking, smuggling and corruption. The most common predicate offences, based on the structure of the disclosures received by law enforcement agencies from the FMS, are tax evasion, counting for more than 75%, followed by corruption (almost 10%), embezzlement, fraud, drug crimes and cybercrime.

Financing of terrorism

505. During the on-site visit, it was pointed out that the threat of terrorism is quite high in Azerbaijan since there have been several terrorist attacks in recent history. For more information the reader should refer to Section 1.3 of this report. The authorities have conducted a number of seminars

for all financial institutions to raise awareness of the risks and obligations related to terrorist financing.

506. The AML/CFT Law which came into force in February 2009, among other novelties, prescribes certain obligations for monitoring entities which arise from the detection of high risk situations concerning money laundering and terrorist financing. Azerbaijani legislation recognises a wide range of different reports which are to be submitted to the FMS (art. 7.2. of the AML/CFT Law). Also, a number of enhanced customer due diligence measures are prescribed in the Law.

Applying the risk based approach

507. According to information provided by the authorities during the on-site visit, all financial institutions conduct risk analysis, and they apply this analysis when rating the risks (low, medium and high) of their customers and products. This was confirmed in meetings with financial institutions.

Exemptions

508. One novelty in the AML/CFT Law is an exemption for certain small businesses. Article 12.1 of the AML/CFT Law requires monitoring entities to establish and maintain internal control systems, which encompasses AML/CFT systems. Nonetheless, Article 12.4 exempts those monitoring entities which have a quarterly turnover of less than 50,000 Manats (approximately €47,000) from implementing the internal control system. This potentially has an impact on the reporting requirements under Recommendation 5 (EC 5.15 b)) the record keeping requirements under Recommendation 10 and internal control requirements under Recommendations 15 and 22.

509. This exemption could increase the vulnerability of small businesses to the risk of being used for the purposes of money laundering and the financing of terrorism and also creates the opportunity to establish low turnover entities which could be exploited for ML/TF purposes._The authorities explained that this exemption was intended to give relief to small businesses and has no impact on financial institutions as all relevant financial institutions have a quarterly turnover in excess of 50,000 Manats.

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

3.2.1 Description and analysis

Recommendation 5 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

510. In the 3rd round MER, Azerbaijan was rated NC for Recommendation 5 based on the fact that there were no explicit or complete legal requirements for the financial institutions to implement CDD measures. Among the deficiencies arising from the lack of legal requirements there was no concept of "beneficial owner" provided by any law or regulation, and no requirement to implement CDD measures when conducting occasional transactions that are wire transfers and transactions which appeared to be linked, when there is a suspicion of ML and FT or when there were doubts concerning previously obtained customer identification data.

511. Since the 3rd round evaluation, Azerbaijan has taken significant steps in order to improve their compliance with international standards. The new AML/CFT Law came into force in February 2009 prescribing obligations for reporting entities to apply preventive measures (including customer due diligence (CDD) and identification of politically exposed persons) which are largely in line with the FATF Recommendations.

512. According the AML/CFT Law, all financial institutions listed in the FATF Glossary are subject to AML/CFT obligations.

Anonymous accounts and accounts in fictitious names (c.5.1)

513. Pursuant to Article 9.1 of the AML/CFT Law financial institutions are not permitted to keep anonymous accounts or accounts in fictitious names, or anonymous deposit accounts, or to issue anonymous deposit certificates.

514. Additionally, it should be noted that criterion 5.1 also refers to a requirement that where numbered accounts exist financial institutions should be required to maintain them in such a way that full compliance can be achieved with the FATF Recommendations. Although numbered accounts are not specifically mentioned in the AML/CFT Law, the evaluators were satisfied that the provisions of the law were sufficient to require full CDD on all accounts, including existing accounts.

515. During the meeting with representatives from the CBA it was stated that, after implementation of Law on Banks in 2004, steps were taken by the CBA to determine if banks had closed existing anonymous accounts. It was also stated that regular CBA supervisory activity includes supervision of implementation of provisions which forbids opening or maintaining anonymous accounts.

516. During the interviews with representatives of financial institutions it was stated that numbered accounts exist in Azerbaijan. Nonetheless, one representative from a bank stated that information on owners of such accounts is available to compliance officers. The authorities also consider that the requirement in Article 9.16 of the AML/CFT Law to apply CDD requirements to customers existing before the entrance into force of the AML/CFT Law and to conduct due diligence on such existing relationships at appropriate times was adequate to cover all existing numbered accounts.

Customer due diligence

When CDD is required (c.5.2)*

517. Articles 9.2 and 9.3 of the AML/CFT Law require monitoring entities to undertake CDD measures, in particular Article 9.2 refers to identification of a customer and of a beneficial owner (BO) and Articles 9.3 to 9.10 set out the verification measures to be undertaken for both natural and legal persons.

518. According to Article 9.2 monitoring entities are required to take measures on identification (CDD) of customers and beneficial owners in the following cases:

- before establishing business relations;
- before carrying out occasional transactions above the applicable designated threshold in the amount of 15,000 Manats (approximately €14,000); this also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked;
- before carrying out occasional transactions that are wire transfers regardless of the amount;
- when there is a suspicion of money laundering or terrorist financing regardless of any exemptions or thresholds;
- the monitoring entity has doubts about the veracity or adequacy of previously obtained customer identification data.

519. During the interviews with representatives of financial institutions, including the Azerpost, it was shown that they are aware of obligations set out in Article 9 of the AML/CFT Law.

Identification measures and verification sources (c.5.3)*

520. As was previously stated monitoring entities are required by Article 9.2 to identify the customer and the beneficial owner and by Articles 9.3 to 9.10 to verify the identification data of the customer and the beneficial owner using reliable, independent sources.

521. Pursuant to Article 1.0.11 a customer should mean *"any natural or legal person permanently or occasionally using the services of the monitoring entities or other persons involved in monitoring the persons that concern the transactions with the funds or other property"*. This definition clearly shows that it covers permanent and occasional customers. As for other legal arrangements, they do not fall under the definition of "customer" since trusts or other similar legal arrangements do not exist and are not recognised by the national legislation.

Natural persons

522. Article 9.5 prescribes that monitoring entities should identify a natural person on the basis of his/her ID documents. Pursuant to Article 9.10 monitoring entities are required to verify a natural person based on the following measures:

- confirming the date of birth from birth certificate document, passport, driving license or other official documents;
- confirming the permanent address from a utility bill or based on extract from state registry of immovable property confirming the state registration right of ownership, billet, lease or rent contract.

Legal persons

523. According to Article 9.4. of the AML/CFT Law, monitoring entities are required to identify legal persons on the basis of the notarised copy of their charter and state registration certificate of the legal person. Article 9.9 prescribes measures that should be applied by monitoring entities to verify the legal person. These measures are as follows:

- comparing the information submitted by a legal person with information included into the state register of legal persons;
- obtaining the information on activity of legal person from mass-media, internet or official publication;
- comparing the latest submitted information with previously received information.

524. According to Art. 9.7 of the AML/CFT Law, a copy of an ID card, notarized copies of the certificate given by the relevant tax agency, a power of attorney for the representative confirming his right to act on behalf of the customer, the charter and the state registration certificate of the legal person submitted for the identification purposes shall be kept by monitoring entities. During the interviews with representatives of financial institutions it was stated that they are well aware of their obligation to identify and verify identification of their customers. Azerpost also keeps copies of ID documents alongside with information of transactions executed by its customers.

Identification of legal persons or other arrangements (c.5.4)

525. According to Article 9.4. of the AML/CFT Law, monitoring entities are required 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. Also, monitoring entities are required to verify the legal status of the legal person, by obtaining proof of incorporation (establishment or existence), and obtain information concerning the customer's name, legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person.

526. During the on-site visit it was stated that financial institutions are required to present documents from the State registry of legal person.

527. During the meeting with representatives of the Ministry of Communication and Information Technologies it was stated that in the course of the off-site inspections of the Azerpost, several shortcomings have been identified with respect to verification of identification of legal entities.

Identification and verification of the identity of the beneficial owner (c.5.5, c.5.5.1 and c.5.5.2)

528. Article 1.0.12 of the AML/CFT Law sets out the beneficial owner (BO) definition as follows *"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"*. It can be concluded that the BO definition provided by the AML/CFT Law is fully in line with the BO definition prescribed by the FATF Methodology.

529. As was previously stated Article 9.2 sets out a requirement to identify the BO and Article 9.8 prescribes the obligation for monitoring entities to verify the identity of the beneficial owners using reliable, independent sources. Nonetheless there is no requirement to identify and verify the beneficiary under the life and other investment linked insurance policies.

530. Pursuant to Article 9.8, monitoring entities should determine, for all customers, whether the customer is acting on behalf of another person, and should then obtain sufficient identification data stipulated in Articles 9.4–9.6 of this Law to verify the identity of that other person.

531. According to the same article, for customers that are legal persons, monitoring entities are required to take reasonable measures to understand the ownership and control structure of the customer, and to determine the natural persons that ultimately own or control the customer (this includes those persons who exercise ultimate effective control over a legal person or arrangement).

532. During the meetings with representatives of financial institutions it was shown that compliance officers require information from customers and obtain other available information in order to identify the natural person who ultimately owns or controls the customer. Nevertheless some of compliance officers stated that in some cases in which they could not determine the beneficial owners, financial institutions do continue the business relationship with those customers, although they would put those customers in a high risk category and obtain information on the beneficial owner later during the business relationship.

533. The evaluators were concerned that the failure to identify the beneficial owner of foreign legal persons could allow business to be conducted on behalf of foreign PEPs without them being identified as such.

534. Legal persons are also allowed to have accounts in the Azerpost. When identifying the customer who is a legal person, the Azerpost requires information about a company's registration held by the Ministry of Taxes which allows the institution to see who the founder of the legal person is. This raises concerns regarding the identification of the beneficial owner, taking into consideration that representatives from the Central Bank of Azerbaijan stated that monitoring entities, when identifying beneficial owners, rely on the information from the state registry of legal persons held by the Ministry of Taxes. According to the information received during the interview with the representatives of the Ministry of Taxes it was noted that the process of registration of legal entities does not require information on the beneficial owners.

535. Although, all the interviewed parties stated that in practice there is no problem in identifying the beneficial owner of a domestic legal person, this would not be the case if the customer is a foreign or domestic legal person owned by a foreign legal person.

Information on purpose and nature of business relationship (c.5.6)

536. Article 9.11 of the AML/CFT Law prescribes that monitoring entities shall obtain information on the purpose and intended nature of the business relationship.

537. During the interview with representatives from the financial sector it was shown that financial institutions are obtaining information on the purpose of business relationship. Also they are obtaining information on source of initial funds used when the business relationship is established.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

538. Article 9.12 of the AML/CFT Law prescribes that monitoring entities shall conduct ongoing due diligence on the business relationship. Ongoing due diligence shall include the following:

- scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and the source of funds; and
- ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

Risk – enhanced due diligence for higher risk customers (c.5.8)

539. According to Article 9.13 of the AML/CFT Law monitoring entities are required to perform enhanced due diligence measures for higher risk categories of customers, business relationship or transaction under the following circumstances:

- non-resident customers;
- legal persons or arrangements such as trusts that are personal assets holding vehicles;
- companies that have nominee shareholders or shares in bearer form;
- establishing of correspondent banking relationships or any other transactions with correspondent accounts of foreign banks; and
- in cases specified by Article 7.2 of the AML/CFT Law (including politically exposed persons, persons from high risk countries, etc.).

540. It is noted that private banking is not included as a category for enhanced due diligence for higher risk customers.

541. Article 7.2 foresees circumstances when STRs should be submitted to the FMS. When such circumstances occur they also follow under the enhanced CDD measures. The circumstances are as follows:

- *situations that cause suspicions or reasonable grounds for suspicions that funds or other property are the proceeds of a criminal activity or are related to terrorist financing;*
- *any transaction with the funds or other property associated with the citizens of the country (jurisdiction) determined by the article 7.3 of this Law, with the persons registered or that, who has a residency or permanent business in this country (jurisdiction), with the persons who has a bank account in banks registered in this country (jurisdiction);*
- *any transactions with funds or other property of politically exposed persons of foreign country;*
- *transfer of funds from anonymous accounts that are out of the jurisdiction of the Republic of Azerbaijan to the Republic of Azerbaijan, as well as transfer funds to the anonymous accounts that are out of the jurisdiction of the Republic of Azerbaijan; and*
- *any transactions of persons the list of which is designated in the order specified by the relevant executive authority on the basis of relevant United Nations Security Council Resolutions, as well as legislation of the Republic of Azerbaijan and international instruments to which the Republic of Azerbaijan is a party.*

542. The enhanced due diligence measures required to be performed by the monitoring entities include the acquisition of additional information, including information on source of wealth. In particular, Article 9.14 sets out the following requirements:

- *verification of accounts and business relationships or other transactions carried out with other means, clarification of the purpose and nature of the transactions;*
- *learning the names of the shareholders and their shares, in case if the customer is a legal person; and*

- *obtaining from other reliable sources and comparing more precise information about the customers, beneficial owner, and if possible, about the sources of funds or other property.*

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

543. Article 9.19 of AML/CFT Law prescribes that monitoring entities can apply simplified CDD measures in cases specified by Articles 9.2.1 (before establishing business relations) and 9.2.2 (before carrying out occasional transactions above the applicable designated threshold). The Article prescribes that the simplified CDD measures are to be determined by the financial monitoring organ (FMS) on the basis of evaluation of materiality and risk of customers, business relationships or financial transactions. The Azerbaijani authorities consider that the term "measures" in the AML/CFT Law is incorrectly translated and merely refers to the application of simplified CDD guidelines to be issued by the FMS.

544. During the on-site visit representatives from the FMS stated that no guidelines had been issued, therefore the concession could not be applied by reporting institutions. The evaluators are nonetheless concerned that the wording of Article 9.19 could give rise to confusion on interpretation within reporting institutions on the application of simplified CDD until such time as guidelines are issued.

545. Considering the wording of Article 9.19 and the absence of a regulation issued by the FMS the evaluation team came to a conclusion that this Article could potentially create confusion for monitoring entities since it could be understood that monitoring entities can apply simplified CDD measures when establishing business relationship and carrying out occasional transactions in all circumstances apart from those circumstances that follow under the category of enhanced CDD measures. This is not in line with criterion 5.9 since the requirement should only apply to those circumstances where the risk of ML or TF is lower.

546. During the interviews representatives of different financial institutions informed the evaluation team that they carry out normal or enhanced CDD measures all the time and did not currently apply simplified CDD measures.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

547. According to Article 9.13.1 non-resident customers are always subject to enhanced customer due diligence measures. This provision goes beyond international standards requiring enhanced CDD measures for all non-resident customers and clearly sets out obligation for monitoring entities.

Risk – simplified / reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

548. Although there is no requirement in the law which specifically prohibits the application of simplified CDD measures when there is a suspicion of ML/FT or specific higher risk scenarios apply, there is a clear requirement in Article 9.13.5 to apply enhanced due diligence in circumstances where a report is being submitted to the FMS which would include "*situations that cause suspicions or reasonable grounds for suspicions that funds or other property are the proceeds of a criminal activity or are related to terrorist financing*".

Risk Based application of CDD to be consistent with guidelines (c.5.12)

549. The AML/CFT Law does not provide for the possibility of monitoring entities determining the extent of the CDD measures on a risk sensitive basis. Nonetheless, monitoring entities are allowed by the AML/CFT Law to apply enhanced and simplified CDD measures.

550. Referring to enhanced CDD measures, Article 9.14 determines what specific enhanced CDD measures should be performed by monitoring entities. This requirement is stated in the law and does not permit monitoring entities to determine otherwise the extent of CDD measures in case of enhanced CDD. In this respect there is no need for any guidelines.

551. In case of simplified CDD measures the law allows monitoring entities to apply such measures. The simplified CDD measures are to be determined by the FMS, nevertheless no relevant guidelines have had issued by the FMS at the time of the on-site visit.

Timing of verification of identity – general rule (c.5.13), Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

552. Article 9.8 of the AML/CFT Law requires monitoring entities to verify the identity of the customer and beneficial owner. By reading this requirement in conjunction with Article 9.2 the verification process should always be carried out before establishing business relationships or conducting transactions for occasional customers.

553. The Law is silent on exceptional circumstances foreseen in criterion 5.14 as it is a requirement that verification is always carried out prior to establishing business relationships or conducting transactions for occasional customers.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

554. Article 9.15 of the AML/CFT Law prescribes that where the monitoring entity is unable to identify and verify parties of transactions in order as defined by this Law or whether the customer has refused to submit identification information on the customer or beneficial owner, or the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data, the monitoring entity shall not open the account, commence business relations or perform the transaction. Article 11 requires that the reporting entity shall inform the financial monitoring organ in these situations.

555. Representatives of the financial sector informed the evaluators that there have been cases in which they reported suspicious transaction to the FMS due to non-identification of beneficial owner of the customer. The FMS have confirmed that they do receive such reports under the special code "FMR" (Front Man Report): in 2011, 8 FMRs were received; in 2012, 16 FMS were received; in 2013, 13 FMRs were received; and up to June 2014, 4 FMRs were received.

556. The AML/CFT Law is silent on situations where the financial institution has already commenced the business relationship, as it is required to conduct full CDD prior to establishing business relationships or conducting transactions for occasional customers. Furthermore, paragraph 5.9 of Article 5 of the Regulation on internal control system requires monitoring entities to terminate the business relationship and to submit a STR to the FMS when they are not able to carry out CDD measures.

557. However the evaluation team noted that some legal entities are exempted from the obligation to apply the abovementioned Regulation and from establishing internal control systems if they are exempted. According to paragraph 1.1 of Article 1 (General provisions) of the Regulation on internal control system the current Regulation is prepared on the basis of Article 12 of the AML/CFT Law. Pursuant to Article 12.1 of the AML/CFT Law monitoring entities which are legal persons shall establish and maintain internal control system. Nonetheless Article 12.4 exempts those monitoring entities which have a quarterly turnover of less than 50,000 Manats (approximately €46,011) from implementing the internal control system. In this respect it can be concluded that the Regulation does not apply to all monitoring entities and in this case the requirement of the Regulation to terminate the established business relationship and to consider making a STR does not apply to such entities. The authorities explained that this exemption has no impact on financial institutions as all relevant institutions have a quarterly turnover of in excess of 50,000 Manats.

Application of CDD requirements to existing customers – (c.5.17 and 5.18)

558. Article 9.16 of the AML/CFT Law prescribes that monitoring entities shall apply CDD requirements to customers existing until the entrance into force of this Law, on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

559. Even though there is no clear provision which sets out an obligation for monitoring entities to perform CDD measures on existing customers who held anonymous accounts, accounts in fictitious names or numbered accounts, the general requirement foresee in Article 9.16 should understood as applicable to all customers.

560. Additionally during the on-site visit the authorities informed the evaluation team that no anonymous accounts or accounts in fictitious names exist in Azerbaijan. This was confirmed by representatives from the private sector.

Effectiveness and efficiency

561. Provisions which set out obligations to conduct CDD measures are largely in line with the FATF Recommendations. Nevertheless there are some issues concerning effective implementation of those standards. The main concern is regarding identification of beneficial owner of customer.

562. Monitoring entities showed a high level of understanding of their CDD obligations. Nevertheless it was shown during the interviews that identification of beneficial owner, especially when the customer is a foreign legal person or domestic legal person owned by a foreign legal person, is causing significant problems for monitoring entities, and in some cases they continue business relationships with customers for which they did not identify the foreign natural person(s) who ultimately owns or controls a customer.

563. Regarding identification and verification of identity of legal persons, effectiveness issues occurred concerning customers of the Azerpost. The Azerpost is an institution offering widespread financial services for natural and legal persons. It was shown at the on-site visit that during the off-site inspection deficiencies were identified concerning verification of identification of legal entities.

Recommendation 6 (rated NC in the 3rd round report)

<u>*Summary of 2008 factors underlying the rating*</u>

564. In the 3rd round MER, Azerbaijan was rated NC for Recommendation 6 based on the fact that the Azeri legal system did not contain any enforceable measures concerning the establishment of business relationship with politically exposed persons whether foreign or domestic.

Risk management systems (c.6.1)

565. Art. 1.0.14. of the AML/CFT Law defines politically exposed persons of a foreign country – "*individuals who are or have been entrusted with prominent public functions in a foreign country (Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials), as well as their family members or close associates*". The definition provided by the AML/CFT Law is fully in line with the FATF Glossary.

566. In addition to the Law requirement, according to items 7.3-7.6. of the Requirements on establishment of the internal control system, monitoring entities are required to obtain information from each new customer if the potential customer is a PEP of a foreign state. The information should then be checked through open sources or special electronic databases (World Check, Factiva and etc.). Also citizens of a foreign state may be required to fill in Annex 1 to the current Requirements to determine whether they are PEPs of foreign state.

567. However it should be noted that, as was stated under R.5, this additional clarification provided by the Regulation does not apply to some monitoring entities.

Senior management approval (c.6.2)

568. Article 9-1.2 of the AML/CFT Law prescribes that monitoring entities are required to obtain senior management approval for establishing business relationships with a PEP. Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a PEP, monitoring entities are be required to obtain senior management written approval to continue the business relationship.

Requirement to determine source of wealth and funds (c.6.3)

569. Pursuant to Article 9-1.3 of the AML/CFT Law, monitoring entities are required to take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as a PEP.

On-going monitoring (c.6.4)

570. There is no requirement in the AML/CFT Law which would require monitoring entities where they are in a business relationship with a PEP to conduct enhanced ongoing monitoring.

Additional element – domestic PEP-s requirements

571. There are no requirements in Azerbaijan legislation to extend the abovementioned CDD measures to domestic PEPs.

Additional element – ratification of the Merida Convention

572. The United Nations Convention against Corruption was ratified on 30 September 2005 and fully implemented by various laws and regulations.

Effectiveness and efficiency

573. The provisions in the AML/CFT Law are in line with international standards concerning PEPs. It should be also stated that according to provisions of the same Law, all non-resident customers are subject to enhanced CDD measures. Nevertheless there is an issue regarding the possibility to determine whether the beneficial owner of a customer is a PEP. During the on-site visit it was not shown what are the effective steps to determine if the beneficial owner of a customer is a PEP. The abovementioned item 7 of the Requirements on establishment of the internal control system and associated Annex 1 (Questionnaire for a PEP of a foreign state) appears to only cover procedures to determine whether a potential customer is a PEP.

574. The evaluators were, however, concerned that the failure to identify the beneficial owner of foreign legal persons (as set out under Recommendation 5 above) could allow business to be conducted on behalf of foreign PEPs without them being identified as such.

Recommendation 7 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

575. In the 3rd round MER, Azerbaijan was rated PC for Recommendation 7 based on the fact that the Azerbaijani legal system did not included the requirements for financial institutions to gather sufficient information about a respondent institution to understand fully the nature of respondent's business. There were no requirements for financial institutions to assess the respondent's institution AML/CFT controls, and ascertain that they are adequate and effective.

Require to obtain information on respondent institution (c.7.1)

576. Even though the AML/CFT Law does not contain any requirement for monitoring entities with respect to correspondent relationships, according to Article 17.8 of the AML/CFT Law the FMS

has issued Requirements on Internal Control Systems, which specifically establishes requirements on correspondent relationships.

577. Thus, pursuant to item 7.11 of the Requirements on internal control systems, monitoring entities shall gather sufficient information on 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 quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action.

578. Also the Central Bank Regulation on opening, managing and closing of banks accounts prescribes obligations on opening by foreign banks of correspondent accounts in foreign and national currency at local banks. Article 8 of this Regulation provides for a list of documents and information that a foreign bank has to submit. Apart from the general information about the foreign bank that has to be submitted, this list also contains requirements to submit information concerning the AML/CFT issues. In particular foreign banks should be required to submit information on the AML/CFT internal control system, information on the fact that the foreign bank does not establish business relationships or conduct transactions with shell banks, information on any investigative actions and/or supervisory measures taken by any competent authority with respect to ML and TF.

Assessment of AML/CFT controls in Respondent institutions (c.7.2)

579. As prescribed by item 7.11 of the Regulation, monitoring entities are required to assess the respondent institution's AML/CFT control and ascertain that they are adequate and effective.

580. In addition to the general requirement stated in item 7.11, there is a specific supplementary obligation for banks. In particular, item 7.10 obliges local banks to require a foreign bank to fill in the self-evaluation survey table (Annex 2 to the Regulation) when opening a correspondent account. This questionnaire contains 45 questions regarding general information on the bank and information on the AML/CFT system implemented by the bank. A compliance officer of the local bank is required to evaluate the self-evaluation survey and submit a written report on results to a senior manager of the bank (to the member of the Board of Directors).

Approval of establishing correspondent relationships (c.7.3)

581. Item 7.12 of the Regulation on establishment of internal control systems prescribes that establishing the new correspondent relationship shall be based on the approval of the senior level management of the monitoring entity.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

582. The Azeri legislation does not contain any requirement for monitoring entities to document or have a clear understanding of the respective AML/CFT responsibilities of each institution during the relationship although the questionnaire as described under item 7.2 above would appear to cover a number of aspects.

Payable through Accounts (c.7.5)

583. According to item 8.4 of the Regulation on opening, maintenance and closing of accounts in banks where a correspondent relationship involves the maintenance of "payable-through accounts", banks shall be satisfied that:

- The respondent foreign bank has performed all the normal CDD obligations on those of its customers that have direct access to the accounts of the correspondent bank; and
- The respondent foreign bank is able to provide the customer identification data specified in the Regulation upon request to the correspondent financial institution.

Effectiveness and efficiency

584. During the meetings with representatives from the private sector it was shown that credit institutions are fully aware of their AML/CFT obligations regarding correspondent relationship.

Recommendation 8 (rated NC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

585. In the 3rd round MER, Azerbaijan was rated NC for Recommendation 8 based on the fact that existing legislation did not contained enforceable measures requiring financial institutions to have in place or to take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risk associated with non-face to face business relationship or transactions.

Misuse of new technology for ML/FT (c.8.1)

586. Article 12–1 of the AML/CFT Law specifically regulates non-face to face business relationships and transactions. Pursuant to Article 12-1.1 monitoring entities are required to have policies in place or take such measures as may be needed to prevent the misuse of technological developments in schemes of the legalization of criminally obtained funds or other property and the financing of terrorism.

Risk of non-face-to-face business relationships (c.8.2)

587. According to Article 12–1.2 of the AML/CFT Law monitoring entities are required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. These policies and procedures shall apply when establishing customer relationships and when conducting ongoing due diligence.

588. This issue is also supplemented by items 7.14 - 7.15 of the Regulation on establishment of internal control systems. In particular item 7.15 requires monitoring entities at least to apply the following minimum measures:

- to conduct verification measures to make sure about the veracity of the identity of the customer with whom the business relationship is established;
- to conduct verification measures to make sure about the veracity of the actual address that the customer with whom the business relationship is established resides.

589. Also Article 12–1.3 of the AML/CFT Law prescribes that measures for managing the risks mentioned in the article 12–1.2 of the AML/CFT Law shall include specific and effective CDD procedures that apply to non-face to face customers.

Effectiveness and efficiency

590. During the meetings with the authorities and private sector it was stated that non-face to face business is not widely spread in Azerbaijan and specifically the society mostly relies on cash.

3.2.2 <u>Recommendations and comments</u>

Recommendation 5

591. The authorities should issue a regulation or guidance on simplified CDD as foreseen in Article 17.8 of the AML/CFT Law and in order to remove any lack of clarity over the application of simplified CDD.

592. The exemption under Article 12.4 of the AML/CFT Law for monitoring entities which have a quarterly turnover of less than 50,000 Manats from terminating the established business relationship and to consider making a STR when the business relationship has already been commenced and the monitoring entity is not able to comply with CDD measures should be removed.

593. Provisions should be introduced to require the identification and verification of the beneficiary under a life insurance policy at or before the time of pay-out or the time when the beneficiary intends to exercise vested rights under the policy.

594. Azerbaijan should consider introducing a requirement that the companies' register held by the Ministry of Taxes contains information on the beneficial owners.

595. The authorities should issue guidance for monitoring entities in order to assist them in identifying the beneficial owners of a legal person if the customer is owned by a foreign legal person.

Recommendation 6

596. The authorities should remove the exemption under Article 12.4 of the AML/CFT Law to cover all monitoring entities.

597. The authorities should consider amending requirements on establishment of the internal control system so that foreign customers and beneficial owners who are foreign citizens are required to fill in the Questionnaire for a PEP of a foreign state.

Recommendation 7

598. Monitoring entities should be required to clearly document the respective AML/CFT responsibilities of each institution.

Recommendation 8

599. The Recommendation is fully observed.

3.2.3 Compliance with Recommendations 5, 6, 7 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• The lack of issued guidance on simplified CDD measures could give rise to confusion in relation to the scope of application; • Monitoring entities which have a quarterly turnover of less than 50,000 Manats are exempted from the obligation to terminate the established business relationship and to consider making a STR when the business relationship has already been commenced and the monitoring entity is not able to comply with CDD measures; • No provision to verify the identity of beneficiaries of life insurance policies at time of pay-out or the time when the beneficiary intends to exercise vested rights under the policy. **Effectiveness** • Monitoring entities still establish business relationships in circumstances where a foreign legal person who is a beneficial owner is not identified.
R.6	**LC**	**Effectiveness** • Circumstances where monitoring entities establish business relationships where a foreign legal person who is a beneficial owner is not identified could allow PEPs to conduct business without being identified as such; • No effectiveness was demonstrated with regard to determination of the

		beneficial owner of legal person who is PEP.
R.7	**LC**	• No requirement for monitoring entities to document or have a clear understanding of the respective AML/CFT responsibilities of each institution during the relationship.
R.8	**C**	

Third parties and introduced business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated N/A in the 3rd round report)

600. There is no provision in current legislation permitting financial institutions to rely on intermediaries or other third parties to perform some of the elements of the CDD process. During the on-site visit it was drawn to evaluators' attention that there is a product offered by banks which includes bank loan and life insurance as a mean of guarantee. Nevertheless it was shown that in those cases life insurance companies are conducting their own CDD measures not relying on documentation and information collected by bank.

3.3.2 Recommendations and comments

601. As it was stated in the 3rd round report while there is no prohibition in legislation to rely on third parties to perform CDD measures it is highly recommended to consider amending current legislation in a way to cover essential criteria under Recommendation 9.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	

Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

602. In the 3rd round MER, Azerbaijan was rated LC for Recommendation 4. The identified deficiency was that financial institutions were not specifically authorised to share information for the implementation of Recommendation 7.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

603. Criterion 4.1 requires that no financial institution secrecy law inhibits the implementation of the FATF Recommendations particularly as regards the ability of competent authorities to access information they require to properly perform their functions in combating ML or FT; the sharing of information between competent authorities, either domestically or internationally; and the sharing of information between financial institutions.

604. According to Article 16.1 of the AML/CFT Law banking and other legally protected secrecy regimes may not be invoked as grounds to reject submission of information as defined in Article 11.1 of the Law to the FMS. Pursuant to Article 16.2 the requirement of the AML/CFT Law shall not apply to the state secrets.

605. Article 17.3 states that "*upon receiving information from the known sources, on transaction which is subject to monitoring, FMS may request monitoring entities, other persons involved in monitoring, supervision authorities and State Customs Committee to submit information defined in the article 11.1 of the AML Law for the purposes of inquiry, also within the framework of analysis and its own authority the FMS may obtain from mentioned bodies or other state authorities additional information needed to properly undertake its functions*.

606. As can be seen from Article 17.3, the FMS is empowered to request additional information from monitoring entities; however Article 16.1 only refers to Article 11.1. In this respect this could lead to potential confusion and allow participants of the securities sector to refuse submission of additional information to the FMS since it would fall under the legally protected secrecy.

607. The current provisions of the AML/CFT Law are worded in fairly broad terms and the evaluation team was not informed about any practical impediments to obtaining information from monitoring entities.

Banking secrecy

608. According to Article 41.2 of the Law on Banks in accordance with Article 967 of the Civil Code, data comprising bank secrecy shall be provided only to clients themselves or their representatives, as well as to inspectors of the Central Bank in performance of their duties on banking supervision, external auditors, to insurance supervisory authority with respect to state control over insurance activity of insurance companies, to the FMS in the cases specified by the AML/CFT Law, as well as to the credit registry in accordance with the Law. Such data may be delivered to public authorities and their officials only under a valid court decision related to prosecution of a criminal case, seizure of client's funds and property in the bank's depository or confiscation of property for compensation of client's liabilities.

Capital market secrecy

609. According to Article 4.1.8 of the Law of the Republic of Azerbaijan on Commercial Secret, the information that has to be disclosed by the remitter, professional participant of the securities market or the supervisory body for professional participant of the securities market is not deemed confidential. The Baku Stock Exchange has provided a list of the information subject to disclosure and the information considered as "commercial secret" as regulated by the Law of the Republic of Azerbaijan on Commercial Secret. The Stock Exchange is responsible for ensuring the confidentiality of the information considered as confidential. Pursuant to Article 17.2 of that Law, the officials of the state authorities are obliged to protect commercial secrets known to them while performing their official duty. Such information may only be disclosed in cases stipulated in the legislation.

610. Furthermore, pursuant to Article 18 of the Law of the Republic of Azerbaijan on Civil Service, the civil servant (which would include employees of the State Securities Commission and the Stock Exchange) is always obliged to protect the state secret or other secrets protected by the law even after the termination of their employment in the civil service.

611. It appears that there are no provisions in legislation which clearly prescribe that capital market secrecy does not apply in situations specified by the AML/CFT Law or when this information is to be used for the purpose of AML/CFT comparable to the provisions which exist in the Law on Banks and in the Law on Insurance Activities. However, according to information provided to evaluators, FMS has not experienced problems in gaining information from security sector, since provisions in Art 16.1. of AML/CFT Law are applicable to all legally protected secrecy regimes. Also, the evaluators were informed that the GPO has direct access to an electronic database of issued securities held by SCS.

Insurance secrecy

612. The Law on insurance activities contains provisions on confidentiality, in particular Article 6.2 of this Law states that the insurer "*shall protect data, considered as insurance secrecy, which they obtained as a result of their professional activity and shall not disclose such data to other persons, except for in specific circumstances, including when the information should be provided to the FMS*".

Sharing of information between competent authorities, either domestically or internationally

FMS

613. According to Article 17.5 of the AML/CFT Law where the FMS, within the framework of analysis determines that the executed transaction is related to the legalisation of criminally obtained funds or other property and the financing of terrorism, this information shall be submitted to the General Prosecutor Office, and the information on the financing of terrorism shall be submitted to the relevant executive authority.

614. Article 17.6 prescribes that where the FMS, in course of carrying out its duties, obtains information on non-compliance of the monitoring entities and other persons involved in monitoring with the requirements of this Law, it shall submit such information to the relevant supervisory authorities for enforcement of administrative or other legislative measures.

615. These two Articles clearly show that the FMS can share information with law enforcement and supervisory authorities. In addition, the FMS has signed MoUs with all relevant competent authorities allowing for sharing of information.

616. As for international cooperation, the FMS is empowered by Article 20 of the AML/CFT Law to cooperate and exchange information with its counterparts.

617. Concerning the relevant legal acts for the National Bank, State Committee for Securities, Ministry of Finance, Ministry of Communication and Information Technologies, that regulate the sharing of information between competent authorities domestically and internationally, the authorities stated that Article 20.1 of the AML/CFT Law provides a general provision for the sharing of information internationally by all competent authorities with AML/CFT responsibilities.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

618. As was stated previously under R.7 item 8.4 of the Regulation on opening, maintaining and closing of bank accounts banks are required to be satisfied that respondent foreign bank is able to provide the customer identification data specified in the Regulation upon request to the correspondent financial institution. However from this requirement it is not clear whether the financial institutions are allowed to share CDD information.

619. In the case of the information related to the wire transfer payers pursuant to item 9.8 of the Regulation on "Non-cash transactions and money transfer" in all circumstances all wire transfers should be accompanied with the identification data.

Effectiveness and efficiency

620. During the on-site visit no issues occurred concerning ability of competent authority to access information. FMS has legal power to obtain additional information from monitoring entities. Additionally, information which constitutes banking secrecy may be submitted to other competent state body based on a court order.

3.4.2 Recommendations and comments

621. The domestic legislation and implementation of international standards are largely in line with international standards concerning ability to access and to share information.

622. The law should be amended to state clearly that capital market secrecy does not apply in situations specified by the AML/CFT Law or when this information is to be used for the purpose of AML/CFT comparable to the provisions which exist in the Law on Banks and in the Law on Insurance Activities.

623. Where a correspondent relationship involves the maintenance of "payable-through accounts", local banks should be allowed to share information about their customers CDD to correspondent banks.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• There is no clear provision in legislation which would require banks to share information about their customers CDD to correspondent banks.

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

3.5.1 Description and analysis

Recommendation 10 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

624. In the 3rd round MER, Azerbaijan was rated PC for Recommendation 10. The identified deficiencies were that there was no clear obligation for financial institutions to keep record of the account files and business correspondence. There were no provisions to ensure that the mandatory record-keeping period may be extended upon request of an authority, and no provisions requiring that customers and transactions records are available on timely basis to domestic competent authorities.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

625. According to Article 10 of the AML/CFT Law monitoring entities shall maintain documents on due diligence measures envisaged by Article 9, documents on transactions with funds or other property, documents on politically exposed person of foreign countries and documents on unusual transactions in the information carriers or in the electronic format.

626. Article 10.1.2 requires monitoring entities to maintain documents on transactions for at least 5 years following the completion of the transaction. Pursuant to Article 10.3 this period can be prolonged if requested by supervisory authorities or the FMS in specific cases upon proper authority.

627. Even though there is no specific requirement in the AML/CFT Law which would state that transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity, the evaluation team is of the opinion that the requirements foreseen in Article 10 is sufficient to cover 10.1.1. Also, during the meetings with representatives of financial institutions and Azerpost it was shown that they are aware of obligations and that in practice they are keeping and maintaining all records on transactions in a way that reconstruction of individual transactions of each customer can be provided. This was also confirmed during the meetings with supervisory authorities.

Record keeping of identification data, files and correspondence (c.10.2)

628. Criterion 10.2 requires financial institutions to maintain records of the identification data, account files and business correspondence for at least 5 years following the termination of an account or business relationship. According to the Azeri legislation (Article 10.1.1) monitoring entities are required to maintain records on the identification data for at least 5 years following the termination of an account or business relationship.

629. As for the obligation to maintain account files and business correspondence, pursuant to Article 10.1.2 account files, business correspondence and other relevant documents should be kept for at least 5 years following the completion of a transaction. This is not in line with the standard, which requires that such records be retained for at least 5 years following the termination of an account or business relationship. However, according to item 11 of the Regulation on Internal

Control System, monitoring entities are required to maintain records of the identification data, account files and business correspondence for at least 5 years following the termination of an account or business relationship. The Regulation does not, however, appear to fall within the definition of "law or regulation" in that it is issued by the FMS and, as such, does not appear to be primary and secondary legislation, issued or authorised by a legislative body, and which imposes mandatory requirements with sanctions for non-compliance.

630. Additionally, the record keeping requirements in the AML/CFT Law and the Regulation might potentially create confusion for monitoring entities since the AML/CFT Law prevails over the Regulation.

631. Pursuant to Article 10.3 record keeping period can be prolonged if requested by supervisory authorities or the FMS in specific cases upon proper authority.

Availability of Records to competent authorities in a timely manner (c.10.3)

632. Article 10 of the AML/CFT Law prescribes that monitoring entities are required to ensure that all customer and transaction records and information mentioned in Article 10.1 of this Law are available on a timely basis to the supervision authorities and financial monitoring organ upon appropriate request. However there is no obligation for monitoring entities to ensure that all customer and transaction records and information are available on a timely basis to law enforcement authorities.

Effectiveness and efficiency

633. During the on-site visit it was clearly shown by financial institutions that they are fully aware of their obligation regarding record keeping. Also none of the supervisory bodies raised concern or mentioned that deficiencies were identified regarding record keeping requirement during the on-site inspections.

Special Recommendation VII (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

634. Azerbaijan was rated PC in the last evaluation round as the following shortcomings were identified:

- 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.

Obtain Originator Information for Wire Transfers (c.VII.1)

635. Pursuant to the legislation of the Republic of Azerbaijan, wire transfer services can only be provided by banks, local branches of foreign banks and the national postal operator (Azerpost). Those entities perform cross-border and domestic wire transfer using service remittance (e.g. Western Union…), and in addition, for cross-border wire transfer they can also operate via the SWIFT System.

636. The CBA "Guidelines on Cashless Settlements and Money Remittances in the Republic of Azerbaijan" dated from September 2013 (see Annex XVIII), sets the general requirements for wire transfers. In item 9 it is prescribed that an application for wire transfer shall include the necessary information stipulated in documents (first name, middle name and surname; type, serial number of an identification document, originator' address etc.). The obligation applies regardless of any threshold and equally to domestic and international transfers.

637. The FATF Recommendation requires that, for all wire transfers of EUR/USD 1,000 or more, financial institutions should include accurate and meaningful originator information (name, address and account number) on funds transfers and related messages that are sent.

638. Under Article 9.2 of the AML/CFT Law, monitoring entities (banks and postal operator) are required to identify the customer and the beneficial owner before carrying out occasional transactions that are wire transfers regardless of the amount. Article 9.8 sets out a requirement to verify the identification data of the customer and the beneficial owner using reliable, independent sources.

639. In addition, according the Annex 2 attached to the CBA Guidelines on Cashless Settlements and Money Remittances in the Republic of Azerbaijan, the client should certify that all submitted documents are accurate and that he/she bears the responsibility for this in compliance with the legislation of the Republic of Azerbaijan.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2)

640. In connection to cross-border wire transfers, the requirement for the ordering financial institution to include full originator information in the message is incorporated in the CBA Guidelines on Cashless Settlements and Money Remittances in the Republic of Azerbaijan. Item 9.4 of this Guideline prescribes that the operator in banks should provide the signed and stamped document that is proving the finishing of wire transfer to the client. The copy of document signed by client is kept by bank.

641. Furthermore, pursuant to the Regulations "On cashier transactions and encashment of values by credit organisations in the Republic of Azerbaijan", identification information shall be obtained in respect of both originator and beneficiary: i) Name, middle name and surname, ii) Address, iii) ID Document details. Mentioned information shall be checked for accuracy and included in the "Form on money transfers without an account" and sent with the transfer to the next FI in the payment chain.

642. With respect to the batch files, the AML/CFT Law does not make any derogation, therefore the evaluation team came to the conclusion that in all circumstances, the financial institutions are required to fulfil the obligations according the above mention Regulations.

Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3)

643. There are no differences in requirements stipulated in legislation for inclusion of originator information between domestic and cross border wire transfers.

Maintenance of Originator Information (c.VII.4)

644. Under section 5.2 of this Guideline covering settlements with payment orders, the process for cashless settlement through bank accounts is described. Items 5.2, 5.3.2; 5.3.5; 5.3.7 state that the payment order shall be filled out by the payer, then the payer bank's responsible person shall verify whether the payment order submitted is impeccable and the payer's bank account contains the amount required for the payment transaction and that the payer bank's responsible person shall send funds to the beneficiary bank in line with the payment order received for execution. In addition, if the requisites of the payment order received from the payer bank are appropriate, the

beneficiary bank's responsible person shall verify the payment order with his/her stamp and signature and submit to the payee.

645. The process of money remittance without a bank account, is prescribed by items 9.4 and 9.8 of the same Guideline. According to these items, when the bank makes a money remittance, the bank's responsible person shall verify the document, confirming the money remittances with payee signature and stamp and submit to the payer; the responsible person of the recipient bank who receives money remittances shall submit the document confirming completion of the money remittances to the payee, verifying with his/her signature and stamp.

646. The Azerbaijani authorities stated that in practice wire transfer processing does not allow for the transmission of transfers lacking information of the payer, which should serve to ensure that all necessary information is maintained in a wire transfer. Furthermore, the Azerbaijan authorities refer to the Article 9.15 of the AML/CFT Law where it is stated that when an FI is unable to identify and verify the parties of transactions in order as defined by this Law or whether refused from submitting identification information on the customer or beneficial owner, or the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data, the FI should not open the account, commence business relations or perform the transaction, and in accordance with article 11 of the same Law should inform the FMS. The evaluators are not convinced that those articles in the AML/CFT Law clearly state that financial institutions in the Republic of Azerbaijan should take full originator information and send it through the chain. The wording "should not…perform the transaction" does not clearly oblige the banks and post office to not perform the transaction.

647. Where technical limitations prevent the full originator information to accompany a cross-border wire transfer, there is no direct requirement to keep available information for 5 years. As was mentioned under R.10, according to the general requirements, the financial institutions are obliged to keep all records of transactions for 5 years, including transactions that are wire transfers regardless of the amount. Therefore, the obligation foreseen in Article 10 of the AML/CFT Law (record keeping requirements) appears to cover the requirement under Criterion VII.4.1.

648. There is no requirement for financial institutions, when processing an intermediary element of chains of wire transfers, to ensure that all originator information that accompanies a wire transfer is retained with the cross border transfer.

649. The Azerbaijan authorities noted that, for the purpose of understanding the intermediary function of the Azerbaijani banks, the size of banking system is relatively small and that limited intermediary bank functions are performed in Azerbaijan. Moreover, commercial banks operating in Azerbaijan primarily use European intermediary banks for cross border wire transfers, and they do not fulfil this function themselves.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

650. According to item 5.3.9 of the section on settlements of the payment order prescribed in the Guidelines on Cashless Settlements and Money Remittances, it is required that if provisions of the payment order are not appropriate, the beneficiary bank should send a request to the payer bank no later than the next business day. If this request is not responded to by the bank within 5 (five) business days the beneficiary bank should return the payment order funds to the payer bank the next business day specifying reasons.

651. In Article 9.15 of the AML/CFT Law it is instructed that where the FI is unable to identify and verify the parties of transactions in an order as defined by this Law or whether refused from submitting identification information on the customer or beneficial owner, or the financial institution has doubts about the veracity or adequacy of previously obtained customer

identification data, the FI should not open the account, commence business relations or perform the transaction, and in accordance with article 11 of the same Law should inform the FMS.

652. The Azerbaijani authorities advised that during on-site visits to banks, the CBA supervisors review the internal bank procedures for handling wire transfers and no deficiencies were found.

Monitoring of Implementation (c. VII.6)

653. The CBA is responsible for monitoring and supervising the activities of banks and other credit institutions for compliance with applicable laws and regulations. At the same time the CBA is responsible for licencing and supervising Azerpost when performing money and value transfer services. However, the Ministry of Communications and Information Technologies (MCIT) is the supervisory authority over the Azerpost for compliance with the AML/CFT requirements in accordance with Article 6.1.4 of the AML/CFT Law.

654. In practice the on-site supervision function was not tested in Azerpost, neither from the CBA, nor from the MCIT. It appears that two supervisory authorities have obligation to assess the compliance of Azerpost with rules implementing SR.VII and an overlap of supervision function exists.

655. All legislative acts (regulations from the Central bank) are mandatory for financial institution and Azerpost and should be monitored periodically by the CBA.

Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

656. According to Article 6.3 of AML/CFT Law, if the supervisory authorities detect non-compliance with the requirements of Articles 9–12 of this Law by monitoring entities and other persons involved in monitoring, supervision authorities shall impose administrative penalty or implement other measures as provided by the legislation in respect to the monitoring entity and other persons involved in monitoring, and shall inform the financial monitoring organ about that.

657. Relevant sanctions for a non-compliance, Article 348-3 of the Administrative Infringements Code of the Republic of Azerbaijan, imposes sanctions with regard to reporting entities in case of violation AML/CFT legislations. The sanction limits are with regard to official persons 800 AZN (€750) up to 1,500 AZN (€1,400) and legal persons from 8,000 AZN (€7,500) up to 15,000 AZN (€14,000).

658. The MCIT does not have sanctioning powers for breaches of the CBA Regulations (e.g. Non-cash transactions and money transfer provisions relating to wire transfers). The deficiencies of the sanctions regime in relation to the overlapping of the supervisory powers over Azerpost, under section 3.10 also apply with regard to SR VII. The statistics provided by the authorities on the findings of supervision, including that the application of sanction revealed that no infringements related to compliance of banks and Azerpost with the AML/CFT requirements concerning wire transfers had been ever detected. This statement was also confirmed during the on-site visit. The evaluators were concerned that during all of the on-site controls by the CBA from 2008 until 2013 for commercial banks and from 2010 until 2013 for Azerpost, no deficiencies in the process of performing the wire transfer by banks were found. This raises questions on the effectiveness of the supervisory function.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

659. There is no limit set forth for wire transfers in the Azerbaijani legislation.

Effectiveness and efficiency

660. During the on-site visit, the representatives of banks informed the evaluation team that no serious problems regarding the information on the payer in the case of cross-border wire transfers were

identified. In addition, there were no deficiencies nor irregularities detected by the CBA in the course of their compliance on-site visits in banks.

661. The evaluators were advised that the CBA, within its comprehensive for on-site inspections, conducts a detailed review of money transfer services provided by banks. The membership of one bank to SWIFT System was been annulled in 2011, as a result of identified infringements regarding money transfers.

662. A deficiency seems to exist in the exercise of the supervisory functions of the MCIT toward Azerpost. For off-site supervision purposes, only one questionnaire covering AML/CFT issues was send to Azerpost by the Ministry of Communications and IT. On the other side, according to Azerpost, they do not send any reports to MCIT on a regular basis although they do send a report to the Central Bank on a monthly basis. It seems that between two supervisory authorities there is a lack of coordination and no sharing of information for supervisory purposes over Azerpost at the present time. This could give rise to effectiveness issues regarding supervision. Until now, neither the Central Bank nor the Ministry of Communications and IT have performed an on-site supervision visit on Azerpost for AML/CFT purposes.

3.5.2 Recommendation and comments

Recommendation 10

663. Most of the essential criteria concerning Recommendation 10 are met. During the meetings with representatives from private sector and supervisory bodies it was shown to evaluators that R.10 is applied effectively by the financial institutions that are operating in Azerbaijan.

664. The requirement to maintain records of account files and business correspondence for at least 5 years following the termination of an account or business relationship should also apply to those monitoring entities which have the yearly turnover less than €184,045.

665. Monitoring entities should be required to ensure that all customer and transaction records and information are available on a timely basis to law enforcement authorities.

666. The requirement to retain business correspondence and other relevant documents should be extended to for at least 5 years following the termination of an account or business relationship.

Special Recommendation VII

667. The requirement for each intermediary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer must be included in the legislation.

668. The Azerbaijan authorities should issue guidelines for the beneficiary financial institutions in order to implement effectively risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The fact that there is incomplete information is not in itself a reason for reporting wire transfers as suspicious or unusual per se.

669. Improving monitoring and supervision of the Azerpost will improve effective implementation of SR.VII requirements. The sanctioning 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	**LC**	• Business correspondence and other relevant documents only required to be kept for at least 5 years following the completion of a transaction.

SR.VII	**PC**	• Monitoring of Azerpost was not fully developed at the time of the on-site visit; **Effectiveness** • There is a division of supervision function over the Azerpost between the CBA and the MCIT that affects the effectiveness of performing supervisory function regarding the SR.VII requirements; • Restricted infringements/deficiencies were found and the sanctions regime concerning SR VII has been applied in practice only once, towards one bank.

<u>Unusual and Suspicious transactions</u>

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

3.6.1 <u>Description and analysis</u>

Recommendation 11 (rated NC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

670. In the 3rd round MER, Azerbaijan was rated NC for Recommendation 11 based on the fact that financial institutions were not 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.

Special attention to complex, unusual large transactions (c.11.1)

671. According to Article 9-2 of the AML/CFT Law monitoring entities are 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.

Examination of complex and unusual transactions (c.11.2)

672. Monitoring entities are required to examine as far as possible the background and purpose of the transactions stipulated in Article 9–2.1 of this Law, and to set forth their findings in writing.

Record-keeping of finding of examination (c.11.3)

673. The AML/CFT Law contains a record keeping requirement which obliges monitoring entities to maintain information on CDD, business correspondence and transactions including unusual transactions, however there is no requirement for monitoring entities to keep specifically findings of unusual transactions for 5 years.

674. According to Article 10.2 of the AML/CFT Law monitoring entities are required to ensure that information mentioned in Article 10.1, which refers to the findings of unusual transactions, is available on a timely basis to the supervisory authorities and the FMS. However, the requirement does not cover law enforcement authorities and auditors.

Recommendation 21 (rated PC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

675. Recommendation 21 was rated PC in the third round MER based on the following factors:

- 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.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1)

676. Even though there are no direct requirements in the AML/CFT Law to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendation, according to Article 9.13 of the AML/CFT monitoring entities are required to apply enhanced CDD measures to customers form the list of countries that do not or insufficiently comply with the ML/TF international standards.

677. Pursuant to Article 17.8 of the AML/CFT Law the FMS is empowered to issue a list of countries that do not or insufficiently comply with the ML/TF international standards. For the purpose how this list should be determined, the Cabinet of Ministers has issued the Regulation on determination of the list of countries (territories).

678. According to this Regulation the list shall be established in coordination with the Ministry of Foreign Affairs. It should be noted that this list does not only contain countries from the FATF public statement but also from other international organisations.

679. Article 6 of the Regulation prescribes that the list of countries shall be published in the official newspaper after being approved and placed on the official web-sites of the FMS and the Ministry of Foreign Affairs. Additionally, Article 6 prescribes that the list should be provided to monitoring entities and other persons involved in monitoring either directly or via relevant supervisory authorities.

Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

680. Pursuant to Article 7 of the Regulation monitoring entities and other persons involved in monitoring should examine the background and purpose of transactions with countries envisaged in the list that have no apparent economic or visible lawful purpose and establish their findings in writing. These findings shall be available to the FMS, supervision authorities and other competent agencies, whenever needed. However there is no requirement that the written findings should be available to auditors.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

681. According to Article 7.4 of the AML/CFT Law appropriate counter-measures shall be applied in relation to business relationships and transactions with natural and legal persons of the countries which continuously do not apply or insufficiently apply the requirements of international instruments on prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism to which the Republic of Azerbaijan is a party. Article 7.2.2 additionally requires that any transactions with funds or property associated with citizens of such countries should be reported to the FMS.

682. However it is not clear from the Azeri legislation what specific rage of counter-measures could be applied by the authorities.

Effectiveness and efficiency

Recommendation 11

683. The representatives of the private sector showed a high level of awareness, on their obligation to monitor and maintain any complex and unusual large transactions. Nevertheless there is an effectiveness issue due to a fact that there were a low number of STRs submitted outside of banking sector and no information was provided by the FMS or other supervisory bodies on written analysis of unusual transactions submitted by monitoring entities.

Recommendation 21

684. During the interviews with representatives of the private sector it was clearly shown that financial institutions are fully aware of their requirements concerning countries which do not or insufficiently apply the FATF Recommendation. They confirmed that they receive relevant the NCCT list as well as the FATF public documents either directly from the FMS or via their supervisory bodies. It was also shown that supervisory bodies cooperate with the FMS on this issue, and it was noted that the FMS plays significant role in raising awareness, providing, in timely manner, all the necessary information to monitoring entities.

3.6.2 Recommendations and comments

Recommendation 11

685. The authorities should consider issuing guidance for monitoring entities to assist them in identifying unusual transactions.

686. Monitoring entities should be required to ensure that unusual transactions findings are available to law enforcement authorities and auditors.

Recommendation 21

687. Evaluators were shown that there is high awareness among monitoring entities and supervisory bodies concerning provisions in legislation which deals with NCCT countries.

688. There should be a requirement that the written findings should be available to auditors.

689. The authorities should issue a list of counter-measures that could be applied by the Azeri authorities to countries which do not or insufficiently apply the FATF Recommendation.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	**Summary of factors underlying rating**
R.11	**LC**	• No requirement to provide findings to law enforcement authorities and auditors. **Effectiveness** • No effectiveness was demonstrated regarding keeping findings and submitting written analysis on complex and unusual large transactions.
R.21	**LC**	• No requirement that the written findings should be available to auditors.

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

3.7.1 Description and analysis

Recommendation 13 (rated NC in the 3rd round report) & Special Recommendation IV (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

690. In the 2008 Mutual Evaluation Report, Recommendation 13 was rated "Non-compliant" due to the fact that at that moment no STR system was in place, in law or regulation in Azerbaijan.

Legal framework

691. The Law of the Republic of Azerbaijan "*On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism*", no. 767–IIIQ of 10 February 2009, Published in «Azerbaijan» Official Newspaper no. 44, dated 25 February, 2009 forms the basis if the legislative requirement.

692. The *Regulation of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan on submission of data by monitoring entities and other persons involved in monitoring,* approved by the Ordinance no. 001/31 May 2010, of the Director of the FMS supplements the AML/CFT Law. However, as this is not issued by a legislative body, it cannot be considered as "law or regulation".

Requirement to Make STRs on ML to FIU (c.13.1)

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

694. In Azerbaijan, the requirement to make STRs on ML/TF to the FIU derives from the provisions of the AML/CFT Law. Article 7.2 of this act obliges monitoring entities to submit to "*information on funds or other property, transactions with them and the attempts to carry out transactions involving the following features, regardless of their amount:*

- *situations that cause suspicions or reasonable grounds for suspicions that funds or other property are the proceeds of a criminal activity or are related to terrorist financing (*article 7.2.1*);*
- *any transaction with the funds or other property associated with the citizens of the country (jurisdiction) determined by the article 7.3 of the AML Law (NCCT LIST), with the persons registered or that have a residency or permanent business in this country (jurisdiction), with the persons that have a bank account in banks registered in this country (jurisdiction) (*article 7.2.2*);*
- *any transactions with funds or other property of politically exposed persons of foreign country (*article 7.2.3*);*
- *transfer of funds from anonymous accounts that are out of the jurisdiction of the Republic of Azerbaijan to the Republic of Azerbaijan, as well as transfer funds to the anonymous accounts that are out of the jurisdiction of the Republic of Azerbaijan (*article 7.2.4*);*
- *any transactions of persons the list of which is designated in the order specified by the relevant executive authority on the basis of relevant United Nations Security Council Resolutions, as well as legislation of the Republic of Azerbaijan and international instruments to which the Republic of Azerbaijan is a party (*article 7.2.5*).*

695. Under article 2.1.5 of the *Regulations on submission of data,* the categories of information covered by article 7.2 of the AML/CFT Law are defined as suspicious transactions and have to be reported by the monitoring entities to the FMS in a specific form, either as a hard-copy format or by software means (made available by FMS). Taking into account the urgency of the situation, data on suspicious transactions may be submitted to the FMS orally, provided that it is urgently followed by the written form, as set out in Article 4.8 of the Regulation.

696. In this respect, both the AML/CFT Law and the Regulations provide for two categories of data to be reported by the monitoring entities to the FMS as suspicious transactions:

- one based on a test of suspicion and other;
- based on objective suspicious indicators provided by the Law (*residency of the customer, PEP, anonymous accounts, UN designated persons).*

697. Although there is no *expressis verbis* obligation to report *promptly* suspicions to the FMS, as provided by the text of Recommendation 13, articles 11.3 of the AML/CFT Law and 6.2 of the Regulation oblige monitoring entities to submit to the FMS information on suspicious transactions before the execution of the transaction. Where non–execution of a transaction is impossible or where it is known that non–execution of the transaction may cause impediments for identification of the beneficial owner, after execution of the transaction the monitoring entities shall immediately inform the FMS.

698. When the monitoring entity reports to the FMS a suspicious transaction, that transaction shall not be executed for two business days (article 11.4 - AML/CFT Law and article 6.3 - Regulation). If during that period, the FMS does not order to suspend these transactions the monitoring entity may execute the transaction.

699. As soon as the FMS reveals that the mandatory fields of the reporting form (asterisked) were not filled, the data is wrong or the information was received in other form which is different than the one imposed by regulations, it returns the report to the monitoring entity via the communication channel it was received (article 4.12 of the Regulation). The monitoring entity has a two day interval to remediate the deficiencies and send back the report to the FMS (article 4.13 of the Regulation).

700. A situation of possible conflict was raised by the evaluation team on the operation of the two day postponement interval, which is mandatory for the monitoring entities once they submitted a STR, when the report submitted to the FMS is incomplete. Representatives of the FMS argued that it is the interest of the monitoring entity to remediate as soon as possible the deficiencies in the report and send it back to the FMS within the two business day interval, available for the FMS to block the transaction. It is still unclear for the evaluation team whether this approach leaves the FMS with sufficient time to properly assess whether a transaction is to be suspended or not.

701. As regards the subjects of the suspicious reporting obligation, the wording of the AML/CFT Law makes this obligation incumbent to all monitoring entities, as defined in article 4 of the same normative act, which covers the FATF concept of financial institution as provided by FATF Recommendation 13.

702. Article 7.2.1 of the AML/CFT Law provides that the trigger for reporting may lie in either a subjective test of suspicions ("*situations that cause suspicions")* or an objective suspicious indicator ("*situations that cause reasonable grounds for suspicions"),* which actually goes beyond the requirements of the Essential Criteria 13.1.

703. Also the reporting requirement relates to funds or other property that are "*proceeds of a criminal activity"*, transactions with such funds or property and attempts to carry out transactions with such funds or property, which is in line with the "*all offence proceeds"* requirement set in the Essential Criteria 13.1.

Requirement to Make STRs on FT to FIU (c.13.2 & IV.1)

704. Criteria 13.2 and IV.1 provides that the obligation to make a 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 by terrorist organisations or those who finance terrorism.

705. Article 7.2 corroborated with article 7.2.1 of the AML/CFT Law obliges monitoring entities to submit to the financial monitoring organ, information on funds or other property, transactions with them and the attempts to carry out transactions, regardless of their amount, involving situations that cause suspicions or reasonable grounds for suspicions that such funds or other property are *related to terrorist financing.* At the same time, Article 1.0.4. of the AML/CFT Law defines *financing of terrorism* as the "*wilful provision or collection of funds or other property by any means, in full or in part, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used in order to finance the preparation, organisation or carrying out by a person or by a group (organisation, community) of persons of an act which constitutes a crime within the scope and as defined in the articles 102, 214, 215, 219, 219-1, 277, 278, 279, 280, 282 of the Criminal Code of the Republic of Azerbaijan, or by an individual terrorist or by a terrorist organisation*".

706. The wording of article 7.2.1 appears to fall short of the criteria 13.2 and IV.1 in the sense that it only covers *funds or other property related to terrorist financing,* leaving out of its scope "*those who finance terrorism"*. However, although not explicitly provided for, the overall context of the requirement appears to clearly embrace "*those who finance terrorism"*.

No Reporting Threshold for STRs (c. 13.3, c. SR.IV.2)

707. Article 7.2 corroborated with article 7.2.1 of the AML/CFT Law obliges monitoring entities to submit to the financial monitoring organ, information on funds or other property, transactions with them and the attempts to carry out transactions, *regardless of their amount,* involving situations that cause suspicions or reasonable grounds for suspicions that such funds or other property are the proceeds of a criminal activity or are related to terrorist financing. The wording used by the legal text is in line with the criteria 13.3 & IV.2.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

708. Article 7.2 corroborated with article 7.2.1 of the AML/CFT Law obliges monitoring entities to submit to the financial monitoring organ, information on funds or other property, transactions with them and the attempts to carry out transactions, regardless of their amount, involving situations that cause suspicions or reasonable grounds for suspicions that such funds or other property are the proceeds of a *criminal activity or are related to terrorist financing*, without any differentiation on the type of criminal activity involved. The wording used by the legal text is in line with the criteria 13.4 & IV.2. Moreover, the Azerbaijani authorities indicated that for the reference period 167 STRs were submitted by the monitoring entities on suspicions related to tax evasion as a predicate offence.

Additional Elements – Reporting of All Criminal Acts (c.13.5)

709. The Azerbaijani authorities indicated that all the financial institutions are required to report to the FMS when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically. In this respect the provisions of Article *7.2.* of the AML/CFT Law have been quoted - "*Information on funds or other property, transactions with them and the attempts to carry out transactions involving the following features shall be submitted to the financial monitoring organ regardless of their amount: (7.2.1) in the situations that cause suspicions or reasonable grounds for suspicions that funds or other property are the proceeds of a criminal activity or are related to terrorist financing".*

710. It is the opinion of the evaluation team that the legal arguments indicated by the Azerbaijani authorities alone do not cover situations where funds have been generated abroad in an activity that would constitute an offence had it been committed domestically. However this provision should be corroborated with the general rule expressed in relation to the scope of application of Article 2.2 of the AML/CFT Law which states that the "*Law shall apply to the activities related to legalisation of the criminally obtained funds or other property and the financing of terrorism outside the jurisdiction of the Republic of Azerbaijan in accordance with the international instruments to which the Republic of Azerbaijan is a party*". In addition, the Azerbaijani authorities indicated that article 12 of the Criminal Code includes within the concept of criminal activity, crimes committed abroad.

Effectiveness and efficiency R.13

711. From an intelligence point of view, there are two main characteristics that make a suspicions reporting regime efficient: *timeliness* and *relevance*. For a FIU, it is of little use to get relevant financial information after the illicit funds got out of its reach as it is useless to get timely information with no intelligence relevance whatsoever. The reporting component of the Azerbaijani AML/CFT system has come a long way since the 2008 Third Round Evaluation. In this context, the evaluation team was satisfied with the potential of the STR reporting regime set up by the AML/CFT Law and subsequent regulation, bearing in mind that the system is still young.

712. In terms of *timeliness,* the reporting rule under the AML/CFT Law (*article 11.3*) and Regulations on submission of data *(article 6.2)* obliges monitoring entities to submit to the FMS information on suspicious transactions before the execution of the transaction. It is only in exceptional

circumstances (e.g. *non–execution of the transaction may cause impediments for identification of the beneficial owner*) that the monitoring entities are allowed to report to the FMS, after the transaction has been carried out. Also, as a matter of urgency, suspicious transactions may even be reported to the FMS orally, provided they are followed shortly by a written report. From the moment an STR is received, the FIU has two business days to decide whether to suspend or not that operation.

713. The afore-mentioned reporting rules, together with the fact that, as indicated on-site by the authorities, almost 99% of the information that is entering the FMS is received electronically, create the premises of a reporting system that manages to pass financial information from the financial and non-financial sector to the FMS in a timely fashion, thus increasing FMS' potential to act.

714. In practice however, statistics provide by the Azerbaijani authorities indicate for the evaluated period that only a maximum of 10% of STRs are reported to the FMS before the execution of the transaction by the monitoring entity. This behaviour restricts the opportunity for the FMS to actually block transactions with a potential ML/TF purpose. This conclusion is supported by the fact that, according to the statistics provided, during 2008-2013, the FMS issued only one order to suspend a suspicious transaction (2012) which was related to an individual on the Al-Qaida Sanctions List, that later proved to be a false matching case. During on-site interviews, representatives of the FMS indicated the low relevance of STRs received from the financial and non-financial sector as a cause for the low number of operations suspended, which is specific to a young AML/CFT system.

715. The *relevance* characteristic of the STR reporting system is highly dependent on the capacity of the reporting entities to identify those specific transactions that have as a purpose or are linked to money laundering and/or terrorist financing. In this respect, both the AML/CFT Law and the Regulations for its implementation provide for two categories of data to be reported by the monitoring entities to the FMS as suspicious transactions: one based on a test of suspicion and other based on objective suspicious indicators provided by the Law (*residency of the customer, PEP, anonymous accounts, UN designated persons)*. This means that, at any moment, there is a constant flow of information on financial transactions that present at least one ML/TF suspicious element, fuelling the AML/CFT system in Azerbaijan.

716. However, the spirit of FATF Recommendation 13 specifically relates to the reporting by the financial institutions of ML/TF suspicions to the FIU as a form of *human intelligence* (i.e. inferences on available information regarding funds, client, products, etc., developed by a trained human source within the financial institution,) and not just the reporting of all the transactions that meet certain objective suspiciousness criteria (even if the criteria present high AML/CFT relevance). Also, another potential effect of the presence of an option in suspicions reporting is that it could encourage a defensive reporting behaviour in the reporting entities, which are inclined to report more easily transactions on objective suspicious indicators and less suspicious transactions that are based on a test of suspicion. The transactions in the latter category are usually harder to detect and also more time and resource consuming.

717. The statistics provided by the Azerbaijani authorities seem to confirm the concerns of the evaluation team. Since the last progress Report of Azerbaijan in 2011, out of 61,433 reports submitted to the FMS, under article 7.2 of the AML/CFT Law (suspicious reporting), only 1,426 reports were related to transactions that *cause suspicions or reasonable grounds for suspicions that funds or other property are the proceeds of a criminal activity or are related to terrorist financing* (i.e. suspicious transactions based on a test of suspicion (TFR plus STR)).

Table 32: Reports submitted to the FMS

TYPE OF SUSPICIOUS REPORTING	NUMBER OF REPORTS			
	2011	2012	2013	TOTAL
BLR (reports on transactions with countries in NCCT list)	23,551	17,554	18,243	59,348
FMR (reports on suspicions that the client does not act on his/her behalf)	8	16	13	37
PEP (reports on transactions from bank accounts of PEPs)	181	216	214	611
TFR (reports on funds related to terrorist financing)	-	8	13	21
STR (reports on funds that are the proceeds of criminal activity)	314	500	591	1,405
UNR (reports on persons subject to sanctions)	10	1	-	11
TOTAL Reports received	24,064	18,295	19,074	61,433

718. Also, statistics on STRs and CTRs received per category of reporting entities highlight two things. On the one hand there is hardly any STR reporting and a low number of CTRs coming from monitoring entities outside the banking system; although it is noted that the banking sector is the predominant sector in Azerbaijan accounting for 93% of financial sector assets in 2012. On the other there seems to be a relatively low number of STRs reported in relation to the overall level of cash transaction reports that are being submitted; although it is noted that Azerbaijan is still a predominantly cash-based economy.

Table 33: STRs and CTRS submitted to the FMS

Reporting entity	2009		2010		2011		2012		2013	
	STR	CTR	STR	CTR	STR	CTR	STR	CTR	STR	CTR
Banks	N/A	579	141	46,516	314	218,657	504	247,937	590	309,631
Insurance sector	N/A			3		9		4		4
Securities sector	N/A			4		17	4	13		93
Real estate						10		9		5
Investment firms	N/A									
Currency exchange	N/A									
Credit institutions providing leasing services	N/A					51		31	1	8
Non-bank credit institutions	N/A			9		35		14		38

TOTAL		**579**	**141**	**46,532**	**314**	**218,779**	**508**	**248,008**	**591**	**309,779**

719. During the on-site visit, all financial institutions interviewed seemed to be aware of their reporting obligations. This is undoubtedly the result of the awareness-raising initiatives and training programmes delivered by the FMS since its establishment, which included a focus on STR reporting.

720. Training provided by the FMS was supplemented by *guidance on criteria on determination of transactions subject to monitoring (red flags)*. This guidance has been prepared by the FMS based on article 10.3 of its Statute, includes both general (relate to all monitoring entities) and specific criteria (applicable to different categories of monitoring entities) and has been regularly updated by the FMS based on the ML/TF patterns and trends identified by the unit. The financial institutions interviewed consider the guidance a useful tool for the reporting system and indicated that they are using it to comply with their reporting obligations.

721. Although, during interviews on-site, a constant level of awareness has been observed by the evaluation team across the whole spectrum of financial institutions, the statistics on reporting provided by the FMS do not seem to support such a conclusion. In fact, during 2011-2013, only 5 out of 1,426 suspicious transactions reports were submitted by financial institutions other than banks. In explaining the discrepancy in reporting patterns, the authorities cited the level of financial business conducted by banks, which by far outweighs business conducted by other financial institutions. It was also stated that the type of investment and insurance products offered in Azerbaijan are traditional in nature and in relatively low volumes, and as such do not generally present high risks of ML/FT.

722. While the explanations provided by the authorities may justify the low number of STRs to a limited extent, the evaluators remain concerned that the level of reporting by most financial institutions in Azerbaijan, other than banks, is very low. There is also a discrepancy that raised the attention of the evaluation team in the fact that for 2011-2013, financial institutions other than banks (insurance companies and Azerpost) submitted to the FMS, 41 reports under article 7.2 of the AML/CFT Law (suspicious reporting), but no STRs based on a test of suspicion (funds related to proceeds of crime and/or terrorist financing). This, corroborated with the fact that for the same period (2011-2013), financial institutions other than banks submitted 317 cash transaction reports to the FMS, is an indication for the evaluation team that more training is needed for the sector, especially on recognizing ML/TF suspicious transactions.

723. At the same time, as regards the reporting pattern of the banking sector, it was difficult for the evaluation team to determine whether the number of STRs received by the FMS every year is sufficient or not, as there are no generally accepted indicators in this respect. However, interviews with the FMS highlighted the fact that they are pushing for more training in order to increase the reporting component of the AML/CFT system. This indicates that the FMS believes more STRs could be submitted by the monitoring entities, an aspect which was also confirmed by the financial institutions themselves, indicating that they feel the need for more ML/TF typologies from the FMS.

724. As regards the relevance for the FMS of the STRs received, during the on-site visit, representatives of the FMS indicated that in the beginning these reports had a relatively low relevance but following training their added value started to increase which could also be seen in the increased number of disseminations submitted by the FMS to law enforcement agencies every year. It is noted that the most common predicate offences related to the disclosures disseminated to law enforcement agencies from the FMS, are tax evasion, counting for more than 75%, followed by corruption (almost 10%), embezzlement, fraud, drug crimes and cybercrime.

725. In respect to terrorist financing, interviews conducted on-site indicated that this reporting requirement seems to be sometimes understood as referring to the implementation of the

international sanctions regime. In practice, financial institutions seem to limit themselves to verifying whether clients are present in international or domestic sanctions lists. Although such a system is effective in identifying funds of known terrorist, the essence of TF STR reporting is to identify funds linked to unknown terrorists or terrorist organisations, or intended for terrorist financing. Although according to statistics provided, during 2011-2013, banks in Azerbaijan submitted to the FMS 21 STRs on funds related to terrorist financing, which apparently are not related to individuals subject to sanctions, it is the opinion of the evaluation team that further training is needed for the financial sector in this respect, as the number seems low in relation to the context of the terrorist threat for the country.

Recommendation 14 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

726. The report on the third evaluation round of Azerbaijani's AML/CFT system in 2008 produced a NC rating for Recommendation 14 based on the fact that no provisions on tipping off and safe harbour were in force at that moment.

Legal framework

727. Law of the Republic of Azerbaijan "*On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism*", no. 767–IIIQ of 10 February 2009, Published in «Azerbaijan» Official Newspaper no. 44, dated 25 February, 2009.

Protection for making STRs (c. 14.1)

728. Essential criteria 1 and 2 to the FATF Recommendation 14 indicate that the safe harbour and tipping off provisions need to be provided by law. In this respect, article 14 of the Azerbaijani AML/CFT Law reads that "*where the monitoring entities and other persons involved in monitoring, its personnel, as well as the personnel of the supervision authorities submit the information on the transaction which is subject to monitoring in good faith to the financial monitoring organ in order as defined by this Law, they shall be exempt from any liability for breach of any restriction on disclosure of the bank or other legally protected secrecy, as well as causing the material and moral damage emerged as a result of the disclosure of information.* The legal provision makes no explicit reference to *directors, officers, and employees (permanent or temporary) of financial institutions* and uses instead the wording *personnel of the monitoring entities and other persons involved in monitoring, as well as personnel of the supervision authorities.* Although this approach does cover situations where such directors and officers are employees of the financial institution, it leaves uncovered situations where professionals provide such services to a financial institution based on a contract other than employment (e.g. outsourcing, consultancy, etc.).

729. Also the legal text provides for an exemption from *any liability for breach of any restriction on disclosure.* The wording used ("*any"*) covers the requirements of Essential Criteria 14.1 in terms of type of liability (*both criminal and civil liability)* and source of restrictions envisaged (*contract, legislative, regulatory or administrative provision).*

730. As regards the protection when the person reporting did not know precisely what the underlying criminal activity was and regardless of whether illegal activity actually occurred, article 14 indicates that the exemption from liability is applicable when *information which is subject to monitoring is submitted to the FMS in good faith, in order as defined by the Law.* However, within the AML/CFT Law there is no explicit provision related to the protection when an STR has been filed but the illegal activity did not actually occur. During on-site interviews there were no concerns expressed by the private sector on possible hostile actions in such situations.

Prohibition against tipping off (c.14.2)

731. The essence of criteria 14.2 lies in the prohibition to disclose (“tip off”) either by directly informing the customers or by taking other actions (such as performing CDD measures), which might eventually make the customers aware of the fact that an STR or related information is being reported to the FIU. This prohibition must also be provided within law or regulation.

732. In Azerbaijan, the tipping off prohibition is covered by the corroboration of the provisions of article 11.6 and article 11.7 of the AML/CFT Law. The first text sets the general rule that the information submitted to the FMS, in accordance with the AML/CFT Law, shall not be disclosed. This information may only be demanded from monitoring entities by the criminal investigation bodies in the course of criminal proceeding. In this case, information may be disclosed only on the basis of the court decision that has come into force. In addition, article 11.7 covers the responsibility for breaching the obligation in article 11.6 - “*except the cases prescribed by the legislation of the Republic of Azerbaijan, informing the customers or any other persons about the measures to be taken against legalisation of criminally obtained funds or other property and the financing of terrorism shall entail responsibility, as defined by the legislation”*.

733. Responsibility *as defined by the legislation* is covered by the provisions of article 316-2 of the Azerbaijani Criminal Code. Paragraph 1 of this article reads that “*except the cases prescribed by the Law, disclosure of the measures to be taken against legalisation of criminally obtained funds or other property, by a person to whom these data has been trusted or known on service, shall be punished by the penalty at a rate from 1.000 AZN up to 3.000 AZN, or with imprisonment for the term up to one year with deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years”.* The second paragraph covers the disclosure of the measure to be taken against financing of terrorism, which is punishable by penalty at a rate from 2,000 AZN (€1,870) up to 4,000 AZN (€3,740), or with imprisonment for the term up to two years with deprivation of the right to hold the certain posts or to engage in the certain activities for the term up to three years.

734. The text of article 11.7 makes no specific reference to its area of applicability making it unclear which are the legal subjects held by this obligation. Taking into consideration that the text was placed under article 11 - *Submission of information to the financial monitoring organ* of the AML/CFT Law, the interpretation confirmed by the monitoring entities interviewed on-site is that it is applicable to monitoring entities and other persons involved in monitoring. It is also the opinion of the evaluation team that the wording used by the legal provisions is wide enough to cover the subjects provided within the Essential Criteria 14.2.

735. There is also another provision within the AML/CFT Law that relates to “*tipping off”*, provided by article 19.4 - “*information about the freezing of the execution of the suspicious transaction on the legalisation of criminally obtained funds or other property and the financing of terrorism shall not be disclosed to the customer”.* Although there are no express sanctions provided for breaching this text, article 21 of the AML/CFT Law specifies that any breaches of the AML/CFT Law bears the responsibility of the legislation of Azerbaijan, thus making applicable the provisions article 316-2 of the Criminal Code of Azerbaijan.

Additional element – Confidentiality of reporting staff (c.14.3)

736. There is no *expressis verbis* provision in AML/CFT Law or regulations provided by the Azerbaijani authorities prohibiting the fact that the names and personal details of staff of financial institutions that make an STR are kept confidential by the FIU. In this respect, the Azerbaijani authorities indicated the provisions of Article 17.4 of the AML/CFT Law as covering this requirement. The text reads that “*information held by the financial monitoring organ shall be securely protected and used solely for the goals of this Law; also the financial monitoring organ shall create an information protection system”*. Although it is unclear for the evaluation team how this provision covers the additional element, during interviews on-site, the FMS indicated

that their disseminations do not make any reference to the names and personal details of staff of financial institutions that make an STR.

Effectiveness and efficiency R.14

737. As regards protection for making STRs, representatives of the private sector met on-site did not express any concerns about potential threats or hostile actions supposedly related to the implementation of their STR reporting obligation.

738. In respect of protection against tipping off however, opinions were expressed that should a customer be refused immediate implementation of a transaction order, this would inevitably "hint" to him or her about the potential reporting action.

Recommendation 25 (rated NC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

739. Recommendation 25 was rated NC based on the following factors:

- Apart from the NBA, no other supervisory body had issued guidelines that could assist financial institutions to implement and comply with the AML/CFT requirements;
- No guidelines had issued to assist financial institutions to combat terrorist financing;
- No guidance for DNFBP was provided for AML/CFT purposes in Azerbaijan;
- There was no feedback to financial institutions.

Feedback to financial institutions on STRs (c.25.2)

740. The FMS is empowered by the AML/CFT Law and its Statute to publicly release periodic reports including statistics, typologies and trends, and provide the reporting entities with relevant legal instruments.

741. On 8 August 2010, the FMS approved Regulation # 025 "*On providing financial institutions and DNFBPs with adequate and appropriate feedback*". The Regulation includes both general feedback and case by case feedback procedures. This Regulation gives clear direction on the kind of data and reports and in which frequency the FMS should provide feedback to the monitoring entities. Item 4 of the Regulation prescribes the following data: information on new techniques or typologies of money laundering and terrorist financing; information on trends and methods of money laundering and terrorist financing based upon information disseminated to law-enforcement bodies, information on key elements of sanitised cases.

742. Item 5.1 and Appendix 1 of the Regulation prescribe that the FMS provide feedback on a monthly basis to the monitoring entities for data on the number of reports received during month for CTRs and STRs.

743. During on-site interviews, evaluators were told that the GoAML solution implemented (in 2012) by the FMS allows two types of feedback to the monitoring entities:

- Daily feedback – on the receipt of any type of report submitted to the FMS by the monitoring entities and other persons involved in monitoring; and
- Monthly feedback – on the quality and outcome of such reports.

744. The FMS has also developed a website that includes information regarding the AML/CFT regime of the Republic of Azerbaijan, as well as legislation, by-laws, guidance, on-line reporting portal, statistics, annual reports and information bulletins.

745. According to the Azerbaijan authorities, the ML/TF typologies and trend analysis are published separately on the website or within the annual report. Research on the website revealed that only the 2011 activity report contained a section dedicated to money laundering and terrorist financing typologies and trends. There is also a separate section for typologies where five typologies were

noted but the content of these typologies could not be accessed by the evaluators. In addition, during the on-site interviews with the representatives of the financial institutions, a need for more ML/TF typologies from the FMS was clearly expressed.

746. Feedback to financial institutions on STRs is also covered in the consideration of Recommendation 26.2.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

747. The authorities should consider clarifying the reporting requirement by extending the requirement to explicitly include those who finance terrorism.

748. To enhance effectiveness:

- further training and awareness raising efforts are needed for the financial sector; and
- more ML/TF typologies and trends should be made publicly available by the authorities involved in AML/CFT.

Recommendation 14

749. Include provisions extending protection on reporting in good faith to directors and officers which are not employees of the reporting entity.

Recommendation 25/c.25.2 [Financial institutions and DNFBPs]

750. Considering the low number of STR reported by all monitoring entities, especially from non-banking credit institutions and DNFBPS, this raises the issue that the FMS should do more for building up the awareness of the obliged entities and increase its work towards general feedback by publishing more regular and extensive ML/TF typologies and trends and organising more workshops for participants of monitoring entities.

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

	Rating	Summary of factors underlying rating
R.13	**LC**	**Effectiveness** • Limited training and lack of typologies has led to a low level of suspicious transaction reports from the banking sector; • Lack of awareness has led to a very low level of STR reporting from financial institutions other than banks.
R.14	**LC**	• Directors and officers (permanent and temporary) are not explicitly protected when they are not personnel of the reporting entity.
R.25	**LC**	**Effectiveness** • The low number of STR reports by all monitoring entities, especially from non-banking credit institutions and DNFBPs, questions the issue of the sufficiency and helpfulness of the ML/TF typologies and trends that are issued by the FMS.
SR.IV	**LC**	**Effectiveness** • Uneven understanding of the reporting requirement by financial institutions:

		• Low number of TF STRs in relation to the terrorist threat of the country.

Internal controls and other measures

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

3.8.1 Description and analysis

Recommendation 15 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

751. R.15 was rated as non-compliant (NC) in the Third Round MER. The report noted concerns about:

- 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.

752. Recommendation 15 requires financial institution to develop programmes against money laundering and financing of terrorism.

753. In accordance with the AML/CFT Law (Article 12) monitoring entities and other persons involved in monitoring, which are legal persons, are obliged to establish and maintain an internal control system against the legalisation of criminally obtained funds or other property and the financing of terrorism. This requirement for establishment of an internal control system sets out policies and procedures of the financial institutions that should be developed with regard to such requirement. According the same provision of the Law this internal control system should include:

- establishment of the internal rules and procedures to prevent the legalisation of criminally obtained funds or other property and the financing of terrorism;
- establishment of the centralised internal archive to identify and verify the customers, the persons acting on behalf of customers, the beneficial owners and the transactions, or to determine whether a potential customer, a customer or the beneficial owner is a politically exposed person of a foreign country;
- preparation of the rules on the documentation and the confidentiality of information;
- conducting ongoing training to the employees on the activity against legalisation of criminally obtained funds or other property and the financing of terrorism;
- definition of the criteria for detecting the transactions to be monitored taking into account features of the activity of the monitoring entities;
- establishment of measures targeted to resolution of problems caused by the suspension of a transaction;
- establishment of the internal audit mechanism to test compliance of the application by monitoring entities of the rules as stipulated by this Law;
- appointment in the monitoring entities which are legal persons of a compliance officer at the level of management or heads of structural units, who shall be responsible to supervise the

implementation of internal rules and procedures, carry out the exchange of information with the financial monitoring organ, as well as for preparing and submitting reports on transactions which are subject to monitoring;

- to put in place screening procedures to ensure high standards when hiring employees depending on features of the activity, as well as the other mechanisms and rules for detecting and preventing any transactions, the nature of which is suspicious, and submission of the necessary information to the financial monitoring organ in accordance with Article 11 of the Law.

754. In addition, in Article 17.8 of the AML/CFT Law, it is prescribed that the FMS adopts regulations on requirements on the preparation of internal control systems. To meet this requirement, the FMS has introduced the Regulation "*On Establishment of Internal Control Systems*". According to Item 3 of this Regulation, monitoring entities and other persons involved in monitoring, which are legal persons should prepare a program on activities in the field of AML/CFT and an adequate control mechanism should be established to ensure success of the program.

3.1. *AML/CFT program should be at least composed of the following elements:*
3.1.1.1. *internal rules and procedures;*
3.1.1.2. *compliance officer;*
3.1.1.3. *conducting training on AML/CFT;*
3.1.1.4. *internal audit.*

3.2. *The following internal rules and procedures should be prepared by the monitoring subject:*
3.2.1.1. *internal rules and procedures for the identification and verification of the customer and beneficial owner;*
3.2.1.2. *criteria for detecting the transactions subject to monitoring (indicators); rules for detecting suspicious transactions, their prevention and submission of the information to the FMS;*
3.2.1.3. *rules on the documentation and the confidentiality of information;*
3.2.1.4. *rules for hiring and checking employees.*

3.3. *Rules and procedures should be approved by senior management of monitoring subjects and periodically renewed to ensure it is up-to-date.*

3.4. *All of the employees of the monitoring subjects engaged in AML/CFT should be acquainted with the rules and procedures and they must be involved in regular training courses concerning the application of these rules and procedures.*

3.5. *The senior management is responsible for preparation and approval of the rules and procedures specified in paragraph 4.1 of the current Requirements and the compliance officers are responsible for the implementation of these rules and procedures".*

755. According to the Azerbaijani legislation, and taking into consideration the risk of money laundering and terrorist financing and the size of the business, there are exemptions from the requirement to develop the internal control system under Article 12.4 of the AML/CFT Law, if the monitoring entity has a quarterly turnover of which is less than 50,000 AZN (€47,000). In the view of the Azerbaijani authorities this exemption has little impact on relevant financial institutions as all relevant financial institutions have a quarterly turnover of greater than 50,000 AZN.

Internal AML/CFT procedures, policies and controls (c.15.1)

756. The Regulation "On Establishment of Internal Control Systems" (enacted on 30 September 2010) requires monitoring entities and other persons involved in monitoring, to implement internal control systems aimed at combating money laundering and financing terrorism.

757. In addition, the supervisory authorities for the security sector have adopted Regulations on measures taken by capital market intermediaries for the suppression of money laundering and financing of terrorism in capital market. According to Article 2.5.1 of these Regulations, financial intermediaries in the securities sector "*should develop internal procedures and supervision program against money laundering and terrorist financing*".

758. According the FATF Methodology, internal procedures, polices and controls should cover CDD, record retention, the detection of unusual and suspicious transaction and reporting obligation. Article 12 of AML/CFT Law and the above mentioned Regulation appear to cover all requirements established by criterion 15.1.

Compliance Management Arrangements (c.15.1.1 and 15.1.2)

759. Article 12.1.8 of the AML/CFT Law and item 13.1 of the Regulation "*On Qualifications and Experience of Compliance Officers Responsible for the Establishment of Internal Control Systems of Monitoring Entities and Other Persons Involved in Monitoring, which are legal persons*" that was enacted on 6 July 2010, require that the compliance officer is appointed at the level of the management or management of structural units at the monitoring subject. The Regulation specifies the following requirements regarding the qualifications and experience of the compliance officer: higher education and at least two-year experience in primary activity of the monitoring entity; knowledge of the national legislation, international standards and requirements on combating legalisation of criminally obtained funds or other property and terrorist financing; knowledge of separate key areas of activities of the monitoring entity; fluent knowledge of the national language; and absence of conviction for committed crime. In addition the following persons are not allowed to be a compliance officer: persons involved in labour activity in another monitoring entity; and persons having close relationship (husband, wife, parents, children, adopters, adoptees, sisters, brothers, parents, sisters, brothers of the husband and wife) with members of the monitoring entity management.

760. Given that the compliance-officer is at the management level, he/she is subject to "fit and proper" criteria too. Decision № 002 of the FMS specifies identical requirements to those set out in the preceding paragraph regarding the qualifications and experience of the compliance officer.

761. According to Item 13.7 of the Regulation on "*On Establishment of Internal Control Systems*" the compliance officer and the other appropriate staff of the monitoring subject shall have timely access to customer identification data and other CDD information, transaction records, and other relevant information pursuant to the Law.

Independent Audit Function (c.15.2)

762. According to Article 12.1.7 of the AML/CFT Law, "*establishment of the internal audit mechanism to test compliance of the application by monitoring entities of the rules as stipulated by this Law*" and all monitoring entities should establish their own internal audit system.

763. Moreover, the FMS have issued the Regulation "*On Establishment of Internal Control Systems*" which establishes the minimum requirements for the establishment and implementation of internal control systems by the monitoring entities and other persons involved in monitoring which are legal persons.

764. Item 15 of this Regulation requires monitoring entities to include an internal audit mechanism as an element of the AML/CFT programme. The internal audit mechanism at the reporting entity should identify potential errors and deficiencies in the application of the requirements of the AML/CFT Law. The reporting entity's management carries the responsibility for conducting regular internal audit to test the effectiveness of the application of the regulations required by the Law. The Azerbaijan authorities explained that internal control mechanisms are implemented in

each financial institution in accordance with the size and complexity of the financial activities that are performed by each entity.

765. According to Article 27.7 of the Law on Banks, internal audit units (department, division etc.) in credit institutions should function under the control of an Audit Committee and ensure ongoing oversight over the efficiency of the activities of the internal control and risk management systems jointly with executive authorities of the bank.

766. In addition, regarding the banking sector, this requirement is clearly set out in the "*Regulation on Internal control and internal audit in Banks*". In particular, the Article 5.5 of this Regulation states that "*all commercial (joint stock) banks shall establish an internal audit function. The number of the internal audit function's staff members shall be determined by the Supervisory Board upon recommendations from the Management Board, in consideration of the size of the bank's assets, scope of the bank's branch office network, scope and nature of internal controls as defined in the bank's policy*." Furthermore, the "*Corporate Governance Standards in Banks*" clearly sets out the requirement for the establishment of an independent audit committee in banks (including but not limited to its functions, responsibilities and reporting obligations). Conversely, the Internal Audit Standard of the CBA sets minimum requirements for internal auditors in terms of technical skills, professionalism and other capabilities. In addition, the directors of audit departments are required to pass an attestation at the CBA in order to be qualified as administrators. The fit and proper issues are reviewed during the attestation.

767. With regards to audit function at Azerpost, all the above-stated requirements that are related to the banks are equally applicable to Azerpost based on the Article 13-3.2 of the "Law on Postal Service".

768. According the SCS Regulations on measures taken by capital market intermediaries for the suppression of money laundering and financing of terrorism in capital market (Article 2.5.1) financial intermediaries in the securities sector "*should develop internal procedures and supervision program against money laundering and terrorist financing*". Moreover, according to the "*Regulations on the broker activity in securities market*", all entities should have internal control, internal audit and risk management systems which should be organised relevant to the size and activities of the company. Articles 40.2 and 40.3 of the Law on Investment Funds mentions requirements towards internal audit in investment funds and asset management companies and sets criteria towards staff.

769. Article 35 of the Law on Insurance Activity refers to insurers' internal audit services, by prescribing the requirement for internal audit to supervise the activities of insurers' internal control, and that the Internal Audit Committee should supervise the work of the Internal Audit Service. In addition the Ministry of Finance of the Republic of Azerbaijan (MFA), as the insurance supervision authority, in accord with the same Article, should issue rules for the conduct of internal audit in insurers; these rules were not provided to the evaluators.

Employee Training (c.15.3)

770. Under Article 12.1.4 of AML/CFT Law it is required to conduct ongoing training of employees on the activity against legalisation of criminally obtained funds or other property and the financing of terrorism.

771. Item 14 of the Regulation "*On Establishment of Internal Control Systems*" regulates this issue as follows:

- *The monitoring subject shall deliver regular training for staff in AML/CFT and ensure their participation in such trainings.*
- *The purpose of the training is that the employees of the monitoring subject obtain necessary knowledge in combating legalisation of criminally obtained funds and other property and*

financing of terrorism to observe AML/CFT legislation, as well as requirements of the internal control system of the monitoring subject, organizational – instructing documents adopted for the organization of internal control.

- *The monitoring subject shall arrange the following training courses depending on the job functions of the employees:*
  - *familiarity with normative legal base as well as normative acts adopted by the FMS in AML/CFT field;*
  - *familiarity with the internal control system adopted by the monitoring subject on AML/CFT field;*
  - *programs related to the implementation of internal control system and practical workshops on these programs;*

772. Practical workshops on the criteria for detection of suspicious transactions in the AML/CFT field".

Employee screening (c.15.4)

773. The Regulation "*On Establishment of Internal Control Systems*" requires each reporting entity to establish rules for hiring and checking mechanisms for employees in the field of AML/CFT within the internal control system.

774. Financial institutions are required to determine the procedures for the hiring of staff on the basis of the peculiarities of the activities, demand for employee and existing risks of the FI. The following specific measures are listed in Item 12.3 of this Regulation in order to prevent hiring of persons connected with the money laundering or terrorism financing:

- checking the knowledge of employees or candidates in AML/CFT;
- checking the correctness of the information submitted by the candidates or employees;
- obtaining information as to whether employees or candidates have been sentenced for committing crime;
- obtaining references of candidates from their previous work places; and
- obtaining other information about the personal or professional qualities of the candidates or employees.

775. Additionally, according to the article 2.5.3 of the "*Regulations On measures taken by capital market intermediaries for the suppression of money laundering and financing of terrorism in capital market*" financial intermediaries in the securities sector should have high screening standards when hiring staff needs. According to the Decree 174 of the Cabinet of the Ministers of the Republic of Azerbaijan in order to get a license at least 3 employees of the financial institutions in the securities sector should pass the SCS certification. The automated electronic certification exam organised by the SCS includes questions on AML/CFT legislation and regulations.

776. For the purposes of human resource management, the CBA has issued human resource Standard recommendations to banks. This Standard covers human resources (HR) management functions, identification, search and development of the sources for resources, performance evaluation and motivation system for employees and dismissal. It also contains a recommendation for a guidance manual for employees and an Ethical and Professional Behaviour Code.

Additional element (c.15.5)

777. It is not clear whether the compliance officer can act independently and report to senior management above the compliance officer's next reporting level.

Effectiveness and efficiency

778. The Azerbaijan authorities has made progress in addressing some of the shortcomings outlined in the 3rd round report, such as implementing explicit requirement for financial institutions to develop programmes against money laundering and terrorist financing, to designate compliance officer at the management level and clearly determine his/her timely access to the relevant AML/CFT data and information.

779. Meetings with the representatives of financial institutions revealed a proper recognition and comprehension of the requirement to have internal procedures, policies and controls for the prevention of ML/FT. Compliance officers of financial institutions demonstrated an understanding of their respective functions and duties.

780. Nonetheless, the discussions during the on-site visit also revealed that compliance officers sometimes lack the ability (the institutional arrangements) to report to the senior management above their next reporting level, i.e. above the executive management, such as the Supervisory Board for banks and similar bodies for other financial institutions.

Recommendation 22 (rated NC in the 3rd round report)

<u>*Summary of 2008 factors underlying the rating*</u>

781. In the 3rd round MER, Azerbaijan was rated NC for Recommendation 22 based on the fact that there was no specific requirement anywhere in normative acts for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with FATF Recommendations and home country requirements. Also there was no requirement to inform the home country supervisor when a foreign branch or subsidiary was unable to observe appropriate AML/CFT measures.

Consistency of the AML/CFT measures with home country requirements and the FATF recommendations (c.22.1)

782. There is no general requirement in the AML/CFT Law that would oblige monitoring entities to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent local laws and regulations permit. Although this is partially covered by Article 7.5, this only applies to branches, etc. in countries that do not, or insufficiently comply with international standards.

783. However, during the on-site visit the authorities stated that branches are the structural divisions of credit institutions and must follow financial institutions internal procedures. Credit institutions are responsible for their branches' activities. According to the Central Bank Rules on Organising Internal Control and Audit in Banks, banks should transfer the application of banking policy, control mechanisms and internal procedures to their branches and subsidiaries. The evaluation team accepted this explanation provided by the authorities, however there is still no requirement for other non-banking financial institutions.

Requirement to inform the home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures (c.22.2)

784. According to Article 7.5 of the AML/CFT Law foreign branches and subsidiaries of monitoring entities having permanent business in high-risk countries (determined by Article 7.3) shall comply with the requirements of the AML/CFT Law and international standards, to the extent that the legislation of the high-risk countries permits.

785. Pursuant to Article 1.6 of the Regulation on internal control system foreign branches and subsidiaries in host countries shall apply the higher standards, to the extent that the host country laws and regulations permit, where the minimum AML/CFT requirements of Azerbaijan and host country differ. Nonetheless this requirement does not apply to monitoring entities whose quarterly turnover is less than 50,000 Manats (€47,000). The Azerbaijan authorities confirm that

this exemption has no impact on financial institutions as all institutions falling under Table 3 above have a quarterly turnover of over 50,000 Manats.

786. Monitoring entities according to Article 7.5 of the AML/CFT Law are required to inform their appropriate supervision authorities in written form, when a foreign branch or subsidiary is unable to observe international standards against ML/TF because this is prohibited by host country legislation.

Additional element (c.22.3)

787. The authorities provided information that about half of banks in Azerbaijan are foreign branches or have foreign ownership in their structure. There is no clear provision in legislation that financial institutions which belong to a group are required to apply consistent CDD measures.

Effectiveness and efficiency

788. Authorities provided information that the International Bank of Azerbaijan is the only state-owned bank having subsidiaries in Georgia and the Russian Federation. Joint supervision was held concerning subsidiary in Russia and no deficiencies concerning implementation of AML/CFT measures were identified. During the meetings with representatives of the private sector it was stated that even though they do not have foreign branches and subsidiaries, there are internal rules prescribed if such a case occurred. During the meetings with representatives of the Ministry of Finance it was stated that one insurance company has branches in Georgia. The Ministry of Finance as a supervisory body did not receive any information from this insurance company concerning its branches in Georgia, and there was no cooperation with a Georgian counterpart regarding supervisory activities.

3.8.2 Recommendation and comments

Recommendation 15

789. Monitoring entities whose quarterly turnover is less than 50,000 AZN (€47,000) should be required to establish internal procedures, polices and controls.

790. Introduce a requirement for financial institutions to maintain an adequately resourced independent audit function.

Recommendation 22

791. It was shown during the meetings that Azerbaijani banks and financial institutions are mostly focusing on domestic market with very few of them having branches in foreign countries (Russian Federation, Georgia). The legal framework is broadly in line with international standards.

792. There should be a general requirement in the AML/CFT Law that would oblige non-banking 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 local laws and regulations permit.

793. Requirements of R.22 should also apply to monitoring entities whose quarterly turnover is less than 50,000 Manats (€47,000).

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**LC**	• Monitoring entities whose quarterly turnover is less than 50,000 Manats are not required to establish internal procedures, polices and controls.

R.22	LC	• No general requirement in the AML/CFT Law that would oblige non-banking 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 local laws and regulations permit; • Requirements of R.22 do not apply to monitoring entities whose quarterly turnover is less than 50,000 Manats.

Shell banks (R.18)

3.9.1 Description and analysis

Recommendation 18 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

794. In the 3rd round MER, Azerbaijan was rated PC for Recommendation 18 based on the fact that there were no criteria setting out to identify shell banks in order to avoid establishing any correspondent banking with shell banks. Also there were no measures in place for financial institutions to satisfy themselves that respondent financial institutions do not permit their account to be used by shell banks.

Prohibition of establishment of shell banks (c.18.1)

795. According to Item 2.1.5 of the Regulation on requirements on establishment of the internal control system "shell-bank" means a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial services group that is subject to effective consolidated supervision (physical presence means meaningful mind and management located within a country, and the existence simply of a local agent or low level staff does not constitute physical presence). This definition of "shell-bank" is in line with the FATF Glossary.

796. According to the Law on Banks, any legal person wishing to exercise banking activities shall acquire a bank license from the Central Bank. 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.).

797. Banks shall be registered with and have a license issued by the Central Bank, and the Central Bank must affirm that the management of the bank meets "fit and proper" standards. The Central Bank supervises the licensing process for all credit institutions and has the sole authority to grant and revoke banking licenses. If the Central Bank determines that a bank provided false information during the licensing process, it can revoke a bank's operating license.

798. Within the term of registration, a bank shall organise the corporate management system (establish bodies in accordance with provisions of this Law, form the organisation structure, be ready for implementation of information-technologies system, define the account and reporting policies, develop the internal procedures, determine the management and minimum staffing requirements), and complete the measures of technical provisions and security. Such requirements as technical and security measures preclude any bank from being a shell bank. The banks are periodically supervised by the Central Bank. In case of any non-compliance with such requirements, the Central Bank is entitled to sanction the bank to the extent of revocation of its license.

799. According to Article 10.5, among the documents that are attached to a final application for obtaining of a banking license there shall be documents, verifying the formation of the corporate

management system of the bank, including the management bodies, acceptance of technical provision and security measures. Also the Central Bank attests appropriate staff of banks when they are appointed to managing positions.

800. Currently there are no banks authorised and operating in Azerbaijan with the characteristics of a shell bank.

801. Even though there is no direct prohibition not to establish shell banks, it can clearly be seen that the comprehensive process established by the Azeri authorities prevents the creation of shell banks of the territory of Azerbaijan.

Prohibition of correspondent banking with shell banks (c.18.2)

802. According to Article 7.13 of the Regulation on establishment of internal control systems monitoring entities are not permitted to enter into, or continue correspondent banking relationships with shell banks.

Requirement to satisfy respondent financial institutions of use of accounts by shell banks (c.18.2)

803. Monitoring entities are required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks - Article 7.13 of the Regulation on establishment of internal control systems.

Effectiveness and efficiency

804. When opening a correspondent account with a foreign bank, the foreign bank shall be required to fill in the self-evaluation survey table (Annex 2). A compliance officer of the local bank shall collect and evaluate information whether correspondent institution have rules and procedures that prohibit establishing or continuing business relations with shell-banks, and whether there rules and procedures ensure that no transaction will be conducted with shell banks or on their behalf through any account or product at the bank. After evaluation, the compliance officer will submit a written report on results to a senior manager of the bank. During the on-site visit it was shown that banks are implementing in practice abovementioned requirements.

3.9.2 Recommendation and comments

805. Recommendation 18 is fully observed.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	

Regulation, supervision, guidance, monitoring and sanctions

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

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

806. Azerbaijan was rated PC on R.23, R.29 & R.17 in the 3rd MER, based on the following factors underlying the rating:

- Failure to implement effective, proportionate and dissuasive sanctions available to deal with natural or legal persons that fail to comply with national AML/CFT requirements;
- Sanctions only available in relation to the legal persons that are financial institutions or businesses but not to their directors and senior management;
- The range of sanctions available were not broad and proportionate to the severity of a situation and did not 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;
- Supervisors were not provided 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; and
- No requirement for staff of supervisory bodies to maintain high professional standards and to keep professional secrets confidential and clear ethical rules should be developed.

Regulation and Supervision of Financial Institutions (c. 23.1)

807. Article 6 of the AML/CFT Law, lists the Azerbaijan authorities which have responsibility to supervise the implementation of AML/CFT requirements in the financial institutions.

808. The following supervisory authorities are responsible for the AML/CFT compliance monitoring of financial institutions as defined within the scope of the FATF Recommendations.

Central Bank of the Republic of Azerbaijan (CBA)

809. The CBA's supervisory functions regarding the application of AML/CFT measures and actions derive from Article 6.1.1 of the AML/CFT Law which places credit institutions (banks and non-bank credit institutions) and legal entities that provide leasing services under its competence.

810. The organisation and operations of the CBA are based on the Law on the Central Bank of the Republic of Azerbaijan. The CBA's primary goal is "to ensure price stability", and also to ensure stability and development of the banking and payment systems (Article 4(2) CBA Law). In order to achieve these goals, the CBA shall:

- determine and implement monetary and foreign exchange policies;
- organise cash circulation, issue banknotes to and withdraw from circulation according to Item II of Article 19 of the Constitution and the present Law;
- regularly determine and announce an official exchange rate of Manat;
- provide foreign currency regulation and control;
- maintain and manage international gold and foreign exchange reserves in its charge;
- develop a reporting balance of payments and participate in development of the projected balance of payments of the country;
- license and regulate banking activities and provide banking supervision in accordance with the Laws of the Republic of Azerbaijan on Banks and on Post Offices, the present law and other Regulations (acts of normative character) adopted pursuant thereto;
- determine, coordinate and regulate activities of and provide oversight of payment systems; and
- implement other functions stipulated by the present Law and other laws.

811. The supervisory tasks are regulated by Articles 46 and 48 of the CBA Law that stipulate that the Central Bank shall be responsible for licensing, regulation and supervisory activities in order to ensure stable operation of the banking system and protect interests of bank creditors and depositors in Azerbaijan. In order to regulate and supervise activities of credit institution and the national operator of mail service the Central Bank among other things shall:

- adopt banking regulations;

- set forth corporate governance standards for banks and domestic branches of foreign banks and supervise their implementation; in cases and in the order specified by the law, conduct inspections at credit institutions, as well as their subsidiaries;
- supervise over compliance of credit institutions with the requirements of the AML/CFT Law;
- impose, in cases and in the order specified by the legislation, statutory corrective actions (enforcement measures) and sanctions on credit institutions and their administrators;
- in cases specified by the law, appoint temporary administrators for banks and domestic branches of foreign banks, and petition to the court for a moratorium of a bank's obligations, when necessary; and
- take appropriate statutory measures with respect to banks and domestic branches of foreign banks whose licenses were revoked; exercise other powers specified in the legislation.

812. Article 25.1.7 of the Law on Banks requires banks to adopt regulations and internal statutes, necessary to ensure reliable and prudential bank management, as well as develop and apply an internal control system to fight legalisation of criminally obtained funds or other property and the financing of terrorism.

813. Article 31.1 of the Law on Banks requires banks to implement the management and current operations in a reliable and prudential manner in accordance with the requirements of the Constitution of the Republic of Azerbaijan, the Civil Code, the AML/CFT Law, other legislative acts, as well as this Law, regulatory acts of the CBA, bank's Charter, all limitations, specified in the banking license or permit.

814. Article 42 of the Law on Banks, requires Credit institutions to deliver data on funds and other transactions to be monitored with respect to legalisation of criminally obtained funds or other property and the financing of terrorism to the FMS, develop and apply their internal control system, ensure other measures specified in the laws of the Republic of Azerbaijan and international pacts seconded by the Republic of Azerbaijan.

815. On 23 February 2011, the Central Bank of the Republic of Azerbaijan adopted the "*Methodological guidelines on risk based supervision over banks on adherence to the AML/CFT Law*". This Guideline/Manuel determines the supervisory procedure and measures of the CBA on compliance of banks and local branches of foreign banks to the requirements of the AML/CFT Law in order to ensure security, sustainability and soundness of the banking system.

State Committee for Securities of the Republic of Azerbaijan (SCS)

816. The SCS is the central executive authority responsible for regulation and supervision over the securities market and it is funded from the state budget. For AML/CFT purposes it is determined as a supervisory authority for carrying out supervision over the securities market – for brokers, who are the professional participants of the securities market, those who professionally operate in the management of securities, lottery organisers and investment funds (Art 6.1.2 of AML/CFT Law).

817. Articles 9.1 and Article 9.5 of Presidential Decree No. 70 On "*Approval of the Statute of The State Committee for Securities of the Republic of Azerbaijan*" stipulates that the SCS prepares and participates in preparation of project of legislative acts related to securities market, provide reviews, conducts analysis and generalisation, develops analytical and methodical materials, and gives opinions in the relevant sphere. According to the Articles 9.6 and 9.7 of the same Presidential Decree, the SCS has the power to bring cases, within its supervision area, to the law enforcement agencies and courts and to apply administrative penalties to who are responsible for the breach of the requirements of legislation.

818. The SCS has approved a Manual/Procedure "*On the inspection of the activities of the securities market participants*" (September 2011). According to this Manual, the SCS has approved and

implements an inspection methodology and internal manual developed in line with the Risk Based Approach. A special part of the inspection manual sets out the AML/CFT measures that should be taken by the SCS authorities.

Ministry of Finance of the Republic of Azerbaijan

819. The MFA 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, 3 of which are life insurers.

820. According the AML/CFT Law, for AML/CFT the MFA purposes is determined as supervisory authority for insurers, reinsurers and insurance intermediaries; and also for natural and legal persons that are engaged in buying and selling of precious stones, precious metals, as well as jewellery or other goods made of precious stones or precious metals.

Ministry of Communication and Information Technologies of the Republic of Azerbaijan (MCIT)

821. According to the AML/CFT Law the MCIT is a responsible authority that supervises over the institutions providing post services.

822. According to the Banking Law, the Central bank can issue a licence to Azerpost for performing financial activities, including exchange office services and money transfer services, receiving deposits and issuing debit and credit cards. The responsible authority for supervision over Azerpost for compliance with AML/CFT Law requirements is the MCIT.

823. The CBA and SCS as supervisory authorities already have their own internal procedures and manuals in place for the manner of conducting supervision in order to assess compliance with the AML/CFT Law. They also following and work in accordance with the core supervisory principles issued by the international organisations (Basel Committee and International Organization for Securities Commissions respectively).

824. During the on-site visit it was explained that the CBA and SCS are exempted from the requirements of the Law on Regulation of inspection. Therefore the evaluators recognise the Azerbaijan authority's awareness for need to align the new Law with internal rules on supervision and methodologies of the CBA and SCS.

825. During the on-site visit it was explained that the CBA and SCS authorities will be excluded from following the Law on Regulation. The evaluators are not aware of any amendments to this Law which were approved after the on-site visit.

Designation of Competent Authority (c. 23.2)

826. The supervisory system in Azerbaijan over financial institutions consists of four responsible supervisory authorities: CBA, SCS, MFA, and MCIT. The AML/CFT Law contains the allocation of supervisory powers over a specific obliged entity to a specific authority; there is no simultaneous competence in AML/CFT matters.

827. The main legal provision for regulation and supervision of financial institutions in the area of AML/CFT legislation is Article 6(1) of the AML/CFT Law. Deriving from this provision, the President of the Republic of Azerbaijan has determined an exact list of supervision authorities by the Decree on "Application of the AML/CFT Law" dated 23 February 2009:

- CBA – for credit institutions, including those providing leasing services;

- SCS – for brokers, who are the professional participants of the securities market, those who professionally operate in the management of securities, lottery organisers and investment funds;
- MFA – for insurers, reinsurers and insurance intermediaries, legal persons that engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones or precious metals;
- Ministry of Communication Information Technologies– for the institutions providing post services.

828. According to Article 6.5 of the AML/CFT Law supervisory authorities shall establish regulations on supervision over the compliance with requirements of Articles 9-12 (CDD measures, PEPs, record keeping, unusual transactions, STR reporting, internal control, etc.) by monitoring entities.

829. The following table provides an overview concerning the supervision and licensing regime of financial institutions in Azerbaijan:

Table 34: Financial sector supervisors

Financial institutions	Supervisor for AML /CFT purposes	Licensing authority (if licenced)	Legal Basis
Commercial banks (including exchange of foreign currency and money transfer)	Central bank	Central Bank	Banking Law #590-IIQ, dated 16 January 2004; AML/CFT Law #767 III-Q dated 10 February 2009
Credit unions	Central bank	Central Bank	Law on Credit Unions #876-IQ, dated 2 May 2000
Insurers, reinsurers and insurance intermediaries	Ministry of Finance	Ministry of Finance	Law on Insurance Activity #519-IIIQ, dated 25 December 2007
Brokers/ dealers	State Committee on Securities	State Committee on Securities	Decree of the President 789 from 2002.02.09
Asset management funds	State Committee for Securities	State Committee on Securities	Decree of the President 789 from 2002.02.09
Investment funds/ investment fund management companies	State Committee for Securities	State Committee on Securities	Decree of the President 789 from 2002.02.09
Companies issuing credit/debit cards/travellers cheques-only banks and postal company	Central bank/ Ministry of Communication Information Technologies	Central bank/ Ministry of Communication Information Technologies	Banking Law #590-IIQ, dated 16 January 2004; AML/CFT Law #767 III-Q dated 10 February 2009
Foreign exchange offices- only banks and postal company	Central bank/ Ministry of Communication Information Technologies	Central bank/ Ministry of Communication Information Technologies	Banking Law#590-IIQ, dated 16 January 2004; AML/CFT Law#767 III-Q dated 10 February 2009, Law on post #714-IIQ, dated 29 June 2004
Providers of fast money transfers (money remitters)-only banks and postal company	Central bank/ Ministry of Communication Information Technologies	Central bank/ Ministry of Communication Information Technologies	Banking Law#590-IIQ, dated 16 January 2004; AML/CFT Law#767 III-Q dated 10 February 2009, Law on post #714-IIQ, dated 29 June 2004
Postal organisation-only	Ministry of	Ministry of	Decree of the President

one Postal company (Azerpost LLC)	Communication Information Technologies	Communication Information Technologies	782 from 2002.02.09
legal entities that perform financial leasing (currently, financial leasing is performed only by credit institutions)	Central Bank	Central Bank	Banking Law #590-IIQ, dated 16 January 2004; AML/CFT Law #767 III-Q dated 10 February 2009

830. There is a provision in Article 6.4 that states that violation of the requirements of this Law by monitoring entities and other persons involved in monitoring, operating under a license may cause revocation (annulling) of a license in accordance with the legislation of the Republic of Azerbaijan, or undertaking other measures stipulated in the legislation of the Republic of Azerbaijan". Therefore it can be concluded that, except for a note in the law that in the case of violation of the AML/CFT law there is an option to revoke a licence, the AML/CFT Law does not contain sanctioning provisions for violation of AML/CFT provisions. However, in accordance with Article 21 of the AML/CFT Law, the sanctioning provisions of other legislation of Azerbaijan, as set out in Article 362-2 of the Criminal Code and Article 348-2 of the Administrative Infringements Code will apply.

Recommendation 30 (all supervisory authorities) (rated PC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

831. In relation to supervisory authorities the following factor underlined the PC rating in the 3rd MER: Inadequate resources for AML/CFT issues in all sectors and lack of clear integrity standards for law enforcement and supervisors in the context of AML/CFT.

Adequacy of Resources (c. 30.1)

<u>*CBA*</u>

832. The AML/CFT issues are considered within the Department of Supervision over Credit Institutions. The department has a staff of 45 individuals (On-site supervision 19, Off-site supervision 16, Licencing 7, Customer Rights Protection 3).

833. The AML/CFT issues are included into the job description of each specialist as well as prudential requirements. The evaluators were informed that in the CBA employees are engaged in the AML/CFT training seminars and workshops on the regular basis. Seminars were held in France, Monaco, Italy, Austria and other countries. In addition, the ATTF Luxemburg and USAID have arranged several seminars in Azerbaijan.

834. In order to prevent a conflict of interest, the CBA has issued two Regulations on "*Prevention of conflict of interests in CBA and on Ethical behaviour of the employees of the CBA*", both acts were confirmed in July 2013. The Supervision Department is linked to the high salary category structure and this is regarded as a competitive salary in Azerbaijan. The average monthly salary within the department is USD 2,200 (€2,750). This element is also important for the independence of the work of CBA employees.

835. To ensure effectiveness and the quality of work, financial analysis software tools, a separate Management Information System, Electronic Statistical Warehouse and Analytical Reporting System were developed within the Supervision department.

<u>*MFA*</u>

836. The Insurance Supervision Department that organises inspections and receives reports is operating within the State Insurance Supervision Service. The department has 7 employees, with one of them being the head of department, others being employees.

837. According to the legislation of the Republic of Azerbaijan on public service, public servants who serve at the insurance supervisor are provided with salaries, other payments and compulsory social insurance - pensions. The average monthly salary of the head of the department is 630 AZN (€590), the employees' salary range from 430 AZN (€400) to 470 AZN (€440). Furthermore, besides the salary that the employees receive, they are additionally paid 300-400 AZN (€280-€375) per month on average from additional funds.

838. The employees of the insurance supervision department regularly attend the training sessions organised by the FMS.

839. In 2011, relevant software for electronic receipt of the reports was purchased and has been implemented since then.

SCS

840. The SCS is a state-funded authority. The Licensing and Supervision Department of the SCS is designated for the AML/CFT supervision which is comprised of eight employees. Three employees of the Department are engaged in supervising compliance of securities market participants with the AML/CFT requirements.

841. The average monthly salary of the head of the department is 917AZN (€860), employees' salary range from 440 AZN to 520 AZN (€410-€485). In addition to their salary, the SCS employees are also subject to receiving additional premium of 300% of their position salary in a calendar year.

842. The majority of staff of this department completed higher education in English, fluent at least in two foreign languages and are well informed about the FATF Recommendations and local legislation on AML/CFT supervision.

843. The SCS employees have participated in a number of domestic and foreign trainings and conferences on ML/TF topics. The SCS staff also delivered satisfactory trainings to securities market participants.

844. In terms of technical resources, to conduct supervision each employee of the SCS is provided with sufficient computer systems with latest hardware and software (Windows 7 Operating System, Microsoft Office 2010). Addition to this, the SCS has electronic registration systems to accept quarterly AML/CFT, internal audit and other reports.

845. The SCS is provided with adequate financial, human and technical resources.

Ministry of Communication and Information Technologies of the Republic of Azerbaijan (MCIT)

846. Under the Rules for supervision over the compliance with requirements of the AML/CFT Law by a national operator of postal communications, it is determined that the Supervision Commission in the MCIT consists of three employees who are responsible for carrying out supervision over implementation of Articles 9-12 of the AML/CFT Law by the National operator. The Supervision Commission operates on the permanent basis.

Professional Standards and Integrity (c. 30.2)

847. The staff of all competent authorities designated by the AML/CFT legislation are considered to be civil servants. Article 18 of the Law on Civil Service stipulates that civil servants are required to comply with among others the following provisions:

- implementing legislation and other normative legal acts;
- carry out orders, decrees and decisions of their management;
- protect state secrecy as well as other information deemed as confidential by legislation even after the cease of government services; and
- comply with high ethical standards.

848. From 2007, the Azerbaijani authorities have adopted the Law "*On rules of ethical conduct of civil servants*". The Objective of this Law is to determine ethical conduct rules in relation to civil servants, as well as provide a legal framework to comply with the ethics conduct rules. According to article 17.3 of this Law, civil servants shall not use the information obtained during his/her term of service for his/her private interests.

Adequate Training (c. 30.3)

849. According statistics provided on training of supervisory bodies, the evaluators note that the CBA and SCS employees are regularly trained for AML/CFT purposes.

850. The Azerbaijani authorities did not provide any statistics on training of the MCIT employees for AML/CFT purposes.

851. According to statistics provided, the MFA only participated twice in MONEYVAL plenaries and only once in a seminar on "Taxes and Law: revealing of illegal financial activities" organised by an international organisation. Therefore, the evaluation team is of the opinion that training for the MFA employees needs to be enhanced.

852. There are no statistics indicating that employees of the MCIT participated and had active role in any seminar or workshops regarding AML/CFT matters. During the on-site visit, representatives of the MCIT mentioned that they participate on one seminar that was organised by the FMA.

Authorities' powers and sanctions

Recommendation 29 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

853. Azerbaijan was rated PC in the 3rd round MER as the supervisors were not provided 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.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

854. Article 1.0.9 of the AML/CFT Law defines the supervision authorities as designated competent authorities responsible for ensuring compliance by FIs and DNFBPs with requirements of the AML/CFT Law.

855. The legal provisions for the supervisory powers of the CBA, SCS, MF and MCIT in relation to financial institutions in the area of AML/CFT legislation are set out in Article 6(1) of the AML/CFT Law. Supervision authorities are the following bodies:

- Central Bank of the Republic of Azerbaijan – for credit institutions and the ones providing leasing services;
- The State Committee for Securities of the Republic of Azerbaijan carrying out supervision over the securities market – for brokers, who are the professional participants of the securities market, those who professionally operate in the management of securities, lottery organisers and investment funds;
- The Ministry of Finance of the Republic of Azerbaijan – for insurers, reinsurers and insurance intermediaries, natural and legal persons that engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones or precious metals;
- The Ministry of Communication and Information Technologies of the Republic of Azerbaijan that supervises over the institutions providing post services – for the institutions providing post services;

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2), Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

856. The Law Regulation of Inspection sets out the primary direction to the state authorities in the process of conducting inspections in order to ensure compliance with requirement of AML/CFT Law. According to Article 1.1.2, "the entrepreneur" shall mean any legal and natural persons whose main purpose is to make profit from the use of property, production and (or) sale of goods, work execution or provision of services. This definition clearly shows that this Law sets out general approach of inspections for all financial institutions and DNFBPs.

857. Article 10.2 of this Law stipulates that, depending on risk categories, the minimum mandatory period for inspection is up to 1, 2 or 3 years. At least once, within these periods, the supervision authorities shall carry out an inspection concerning the implementation of AML/CFT requirements. Articles 14, 15 & 20 of this Law set out in detail the inspection procedure, by describing the types and period of inspection, inspection procedures during on-site inspections and a protocol for the examination. Article 20.3 of this Law also prescribes the obligation for the entrepreneur, during the inspection, to present the documents related to inspection to the inspector, and that the originals of the documents taken during the inspection must be returned to the entrepreneur or immediately after the inspection together with a copy of the inspection report.

858. There is no clear obligation for the entrepreneur to give all records and documents or information relevant for the inspector on an ongoing basis. The right of other supervisory authorities, except CBA and SCS, to compel the production of records from the monitoring entities is prescribed in Article 10.2 of the AML/CFT Law. This article states that "*monitoring entities are required to ensure that all information and documents prescribed in the Article 10.1 are available on a timely basis to the supervision authorities and financial monitoring upon appropriate request*". However, the evaluators conclude that this obligation refers only to the obligations of financial institutions to keep customer and transaction records, thus it does not refer explicitly to supervisory powers to obtain access to all records, documents or information for supervisory purposes, including any analysis that the FI made to detect unusual or suspicious transactions.

<u>*CBA*</u>

859. Articles 46.1 and 46.2 of the Law on Banks empowers the CBA and its appointed auditors to have access to any bank, its branch, department, subsidiary economic units, as well as local branches of foreign banks to conduct on-site inspections and to review their reports, accounting books, documentation and other records, and require explanations thereon. It also requires that administrators, employees and agents of the bank, its subsidiary economic units, persons with qualifying holdings, related parties and persons, acting on behalf of related parties, branch, department of the bank and a local branch of the foreign bank to submit all necessary data on any issue, related to management and current activities of these structures, including customer operations. Article 46.4 requires foreign banks to submit reports to the CBA and provides the CBA with the power to conduct on-site inspections to clarify information set out in these reports. Article 46.6 however limits the power of the CBA to conduct examinations in foreign banks to circumstances where they are conducting enquiries under cooperation arrangements from foreign bank regulatory authorities or in cases of valid court orders being issued. This would appear to limit the powers of the CBA in relation to foreign banks and branches.

<u>*SEC*</u>

860. According to the Regulations on "*Supervision of compliance of securities market participants, which are monitoring entities, with the requirements of the AML/CFT Law*" adopted on 12 February 2012, the SCS carries out ongoing supervision for AML/CFT purposes in the securities sector. This Regulation specifies submission of off-site AML/CFT reports by brokers, asset management companies, investment funds and lottery organiser to the SCS.

861. According to Article 2.6 of the abovementioned Regulations, monitoring entities must submit internal audit report for AML/CFT purposes to the SCS within 5 working days following the completion of audit.

862. In addition to the internal audit report, monitoring entities are required to submit quarterly AML/CFT reports to the SCS in 10 working days following the completion of reporting period stipulated by the Article 2.7 and determined by the Annex 2 of the Regulations.

863. The quarterly AML/CFT report contains information and data on the type of customer of the monitoring entity, information on transactions of the monitoring entity, and data of trainings in the AML/CFT field attended by employees of the monitoring entity. There is an additional statistics part of this quarterly report that provides information to the SCS among other things on data for number of STR reports and number of cases found but not reported to the FMS,

864. During the on-site inspections the assessment of risk mitigates of monitoring entity is carried out by following the procedure that is consist of seven elements:

- Corporate Governance and Role of the Board;
- Risk Management;
- Policies and Procedures;
- Monitoring and Suspicious Activity Reporting;
- Internal Controls and Internal and External Audit;
- Compliance Function; and
- Training.

865. The securities market of Azerbaijan is quite compact. According the Azerbaijani authorities' statistics there are an average of 19 transactions daily, there are only two listed companies, the number of active retail investors is nearly 80, and other investors are institutional investors such as banks. There is a centralised depositary, clearing and settlement system, with segregated accounts which is organised by the National Depository Centre. The National Depository is 100% state owned and the SCS is represented on the Supervisory Board and actively involved in the management of the company. The total number of monitoring entities is 14. Of those four are actively involved in the market and cover nearly 80% of the market. The average number of inspections conducted by the SCS annually is three. This means that as a result of these inspections, SCS is able to cover 75% of the market.

MFA

866. At the time of the on-site visit there were only 3 life insurance companies operating in Azerbaijan. They sell the following insurance products:

- Assurance on death. Almost all portfolios of this class of insurance consist of loan protection plans which are sold via banks. There is no investment element and no cash operations are permitted;
- Endowment assurance. There are tax incentives when employers buy this class of insurance for their employees. The entire portfolio consists of the policies bought by employers for their employees. The product is sold directly to employers and no cash operations are permitted;
- Mandatory employment injury insurance. All employers must buy this class of insurance to protect their employees against employment injuries. The product is sold directly to employers. There is no investment element and cash operations are not permitted.

867. During the on-site visit, the evaluators were not provided with any regulation or rules, issued by the MFA, according to which they perform supervision over the compliance with requirements of Articles 9-12 of the AML/CFT Law in the insurance sector. The Azerbaijani authorities explained to the evaluators that the MFA follows the supervision procedure prescribed in the Law on Regulation of Inspection.

868. On 12 March 2014, the MFA adopted Guidance on AML/CFT risk-based supervision of life insurance supervision. As this was adopted after the on-site visit, the effectiveness of the supervision methodology prescribed by this Guideline could not be assessed by the evaluators.

MCIT

869. According to the Rules on "*Supervision over meeting the requirements of the AML/CFT by national operator of postal communication*" adopted in May, 2013, the MCIT carries out ongoing supervision for AML/CFT purposes over Azerpost. The MCIT conducts an in-house review (through analysis of a self-evaluation inquiry filled in by the Azerpost) and on-site/mobile controls once in three years or more frequently on the basis of information received by the MICT about violation of requirements of Articles 9-12 of the Law by the operator or in case corrective actions applied to controlled object as a result of in-house review are inadequate. The in-house review of the national operator is documented in the form of a report. The four compliance ratings that are given in the report, relating to the effective implementation of requirements of the AML/CFT Law, are: not applied; partially applied; considerably applied and completely applied.

870. During the on–site visit the representatives from MCIT explained that this review indicated that Azerpost is applying the AML/CFT Law requirements. It was also stated that MCIT will implement both an in-house review and a mobile control in 2014.

Powers of Enforcement & Sanction (c. 29.4)

871. Article 6.3 of the AML/CFT Law sets out that if the supervisory authorities detect non-compliance with the requirements stipulated in the AML/CFT Law, the supervisory authorities shall impose an administrative penalty or implement other measures as provided by the legislation in respect to FIs and shall inform the FMS.

872. Moreover, Article 6.4 of the AML/CFT Law stipulates that violation of the requirements of this Law by FIs and DNFBPs operating under a license may cause the revocation (annulling) of a license in accordance with the legislation or undertaking other measures stipulated in the legislation of the Republic of Azerbaijan.

873. Taken as a whole, the above mention provision of the AML/CFT Law defines that the supervisory authorities have the power to impose enforcement and sanctions towards the FIs only in those situations where the powers and procedure for implementing measures and other sanctions are prescribed in separate laws other than the AML/CFT Law.

874. Pursuant to Article 47 of the Law on Banks, if the CBA detects that a bank violates prudential norms and requirements, implements its activities through violation of the requirements of this Law, the AML/CFT Law and the CBA legal documentation, and violates limitations, included in the banking license or permissions issued by the CBA or other grounds, capable to result in such violations, depending on the nature of violation, the CBA shall be entitled to impose enforcement measures on banks depending on the nature of the violation.

875. In addition, the Law on Banks determines clear sanctions for bank administrators (including the directors). The Law on Banks stipulates the temporary suspension from performing their job for the administrators (Article 48.1.2) and dismissal from their positions for administrators (Article 49.1.2) as a liability measures.

876. Item 9.7 of the SCS Statute provides the authority with the power to hear administrative infringement cases in order to conduct its supervision functions.

877. In the Rules on "*Supervision over meeting the requirements of the AML/CFT by national operator of postal communication*" it is prescribed that if in the case of performing an off-site control access the postal operator is assessed as less than *completely applied*, then MCIT can

apply an order to the national operator, notification to the national operator or may send a demand to the national operator a notice to avoid the violations.

878. According Article 106.1.7 of the Law on Post, in cases of breach of requirements of the AML/CFT Law by the national operator, the CBA may revoke the license of the national operator.

879. It is still not clear to the evaluators why, if the MCIT is the supervisory authority that performs supervision over the national operator for the implementation of AML/CFT requirements, it cannot a revoke licence from the post operator in cases where this entity has made a violation of the AML/CFT Law. As the post office sends all information and data connected with its financial activities only to the CBA (including data for wire transfer and money exchange services), it is not clear how MCIT can ensure that its powers of implementation over the national operator are efficient or effective.

880. According the Azerbaijan authorities a breach of the AML/CFT Law is regarded as a basis for suspension of insurance licence.

881. All supervisory authorities (CBA, SCS, MCIT, and MFA) may impose sanctions for failure to comply with the requirements of the AML/CFT Law by the FI and their officials, under Article 348-3 of the AIC.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

CBA

882. During the on-site interviews, the representatives of the CBA described the AML/CFT supervision as a risk based one. The AML/CFT issues are covered during the regular general supervision and on-site inspections and in case AML/CFT breaches are identified, the FMS is notified.

883. The procedures for the on-site inspections of banks are set out in the Regulation for On-Site Inspection of Banks of April 2010. This Regulation states that the main objective of bank inspections carried out by the Central Bank is to evaluate whether their operations are in compliance with the existing banking laws of the Azerbaijan Republic, including the Central Bank's regulations, accounting practices are accurate, risk management and internal control systems are effective, to assess the bank's financial condition and operating prospects on site based on original records and documentation, as well as to detect any practices of the bank that may pose a threat to creditors and depositors interests. The Regulation sets out details of:

- Frequency, planning, types and duration of inspections;
- Inspection preparations
- Organisation of inspections;
- Rights and responsibilities of inspection team members; and
- Documentation of inspection findings.

884. The CBA conducted 112 on-site visits during the years 2010-2013. 18 of them were specific AML/CFT visits. Within the remaining 94 visits AML/CFT issues were combined with general supervision.

885. Prior to an on-site visit the CBA will also discuss the AML/CFT risks with the FMS and determine the sample size accordingly. Wire transfers are reviewed to ensure all relevant information is included. As previously noted, transactions with Iranian nationals are closely supervised and transfers of funds to Iran are prohibited.

886. The risk based approach methodology was only adopted in December 2013 and it is intended that this will dictate the scope of both on-site and off-site reviews. However due to its recent adoption, it was not possible to assess how effectively this was being applied in practice.

<u>SCS</u>

887. The SCS performs AML/CFT supervision as part of their general supervision of the entities under their responsibility. The decision to undertake an on-site visit to a certain company is risk based. According the SCS methodology, their internal procedure for on-site supervision and the scope for supervision, it can be concluded that this supervisory authority takes their supervisory function in AML/CFT field very seriously.

888. According to the Risk Based Methodology, the CBA supervisors use a risk measurement matrix in the AML/CFT field for the supervised entities giving a final AML/CFT risk score by using different weights for institutional risk and for business risk. The aforementioned institutional risk includes categories as size, corporate structure and the years of operation of the bank. The business risk include qualitative factors (such as: management attitude, policies and procedures, compliance officer, reporting process, training and the HR management, risk management and internal control systems) and quantitative indicators (bank products and services). For the final risk score of the level of AML/CFT risk for each bank there are five ratings (very low, low, medium, high and very high). The intensity of off-site measures and selection of the banks for supervision will depend on evaluation findings and indicators of the AML/CT risk measurement matrix.

889. In order to complete the prescribed procedure the CBA Supervisors use different supervisory tools and measures, for instance receiving and analysing documents in the process of licencing, sending Questionnaires of qualitative factors for measuring risk, conducting the on-site controls and imposing different supervisory measures.

890. According to the Inspection Methodology and internal manual the SCS currently carry out inspections based on the risk based approach. Within the framework of the risk based approach, the SCS determines risk profiles and a risk map of market participants, based on quantitative data obtained from the reports as well as qualitative information on internal control mechanisms in order to identify the general and specific risks in the market and with respect to each supervised entity. Based on this risk map, the SCS specifies frequency and scope of supervision, with a supervision cycle no longer than two years.

891. The formation of risk profiles is carried out in three steps. The first step includes information obtained during the authorisation process. Concurrently, the size and corporate governance of the monitoring entity, which are also components of "Structural Risk", are assessed. The second step is receiving and analysing quarterly AML/CFT reports. This time, size of transaction, which is a component of "Structural Risk" and all the components of "Business Risk" are assessed. The third step is to conduct an on-site inspection. During on-site inspections qualitative information of monitoring entity is assessed. This information is grouped according to "Risk Mitigates".

892. The ML/FT risks in the securities sector are generally divided into two groups, institutional risks and business risks, in order to determine inherent risk. Once the inherent risks have been rated, the supervisor assesses the quality of risk management (adequacy of ML/FT risk management systems and risk mitigates).

893. During the on-site interviews, the evaluators received positive feedback and got the impression that the employees from the SCS were well trained and aware of the AML/CFT requirements in the security sector. However, the number of employees in the SCS it is barely appropriate. At the time of the on-site visit only 16 securities market participants were monitoring entities, if this number increases then the number of employees in the SCS responsible for supervision should also increase.

<u>MFA</u>

894. During the on-site interviews the evaluators were left with the impression that the AML/CFT supervision conducted by the MFA is more focused on compliance with prudential insurance standards than with specific AML/CFT requirements that should be implemented by the insurance sector. The supervisory procedure that this supervisory authority is following, the Law on Regulation of Inspection, was issued in July 2013.

895. According to the statistics provided, in 2012 as part of the general on-site supervision, MFA conducted compliance checks with AML/CFT requirements in one life insurance company and in 2013 in two life insurance companies. Taking into consideration the number of the life insurance companies in the insurance sector, the evaluator finds that the numbers of performed on-site inspections were sufficient.

MCIT

896. During the on-site visit the evaluators got the impression that the representatives from the MCIT did not clearly understand in which cases and which procedures should be followed where there is a violation of the AML/CFT Law and a consequent need to revoke the licence of the postal service office, Azerpost.

897. The MCIT started to perform its supervisory function over Azerpost from 2010. However, only in the last quarter of 2013 did the MCIT send a questionnaire to Azerpost and in 2014 it is planned to conduct the first on-site supervision. Therefore the evaluators are not able to assess whether the 3 people dedicated to AML/CFT in the Supervision Commission are adequate.

Recommendation 17 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

898. Azerbaijan was rated NC on R.17 in the 3rd MER, based on the following factors underlying the rating:

- 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.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Designation of Authority to Impose Sanctions (c. 17.2), Range of Sanctions—Scope and Proportionality (c. 17.4)

899. The range of administrative sanctions for infringements of provisions of the AML/CFT Law that are available to all supervisory authorities of FIs (CBA, SCS, MFA, MITC) include:

- The range of fines applicable to administrative breaches for non-compliance with the AML/CFT Law is determined in Article. 348-3[8] of the AIC under which the maximum fine for legal person is 15,000 AZN (€14,000) and for official person is 1,500 AZN (€1,400);

[8] Article 348–3. Violation of the legislation on the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism

348–3.0. Violation of the legislation on the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism, that is:

348–3.0.1. non–observance of the requirements to identify and verify the customer, beneficial owner or authorized representative, or to document the information by the monitoring entities and other persons involved in monitoring;

- The power to withdraw a license or operating under a license, pursuant to Art. 6.4 of the AML/CFT Law; or
- The power to undertaking other measures provided by the legislation of the Republic of Azerbaijan, also pursuant to Art. 6.4 of the it AML/CFT Law;

900. In addition, Art. 6.4 of the AML/CFT Law, provides for the power of supervisory authorities to withdraw a FI's license for violation of the requirements of the AML/CFT Law or undertake other measures provided by the legislation of the Republic of Azerbaijan. It is not clear, whether for each violation of the Law the supervisory authority may revoke a licence. In that sense it is important that in all sectorial-laws supervisory authorities have a procedure for revoking the licence of the FIs in the case of violation of the AML/CFT requirements.

901. At the same time, when the FMS, within the frame of its competence, has information on non–compliance of FIs and DNFBP with the requirements of the AML/CFT Law, it has to submit such information to the relevant supervision authorities for enforcement of administrative sanctions or stipulated by the national legislation, other measures to these persons. During the on-site visit, the Azerbaijani authorities did not provide any examples of cooperation with other supervisory authorities regarding these FMS competence.

902. Criminal sanctions are also possible pursuant to Article 316 of the Criminal Code. This article provides that any official who discloses information about the measure to be taken against the legalisation of criminally obtained funds or other property shall be punished, with deprivation of liberty for up to six months or a fine of 1,000 AZN (€935) to 3,000 AZN (€2,800), and for more serious offences, with deprivation of liberty for up to five years.

<u>Banking sector</u>

903. Based on the Law on Banks the CBA may revoke the banking license of a credit institution if management or current activity is not in line with the requirements of the AML/CFT Law.

904. According to Article 47 of the Law on Banks, the CBA can issue a written instruction to a bank on execution of corrective measures, indicated in Article 48 herein, and terms for correction of deficiencies. The CBA may impose the following corrective actions on banks in accordance with Article 47 herein:

- limit or suspend implementation of certain banking activities;
- temporary removal of administrators;
- terminate banking operations and transactions with related parties and persons acting on behalf of related parties; and
- limit or suspend attraction of funds from sources other than the funds attracted from founder banks, subsidiary banks or local branches of foreign banks.

348–3.0.2. non–compliance by the monitoring entities and other persons involved in monitoring with the requirements to preserve the identification documents and documents on the transactions with the funds or other property;
348–3.0.3. failure to apply or incomplete applying of the internal control system by the monitoring entities and other persons involved in monitoring, which are legal persons;
348–3.0.4. failure to carry out in time or incomplete execution by the monitoring entities and other persons involved in monitoring of the written instructions of the financial monitoring organ or supervision authorities given in order and cases stipulated by the Law;
348–3.0.5. violation of the requirements of the non–execution of a transaction or submission the information stipulated by the Law, by the monitoring entities and other persons involved in monitoring—
entails imposition on official persons of penalty at a rate from 800 AZN (€750) up to 1,500 AZN (€1,400), on legal persons of penalty at a rate from 8,000 AZN (€7,500) up to 15,000 AZN (€14,000).

905. The CBA along with the corrective actions may also impose the following sanctions on banks: apply fines and penalties to banks and banks administrators, as per the AIC; and dismiss administrators from their positions. The dismissal of the bank administrator from his/her position shall be executed immediately under the decision of the competent management authority of the bank. Sanctions against banks and bank senior management are applied in case and in accordance with procedures stipulated under the Code of Administrative Infringements. Administrators according to Article 1 of the Law on Banks are defined as follows: "*members of supervisory board, audit committee and management board of a bank, chief accountant of the bank, employees of internal audit, managers and chief accountants of branches, affiliates and representative offices of a bank*".

906. The CBA may decide to revoke the banking license on the basis stipulated in Article 16. The CBA shall be entitled to appoint a temporary administrator to the bank, if the bank shall fail to fulfil the requirements stipulated in Articles 47, 48 and 49.1.2 therein.

<u>Securities sector</u>

907. According to Article 9.7 of the Statute, the SCS can impose disciplinary sanctions (warnings, mandatory directives). According to Articles 208, 211, 215 of the Administrative Code, the SCS can impose financial sanctions to a company as a legal person as well as its directors and senior management if they do not comply with the regulations (which includes regulations on AML/CFT) of the SCS.

908. According to Article 5.1.2 of the Decree No.782 of the President of the Republic of Azerbaijan dated 2 September 2000 "On Granting Special Permissions (Licenses) for Some Types of Activities in the Republic of Azerbaijan" the SCS can suspend the license of the financial institution. According to Article 5.4.3 of the abovementioned Decree and article 9.6 of the Statute, the SCS may revoke the license of the financial institutions in the securities sector.

909. The following table sets out the sanctions that were imposed by supervisory authorities on financial institutions as a result of its on-site inspections.

Table 35 Sanctions imposed on banks

Year	Total number of inspection	Number of inspections identified AML/CFT infringements	Written warning	Fines (number)	Removal of manager/ compliance officer	Withdrawal of licence
2009	43	16	16			
2010	37	5	4	1		
2011	24	7	6	1		
2012[9]	33	12	11			
2013[10]	18	9	9			

Table 36 Sanctions imposed in the securities sector

Year	Total number of inspection	Number of inspections identified AML/CFT infringements	Written warning	Fines (number)	Removal of manager/ compliance officer	Withdrawal of licence
2009	1	/				

[9] In addition in 2012 CBA applied one "other measure" that it is not mention as a type of measure in the statistic.

[10] Numbers for 2013 indicated for 30.10.2013 and inspection process for 5 banks is not finished.

2010	5	/				
2011	/	/				
2012	5	1	1	1		
2013	2	/				

Table 37 Sanctions imposed in the life insurance sector for AML/CFT infringements

Year	Total number of inspection	Number of inspections identified AML/CFT infringements	Written warning	Fines (number)	Removal of manager/ compliance officer	Withdrawal of licence
2009						
2010						
2011						
2012	1	1	1			
2013	2	2	2			

910. For the period 2009-2013 most of the corrective measures that are taken by the CBA are writing warnings.

911. The SCS, in the period of four years, determined only one AML/CFT infringements and consequently imposed one written warning and one fine. Having in mind the numbers of monitoring entities that are supervised by the SCS there were not a sufficient number of on-site inspections.

912. The MFA as supervisory authority over the insurance sector found AML/CFT infringements. For the period of 2009–2013 a total of 3 non-life insurance entities licenses have been withdrawn. These withdrawals however are not based on violations of the AML/CFT Law. According to the statistics provided, the MFA as a supervisory authority over the insurance sector applies more varied types of sanctions. However, for AML/CFT deficiencies only written warnings were issued.

913. There is no on-site inspection control in Post Company in 2010, 2011 and 2012. In 2013 there is one on-site inspection in the Azerpost, but no AML/CFT infringements are identified.

914. According to the Azerbaijan authorities, the following violations of the AML/CFT Law were found during on-site inspections:

- Lack of satisfactory internal control system on combating the legalization of criminally obtained funds or other property and the financing of terrorism;
- Not meeting requirements on including combating the legalization of criminally obtained funds or other property and the financing of terrorism related functions in job descriptions of employees;
- Not fully meeting the requirements on CDD measures; and
- Lack of written provisions on secrecy of reports.

915. According to the FATF Methodology sanctions should be effective. According to the Azerbaijan legislation for the infringement procedure, in case of non-compliance of the AML/CFT law all supervisory authorities cannot impose fines directly to the financial institutions, but should request permission from the court in order to start an infringement procedure. In addition, according to the statistics provided, there is low number of fines issued by the supervisory authorities. The Azerbaijani authorities did not provide information and data for the time period of starting and finishing the infringement procedure and on how many cases the supervisory authorities initiated and filed requests to the competent court authority for launching infringement procedures, where the courts either refused the requests or did not proceed with the procedure. The evaluators are of the opinion that there is low effectiveness of the fines prescribed within the Administrative Infringement Law.

916. At the same time there is no proportionality of the fines connected with severity of the non-compliance with the Law, and having in mind the maximum level of fine that can be imposed to legal and physical person it can be also concluded that determined fines are not dissuasive especially for banks, security and insurance sector.

917. Moreover, having in mind the above mention violations that were identified by the supervisory authorities during on-site inspections, it can be concluded that in accordance with the provision of the AML/CFT Law, in cases of violation of the AML/CFT Law, the supervisory authority may revoke the licence of the FI; although it is not applied even there is a possibility in practice to do so.

918. In addition, it is not clear whether there is a legal basis for the MFA and MCIT as supervisory authorities to undertake different types of supervisory measures over the insurance sector post operators. Neither is it clear whether there is a procedure that should be followed by the MFA and the MCIT as supervisory authorities over the insurance sector and post operators in order to revoke a licence in cases of violation of the AML/CFT Law.

919. The evaluators are of the opinion that the maximum fine of 15,000 AZN (€14,000) cannot be regarded as sufficiently dissuasive for the financial institutions, especially for major infringements. The sanctions imposed on the financial sector are not published.

920. In general it can be concluded that sanctions available to supervisory authorities are not effective, proportionate and dissuasive.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

921. The AIC allows sanctions to be imposed on legal persons and "on the official person".

922. Based on article 16 of the AIC, the "official persons" mean persons who carry out management at state and non-governmental organisations, institutions and enterprises, or persons who perform similar duties in view of special authority, also natural persons who perform such duties dealing with business activity without establishing a legal person. The term "official person" does not expressively encompass directors or senior management. During the on-site visit, the Azerbaijan authorities explained to the evaluators that in practice financial sanctions were usually issued towards the compliance officer in the monitoring entity, or in certain circumstances to the senior management. However the authorities did not explained when the supervisory authority is issuing a fine towards a compliance officer and when fines are issued towards senior management. Moreover, the supported statistics do not give any additional information towards which official person in the monitoring entity the sanctions were imposed. However, these differences in the practise to impose fines towards compliance officers or to the senior management, leaves some discretion and can influence the effectiveness of the sanctioning system.

923. The Azerbaijan authorities have to consider making a clear referencing and less ambiguity when it comes to the ability of sanctioning senior management of FIs.

924. The AML/CFT Law is silent about the types of sanction that can be imposed by the FMS.

<u>Market entry</u>

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

<u>Banking sector</u>

925. Article 7.2 of the Law on Banks sets out the provision that during the review of an application on obtaining of a bank license and permit, the CBA shall receive the information from financial, tax and law enforcement agencies on financial status, professional activities of major shareholders (if these are legal entities, information on management) and administrators, on whether they had any

criminal convictions in the past. This requirement is also applicable to persons, which in future will wish to obtain major shares of the bank (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 shall submit to the CBA the information which may be required. Pursuant to Article 10.1 of the Law on Banks, administrators of banks, their branches, divisions, representations and local branches and representations of foreign banks shall be the persons having fit and proper characteristics. Administrators are the members of the Controllers' Board, Audit Committee and Management Board of the Bank, as well as the Chief Accountant of the bank (head of accounting service), employees of the internal audit division, managers and chief accountants of branches, departments and representations of the bank. Persons having fit and proper characteristics – civilly impeccable natural persons, who are thought to be fair and trustful for its social position and professional qualities, experience, business interests of which let them be the owner of majority participation share in the bank, administrators, temporary administrator and liquidator. Majority participations are reviewed at the levels of 20%, 33% and 50% of ownership of shares in a bank's capital.

926. Civil impeccability for the owner of a majority participation in shares, 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 wilfully committed crimes; for an administrator, temporary administrator and liquidator it means the absence of a conviction for a committed crime, absence of criminal records on serious and especially serious crimes against property or in the sphere of economic activity, 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.

927. Article 22 of the Law on Banks regulates the restriction of a significant or controlling interest in the charter capital of the bank. Based on this article the CBA shall reject the issuance of permits in following cases: if managers of executive authorities of legal person do not have fit and proper characteristics; if the natural persons do not have fit and proper characteristics.

Insurance sector

928. Article 19.1.2 of the Law on Insurance Activity sets out the requirement that citizens of the Republic of Azerbaijan shall meet the civil impeccability requirement in order to become an insurer's founder or shareholder if he/she wishes to obtain significant participating share or significant control in the insurer.

929. Article 19.2.2 indicates that in order for local legal entities to obtain significant participating shares or significant control in the insurer its managers of executive body shall meet the civil impeccability requirement. Definition of the civil impeccability is stipulated in the article 1.1.41 of the Law on Insurance Activity, for the persons specified includes: absence of previous convictions for deliberately committed crime; absence of the previous convictions for grave or especially grave 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.

930. According to Article 37.1 of the Law members of Insurer's Directors Board, Management Board and Inspection Commission, as well as head of the Internal Audit Service, Chief accountant and Actuary are administration (administering employees) of the insurer. Furthermore, Article 38 says that administration of insurer shall be appointed on the basis of consent of the insurance supervision authority. Any decision on appointment of the insurer's administration without consent of insurance supervision authority shall be deemed void from the moment of its adoption.

Securities sector

931. Directors and senior management of financial institutions are subject to evaluation on the basis of "fit and proper" criteria. Evaluation is carried out during the licensing process. The Ordinance of the Cabinet of Ministers of the Republic of Azerbaijan № 174, dated 7 November 2002 specifies additional requirements for the licensing procedures, which also includes submission of information about directors and senior management of financial institutions.

932. According to Article 19.13 of the Ordinance, the SCS requires submission of information about directors and senior management, and their notary approved copy of documents for higher education and work experience. Moreover, Article 19.14 of the Ordinance requires applicants to provide civil integrity of employees appointed to leading positions for the absence of intentional criminal conviction, absence of conviction for property and economic activities and being liable for grave crimes, absence of imposition of a ban by court order for relevant position or professional activities and the absence of bankrupt declaration by the court.

933. In addition, articles 40.1.1. and 40.2.4 of the Law on Investment Funds requires that the qualified holders of the investment fund and asset management company should meet fit and proper criteria. Fit and proper criteria have been defined by Article 1.1.5 as absence of intentional criminal conviction, absence of conviction for property and economic activities and being liable for grave crimes, absence of imposition of a ban by court order for relevant position or professional activities and the absence of bankrupt declaration by the court.

934. It appears that in Azerbaijan comprehensive legal and regulatory measures are established to prevent criminals from holding or being the owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards or councils in a financial institutions. Nonetheless the established system does not appear to cover criminals from being the beneficial owners of a significant or controlling interest. Also persons who are associated with criminals are not covered.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

935. Pursuant to Article 3.2 of the Law of the Republic of Azerbaijan "On currency regulation" exchange of foreign currency can only be carried out by plenipotentiary banks. The notion of "plenipotentiary bank" is provided in Article 1.11 of same Law. "Plenipotentiary bank" is a credit institution that has a licence for conduction banking activity in the Republic of Azerbaijan.

936. Based on the Decree of the President on Elaboration of Rules on Providing Licenses for some Activities, MVT services can only be provided by banks and post offices. For more details with respect to MVT operators the reader should refer to the analysis of SR.VI (under section 3.11).

Licensing of other Financial Institutions (c. 23.7)

937. There are no other financial institutions in Azerbaijan apart from those mentioned under Criterion 23.4.

<u>On-going supervision and monitoring</u>

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

938. As was mentioned previously, the Law on Regulation of Inspection establishes a general approach for prudential supervision that should be used by the supervisory authorities. Considering that this Law is also used to carry out AML/CFT inspections it can be concluded that prudential supervision is applicable to AML/CFT issues.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

939. Considering that exchange services and MVT can only be provided by banks and post operators and these financial institutions are subject to the AML/CFT Law and are supervised by the CBA

it can be stated that these financial institutions are subject to effective system for monitoring and ensuring compliance with the AML/CFT Law.

940. For more information the reader should refer to Section 3.11.

Supervision of other Financial Institutions (c. 23.7)

941. There are no other financial institutions in Azerbaijan apart from those mentioned under Criterion 23.4.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

942. Statistics on the number of on-site inspections are set out below.

Table 38: Number of on-site inspections

Year	CBA	SCS	MFA	MCIT
2009	43	1		
2010	37	5		
2011	24	/		
2012	33	5	1	
2013	18	2	2	

943. The effectiveness of the process and the assessors view on the coverage of the sectors is set out under Recommendation 29 above. Overall the coverage appears comprehensive other than for the coverage of postal services by MCIT.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

944. The Azerbaijani authorities explained that, in March 2014, the CBA received a supervision-related request from the Malta Financial Services. Despite the fact that this authority does not have a mutual cooperation agreement with the CBA, this request was properly responded to. Other supervisory authorities did not receive any requests for assistance on AML/CFT issues

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

945. There are no provisions in place to prevent criminal associates from holding or being beneficial owners of a significant or controlling interest or holding a management function in a credit institution or an insurance company.

946. The division of the scope of the supervision powers of the CBA and the MCIT is not appropriate, and undermines the overall effectiveness of the supervision of Azerpost.

Guidelines

Recommendation 25 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

947. Azerbaijan was rated NC in the last evaluation report as the following shortcomings were identified:

- Apart from NBA no other supervisory body had issued guidelines that can assist financial institutions to implement and comply with the AML/CFT requirements;
- No guidelines had been issued to assist financial institutions to combat terrorist financing; and
- No guidance for DNFBP was provided for AML/CFT purposes in Azerbaijan.

Guidance for financial institutions other than feedback on STRs (c.25.1)

948. The FMS has issued several regulations in order to help financial institutions and DNFBP to implement and comply with the AML/CFT requirements. For example the Regulation on

"*Requirements on qualifications and experience of compliance officers responsible for the establishment of internal control systems of monitoring entities and other persons involved in monitoring, which are legal persons*" and the Regulation on "*Requirements on establishment of the internal control system by monitoring entities and other persons involved in monitoring which are legal persons*" (Regulation on Internal Control Systems).

949. The Regulation on Internal Control Systems establishes the minimum requirements for the establishment and implementation of internal control systems for fighting ML and TF. The Regulation covers:

- The introduction of a program on activities in the field of AML/CFT and an adequate control mechanism;
- internal rules and procedures;
- Internal rules and procedures for the identification and verification of customers and beneficial owners;
- Identification and verification of customers based on risk-based approach;
- Identification and verification of high-risk customers;
- Ongoing monitoring of customer accounts and transactions conducted by them;
- Criteria for the detection of transactions subject to monitoring;
- Detection and prevention of suspicious transactions and submission of information;
- Documentation and confidentiality of information;
- Recruitment and checking of employees;
- The role of the compliance officer;
- Conducting AML/CFT training; and
- Internal audit mechanisms.

950. In addition, the FMS has developed its website to include very broad information regarding the AML/CFT regime of the Republic of Azerbaijan, as well as legislation, by-laws, guidance, on-line reporting portal, statistics, typologies AML techniques and methods. Alongside this, the FMS releases annual reports with information regarding its activities, statistics, typologies and trends and also releases information bulletins.

951. The Azerbaijan authorities state that all supervisory authorities have the power to release annual reports about their activities; such annual reports being published on their respective official websites.

952. The evaluators recognise the efforts taken by the FMS to issue regulations for the establishment of internal control systems and requirements on the qualifications and experience of compliance officers that are minimum requirements that must be fulfilled by all financial institutions in order to implement the AML/CFT regulations. However, by-laws alone cannot be taken as a substitute for guidance. The Azerbaijani authorities should issue sector specific guidance in order to ensure that it goes further than merely repeating the provisions of the legislation and identify best practices that would assist the FIs in meeting the AML/CFT legal requirements.

Effectiveness and efficiency (R. 25)

953. During the on-site visit, the evaluation team received from the representatives of financial institutions positive feedback regarding the efforts of FMS to provide detailed regulations on the implementation of AML/CFT requirements. They did, however, also point out the need for more guidance, especially for the following issues:

- the manner of identification and verification of the beneficial owners, especially in the sense of what kind of reasonable measures should be taken to establish the ownership and control structure of non-resident legal entities; and

- guidance for enhanced due diligence and for simplified due diligence to determine the measures and documents that should be collected by financial institutions.

954. The evaluators also identified the lack of clear guidance for identifying complex and unusual transaction.

3.10.2 Recommendations and comments

Recommendation 23

955. Legal provisions should be adopted to prevent persons who are associated with criminals 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 in financial institutions.

Recommendation 17

956. The FMS and the Ministry of Justice should be given the authority to initiate procedures for violation of provisions of the AML/CFT Law outside the process of on-site supervision, e.g. Standardised off-site supervisory examinations. This could enhance effectiveness of the sanctioning regime.

957. The range of sanctions should be amended in order to be effective, proportionate and dissuasive.

958. Violation of AML/CFT requirements is sanctioned with withdrawing a license. Although this is a very dissuasive sanction it is unclear how in practice these obligations set out in the law can be executed. The other sectorial laws (apart from the CBA and the SCS) do not provide for a procedure for withdrawing or suspending a financial institution's licence for not observing AML/CFT requirements.

959. There are no extended range/types of sanctions (except for CBA and SCS).

960. The sanctioning system for infringements according the existing Azerbaijani legislative acts requires court decisions via application of the supervisory authorities. According to statistics this does not work in practice as no sanctions, apart from writing warnings, have been imposed so far.

961. In addition, according to the Azerbaijan legislation, the AML/CFT requirements are set out in the AML/CFT Law, and the infringement sanctions are imposed in another law-the Administrative Infringement Code (AIC). The evaluators are on the opinion that there is a clear link between the requirements of the AML/CFT law and the available sanctions determined by the AIC. However, the sanctioning regime will be clearer, more easily applicable and less subjective if each concrete requirement of the AML/CFT Law is linked to sanctions. In a concrete situation it is not clear what fines could be imposed on financial institutions for each violation of the AML/CFT Law (for example it is not clear if an FI identified the client but did not verified the client's identity, whether the supervisory authority in this case will impose fines).

Recommendation 25 (c.25.1 [Financial institutions])

962. The evaluators encourage the Azerbaijani authorities to issue sector specific guidance in order to ensure that it goes further than repeating the provisions of the legislation. The guidance should identify best practice that would assist the institutions in meeting the AML/CFT legal requirements. Guidance should also set out the expectations of the supervisory authorities in respect of the requirements: to establish and verify the identity of beneficial owners, in particular the manner of identification of those which are non-residents in Azerbaijan; on identifying complex and unusual transactions; and on appropriate measures for simplified and enhanced due diligence.

Recommendation 29

963. The Law on Banks should be amended to provide the CBA with full powers to conduct on-site examination of foreign banks and branches.

964. The Ministry of Communication and Information Technologies of the Republic of Azerbaijan should have adequate powers to monitor entities providing postal services.

965. When conducting inspections the MFA should take into account the possible vulnerabilities of the insurance sector concerning ML/TF issues.

966. The division of the supervision powers of the CBA and the MCIT should be clearly stated in order not to undermine the overall effectiveness of the supervision of Azerpost.

Recommendation 30 (all supervisory authorities)

967. Training for the MFA employees should be enhanced.

968. The MCIT is under staffed and training for the employees should be improved.

Recommendation 32

969. The Azerbaijani authorities explained that, in March 2014, the CBA received a supervision-related request from the Malta Financial Services. Despite the fact that this authority does not have a mutual cooperation agreement with the CBA, this request was properly responded to. Other supervisory authorities did not receive any requests for assistance on AML/CFT issues.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors underlying overall rating
R.17	**PC**	• Sanctions are not effective, proportionate and dissuasive; **Effectiveness** • No sanctions have been applied to financial institutions' senior management; • No sanctions apart from writing warnings have been imposed; • No sanctions have been applied by the MCIT; • Low number of sanctions applied by the CBA, SCS and MFA raises concerns about the effectiveness of the AML/TF sanctions regime.
R.23	**PC**	• There is no requirement to prevent persons who are associated with criminals 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 in financial institutions; **Effectiveness** • The Postal Office was not subject to on-site supervision; • Adequate effectiveness of the risk based approach on supervision not demonstrated due to recent adoption of the procedures (referring to MFA and MCIT).
R.25	**LC**	• Lack of guidance on:

		- identification and verification of beneficial owners, especially a description of reasonable measures that should be taken by the financial institution in order to identify and verify ownership and control structure of the non-resident legal entities; - measures that financial institutions should take regarding enhanced and simplified due diligence; - complex and unusual transactions.
R.29	**LC**	**Effectiveness** • The division of the supervision powers of the CBA and the MCIT is not appropriate, and undermines the overall effectiveness of the supervision of post office for AML/CFT purposes.

Money or value transfer services (SR. VI)

Legal Framework:

970. The following legal acts regulate the work of MVT providers:

- Law on AML/CFT;
- Law on Banks;
- Law on Post;
- CBA Regulation "On cashless settlements and money transfers in the Republic of Azerbaijan";
- CBA Regulation "On the currency transaction regime of residents and non-residents in the Republic of Azerbaijan".

971. Based on the Law on Banks and the Law on Post financial activity, including MVT service providing ones, it is one of the banking activities that are limited to banks and post office. There are no independent, standalone MVT providers in Azerbaijan.

972. MVT is a licenced activity under Article 32 of Law on Banks and all banks and post offices are subject to licensing.

973. Supervision on MVT services is carried by the CBA as a supervisory authority of all banking activities.

974. No on-site supervision was conducted in postal offices for MVT services.

975. Deficiencies under Recommendations R.4-R.11, R13-15, R.21-23, and SR.VII referring to banks and postal office will be reflected in the analysis of SR.VI.

3.11.1 Description and analysis

Special Recommendation VI (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

976. Azerbaijan was rated PC in the 3rd evaluation round on the basis that the implement of Recommendations 4-11, 13-15 and 21-23 in the MVT sector suffered from the same deficiencies as those that applied to other financial institutions.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

977. Banks and post office are the only entities which perform money transfers in Azerbaijan. Pursuant to the Decree of President on "*Elaboration of rules of the providing licenses for some activities*", Item 19 states this activity may only be given to banks and post offices. MVT Services are a licensed activity under Article 32 of Law on Banks and Articles 13-1 and 13-2 of the Law on Post.

978. A wire transfer is performed via banking and post office channels, including the SWIFT system and global money transfer services (e.g. Western Union, MoneyGram, etc.). Money remitters are not permitted to operate outside the framework of banks and post office.

979. 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 the CBA 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*".

980. The CBA maintains a centralised 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).

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

981. All requirements derived by the AML/CFT legislation are applicable to MVT services as a part of banking activities.

982. Notwithstanding the fact that MVT service operators are subject to the AML/CFT Act, the various deficiencies identified with respect to Recommendations 4-11, 13, 21-23 may have an impact on the effective implementation of AML/CFT requirements by banks and the post office.

Monitoring MVT services operators (c. VI.3)

983. Details of regulatory arrangements for monitoring of MVT services by the authorised state body, (i.e. the CBA and MCIT) are provided under the analysis of the Criterion 23.4. As to the practice of monitoring, the assessment team was not provided with any information on any specific supervisory measures, including off-site and on-site inspections, taken with regard to providers of MVT services. This also refers to the activities of the Azerpost (for the details, please see the analysis under Criterion 23.5).

984. The monitoring of MVT services in banks is carried by the CBA as a supervisory authority that performs supervision over banks.

985. The supervision over the post office for AML/CFT purposes is carried out by the MCIT. The MCIT is authorised to perform their control according to the Rules for Supervision over Meeting the Requirements of the AML/CFT Law by National Operator adopted in May 2013.

986. According to the regulations MCIT should conduct an off-site inspection twice a year.

Lists of agents (c. VI.4)

987. Money remitters are not permitted to operate outside the framework of banks and post office.

988. The Azerbaijan authorities informed the evaluators that the lists of all branches/divisions of the Post Office that produce MVT services are publicly available on the Azerpost web-site (http://www.azerpost.az/index.php?language=en).

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

989. Article 348-3 of Administrative Infringements Code of the Republic of Azerbaijan imposes sanctions with regard to reporting entities in case of violation AML/CFT legislations. The sanction limits are with regard to official persons 800 AZN up to 1,500 AZN (€750 to €1400) and legal persons from 8,000 AZN up to 15,000 AZN (€7,500 to €14,000).

990. Article 6.4 of AML/CFT Law sets out that violation of the requirements of this Law by the monitoring entities and other persons involved in monitoring, operating under a license may cause revocation (annulling) of a license in accordance with the legislation of the Republic of Azerbaijan, or undertaking other measures stipulated in the legislation of the Republic of Azerbaijan.

991. 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.

992. According to the Law on Banks penalties can be applied to in accordance with the Administrative Violations Code with a 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).

Additional element – applying Best Practices paper for SR. VI (c. VI.6)

993. Certain aspects of the Best Practices paper for SR.VI have been broadly implemented, in particular those issues relating to licencing, AML/CFT Regulation, compliance monitoring and sanctions.

Adequacy of Resources—MVT Registration, Licensing and Supervisory Authority (R.30)

994. During the on-site visit, the Azerbaijani authorities explained that the MCIT has a separate Unit for the postal sector that is responsible for licencing companies that provide postal service. Up to date only the Azerpost performs postal services, and at the same time it is licenced by the CBA for conducting financial services through the postal service.

995. In addition it was explained that the MCIT operates a Supervision commission where 3 (three) employees are working only on supervision over meeting the requirements of Articles 9-12 of the AML/CFT Law by the National operator. The Supervision Commission operates on a permanent base. During the on-site visit, it was stated that the Supervisory Commission performed one off-site supervision by sending a self-assessment inquiry.

996. No specific resources have been assigned by the CBA to the supervision of MVTs, and CBA is included supervision of the MVT service in general supervisory resources.

997. Given that the MCIT has not been able to carry out inspections in the Azerpost, and the CBA had not undertaken on-site inspections due to a focus of its resources on other sectors, it would appear that additional resources are required.

Effectiveness and efficiency

998. The CBA receives regular reports from the banks for prudential purposes, including information for MVT services that are performed by banks.

999. The Azerbaijani authorities provide the evaluation team with an extract of a monthly report that the Azerpost is sending to the CBA. This report contains:

- financial information on Azerpost for the previous month;
- data for how many individuals and legal entities opened an account at the Azerpost
- data for the number of payment cards in circulation;
- information for fast money transfer system used by the Azerpost (how much money entered to Western Union, to Migom, to Zolotaya Corona); and
- non-cash currency exchange in amount of money carried out with banks or conducted in cash in exchange offices.

1000. The MCIT does not receive any data for MVT services, nor any other information or data for AML purposes from Azerpost. Not receiving data and information on regular off-site base, clearly likely affect the effectiveness of supervision by MCIT.

1001. The Azerbaijan authorities informed the evaluators that no on-site inspections of Azerpost were undertaken by the CBA and no on-site inspections for AML/CFT had been carried out by the MCIT. However, the MCIT explained that in 2013 one off-site supervision was performed. An off-site control was conducted by the MCIT on Azerpost LLC in August 2013 and the results of the control were evaluated as "significantly applied" taking into consideration the execution of the requirements of Articles 9-12 of the AML/CFT Law by the Azerpost LLC.

1002. The meetings with the representatives of the Azerpost did not demonstrate an appropriate understanding relating to threats for money laundering in performing money transfer services. In addition, there is a lack of STR reporting from the Azerpost.

1003. No effective sanctioning regime is in place and no sanctions have been issued. The MCIT was not aware what kind of sanctions can be imposed on the Post Office if there is a violation of the AML/CFT Law. The Azerbaijani authorities explained that MCIT has powers to perform supervision but when they find any deficiency relating to non-compliance with the AML/CFT Law, they can ask the CBA to revoke the licence of that specific Post Office branch.

3.11.2 Recommendations and comments

1004. The MCIT should conduct regular AML/CFT on-site inspections of both Azerpost and individual post offices.

1005. The MCIT should receive regular AML/CFT reports from Azerpost.

1006. The sanctioning system for infringements of the existing legislative acts requiring court decisions via application of the supervisory authorities does not work in practice as no sanctions apart from the CBA have been imposed so far. It should be amended to provide for an effective sanctioning regime.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors relevant
SR. VI	**PC**	• Deficiencies under Recommendations R.4-R.11, R13-15, R.21-23, and SR.VII) referring to banks and postal office will be reflected in SR.VI; **Effectiveness** • Money Transfer service provided by post office are not adequately monitored and controlled by the authorities; • No on-site supervision in postal offices as a consequences lack of effective supervision of MVT services in the Post Office; • No effective sanctioning regime for Post Offices;

		• Duplication of supervisory powers towards Azerpost.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

1007. Since the 3rd round evaluation, Azerbaijan has taken significant steps in order to improve their compliance with international standards. The new AML/CFT Law which came into force in February 2009, has also prescribed obligations for DNFBPs to conduct CDD measures as well as other preventive measures.

1008. Art. 4. of the AML/CFT Law identifies monitoring entities among which are: natural and legal persons engaged in buying and selling of precious stones and metals, as well as jewellery or other goods made of precious stones and metals; lottery organiser; and natural and legal persons providing intermediary services on the buying and selling of real estate. Article 5 of the same Law prescribes that requirements of Articles 9–11 (CDD measures, record keeping, submitting of information to FMS) and 12-1 (non-face to face business relationship) shall apply to lawyers, notaries, other persons providing legal or audit services when they prepare for or carry out transactions for their customers with respect to the following activities: buying and selling of real estate; managing of customer funds, securities or other property; managing of customer bank and securities accounts and creation, operation or management of legal persons, buying and selling of legal persons, organisation of contributions for the creation, operation or management of legal persons. According to abovementioned this general provisions applies to all monitoring entities including DNFBPs.

1009. According to information provided by the authorities, all acquisitions of real estate are conducted through the bank accounts of notaries. This applies to all acquisitions in which the value of real estate is above 5,000 USD (€6,250). There are 70 real estate agents in Azerbaijan, and the FMS conducts supervision over them.

1010. According to information provided by the authorities there are 345 dealers in precious metals and stones in Azerbaijan. The supervisory body regarding the implementation of AML/CFT measures is the MFA.

1011. According to the legislation of the Republic of Azerbaijan, in order to launch business activity as a pawnshop or real estate intermediaries as ordinary business activities, it is only necessary to get a taxpayers identification number (TIN) from the Ministry of Taxation. There is no specific registration procedure for them.

1012. According to information provided by the authorities there are 96 auditors and accountants in Azerbaijan and supervisory body is the Chamber of Auditors.

1013. As was mentioned under Section 3 of this report monitoring entities which have a quarterly turnover less than 50,000 Manats (€47,000) are excluded from the requirements of the Regulation on internal control system. This exemption could increase the vulnerability of small businesses to the risk of being used for the purposes of money laundering and the financing of terrorism.

Customer due diligence and record-keeping (R.12)

(Applying R.5, 6, 8-10)

4.1.1 Description and analysis

Recommendation 12 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1014. In the 3rd round MER, Azerbaijan was rated NC for Recommendation 12 based on the fact that the coverage of DNFBPs was not in line with international standards as a result of Recommendations 5, 6, 8, 10 and 11 not being implemented for DNFBPs.

Applying Recommendation 5 (c. 12.1)

Casinos (Internet casinos / Land based casinos)

1015. Casinos are prohibited by the Presidential Decree No. 730 dated 27 January 1998 on "*Combating with economic crime*". There is only one lottery organiser, Azerlotereya OJST, created by the Presidential Decree No. 599 On "*Improving lottery activity in the Republic of Azerbaijan*". All pay-outs above 2,000 AZN (€1,870) must be carried out through a bank account of the customer. Lottery games can be played via the Internet, but lottery accounts can only be charged with funds from a bank account.

Real estate agents

1016. Real estate agents fall within the definition of a "monitoring entity" under Article 4 of the AML/CFT Law. All CDD requirements set out in Article 9 are applicable to real estate agents. The identified deficiencies under R.5 also apply insofar as the recommendation applies to real estate agents.

1017. During the on-site visit the authorities informed the evaluation team that all acquisitions of real estate in which value of real estate exceeds 5,000 USD (€6,250) are conducted through special bank accounts of public notaries. Buyers of real estate deposit funds to be used for acquisition in a special/escrow account of a public notary and after finalisation of the contract funds are paid out to the seller.

Dealers in precious metals and dealers in precious stones

1018. Dealers in precious metals and stones fall within the definition of a "monitoring entity" under Article 4 of the AML/CFT Law. All CDD requirements set out in Article 9 are applicable to dealers in precious metals and stones. The identified deficiencies under R.5 also apply insofar as the recommendation applies to dealers in precious metals and stones.

Lawyers, notaries and other independent legal professionals and accountants

1019. According to Article 5 of the AML/CFT Law CDD requirement foreseen in Article 9 shall apply to lawyers, notaries, other persons providing legal or audit services when they prepare for or carry out transactions for their customers with respect to the following activities:

- buying and selling of real estate;
- managing of customer funds, securities or other property;
- managing of customer bank and securities accounts;
- creation, operation or management of legal persons, buying and selling of legal persons, organisation of contributions for the creation, operation or management of legal persons.

1020. However it is not clear whether such accounts are subject to the AML/CFT Law.

1021. During the meetings with the Bar Association it was stated that there are approximately 4,000 lawyers in Azerbaijan. Their primary business is defending their clients and they do not conduct financial transactions for their clients. Concerning buying and selling of real estate it was stated by representatives of the Bar Association that lawyers are obliged to report to the FMS all contracts in which value of real estate exceeds 15,000 AZN (€14,000), but no such reports were submitted so far.

1022. Auditors are also monitoring entities according to provisions in art. 5. of the AML/CFT Law. During the meeting with representatives from Chamber of Auditors it was shown that they are fully aware of their obligations set out in the AML/CFT Law.

Trust and company service providers

1023. Trust and company service providers are not subject to the AML/CFT Law since trusts and company service providers are not recognised by the national legislation, nonetheless it is not clear whether foreign trusts and company service providers can operate in the territory of Azerbaijan.

Applying Recommendation 6, 8, 10, 11 (c. 12.2)

1024. General provisions in the AML/CFT Law concerning Recommendations 6, 8, 10 and 11 in the same way apply to DNFBPs. The identified deficiency with respect to effectiveness under Recommendation 6 applies to DNFBPs as well.

Effectiveness and efficiency

1025. There are some concerns regarding the effective implementation of requirement to identify the beneficial owners of customer for DNFBPs as was stated above for financial institutions. Furthermore, no effectiveness was demonstrated regarding identification of the beneficial owner of customers, especially foreign legal entities and domestic legal entities owned by foreign legal entities. This concern is emphasised in the sector of legal services companies which are offering a wide range of financial and legal services to their customers.

1026. It appears that awareness among DNFBPs to conduct prescribed CDD measures is relatively new for monitoring entities as well as for supervisory bodies. Taking into consideration the abovementioned, no effectiveness was demonstrated concerning implementation of Recommendation 6, 8, 10 and 11. On the other hand Chamber of Auditors has a high level of understanding of AML/CFT obligations set out for auditors and accountancy practices.

4.1.2 Recommendations and comments

Applying Recommendation 5

1027. The recommendation under R.5 above also applies to DNFBPs. More steps should be undertaken to raise awareness among DNFBPs on the importance of identification of beneficial owners of customers as one of the key points in conducting effective CDD measures.

1028. Accountants should be subject to the AML/CFT Law.

1029. DNFBPs whose quarterly turnover is less than 50,000 Manats (€47,000) should not be exempted from the AML/CFT requirements.

Recommendation 6

1030. Recommendations under R.6 also apply to DNFBPs insofar as the recommendations apply to DNFBPs.

Recommendation 8

1031. This Recommendation is fully observed.

Recommendation 10

1032. Recommendations under R.10 also apply to DNFBPs insofar as the recommendations apply to DNFBPs.

Recommendation 11

1033. Recommendations under R.11 also apply to DNFBPs insofar as the recommendations apply to DNFBPs.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12[11]	**PC**	• Accountants are not subject to the AML/CFT Law; • DNFBPs whose quarterly turnover is less than 50,000 Manats are not subject to a number of the AML/CFT requirements. ***Applying Recommendation 5*** • Deficiencies under Recommendation 5 also apply to the DNFBP sector. **Effectiveness** • DNFBPs are experiencing problems when identifying the BO. ***Applying Recommendation 6*** • Deficiencies under Recommendation 6 also apply to the DNFBP sector. ***Applying Recommendation 10*** • Deficiencies under Recommendation 10 also apply to the DNFBP sector. ***Applying Recommendation 11*** • Deficiencies under Recommendation 11 also apply to the DNFBP sector.

Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

General introduction

1034. Details of the DNFBPs covered by the AML/CFT Law are set out under Recommendation 12 above.

1035. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data by monitoring entities and other persons involved in monitoring to the Financial Monitoring Service under the Central Bank of the republic of Azerbaijan* are applicable to both monitoring entities and other persons involved in monitoring. Having regard to that, for an analysis of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 13.

4.2.1 Description and analysis

Recommendation 16 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1036. In the 2008 Mutual Evaluation Report, Recommendation 16 was rated "Non-compliant" due to the fact that at that moment Recommendations 13-15 and 21 were not addressed for DNFBPs in Azerbaijani legislation.

[11] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report.

Legal framework

1037. The following laws are relevant to a consideration of Recommendation 16:

- Law of the Republic of Azerbaijan "*On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism*", no. 767–IIIQ of 10 February 2009, Published in «Azerbaijan» Official Newspaper no. 44, dated 25 February, 2009;
- *Regulation of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan on submission of data by monitoring entities and other persons involved in monitoring*, approved by the Ordinance no. 001/31 May 2010, of the Director of the FMS.

<u>*Applying Recommendations 13-15 and 21*</u>

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

Casinos

1038. Casinos are prohibited in Azerbaijan by the provisions of Presidential Decree No. 730 dated 27 January 1998 on "*Combating with economic crime*". Nevertheless, there is one lottery organiser in Azerbaijan (Azerlotereya OJSC), created by the Presidential Decree No. 599 on "*Improving lottery activity in the Republic of Azerbaijan*". This entity is regulated by the Law on Lottery and is supervised for AML/CFT purposes by the State Committee for Securities.

1039. According to the information provided by the Azerbaijani authorities, the Ministry of Economy and Industry holds 100% of the capital of "Azerlotereya" OJSC. According to Paragraph 3.1 of "*the Regulations on submission of data by monitoring entities and other persons involved in monitoring to the FMS under the Central Bank of the Republic of Azerbaijan*", transactions conducted by monitoring entities in cash with funds or other property equivalent to or above 20,000 AZN (€18,700) are considered as cash transactions and CTRs are required to be submitted to the FMS. If the transactions with funds in above-mentioned amounts are conducted in cash by the "Azerlotereya" OJSC, then the CTR is submitted to the FMS. All the winnings in the lottery that exceed 2,000 (€1,870) AZN must be paid to the winner through a bank account.

1040. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to lottery organisers in general (article 4.0.10 – AML/CFT Law). Reference in this respect may be made to the text under Recommendation 13.

Real estate agents

1041. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to natural and legal persons providing intermediary services on the buying and selling of real estate in accordance with the provisions of article 4.0.11 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Dealers in precious metals and dealers in precious stones

1042. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to natural and legal persons engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones and precious metals in accordance with the provisions of article 4.0.8 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Lawyers, notaries and other independent legal professionals and accountants

1043. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to lawyers, notaries, other persons providing legal or audit

services, in accordance with the provisions of article 5 of the AML/CFT Law, when they prepare for or carry out transactions for their customers with respect to the following activities:

- buying and selling of real estate (article 5.1.1)
- managing of customer funds, securities or other property (article 5.1.2)
- managing of customer bank and securities accounts (5.1.3)
- creation, operation or management of legal persons, buying and selling of legal persons, organisation of contributions for the creation, operation or management of legal persons (5.1.4).

1044. For an analysis of the reporting requirement applicable to these categories, reference may be made to the text under Recommendation 13.

Trust and company service providers

1045. According to information provided by the authorities, the legislation of the Republic of Azerbaijan does not recognise trusts and/or company service providers. Therefore, there are no provisions under the AML/CFT Law that makes this act applicable to such legal structures. Hence the suspicious reporting requirement is not applicable for this category of entities.

Legal Privilege

Lawyers, notaries and other independent legal professionals and accountants

1046. Recommendation 16 provides that, in respect of their reporting obligations, lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report suspicious transactions if the relevant information was obtained in circumstances where they are subject to legal professional privilege or legal professional secrecy.

1047. In Azerbaijan, the relation between the legal privilege of lawyers, notaries and other independent legal professions and accountants and their reporting obligation, article 5.3 of the AML/CFT Law, exempts these categories from reporting when the information they hold is considered as professional secrecy or legal professional privilege. Essential criteria 16.1, leaves at the discretion of each jurisdiction to determine the matters that would fall under the legal professional privilege or legal professional secrecy. In Azerbaijan these two concepts are covered by various legislative acts in the field they regulate (i.e. Law of the Azerbaijan Republic On advocates and advocacy, Law of the Azerbaijan Republic On notary and Law of the Azerbaijan Republic about Auditing Services).

1048. Another issue that came to the attention of the evaluation team was related to the fact that the provisions of article 16.1 of the AML/CFT Law (*banking or other legally protected secrecy regimes shall not be invoked as a ground to reject submitting information to the FMS*) seem to override the provisions of article 5.3 of the same normative act that allows for lawyers, notaries and other independent legal professions and accountants not to report their suspicions when information falls under legal professional privilege or legal professional secrecy. This fact was confirmed to the evaluation team by the Azerbaijani authorities stating that *"if one may find discrepancy between these two articles, then Article 16.1 prevails over Article 5.3 due to its special nature",* which means that the current provisions actually go beyond the Essential Criteria 16.1.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

1049. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data by monitoring entities and other persons involved in monitoring to the Financial Monitoring Service under the Central Bank of the republic of Azerbaijan* are applicable to both monitoring entities and other persons involved in monitoring. For an analysis

of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 13.

Casinos

1050. Casinos are prohibited in Azerbaijan by the provisions of Presidential Decree No. 730 dated 27 January 1998 on "*Combating with economic crime".* The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to lottery organisers in general (article 4.0.10 – AML/CFT Law). Reference in this respect may be made to the text under Recommendation 13.

Real estate agents

1051. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to natural and legal persons providing intermediary services on the buying and selling of real estate in accordance with the provisions of article 4.0.11 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Dealers in precious metals and dealers in precious stones

1052. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to natural and legal persons engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones and precious metals in accordance with the provisions of article 4.0.8 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Lawyers, notaries and other independent legal professionals and accountants

1053. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to lawyers, notaries, other persons providing legal or audit services, in accordance with the provisions of article 5 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Trust and company service providers

1054. According to information provided by the authorities, the legislation of the Republic of Azerbaijan does not recognise trusts and/or company service providers. Therefore, there are no provisions under the AML/CFT Law that make this act applicable to such legal structures. Hence the suspicious reporting requirement is not applicable for this category of entities.

Making of ML/FT STRs regardless of possible involvement of tax matters (c. 16.1; applying c. 13.4 to DNFBPs)

1055. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data by monitoring entities and other persons involved in monitoring to the Financial Monitoring Service under the Central Bank of the republic of Azerbaijan* are applicable to both monitoring entities and other persons involved in monitoring. For an analysis of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 13.

Casinos

1056. Casinos are prohibited in Azerbaijan by the provisions of Presidential Decree No. 730 dated 27 January 1998 on "*Combating with economic crime".* The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to lottery organisers in general (article 4.0.10 – AML/CFT Law). Reference in this respect may be made to the text under Recommendation 13.

Real estate agents

1057. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to natural and legal persons providing intermediary services on the buying and selling of real estate in accordance with the provisions of article 4.0.11 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Dealers in precious metals and dealers in precious stones

1058. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to natural and legal persons engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones and precious metals in accordance with the provisions of article 4.0.8 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Lawyers, notaries and other independent legal professionals and accountants

1059. The suspicious reporting requirements set out under the AML/CFT Law and the *Regulations on submission of data* are applicable to lawyers, notaries, other persons providing legal or audit services, in accordance with the provisions of article 5 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 13.

Trust and company service providers

1060. According to information provided by the authorities, the legislation of the Republic of Azerbaijan does not recognise trusts and/or company service providers. Therefore, there are no provisions under the AML/CFT Law that makes this act applicable to such legal structures. Hence the suspicious reporting requirement is not applicable for this category of entities.

Reporting through Self-Regulatory Organisations (c.16.2)

Lawyers, notaries and other independent legal professionals and accountants

1061. Lawyers, notaries and other persons providing legal or audit services are obliged to report all the categories of transactions (including suspicious transactions) directly to the FMS, in accordance with the provisions of article 7 - *Transactions with funds or other property subject to monitoring* and article 11 - *Submission of information to the financial monitoring organ* of the AML/CFT Law.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBPs) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBPs)

1062. The protection and no tipping off provisions under the AML/CFT Law are applicable to all the categories of subjects included under the *monitoring entities* (article 4) and *other persons involved in monitoring* (article 5) concepts. For an analysis of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 14.

Casinos

1063. Casinos are prohibited in Azerbaijan by the provisions of Presidential Decree No. 730 dated 27 January 1998 on "*Combating with economic crime"*. The protection and no tipping off provisions set out under the AML/CFT Law are applicable to lottery organisers in general (article 4.0.10 – AML/CFT Law). Reference in this respect may be made to the text under Recommendation 14.

Real estate agents

1064. The protection and no tipping off provisions set out under the AML/CFT Law are applicable to natural and legal persons providing intermediary services on the buying and selling of real estate in accordance with the provisions of article 4.0.11 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 14.

Dealers in precious metals and dealers in precious stones

1065. The protection and no tipping off provisions set out under the AML/CFT Law are applicable to natural and legal persons engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones and precious metals in accordance with the provisions of article 4.0.8 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 14.

Lawyers, notaries and other independent legal professionals and accountants

1066. The protection and no tipping off provisions set out under the AML/CFT Law are applicable to lawyers, notaries, other persons providing legal or audit services, in accordance with the provisions of article 5 of the AML/CFT Law. Reference in this respect may be made to the text under Recommendation 14.

1067. In addition, specifically for the categories of lawyers, notaries, other persons providing legal or audit services, article 5.2 of the AML/CFT Law provides that information submitted by these entities to the FMS shall not be disclosed.

Trust and company service providers

1068. According to information provided by the authorities, the legislation of the Republic of Azerbaijan does not recognise trusts and/or company service providers. Therefore, there are no provisions under the AML/CFT Law that makes this act applicable to such legal structures. Hence the suspicious reporting requirement is not applicable for this category of entities.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS)

1069. Art 12 of AML/CFT Law prescribes an obligation to monitoring entities which are legal persons to establish and maintain internal control system to prevent the legalisation of criminally obtained funds or other property and the financing of terrorism. However, Article 12.4 of the AML/CFT Law provides an exemption from the requirement to develop an internal control system for monitoring entities which have a quarterly turnover less than 50,000 Manats (€47,000).

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs)

1070. Article 12.1.7 of AML/CFT Law obliges monitoring entities to establish internal audit mechanism to test compliance of the application by monitoring entities (which are legal persons) of the rules as stipulated by this Law. Considering that all DNFBPs are subject to the AML/CFT Law the analysis of Recommendation 15 under Section 3.8 of this report in relation to financial institutions also applies to DNFBPs.

1071. However, as stated above, there is an exemption from the requirement to develop an internal control system for monitoring entities which have a quarterly turnover less than 50,000 Manats (€47,000).

Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs)

1072. Article 12.1.4 of AML/CFT Law and item 12 of the Regulation "*On Establishment of Internal Control Systems*" applies to all monitoring entities which are legal persons and require them to conduct on-going training on AML/CFT matters.

1073. However, as stated above, there is an exemption from the requirement to develop an internal control system for monitoring entities which have a quarterly turnover less than 50,000 Manats (€47,000).

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs)

1074. The analysis of R.15 under Section 3.8 of this report with respect to financial institutions is also applicable to DNFBPs.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs)

1075. It is not clear whether the compliance officer can act independently and report to senior management above the compliance officer's next reporting level.

<u>Applying Recommendation 21</u>

Special attention to persons from countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS), Examinations of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBPS), Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1076. The analysis of Recommendation 21 under Section 3.6 of this report in respect of financial institutions also applies to DNFBPs as well as the deficiencies under this section.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

Accountants

1077. Article 5 of the AML/CFT Law– *"Other persons involved in monitoring"* makes the provisions of the law applicable to lawyers, notaries, other persons providing legal or audit services when they prepare for or carry out transactions for their customers with respect to the following activities:

- buying and selling of real estate (article 5.1.1)
- managing of customer funds, securities or other property (article 5.1.2)
- managing of customer bank and securities accounts (5.1.3)
- creation, operation or management of legal persons, buying and selling of legal persons, organisation of contributions for the creation, operation or management of legal persons (5.1.4).

1078. Having regard to that, for an analysis of the reporting requirement applicable to auditors, reference may be made to the text under Recommendation 13.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1079. The Azerbaijani authorities indicated that both monitoring entities and other people involved in monitoring are required to report to the FMS when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically. In this respect the provisions of Article *7.2.* of the AML/CFT Law have been quoted - "*Information on funds or other property, transactions with them and the attempts to carry out transactions involving the following features shall be submitted to the financial monitoring organ regardless of their amount: (7.2.1) in the situations that cause suspicions or reasonable grounds for suspicions that funds or other property are the proceeds of a criminal activity or are related to terrorist financing"*.

1080. It is the opinion of the evaluation team that the legal arguments indicated by the Azerbaijani authorities alone do not cover situations where funds have been generated abroad in an activity that would constitute an offence had it been committed domestically. However this provision should be corroborated with the general rule expressed in relation to the scope of application of the AML/CFT Law reading that the "*Law shall apply to the activities related to legalisation of the criminally obtained funds or other property and the financing of terrorism outside the jurisdiction of the Republic of Azerbaijan in accordance with the international instruments to which the Republic of Azerbaijan is a party*".

Effectiveness and efficiency

Applying Recommendation 13

1081. During the on-site visit the representatives of DNFBPs met by the evaluators appeared to have a good understanding of their reporting responsibilities. However, the total lack of reporting, as set out in the following table does raise questions on the effectiveness of the reporting regime.

Table 39: STR Reports filed

	2010		2011		2012		2013	
	ML	FT	ML	FT	ML	FT	ML	FT
Financial institutions	141	0	314	0	508	8	591	9
DNFBP	0	0	0	0	0	0	0	0
Total	141	0	314	0	508	8	591	9

Table 40: Reports filed on transactions above a certain threshold

	2010	2011	2012	2013
Financial institutions	46,532	218,769	247,999	309,774
Real estate agents	1	10	9	5
Other DNFBP	0	0	0	0
Total	46,533	218,779	248,008	309,779

1082. Having regard to the fact that the monitoring entities concept under article 4 of the AML/CFT Law covers many of the entities comprised under the FATF definition of DNFBPs, paragraphs under the effectiveness and efficiency sections of Recommendation 13 are fully applicable for Recommendation 16.

1083. In terms of casinos, such businesses are forbidden in Azerbaijan and the only entity operating in this field is the national lottery Azerlotereya. The State Committee for Securities, the supervisory authority for the lottery, argued that it is virtually impossible to launder money or finance terrorism through the lottery as any winnings that exceed the equivalent of 2,000 AZN (€1,870) are only paid into a bank account owned by the winner. The only scenario envisaged in this respect would be to use dirty money to buy a winner ticket, but this is impossible as the funds are only paid to the winner her/himself and any payment on winnings is visible in real time to the State Customs Committee, through an on-line supervision system.

1084. According to the FMS, real estate agents in Azerbaijan do not actually own the assets that they intermediate the sale of and they are mainly involved in rental. However, even under such circumstances, the lack of any STRs from this sector is, for the evaluation team, a strong indicator of its low capacity in recognising suspicious transactions and comes to a certain extent in contradiction with the apparent development rate of the real estate sector, the evaluators noticed in the capital city of Baku.

1085. From an operational perspective, notaries in Azerbaijan have to perform every transaction with real estate that exceeds 5,000 AZN (€4,670) through a bank account opened by the notary into the bank. According to information received on-site, the obligation to report an STR when suspicions of ML/TF are present resides with the notary that is facilitating the real estate transaction. Statistics on reports provided by the Azerbaijani authorities indicate that, during the reference period, no such STRs were submitted to the FMS. This comes to a certain extent in contradiction with the fact that for the same interval 112,010 cash transaction reports have been submitted by public notaries for operations conducted through bank accounts. Overall, it is the opinion of the evaluation team that the lack of reports from this category of DNFBPs, as well as real estate agents, is contradictory to the overall ML/TF risks of the sector.

Table 41: Transactions of public notaries

Year	Transactions of public notaries (conducted in banks)
2011	33,395
2012	33,724
2013	44,891
TOTAL	112,010

1086. As regards lawyers, the general explanation provided on-site by the Azerbaijani authorities related to the fact that these categories are rarely involved in performing transactions for their clients that would require them to submit reports to the FMS under the AML/CFT Law. However during on-site discussions with the representatives of the Bar Association the evaluation team was instructed that there are two categories of professionals in Azerbaijan that provide legal services for clients: lawyers and defence councillors. Apparently, training has only been provided by the FMS to those entities that are under the supervision of the Bar Association.

1087. Another issue that came to the attention of the evaluation team was related to the fact that the representatives of the Bar Association interpreted the provisions of article 16.1 of the AML/CFT Law in the sense that lawyer secrecy is not opposed to the FMS; an interpretation which was later confirmed by the Azerbaijani authorities. Although such interpretation should have led in practice to an increased level of reports submitted by lawyers to the FMS, statistics do not show such a trend. This is for the evaluation team an indication that more training is needed to be provided for this sector in relation to their obligations under the AML/CFT Law.

1088. As shown by the statistics provided, the level of reporting from the non-financial monitoring entities and other entities involved in monitoring is non-existent. During 2010-2013, there were no reports received by the FMS from non-financial entities. This comes, to a certain extent, in contradiction with the level of AML/CFT awareness identified on-site by the evaluation team. It is the opinion of the evaluators that although training provided by the FIU has raised to a certain extent the awareness of the non-financial sector over AML/CFT issue, DNFBPs have a relatively low capacity in recognising suspicious transactions.

Applying Recommendation 14

1089. As regards protection for making STRs, representatives of the DNFBPs met on-site did not express any concerns about potential threats or hostile actions supposedly related to the implementation of their STR reporting obligation. Applying Recommendation 15

Applying Recommendation 21

1090. During the on-site visit effective implementation of requirement under Recommendation 21 regarding DNFBPs was demonstrated.

4.2.2 Recommendations and comments

Applying Recommendation 13

1091. Extend the STR requirement to explicitly include those who finance terrorism.

1092. To enhance effectiveness: further training and awareness raising efforts are needed for the DNFBP sector.

Applying Recommendation 14

1093. Recommendations under R.14 also apply to DNFBPs insofar as the recommendations apply to DNFBPs.

Applying Recommendation 15

1094. DNFBPs that have the quarterly turnover less than 50,000 Manats (€47,000) should not be excluded from the requirement to establish an internal control system.

1095. Recommendations under R.15 also apply to DNFBPs insofar as the recommendations apply to DNFBPs.

Applying Recommendation 21

1096. Recommendations under R.21 also apply to DNFBPs insofar as the recommendations apply to DNFBPs.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors underlying rating
R.16[12]	**PC**	***Applying Recommendation 13*** **Effectiveness** • No STRs received from DNFBPs; • DNFBPs have a relatively low capacity in recognising suspicious transactions. ***Applying Recommendation 14*** • Deficiencies under R.14 are also applicable to DNFBPs. ***Applying Recommendation 15*** • DNFBPs that have the quarterly turnover less than 50,000 Manats are excluded from the requirement to establish the internal control system. ***Applying Recommendation 21*** • Deficiencies under R.21 also apply to DNFBPs.

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

Legal Framework

1097. Articles 4 and 5 of AML/CFT outline, under the definition of 'monitoring entities' and 'other persons involved in monitoring', the financial and non-financial institutions subject to AML/CFT supervision which also includes DNFBPs listed in the FATF Recommendations.

1098. Details of the DNFBPs covered by the AML/CFT Law are set out under Recommendation 12 above.

1099. The institutions of "*external accountants*" are not applicable to the Republic of Azerbaijan.

1100. According to the Azerbaijani authorities the definition of auditor and other person providing legal service also covers external auditors and accounting services, as well as tax advisors bearing in mind that tax advisers are regarded as legal services.

4.3.1 Description and analysis

[12] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report.

Recommendation 24 (rated NC in the 3rd round report)

<u>*Summary of 2008 factors underlying the rating*</u>

1101. Azerbaijan received a non-complaint rating in the 3rd round report due to the fact that there were 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 were not defined, including powers to monitor and sanction for deficiencies connected with AML/CFT.

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1102. Casinos are prohibited by the Presidential Decree No 730 dated 27 January 1998 on "Combating economic crime".

Monitoring and Enforcement Systems for Other DNFBPs (c. 24.2 & 24.2.1)

1103. Based on the AML/CFT Law and the Presidential Decree on implementation of supervision over the compliance of DNFBP with the requirements of the AML/CFT Law it is carried out by[13]:

- SCS - for Azerlotereya OJST;
- Ministry of Justice – for notaries;
- Ministry of Taxes – for persons providing legal services;
- Bar of Lawyers of the Republic of Azerbaijan within the framework of competence – for the lawyers;
- Chamber of Auditors of the Republic of Azerbaijan within the framework of competence – for the persons providing audit services;
- FMS for real estate agents and pawnshops; and
- MFA for natural and legal persons engaged in buying and selling of precious stones, precious metal, as well as the jewellery or other goods made of precious stones and precious metals and dealers in precious metals.

1104. Violations of the requirements of the AML/CFT Law by DNFBPs operating under a license, which are violating the AML/CFT requirements are subject to a sanction of revocation (annulling) of the license.

1105. Current legislation designates supervisory authorities with relevant powers, including power to monitor DNFBP and submit information on non–compliance with the requirements of the AML/CFT Law to courts for enforcement of administrative sanction. Article 348-3 of Code of Administrative Infringements determines sanctions for non-compliance for DNFBP together with financial institutions.

<u>*Real estate agents*</u>

1106. Real estate agencies are obliged entities and they are supervised by the FMS.

1107. According to the legislation of the Republic of Azerbaijan, in order to lunch business activity as real estate intermediaries, you are required to get a taxpayers identification number (TIN) from the Ministry of Taxation as ordinary business activities. There is no specific registration procedure for that.

1108. The FMS has developed and adopted in July 2010, the Regulation On supervising the observance of requirements of the AML/CFT law by natural or legal persons providing intermediary services on purchase and sale of real estate (real estate agents) and pawnshops.

[13] For further details see table 5 in section 1 above.

1109. This Regulation regulates supervising the observation of requirements of Article 9-12 of the AML/CFT Law by real estate agents and pawnshops.

1110. According to this Regulation, the Supervision Department of the FMS must conduct two off-site audits per year and one on-site audit every three years. The off-site review is conducted based on a self-evaluation checklist filled out by the real estate agents. The checklist is attached to the Regulation, it contains questions on requirements of the AML/CFT Law (what kind of measures on identification of customers and beneficial owner are taken, unusual transactions, record keeping, data submission, internal control system, use of technological tools without establishing direct content) that must be answered by the real estate agents by assigning one of four compliance rates to each requirement (not applied, partially applied, significantly applied, fully applied).

1111. The answers received by the checklist are analysed and evaluated by the Supervision Department who at the end must create a report for the performed audit.

1112. The Supervisory Department of the FMS supervises observance of the AML/CFT requirement by 70 real estate agents and 27 pawnshops.

1113. During the on-site visit evaluators were informed that the FMS performed only one off-site audit by sending a self-evaluation checklist in October/November 2013 to all real estate agents and pawnshops. The most common deficiencies found during this off-site visit are:

- Lack of satisfactory internal control system on combating the legalization of criminally obtained funds or other property and the financing of terrorism;
- Not meeting requirements on including combating the legalization of criminally obtained funds or other property and the financing of terrorism related functions in job descriptions of employees;
- Not fully meeting the requirements on CDD measures; and
- Lack of written provisions on secrecy of reports.

1114. Although, the on-site audit is prescribed by the Regulation at the time of on-site visit FMS had not exercised this power.

Auditing companies

1115. Auditors and Auditing companies are supervised by the Chamber of Auditors.

1116. The Chamber of Auditors of Azerbaijan Republic is an independent financial control body.

1117. According to the Law on Audit Services, the Chamber of Auditors was established in order among other things to:

- "*Organise and manage the work of audit service in the Republic of Azerbaijan;*
- *Provide the license to independent auditors and auditor organizations in the territory of the Republic of Azerbaijan, controls their works and compliance with the Law "On Audit Services" of the charter of the auditor organizations.*
- *Register the independent auditors and audit organizations;*
- *Develop and approves the rules of the conducting of examinations for the allocation of licenses giving the right to be engaged in audit services;*
- *Prepare and approves different report forms;*
- *Prepare instructions, recommendations and methodical instructions on conducting audit;*
- *Carry out appropriate actions for the protection of rights and legal interests of independent auditors and audit organizations;*
- *Carry out the revised audit;*
- *Provide audit opinions to the accuracy of assessment of properties of economic subjects in connection with privatization of state enterprises or other purposes;*

- *Carry out the functions of the monitoring body against the ML/TF in respect to the persons providing audit services within its competence in cases specified by legislation."*

1118. At the time of the on-site examination, there were 96 auditors registered in the Chamber of Auditors.

1119. Independent auditors and audit organisations are performing their work on the basis of a license issued for a period of five years after getting a state registration (Article 10 of the Law on Audit service).

1120. Article 15 of the Law on Audit services regulates circumstances according to which the audit licenses giving the right to deal with audit services may be recalled. Licenses authorising auditors and audit organisations may be recalled by the decision of the Chamber of Auditors in the following circumstances:

- if they carry out unsatisfactory audit three times during the same calendar year;
- if during the course of audit, they flagrantly violate the provisions of this Law and the legislation of the Republic of Azerbaijan;
- if a court decision in respect of an independent auditor takes effect, depriving him
- (or her) of the right to hold certain positions in the financial and economic spheres or to
- be engaged in certain activities, or punishing him (or her) for offences committed for
- mercenary motives;
- if after the license has been granted, it is found that it was obtained on the basis of
- false information;
- if the auditor transmits information he obtained during the course of an audit to a
- third party without the consent of the manager (owner) of the business entity, except in the cases provided for by the legislation;
- if the auditor (audit organisation) conceals any cases in which audits are prohibited
- if they did not follow the prohibitions in connection with audit service (under article 18 of this Law).

1121. According to the above mention cases there is no explicit circumstance giving the right to the Chamber of Auditors to revoke an audit license for AML/CFT deficiencies. Although, according to Article 6.4. violation of the AML/CFT Law by auditors and audit organisations may cause revocation of a license, this is not clearly set out in the sectorial law; Law on Audit Service. In addition, during the on–site visit, members of the Chamber of auditors were not aware of the measure that they can revoke licence in cases where auditors and audit organisations violate the AML/CFT requirements.

Lawyers

1122. According to Articles 5 and 6 of the AML/CFT Law lawyers/advocates are obliged entities and they are supervised by Bar Association. At the time of the on-site examination, there were 158 lawyers registered with the Association.

1123. According to Article 16 of the Law on Advocates and Advocate Activities, the advocate who carries out professional activity must follow the provision of the AML/CFT Law.

1124. During the on-site visit the evaluators were informed that the Bar Association has not carried out any on-site examinations on advocates and the Law on Advocates and Advocate Activities does not provide them with the right to carry out such examinations. The Bar Association also informed the evaluators that in practice is hard to conduct examinations on advocates in view of the confidentiality issues.

Notaries

1125. According to the item 4 of the Presidential Decree dated August 2010, AML/CFT supervision over notaries it is conducted by the Ministry of Justice.

1126. At the time of the on-site examination, there were 57 notaries registered with the Ministry of Justice.

1127. 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.

1128. No violations of AML/CFT measures have been identified in this sector and therefore no sanctions were imposed.

1129. The AML/CFT supervision over the activities of other persons providing legal services shall be conducted by the Ministry of Taxes of the Republic of Azerbaijan.

<u>Other person provided legal service</u>

1130. With the same Presidential Decree that determines supervisory authority for notaries, dated August 2010, it is also determined that the Ministry of Taxes is responsible for supervision over other persons providing legal services for AML/CFT purposes.

<u>Dealers in precious metals and precious stones</u>

1131. Natural and legal persons engaged in buying and selling of precious stones, precious metal, as well as the jewellery or the other goods made of precious stones and precious metals are obliged entities and they are supervised by the MFA. (Articles 4.0.8. and 6.1.3 of the AML/CFT Law). As at the time of the on-site examination there were 341 registered dealers.

<u>Trust and Company Service Providers</u>

1132. Trusts are not recognised by the Azeri legislation and are not subject to the AML/CFT Law.

1133. There are no specific company service providers, in Azerbaijan**.**

Recommendation 25 (rated NC in the 3rd round report)

Legal Framework

1134. All regulations issued by the FMS are universal and applicable to the DNFBPs in a same manner as it is for financial institutions.

1135. According to the requirements of Article 12 of the Law on AML/CFT and paragraph 10.6 of the Statute on the FMS, the FIU prepared the following Regulations (by-laws) on:

- *Requirements on establishment of the internal control system by monitoring entities and other persons involved in monitoring which are legal persons for preventing the legalization of criminally obtained funds or other property and the financing of terrorism"; and*
- *Requirements on qualifications and experience of compliance officers responsible for the establishment of internal control systems of monitoring entities and other persons involved in monitoring, which are legal persons*.

1136. The above mention by-laws give information to the FIs and DNFBPs on measures covered under the AML/CFT Law. They establish the minimum requirements for the setting up and implementing the internal control system for fighting the ML/TF, including assistance on issues covering:

- internal rules and procedures for the identification and verification of customers and beneficial owners;

- identification and verification of customers based on risk based approach;
- identification and verification of high-risk customers; ongoing monitoring of customer accounts and transactions;
- criteria for the detection of transactions subject to monitoring;
- detection and prevention of suspicious transactions and submission of information;
- documentation and confidentiality of information;
- recruitment and checking of employees; and
- conducting AML/CFT training; internal audit mechanism.

1137. From the content of these Regulations it can be concluded that they institute the minimum requirements for the implementation of internal control systems. The evaluators encourage the Azerbaijan authorities, especially the prudential supervisory authorities for DNFBPs to establish guidelines that will provide help for any additional measure that DNFBPs could take in order to cover specific situation and risk factors, more complicated organisational and risk management structure of the financial sector in order to implement AML/CFT measures more effectively.

Summary of 2008 factors underlying the rating

1138. Azerbaijan was rated NC in the 3rd round for Recommendation 25, for the following reasons:

- apart from the CBA no other supervisory body had far issued guidelines that could assist financial institutions to implement and comply with the AML/CFT requirements;
- no guidelines had been issued to assist DNFBPs to combat terrorist financing, and
- no guidance for DNFBP was provided for AML/CFT purposes in Azerbaijan.

Guidance for DNFBPs other than feedback on STRs (c. 25.1)

1139. Besides the bylaws adopted by the FMA, no other guidelines were provided to the evaluators, including sectorial guidelines from the Ministry of Justice, the Ministry of Taxes, the MFA, the BAR Association or Chamber of Auditors.

Feedback (applying c. 25.2)

1140. According to the paragraph 10.15 of the Statute on the FMS, the FIU on August 2010 approved the Regulation "*On providing financial institutions and DNFBPs with adequate and appropriate feedback approved by FMS*". The Regulation includes both general feedback and case by case feedback procedures.

1141. In accordance with its Statute, the FMS is preparing relevant statistics reports (data on the number of received reports, data on the number of cases disseminated to law-enforcement bodies) as well as publicly releasing periodic reports including statistics, typologies and trends, and information regarding its activities. Feedback to the financial institutions and DNFBP are provided on a regular monthly basis through GoAML and periodically for the case by case situations.

1142. During the on-site visit DNFBP representatives confirmed that they have good cooperation with the FIU when it comes to general feedback by receiving regular reports and statistics and also case by case feedback exists in practice.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

1143. Staff of all supervisory authorities designated by the AML/CFT legislation are considered to be civil servants and accordingly to meet the required professional standards and integrity. In addition, the Law of the Republic of Azerbaijan on Rules of Ethics Conduct of Civil Servants, prescribes obligations for the honest conduct of performing official duties, increasing of professionalism and private responsibility, as well as prohibition on received gifts and privileges

1144. Article 17.4 of the AML/CFT Law regulates obligation for the FMS to create an information protection system. Information held by the FMS is required to be securely protected and used for the goals of the AML/CFT legislation.

FMS

1145. The FMS' resources dedicated to supervision are considered inadequate. Only three people work in the Supervisory Department in the FIO, and they are in charge of supervision of 70 real estate agents and 27 pawnshops.

Ministry of Finance, the Ministry of Taxes and the Chamber of Auditors

1146. The adequacy of the Ministry of Justice's resources, the MFA and the Bar Association's resources are difficult to assess due to limited supervisory activity.

1147. The Azerbaijan authorities did not provide any statistics on trainings for AML/CFT purposes of the employees in the MFA. For the Ministry of Taxes, the only training listed was that an employee attended a MONEYVAL plenary meeting in 2008.

1148. The Chamber of Auditors in 2009-2013 organised a number of courses for auditors and specialists regarding different topics on AML/CFT Law issues. They organised courses locally in cooperation with the FMS and other executive bodies, or internationally as actively participant in organising international conference for internal audit perspectives.

Effectiveness and efficiency (R. 24-25)

1149. According to the statistics in period from 2008 to 2013 no on-site visits have been performed by the Ministry of Justice and the Lawyers Bar Association. Consequently no supervisory action towards notaries and lawyers were issued.

1150. Also in the same period (from 2008 to 2013), the MFA did not perform any on-site supervision for AML/CFT purposes towards the dealers in precious metal and precious stones. In addition, no sanctions or measures have been applied to these entities. In general, the evaluators developed the opinion that the MFA supervisory function over the dealers in precious metals and precious stones has yet to be properly applied.

1151. During the on-site visit, the evaluators formed the impression that the Ministry of Taxes only marginally performed their supervisory function for AML/CFT purposes over persons that performed other legal services, and only if it could easily be accommodated with its primary focus on fiscal matters. No statistics were provided for performed on-site supervision by the Ministry of Taxes for AML/CFT purposes.

1152. The FMS only performed on-site visits for the real estate agents in 2013. According to statistics provided, 15 on-site visits were performed, during which 5 deficiencies were defined and 5 writing warnings were issued.

1153. The Chamber of auditors performed 23 on-site visits in 2012 and 19 on-site visits in 2013. Consequently, the same number 23 (19) of writing warnings were issued.

1154. During on-site visit, the evaluators get the impression that the Chamber of Auditors and Lawyers Bar Association were not familiar with the consequences of revoking the license of the lawyers/auditors in case of violations of the AML/CFT Law. Both supervisory authorities advised the evaluators that they can apply sanctions only by their respective laws. However such sanctions can only be applied in relation to prudential measures with respect to the provisions of the relevant laws. No supervisory authority, not even the FMS, is empowered to impose sanctions for breaches of non-compliance with the AML/CFT Law. The FMS is only enabled to initiate proceedings with the Court as described under Recommendation 29.

4.3.2 Recommendations and comments

Recommendation 24

1155. Notaries, Lawyers, other persons giving legal services and dealers in precious stones and precious metals remain unsupervised in practice due to a lack of involvement of the MJA, Lawyer Bar Association, MFA and MTA in performing their supervision function for AML/CFT purposes. On the whole, the Azerbaijani supervisory authorities need to have a more proactive role in this respect.

1156. The supervisory authorities should develop an action plan on how AML/CFT supervision will be integrated into their existing activities as well as undertake more AML/CFT inspections.

1157. The evaluators also recommend that an analysis of risks (global or sector-specific) is carried out by the supervisory authorities to assist them in focusing supervisory efforts on areas identified as problematic due to higher risks.

1158. AML/CFT training should be provided for individuals conducting AML/CFT supervision in the Ministry of Justice, Lawyer Bar Association, MFA, and MTA.

Recommendation 25 (c.25.1 [DNFBPS])

1159. The evaluators consider developing sector specific guidelines as a positive development that should further contribute to enhance the awareness of the sectors.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPS)

	Rating	**Summary of factors relevant to s.4.3 underlying overall rating**
R.24	**PC**	• Undue procedural hurdles for all supervisory authorities of the DNFBPs to initiate procedures for violation of the AML/CFT Law provisions; **Effectiveness** • Minimal active supervision undertaken for AML/CFT purposes; • Several supervisory authorities are not fully aware of their supervisory function.
R.25	**LC**	**Effectiveness** • Apart from regulations issued from FMS no sector specific guidance for the implementation on the AML/CFT Law were issued. The lack of guidelines for FIs, also applies to the DNFBP sector.

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

4.4.1 Description and analysis

Recommendation 20 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1160. Azerbaijan was rated PC for R 20 in the 3rd round as the authorities had not considered any other non-financial businesses or professions to be at risk of being misused for money laundering or terrorist financing.

Applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBP) (c. 20.1)

1161. Pursuant to Article 4 of the AML/CFT Law, pawnshops, the lottery organiser and natural and legal persons engaged in buying and selling of jewellery or other goods made of precious stones and metals are now monitored entities. In this respect all requirement of the AML/CFT Law are also applicable to them.

1162. In particular identification and verification of customers and beneficial owners, record keeping, STR and CTR reporting shall apply in the same manner to them.

1163. The authorities have included some other DNFBPs that are at risk of being misused for money laundering or terrorist financing, nevertheless there was no analysis which had been undertaken to identify which other non-financial businesses and professions could also potentially pose a risk.

Development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering (c. 20.2)

1164. In order to reduce reliance on cash, the Central Bank has established a large value payment system, retail payment system, national card processing centre and centralised information system of mass payments.

1165. The "*State Programme on Development of National Payment System in the Republic of Azerbaijan*" was affirmed by the Presidential Decree of 9 December 2004 taking into consideration the enlargement of reforms held in the field of payment systems directing to regions, more active use of the National Payment System opportunities, creation of digital payment area through the whole country, necessity to increase access of natural and legal persons to financial services. Also, a new state program concerning the Development of Electronic Payment Services in Azerbaijan for 2013-2017 years was submitted to the State Government.

1166. The ATM network covers all territory of the Republic of Azerbaijan. The number of ATMs has increased for 58% over a period of 5 years and has reached 2,396. The total number of card reader terminals over that period has increased for 333% and reached 35,152. The number of payment cards has increased by 47% and reached 5,346,774. Moreover, pursuant to the Ordinance of the Government all social payments are made through payment cards.

1167. Even though the authorities are taking steps to reduce reliance on cash, there appeared to be no overall strategy on the development and use of modern and secure techniques for conducting financial transactions that were less vulnerable to money laundering.

4.4.2 Recommendations and comments

1168. The authorities should consider undertaking an analysis to identify which other non-financial businesses and professions could also potentially pose a risk.

1169. The authorities should consider issuing a strategy on the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• No analysis had been undertaken to identify which other non-financial businesses and professions could also potentially pose a ML/TF risk.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

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

5.1.1 Description and analysis

Recommendation 33 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1170. In the 3rd round MEQ Azerbaijan was rated PC for R.33 in view of the fact that the commercial, corporate and other laws did not require adequate transparency concerning the beneficial ownership and control of legal persons and that there was no full transparency of the shareholders of companies that had issued bearer shares and no specific measures taken to ensure that bearer shares were not misused for money laundering.

Legal framework

1171. The main piece of legislation in this regard is the Law on State registration and State recording of legal persons. The provisions of the AML/CFT Law (which has been introduced since the 3rd round evaluation) also require to be considered in assessing compliance with this recommendation.

Measures to prevent unlawful use of legal persons (c. 33.1)

1172. Save as referred to in third round evaluation report, there do not appear to have been any relevant amendments to the Law on State registration and State recording of legal persons since the 3rd round evaluation. However, the evaluators are advised that the Ministry of Taxes now co-operates with the Ministry of Internal Affairs and has on-line integration with the Ministry of Internal Affairs on ID cards in order to verify information provided as part of the registration process.

1173. Article 9.2 of AML/CFT Law requires monitoring entities to take measures on identification of customers and beneficial owners and Article 9.8 requires verification of the identification data with regard to customers and beneficial owners. For customers that are legal persons, Article 9.8 further requires that monitoring entities "take reasonable measures to understand the ownership and control structure of the customer and to determine who are the natural persons that ultimately own or control the customer (this includes those persons who exercise ultimate effective control over a legal person or arrangement)".

1174. The definition of 'beneficial owner' in Article 1.0.12 of the AML/CFT Law reads as follows: "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."

1175. If these provisions were to be relied upon to effectively bridge the gap in the registration system, it would be necessary to show that (a) all legal persons are subject to monitoring by a monitoring entity and (b) the competent authorities have a way of effectively obtaining beneficial ownership and control information from monitoring entities. With regard to (a) this is not the case. With regard to (b), Article 10.2 of the AML/CFT Law provides that "Monitoring entities are required to ensure that all customer and transaction records and information mentioned in Article 10.1 of this Law [documents on due diligence] are available on a timely basis to the supervision authorities and financial monitoring organ upon appropriate request." Therefore a gap remains in respect of legal persons who are not subject to monitoring by a monitoring entity.

1176. Additionally, in accordance with Article 11.6 of the AML/CFT Law information submitted to the financial monitoring organ (submitted by monitoring entities where there is an inability to identify parties, a refusal to submit identification information, or doubts about the veracity or adequacy of previously obtained information (Article 9.15) and submitted where transactions are over a designated threshold or otherwise suspicious or higher risk (Article 7)) shall not be disclosed. This information may only be demanded from monitoring entities by the criminal investigation bodies in the course of criminal proceedings. In this case, information may be disclosed only on the basis of the court decision that has come into force.

1177. It should also be noted that the Ministry of Taxes has confirmed that the register would not show, and they would not require to be informed, if shares were held by a nominee.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c. 33.2)

1178. Amendments to the 2005 Law on Commercial Information, which were adopted in 2012, prohibit government officials from distributing information about companies if doing so "*contradicts the national interests of Azerbaijan in political, economic, and monetary policy, the defence of public order, the health and moral values of the people, or harms the commercial or other interests of individuals*." The amendments also make release of information contingent upon receiving permission from all individuals named in the records. The evaluators consider that this places an unnecessary barrier to financial institutions and DNFBPs from obtaining and verifying beneficial ownership information, in particular, the requirement to receive permission from all individuals named in the records could cause significant delays in accessing information.

Prevention of misuse of bearer shares (c. 33.3)

1179. There do not appear to have been any amendments to the legal regime in respect of bearer shares since the 3rd round evaluation. However, the State Committee on Securities advised the evaluators that, in practice, it is impossible to effectively issue bearer shares because the companies law of Azerbaijan requires all shareholders of joint stock companies to be registered and it would not be possible to register ownership of a bearer share in a joint stock company. The State Committee on Securities advise that any transaction involving bearer shares would be high risk and would require an STR and enhanced due diligence measures. No such transactions have occurred to their knowledge. Private sector representatives who met with the evaluators advised that, although they are not prohibited by legislation, there is no practice of using bearer shares in Azerbaijan. Were they to see such a practice, they would treat it as a high risk activity.

Additional element - Access to information on beneficial owners of legal persons by financial institutions (c. 33.4)

1180. The evaluators understand 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 from the commercial register relevant information on a commercial company. Financial institutions have free access to this database through the internet without any restriction. However, 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 data as the register does not necessarily provide complete information on beneficial ownership.

5.1.2 Recommendations and comments

1181. It remains the case that there is no requirement in respect of the commercial register for information on beneficial ownership to be collected or made available and the registration system does not provide adequate access to up-to-date information on beneficial ownership in a timely manner.

1182. Information may only be demanded from monitoring entities by the criminal investigation bodies in the course of criminal proceedings. In this case, information may be disclosed only on the basis of the court decision that has come into force.

1183. The requirement that release of information is contingent upon receiving permission from all individuals named in the records as set out in the Law on Commercial Information should be removed

1184. The authorities should assess the potential risk of the use of bearer shares for criminal activities as part of the upcoming national risk assessment.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Amendments to the Law on Commercial Information place unnecessary restrictions on access to ownership and shareholder information; • Commercial, corporate and other laws do not require adequate transparency concerning the beneficial ownership and control of legal persons.

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

5.2.1 Description and analysis

Recommendation 34 (rated N/A in the 3rd round report)

Summary of 2008 factors underlying the rating

1185. In the 3rd round MER Azerbaijan was rated N/A for R.34 in view of the fact that the concept of trust is not known and neither domestic nor foreign trusts operate in Azerbaijan.

Legal framework

1186. The Azerbaijani authorities advised the evaluators that the concept of trust is not known in Azerbaijan and that legislation in this regard has not changed since the third round evaluation.

Measures to prevent unlawful use of legal arrangements (c. 34.1)

1187. Not applicable.

Timely access to adequate, accurate and current information on beneficial owners of legal arrangements (c. 34.2)

1188. Not applicable.

Additional element - Access to information on beneficial owners of legal arrangements by financial institutions (c. 34.3)

1189. Not applicable.

5.2.2 Recommendations and comments

1190. The concept of trust is not known under the Azerbaijan Civil Code and the Azerbaijani authorities advised the evaluators that trusts (domestic of foreign) cannot operate in their country.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	

Non-profit organisations (SR.VIII)

5.3.1 Description and analysis

Special Recommendation VIII (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1191. In the 3rd round MER Azerbaijan was rated PC for SR.VIII in view of the fact that the authorities did not periodically review the NPOs/NGOs with the object of assessing terrorist financing vulnerabilities, no risk assessment of NPOs/NGOs had been undertaken, there was no regular programme for field audits, the detailed provisions regarding financial obligations and annual accounts were only applicable to "charitable entities", no measures were in place to ensure that funds or other assets collected by or transferred through NPOs/NGOs were not used to support the activities of terrorists or terrorist organisations and the financial transparency and reporting structures did not amount to effective implementation of the essential criteria VIII.2 and VIII.3.

Legal framework

1192. The non-profit sector is governed by the Civil Code, Law on State registration and State recording of legal persons, the Law on Non-Governmental Organisations (a useful summary of key articles of which is set out in the 3rd round report) and the Law on Religious Freedoms. There are around 3,000 NPOs active in Azerbaijan and almost 600 religious organisations.

Review of adequacy of laws and regulations (c.VIII.1)

1193. Article 18.1 of the Law on State Registration and State Registry of Legal Entities provides that legal entity registrations are public and therefore any person (with no need to demonstrate a legal interest) can have access to details of any of the registered files in respect of an NPO and may receive copies of the documents submitted for registration. There is also a separate register of religious organisations which is administered by the State Committee for Work with Religious Organisations and which is publicly available.

1194. Pursuant to Article 4.0.9 of the AML/CFT Law non-governmental or religious organisations parts of activities of which consist of collecting, delivering or transferring funds are monitoring entities for the purposes of the AML/CFT Law. Article 10.2 of the AML/CFT Law provides that "Monitoring entities are required to ensure that all customer and transaction records and information mentioned in Article 10.1 of this Law [documents on due diligence] are available on a timely basis to the supervision authorities and financial monitoring organ upon appropriate request."

1195. The FMS have advised the evaluators that no suspicious transaction reports have been received from the NPO sector pursuant to Article 7 of the AML/CFT Law.

1196. In terms of progress on identified issues, in relation to charitable entities, it was observed in the 3rd round report that there do not appear to be any best practice documents or rules for giving or soliciting donations. Whilst this appears to remain the case to some extent, it should be noted that, further to amendments which came into force on 7 March 2013, pursuant to Article 24-1.4 of the Law on Non-Governmental Organisations, a non-governmental organisation which, according to its regulations has the primary goal of philanthropy cannot receive more than 200 AZN (€190) in cash. Article 24-1.2 provides that "*Non-government organization cannot give a*

pecuniary or other advantage, privilege or concession, and cannot make such an offer or promise directly or indirectly to the person who makes donation or to other person in return of the donation made or promised" and Article 24-1.3 provides that "*Person who makes a donation cannot require or receive any pecuniary or other advantage and cannot consent to such an offer or promise for himself or for others in return of the donation he has made or to be made*."

1197. A review of the sector was conducted in 2012, prior to the Eurovision song contest and a further review was undertaken in 2013 both considering the vulnerabilities of the sector[14]. These reviews included consideration of the vulnerability of the sector to being utilised for the financing of terrorism. The three main stakeholders involved in the review were the Ministry of Justice, the FMS and the Ministry of National Security. In addition, the State Committee for Work with Religious Organisations conducted a review and concluded that the religious sector is not vulnerable as the amounts of donations being made are not high (they advised that the average budget of a religious organisation is around 120 AZN (€110) per month). Amendments to legislation have been proposed including a proposal that no NGO and receive cash, all donations being through bank transfer.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1198. The evaluators are advised that for the protection of the sector from terrorist financing abuse and for raising awareness in non-profit organisations about the risk of terrorist abuse a number of trainings were conducted by the FMS and the Ministry of Justice. The FMS advise that the main focus of their training was obligations under the AML/CFT Law and the duty to report suspicious transactions. The Ministry of Justice advise that their training programme in this regard was launched last year and that, whilst there was not a massive amount of training undertaken last year they are looking to increase this next year.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

1199. The evaluators are advised that NPOs are supervised and monitored by the Ministry of Justice, the MFA and the State Committee for work with Religious Organisations. The Ministry of Justice are designated as a supervision authority for NPOs' compliance with AML/CFT requirements. The Ministry of Justice also supervise whether an NPO's activities are in accordance with the purposes determined by the charter of the NPO. Financial supervision is conducted by the MFA, to which NPOs must submit annual financial reports by no later than 1 April each year. The Ministry examine annual financial reports of NPOs and take the necessary action in respect of non-compliance with the laws and regulations. Supervision of religious organisations is undertaken by the State Committee for work with Religious Organisations.

1200. The Ministry of Justice advised the evaluators that in 2013 they reviewed the activities of seven organisations. A review includes looking at whether proper identification of the people involved has been undertaken, what internal controls are in place and whether any unusual transactions have taken place. These reviews resulted in one criminal case being opened which does not have ML elements but involves corruption.

1201. With regard to religious organisations, the State Committee on Work with Religious Organisations requires the provision of financial reports, and information on donations and grants (grants being monies given on the understanding that they will be used for certain purposes).

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

[14] A further review of the sector is planned in advance of the First European Games in Baku in 2015.

1202. The Law on State Registration and State Recording of Legal Persons which was adopted on 12 December 2003 contains provisions regarding state registration and state recording of non-profit organisations, which shall be able to act only after state registration in the Ministry of Justice of the Republic of Azerbaijan. Pursuant to Article 14.1 of that Law the following information shall be reflected in records in respect of organisations entered into the state recording system:

1. name (or title) of organization;
2. legal address of organization;
3. legal-organisational structure of organization;
4. fiscal year;
5. ID code of organization;
6. first name, surname, middle name, citizenship and place of residence of each founder of organization; if the founder is a legal person, its name, legal address and information on its registration;
7. first name, surname, middle name, citizenship and place of residence of each legal representative of organisation;
8. information on location, organizational and legal from and registration of structures established by the legal entity on the territory of the Azerbaijan Republic or outside of the Azerbaijan Republic.

1203. Article 14.2.3 provides that non-commercial organisations must provide information on the scope of their activities and objectives and their area of activity.

1204. Information regarding the identity of person(s) who own, control or direct NPO activities, including senior officers and board members is contained in their establishment documents and charters of legal persons. The Azerbaijani authorities advise that establishment documents and charters of legal persons are kept in the state recording system. Although registration of religious organisations is done separately, the evaluators are advised that it is done based on the requirements of this legislation and that such register is also publicly available.

1205. Pursuant to Article 18.2 information on registered and recorded legal persons, representations and branches shall be published in the official state newspaper. Pursuant to Article 18.1 everyone has a right to see records of the state recording system, as well as to get extracts from state records and require copies of documents submitted for the registration. The Ministry of Justice of the Republic of Azerbaijan must provide information on registration or non-registration of legal persons, in accordance with the request of any interested person.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1206. The evaluators are advised that Article 31 of the Law on Non-Governmental Organisations provides as follows:

31.1 Upon violation of the requirements made from rules of this Law, non-governmental organization bears the responsibility according to the laws of the Azerbaijan Republic.

31.2 In case of undertaking actions that contradict to the purposes of this law, non-governmental organization receives written warning from the applicable executive body or instructions on liquidation of violations.

31.2-1 A warning is issued about the non-governmental organization in cases of non-submission of data necessary for state register of the legal persons or submission of incorrect data.

31.3 Non-governmental organization has the right to appeal to court against the given warning.

31.4 If non-governmental organization received more than two warnings or instructions on correction of violations within a year, the court can liquidate non-governmental organization.

31.5. The operation of the non-governmental organization that hinders the elimination of the situation which caused the introduction of emergency situation may be suspended as prescribed by the legislation.

31.6. In case the non-governmental organization fails to submit its annual financial report within the defined period, the relevant executive authority issues a written warning to the organization and demands the submission of the relevant report within 30 days. The non-governmental organization that fails to submit the report within that period is liable pursuant to the legislation of the Republic of Azerbaijan.

1207. The Ministry of Justice advised that deficiencies found last year were the subject of warnings, which have the status of an order. They advised the evaluators that in last ten years they have reduced terminations of organisations, preferring to work with them to address identified problems.

1208. The Azerbaijani authorities advise that the Code of Administrative Infringements contains the following sanctions in respect of NGOs:

Article 223-1. Violation of the Legislation on Acceptance (Provision) of Grants

223-1.3. Receiving the aid in the form of financial resource or in the other pecuniary form without grant contract (decision) by religious organizations, non-government organizations, and branches and representations of foreign non-government organizations working in the Republic of Azerbaijan – entails imposition of penalty on officials in the amount of 2500-5000 AZN, and on legal persons in the amount of 8000-15000 AZN in conjunction with confiscation of resources and items which was direct object of the administrative offense.

Note: Article 223-1.3 of this Code does not apply to donations provided in the Laws of Republic of Azerbaijan on Freedom of Religious Belief and Non-government Organizations (public organisations and funds) and the aid provided by public bodies (i.e. this applies to grants but not donations).

Article 247-4. Omission to include information about donations in the financial report

Omission to include the information about the amount of donations political party or non-government organization, as well as branch and representation of foreign non-government organization receive and persons who make donations in the financial report made to the concerned executive body – entails imposition of penalty on officials in the amount of 1500-3000 AZN, and on legal persons in the amount of 5000-8000 AZN.

Article 247-5. Provision and Acceptance of Money Donated in Cash
Article 247-5.1. Donation of money to the political party or non-governmental organization, as well as branch and representation of foreign non-government organization in cash - entails imposition of penalty on natural persons in the amount of 250-500 AZN, on natural persons in the amount of 3000-7000 AZN;
247-5.2. Acceptance of money by the political party or non-governmental organization, as well as branch and representation of foreign non-government organization in cash - entails imposition of penalty on officials in the amount of 1000-2000 AZN, on legal persons in the amount of 7000-10000 AZN.

Note: This provision does not apply to donations in the amount of no more than 200 AZN (€185) given to non-government organisations working in the Republic of Azerbaijan whose according to its regulations the primary goal is a philanthropy.

1209. Also, being monitoring entities, NGOs bear responsibility for breach of the AML/CFT Law according to Article 348-3 of the Code of Administrative infringements:

Extract from the Code of Administrative Infringements:
Article 348–3. Violation of the legislation on the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism;

348–3.0. *Violation of the legislation on the prevention of the legalization of criminally obtained funds or other property and the financing of terrorism, that is:*

348–3.0.1. *non–observance of the requirements to identify and verify the customer, beneficial owner or authorized representative, or to document the information by the monitoring entities and other persons involved in monitoring;*

348–3.0.2. *non–compliance by the monitoring entities and other persons involved in monitoring with the requirements to preserve the identification documents and documents on the transactions with the funds or other property;*

348–3.0.3. *failure to apply or incomplete applying of the internal control system by the monitoring entities and other persons involved in monitoring, which are legal persons;*

348–3.0.4. *failure to carry out in time or incomplete execution by the monitoring entities and other persons involved in monitoring of the written instructions of the Financial Monitoring Service or supervision authorities given in order and cases stipulated by the Law;*

348–3.0.5. *violation of the requirements of the non–execution of a transaction or submission the information stipulated by the Law, by the monitoring entities and other persons involved in monitoring - entails imposition on official persons of penalty at a rate from 800 AZN up to 1,500 AZN, on legal persons of penalty at a rate from 8,000 AZN up to 15,000 AZN.*

1210. The evaluators have not been provided with any examples of penalties being imposed for such administrative infringements.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1211. As already discussed NPOs will be registered pursuant to the Law on State registration and State recording of legal persons. Pursuant to Article 18.2 of that law information on registered and recorded legal persons, representations and branches shall be published in the official state newspaper. Pursuant to Article 18.1 of that law everyone has a right to see records of the state recording system, as well as to get extracts from state records and require copies of documents submitted for the registration. The Ministry of Justice of the Republic of Azerbaijan must provide information on registration or non-registration of legal person, in accordance with the request of any interested person. There is also a separate register of religious organisations which is administered by the State Committee for Work with Religious Organisations and which is publicly available.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1212. In addition to the provisions of the Law on State registration and State recording of legal persons, the authorities referred the evaluators to Article 10 of the AML/CFT Law which provides as follows:

10.1. *The monitoring entities shall maintain the documents on due diligence measures envisaged by the article 9 of this Law, documents on the transactions with the funds or other property and documents envisaged by articles 9–1 and 9–2 of this Law, in*

the information carriers or in the electronic format within the timeframes indicated below, if no longer period is envisaged by the legislation:

10.1.1. *documents on due diligence measures of the customer, beneficial owner or authorized representative – at least for 5 (five) years after the customer's account is closed or after termination of legal relations with the customer;*

10.1.2. *documents on the transactions with the funds or other property conducted by the customer (account files, business correspondence and other relevant documents) and the information prepared in accordance with the article 11 of this Law – at least for 5 (five) years following completion of the transaction.*

10.2. *Monitoring entities are required to ensure that all customer and transaction records and information mentioned in the article 10.1 of this Law are available on a timely basis to the supervision authorities and financial monitoring organ upon appropriate request;*

10.3. *The timeframe stipulated in the article 10.1 of this Law may be prolonged if requested by supervision authorities or financial monitoring organ in specific cases upon proper authority.*

1213. Article 29 of the Law on Non-Governmental Organisations states that Fund shall be obliged to publish annual reports about use of its property. The evaluators are advised that only foundations are obliged to publish an annual report regarding utilisation of their property but that all NPOs submit an annual financial report to the MFA no later than 1 April each year. The form, content and manner of submission of these reports are determined by the Cabinet of Ministers.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

1214. Save as set out below, there are no specific provisions in place regarding investigation and information gathering on NPOs.

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1), Access to information on administration and management of NPO-s during investigations (c.VIII.4.2), Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1215. The authorities advise that there is effective coordination and cooperation between relevant state authorities that hold information on NPOs and that within this framework the MFA (which reviews NPOs annual reports), the Ministry of Justice (which has supervisory authority over NPOs) and the FMS (which conducts monitoring based on information sharing by NPOs) and law enforcement organisations all cooperate on this issue**.** Further detail of how this cooperation works in practice has not been provided to the evaluators.

1216. The authorities advise that the Ministry of Justice recently introduced a Unified Electronic System dedicated to NPOs. This system is a universal tool for the prompt exchange of information among NPOs and the state authorities. Thus, by this system, since 2014 the FMS has periodically published relevant information such as information on non-cooperative countries and territories, updated lists of designated persons and information on the level of cooperation between NPOs and the FMS in the AML/CFT sphere.

1217. The Azerbaijani authorities have nothing to add to the information provided in respect of Criteria VIII.3.3 and 3.4 above in respect of availability of information on the administration and management of NPOs.

1218. There are no other specific provisions regarding investigation and information gathering on NPOs.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1219. Mechanisms for responding to international requests are the same as those outlined in respect of Recommendations 36, 38, 40 and SR.V.

Effectiveness and efficiency

1220. The sector is now subject to monitoring and the vulnerability to the financing of terrorism has been considered. The sector is also subject to the provisions of the AML/CFT Law and as such has been included within the definition of "monitoring entities". The sector is also subject to AML/CFT supervision in accordance with the AML/CFT Act.

1221. The evaluators note that a relatively low number of reviews of NPOs have been carried out by the Ministry of Justice and although some training has been carried out by the Ministry of Justice.

1222. The evaluators have not been provided with sufficient information about coordination and cooperation between relevant state authorities that hold information on NPOs to allow them to assess effectiveness in this regard although, as noted above reviews of the vulnerability of the sector have been undertaken by the main stakeholders. See also under Recommendation 31 below.

1223. Deficiencies identified in respect of Recommendations 36, 38, 40 and SR.V may impact compliance in respect of c.VIII.5

5.3.2 Recommendations and comments

1224. The evaluators welcome the fact that the Ministry of Justice is looking to increase its training programme. The forthcoming national risk assessment should give consideration to what further training may be required.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**C**	

6 NATIONAL AND INTERNATIONAL CO-OPERATION

National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1225. The report on the third round evaluation of Azerbaijan's AML/CFT system in 2008 produced a PC rating for Recommendation 31 based on the fact that at that time there was no real mechanism in place to coordinate at working level.

Legal Framework

1226. The following laws are relevant to the consideration of Recommendation 31:

- The Law of the Republic of Azerbaijan "On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism";
- Decree on approval of the Statute of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1227. Recommendation 31 requires policy makers, the FIU, law enforcement and supervisors to have effective mechanism in place which enable them to cooperate, and, where appropriate, coordinate domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing.

1228. At a policy level, the FMS under the Central Bank of Azerbaijan is the state authority empowered to provide implementation of the state policy in the sphere of prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism, to improve the inspection system and to coordinate the activity of the relevant state authorities in this field (Article 1 of the Decree on the application of the AML/CFT Law). In order to carry out its mission, the FMS is authorised to interact with other state authorities (article 4 of the Statute), to coordinate the activity of monitoring entities, other persons involved in monitoring, supervision authorities and other state authorities (article 9.2 of the Statute) and to set up interagency cooperation and consultative bodies or working groups (article 11.9 of the Statute).

1229. The on-site visit confirmed to the evaluation team the fact that the FMS has taken the lead in coordinating the components of the national AML/CFT system. Very good bilateral cooperation relationships were observed between the FMS and other actors with AML/CFT responsibilities. Also, two strategic plans have been developed by the FMS for the periods 2010-2013 and 2014-2017, dedicated to institutional development and performance sustainability. Although these documents are not an AML/CFT strategy for the system, they do include some specific objectives dedicated to increasing the level of national cooperation, especially with the financial and non-financial sector.

1230. At an operational level, the FMS has signed a Memoranda of Understanding with the Anti-corruption Directorate under the General Prosecutor's Office (February 2010) and the Ministry of National Security (May 2010). Similar Memoranda were also concluded with all supervision authorities in Azerbaijan, namely the Central Bank, Ministry of Taxes, Ministry of Communication and Information Technologies, Chamber of Auditors, State Committee on Securities and State Committee on Work with Religious organisations. These agreements provide mainly for effective cooperation means, including regular working meetings,

consultations and joint trainings and providing information and technical supports between counterparts. According to the Memoranda concluded with the General Prosecutor's Office and the Ministry of National Security, these authorities are required to provide the FMS with feedback on the cases which were disseminated to them.

1231. In addition, the State Committee on Securities signed MOUs with the Central Bank and the Chamber of Auditors that cover, among other things, AML/CFT issues. No other MOUs on AML/CFT issues were signed.

1232. Representatives of the FMS informed the evaluation team that within this cooperation framework, the FMS specialists and law enforcement agencies' representatives (General Prosecutor and Ministry of National Securities) meet on an ongoing basis to discuss money laundering and terrorist financing cases, trends and schemes. Also, such meetings are held with supervision authorities to point out on the weaknesses in the reporting system. In addition, on issues on suspicious physical transportation of values, the specialists within the FMS meet also on a regular basis with the representatives of the State Customs Committee.

1233. In numbers, starting with 2010, the FMS organised multilateral or bilateral meetings as follows: 2010 – 10 meetings; 2011 – 8 meetings; 2012 – 8 meetings; and 2013 – 6 meetings. According to information provided, the topics addressed within those meetings covered feedback on the disseminations made by the FMS to the LEAs, supervisory actions taken by the supervisory authorities, compliance of the reporting entities with the national legislation, actions to integrate databases available at the AML stakeholders, etc.

1234. As regards coordination with policy makers, the FMS indicated that direct meetings dedicated to discussions on possibilities to improve the legislative framework have been organised, with attendance of specialists from the FMS. Also, a number of meetings have been organised with officials from the President Administration and Cabinet of Ministers regarding state policy on AML/CFT and legislative development in this field.

1235. During on-site interviews most of the interviewed authorities mentioned their good cooperation relationships with FMS and there were even examples of cooperation between supervision authorities and law enforcement (ex. auditors used as experts in ML/TF cases investigated/prosecuted by the General Prosecutor's Office).

1236. Although, at the time of the on-site visit there was no AML/CFT strategy adopted in Azerbaijan, significant progress in national cooperation on anti-money laundering and terrorist financing issues has been achieved since the third evaluation round, especially at operational level. In this respect, operational mechanisms dedicated to cooperation between FMS and law enforcement authorities or between FMS and monitoring entities and their supervision authorities are in place. Such mechanisms are however bilateral.

1237. Even if the FMS is in contact with the main actors with AML/CFT responsibilities it does that on a one to one basis or with one category at a time (e.g. meetings with representatives of the monitoring entities). It is the opinion of the evaluation team that such an approach falls short of the spirit of essential criterion 31.1 as it would not ensure an overarching coordination of all the AML/CFT stakeholders and thus does not meet entirely the requirement for policy coordination across all relevant competent authorities.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS) (c. 31.2)

1238. According to information provided by the Azerbaijani authorities, the FMS held a number of round table discussions with the representatives of the monitoring entities during which legislative amendments in the AML/CFT sphere were discussed. Apart from such round table meetings, trainings sessions and workshops organised by the FMS were used for discussions on

AML/CFT laws, regulations, guidelines, etc. Moreover, the FMS indicated that it is standard procedure to post draft legislation on its official website for comments from anybody interested. All useful comments are taken into consideration when developing the final draft piece of legislation.

1239. Also, the FMS indicated that it has received a number of requests from reporting entities on the interpretation of the AML/CFT Law. Such requests were dealt with by the Legal and Methodological, Analytical, Supervision and International Cooperation Departments of the FMS whose staff provided clarifications as to the provisions of not only the AML/CFT Law, but also the decrees, by-laws and other legislation, which are the components of the national AML/CFT regime.

Recommendation 32.1 (Review of the effectiveness of the AML/CFT system on a regular basis)

1240. According to information provided by the Azerbaijani authorities, by the Decision of the Director of the FMS, dated 9 February 2011, # 005, the "*Form of submission of statistical information on the offences related to the legalization of criminally obtained funds or other property and the financing of terrorism to the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan*" was approved and included to state registration. According to the Item 2 of this Form, the Ministry of National Security and the General Prosecutor's Office submit statistical information on the offences related to the legalisation of criminally obtained funds or other property and the financing of terrorism once in six months to the FMS. By using this information, the FMS generalises this information and uses it in its strategic analyses. This way the FMS determines its priorities and spheres of risk.

1241. Although there is a solid system in place for the collection of statistical information on AML/CFT, the fact that information is aggregated into one place is not sufficient for an effective review of the works of the system. It is the spirit of Essential Criteria 1 of Recommendation 32 that the strategic analyses developed by the FMS are subject to common review of the actors involved in the AML/CFT field for policy development purposes. The Azerbaijani authorities indicated that the results of such analyses are discussed during the meetings of the FMS with other actors in the AML/CFT field.

Recommendation 30 (Policy makers – resources, professional standards and training)

1242. According to information provided by the Azerbaijani authorities, all employees of policy makers in Azerbaijan are considered civil servants. The professional standards for the civil servants are regulated by the Law on Civil Service and the Rules of Ethic Conduct of Civil Servants. The first normative act provides, in addition to the definition of the civil servants, clear rules on topics like who has the right to be recruited as a civil servant, the recruitment procedure, ongoing training of civil servants and the performance evaluation of this category. The Rules of Ethic Conduct of Civil Servants regulates topics including: honest conduct for such category (Article 4); increasing professionalism and private responsibility (Article 5); impermissibility of acquiring material and non-material gifts, privileges and concessions (Article 12); prevention of Corruption (Article 13); restrictions on acceptance of gifts (Article 14); prevention of conflict of interests (Article 15); control over observance of the ethics conduct rules (Article 20); and responsibility for violation of ethical conduct rules (Article 23).

Effectiveness and efficiency

1243. In the period under review, the FMS has been very active in improving national cooperation in the area of AML/CFT. The FMS should certainly be commended for the current level of operational cooperation with other AML/CFT stakeholders. Nevertheless the AML/CFT system in Azerbaijan seems to be lacking an overarching policy coordination mechanism dedicated to revision and strategic coordination of its components.

1244. Although cooperation appeared to be working effectively on a policy level the evaluators noted that the Ministry of the Interior, which is responsible for the investigation of general financial crime did not have direct access to information held by the FIU and did not always receive FIU disseminations via the GPO.

6.1.2 Recommendations and Comments

Recommendation 31

1245. Efforts should be paid to implement a continuous and consistent, multilateral cooperation and coordination mechanism dedicated to problem identification at AML/CFT system level and the adoption of proactive or reactive policies to cope with emerging or existent issues.

1246. The FMS should have the authority to disseminate financial information to all relevant investigative bodies, when following analysis, indications of crimes other than money laundering or terrorist financing emerge. The FMS should be authorised to disseminate financial information, under proper safeguards, upon the request of another domestic authority for investigation purposes.

Recommendation 32

1247. Statistics collated and prepared by the FMS should be available to all key stakeholders and used to develop AML/CFT policy and strategy.

Recommendation 30

1248. This Recommendation appears to be fully met in relation to Recommendation 31.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**LC**	• Although bilateral cooperation exists, there is no real mechanism in place for AML/CFT policy coordination of all the AML/CFT stakeholders. • Lack of cooperation between the GPO and Police on financial intelligence.

The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Recommendation 35 (rated PC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1249. In the 3rd round MER Azerbaijan was rated PC for R.35 because the effectiveness of implementation of standards in relation to ML give rise to doubts, some aspects of the physical and material elements of the Vienna Convention needed clarification and although the Palermo, Vienna and FT Conventions had been brought into force there were still reservations about effectiveness of implementation in some circumstances, particularly terrorist financing criminalisation and some aspects of the provisional measures regime.

1250. In the 3rd round MER Azerbaijan was rated PC for SR.I because the FT offence did not fully comply with the Terrorist Financing Convention, there was no clear structure for the conversion of the designations under 1267 and 1373 and a comprehensive system was not in place with, in

particular, sufficient guidance and communication mechanisms with all FIs and DNFBPs, there were no clear and publicly known procedures for listing/delisting and the Financing of Terrorism Convention was not covered in relation to identification of beneficial owners, a precise mechanism for the freezing of funds related to terrorist financing was not in place and preventative measures in the Financing of Terrorism Convention were not implemented.

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1251. The United Nations Convention against Illicit Traffic in Narcotic and Psychotropic Substances, 1998 (Vienna Convention) was signed in 1992 and ratified by Law №356 of 28 October 1992 and 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 United Nations Convention for the 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

1252. Since the ratification of these conventions does not necessarily mean full implementation as required by R.35 and SR.I, the Methodology requires evaluators to be satisfied that the most relevant articles of the respective conventions are actually implemented.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1253. Some concerns in respect of the confiscation of indirect proceeds of crime, value confiscation and third party confiscation are expressed earlier in the report (please see the recommendations and comments at R.3). Other issues identified in respect of compliance with the Vienna and Palermo Conventions include deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property and a lack of legislative confirmation of the practice of inferring the intentional element of money laundering from factual circumstances (please see the recommendations and comments at R.1 and R.2).

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1254. The comments made in the paragraph above apply equally here. It is also noted that liability of legal persons is not yet covered.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1255. Issues identified in respect of compliance with the Terrorism Financing Convention include a deficiency in criminalising all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist *Financing* Convention, a lack of legislative confirmation of the practice of inferring the intentional element of terrorist financing from factual circumstances and the fact that liability of legal persons is not yet covered (please see the recommendations and comments at SR.II).

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1256. Issues identified in respect of compliance in freezing terrorist funds are set out in detail in the recommendations and comments at SR.III.

Additional element – Ratification or Implementation of other relevant international conventions

1257. The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Strasbourg Convention) was signed on 7 November 2001 and ratified by Law №420-IIQ of 1 March 2003. However, similar deficiencies in implementation to those identified in respect of the conventions referred to above can be identified, such as deficiencies in respect of the offence of acquisition, possession and use and concerns about value confiscation.

6.2.2 Recommendations and comments

1258. It is welcomed that Azerbaijan has ratified all the relevant instruments. However, the deficiencies identified above in connection with the implementation of the Vienna, Palermo and Terrorist Financing Conventions and the Implementation of UNSCRs relating to Prevention and Suppression should be addressed.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• Deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property; • Offences in the Annex to the Terrorist Financing Convention not fully transposed into the Criminal Code; • Authorities should be able to attack property held by third parties where there is a gift made or inadequate value in exchange for the property; • Criminal liability for ML not yet extended to legal persons and no civil or administrative liability for money laundering by legal persons.
SR.I	**PC**	• Offences in the Annex to the Terrorist Financing Convention not fully transposed into the Criminal Code; • Various deficiencies identified in respect of SR.III.

Mutual legal assistance (R. 36, 38, SR. V)

6.3.1 Description and analysis

Recommendation 36 (rated LC in the 3rd round report)

Summary of 2008 factors underlying the rating

1259. In the 3rd round MER Azerbaijan was rated LC for R.36 in view of the fact that the definitional problem of the money laundering offence may render MLA problematic in some cases involving money laundering as a “stand alone” crime and money laundering involving conversion or transfer and simple possession and that the absence of corporate liability could be a problem in providing MLA.

Legal framework

1260. The legal framework for MLA consists of multilateral treaties, bilateral mutual legal assistance treaties and the Law on Legal Assistance in Criminal Matters. The legal framework is unchanged since the 3rd round report.

Widest possible range of mutual assistance (c.36.1)

1261. As noted in the 3rd round report, the European Convention on Mutual Assistance in Criminal Matters, 1959 and its Protocols was signed by Azerbaijan on 7 November 2001 and ratified on 4 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 concerned acts which are not qualified as an offence under the legislation of the Republic of Azerbaijan. The European Convention on Extradition, 1957, and its additional Protocols of 15 October 1975 and 17 March 1978 were signed on 7 November 2001 and ratified by the Law of 17 May 2002. As noted elsewhere in this report, Azerbaijan is also a party to the International Convention for the Suppression of the Financing of Terrorism, The Vienna and Palermo Conventions and the

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 1990. Azerbaijan is also part of the Commonwealth of Independent States (CIS) 1993 Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.

1262. Since 2004, Azerbaijan has concluded bilateral agreements with countries such as Republic of Moldova, Kazakhstan, Kyrgyzstan, Uzbekistan, Russian Federation, United Arab Emirates, Peoples Republic of China, Morocco and India.

1263. The Ministry of Justice in Azerbaijan is the central authority which deals with mutual legal assistance and cooperation matters. As noted in the 3rd round report, 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 international laws and there is direct applicability of the conventions. Therefore, domestic law can only be applicable in non-treaty based co-operation or for the regulation of issues not otherwise covered by the applicable treaty.

1264. Under Article 488.2 of the CPC, the authorities are in a position to provide MLA in respect of AML/CFT Investigations. Under that provision, the MLA shall be rendered to another state on the basis of the CPC, other laws applicable in Azerbaijan or provisions in an international treaty executed to this effect to which Azerbaijan is a party. Azerbaijan's Law on Legal Assistance in Criminal Matters makes provision for assistance in the absence of a treaty with Azerbaijan and provides for assistance based upon the principle of reciprocity.

1265. The legal assistance which can be provided by Azerbaijan where the assistance is based upon reciprocity is set out in Article 2.3 of the Law on Legal Assistance in Criminal Matters, and includes the following:

- taking the testimony or statements of persons;
- provision of judicial documents;
- searching or seizure;
- examining objects, residences or other places;
- provision of papers, information or material evidence;
- presenting the opinions of experts;
- presenting the originals or required certified copies of documents, including bank and financial records;
- determining identity or place of residence;
- carrying out search or seizure operations on property;
- determining criminally obtained funds, property and means used for committing crime;
- carrying out other measures that are in accordance with the legislation of Azerbaijan.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1266. No significant concerns were raised by any jurisdictions in response to MONEYVAL's request for input with the regard to the provision of assistance by Azerbaijan. However, a lack of statistics on mutual legal assistance impedes the evaluation of effectiveness.

Mutual legal assistance should not be prohibited or made subject to unreasonable, disproportionate or unduly restrictive conditions (c. 36.2)

1267. According to the Law on Legal Assistance in Criminal Matters the following are the grounds for refusal in provision of legal assistance:

1. if there are sufficient reasons to assume that provision of legal aid would damage sovereignty, security or other interests of the Republic of Azerbaijan;

2. if the request for legal aid is issued in respect of deeds to be considered as political crime by the Republic of Azerbaijan;
3. if the request for legal aid is issued in respect of crime against military service;
4. if the request for legal aid is issued in respect of a deed not considered as a crime in accordance with the legislation of the Republic of Azerbaijan;
5. if there are sufficient grounds to assume that the request is issued with a view to prosecution of a person in connection with his/her race, nationality, language, religion, citizenship, political views or sex;
6. if the request is issued in respect of a criminal offence being investigated or heard by the court in the Republic of Azerbaijan and its implementation cannot be postponed;
7. if the form and content of the request for legal assistance is not consistent with the provisions of Article 4 of the Law.

Clear and efficient processes for the execution of mutual legal assistance requests in a timely way and without undue delays (c. 36.3)

1268. With respect to all forms of MLA, the request is executed according to the procedure provided by Azerbaijani law or according to the procedure provided by an international agreement to which Azerbaijan is a 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 terrorist financing would be handled as a priority. At the same time the Azerbaijani authorities were unable to provide an approximate time frame for dealing with requests, since no requests in relation to money laundering offences had been received.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1269. 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 the evaluators are advised that 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. However, the evaluators have not been made aware of any examples of mutual legal assistance having been provided in connection with a fiscal matter.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1270. The Azerbaijani authorities advise that Azerbaijan does not refuse requests for mutual legal assistance on the grounds of law that impose a secrecy or confidentiality requirements on financial institutions. A request relating to such issues is treated according to the national provisions for lifting bank secrecy by the Court, upon request of the prosecutor.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1271. The Azerbaijani authorities advise that investigative measures as search and seizure and the production of bank and financial records are covered by article 2.3 of the Law on Legal Assistance in Criminal Matters, and Azerbaijan is in a position to respond to a request from a foreign state for such measures. Under Article 12 of the Law on Legal Assistance in Criminal Matters, the Ministry of Justice or other competent authority is charged with carrying out search and seizure operations at the request of the foreign state in accordance with the CPC. With regard to the provisions of the CPC, it is noted that Azerbaijan was rated LC for Recommendation 28 in the third round evaluation.

Avoiding conflicts of jurisdiction (c. 36.7)

1272. The law is silent as to the possibility of using a procedure to transfer criminal procedures to another State or from another State to Azerbaijan in order to avoid conflicts of jurisdiction.

Article 3 of the Law on Legal Assistance in Criminal Matters provides that if a legal assistance request interferes with an investigation being carried out by law enforcement authorities or a court examination of a criminal case in Azerbaijan, the assistance will be postponed.

1273. There are no rules in Azerbaijani legislation 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 arise in practice, they would be solved based on Article 148 of the Constitution. According to Article 148 of the Constitution, international agreements where the Republic of Azerbaijan is one of the parties constitute an integral part of the legislative system of the Republic of Azerbaijan. The idea is that, the solution of such conflicts is affected in accordance with international practice in this regard. 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 of prosecutions in both countries. In that case, the relevant prosecution agency of Azerbaijan will either refer the criminal case to the other state, or request that the foreign counterpart agency do the same.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1274. According to Article 5 of the Law on Legal Assistance in Criminal Matters, the Ministry of Justice or other competent authority of the Republic of Azerbaijan executes the request for legal aid in the relevant way defined by the legislation of the Republic of Azerbaijan. If the Ministry of Justice or other competent authority of the Republic of Azerbaijan is not entitled to consider the request on legal aid, it should forward the request to the competent authority and inform the competent authority of the foreign state. According to Article 15 of the European Convention on Mutual Assistance in Criminal Matters requests for mutual assistance and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.

Special Recommendation V (rated PC in the 3rd round report)

International Co-operation under SR. V (applying 36.1 – 36.7 in R.36, c.V.1)

1275. The same legal provisions are available in respect of terrorist financing. International cooperation in the area of FT could in some instances suffer from the remaining gaps identified in compliance with the Terrorist Financing Convention. The absence of corporate liability has the potential to impede cooperation. Statistics on mutual legal assistance are not readily available.

Additional element under SR V (applying c. 36.8 in R. 36, c.V.6)

1276. The same legal provisions are available in respect of terrorist financing.

Recommendation 38 (rated PC in the 3rd round report)

<u>Summary of 2008 factors underlying the rating</u>

1277. In the 3rd round MER Azerbaijan was rated PC in view of the very limited range of offences susceptible to confiscation domestically and the fact that dual criminality may adversely inhibit assistance.

Legal framework

1278. 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 Assistance in Criminal Matters and the Presidential Decree on regulations on assignment of part of confiscated 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 Assistance in Criminal Matters should be applied. Article 2.3 of that Law sets out the acts which may be carried out in order to provide mutual legal assistance, inter alia, searching or seizure of the possession, determination of legally obtained funds, property, as well as funds used for committing crime

Ability to provide an effective and timely response to mutual legal assistance requests by foreign countries related to identification, freezing, seizure, or confiscation (c. 38.1) and Confiscation of corresponding value (c. 38.2)

1279. In the absence of any statistics in this area it is difficult to determine whether and to what extent Azerbaijan could provide effective and timely responses to foreign requests for freezing, seizure or confiscation although it should be noted that no significant concerns were raised by any jurisdictions in response to MONEYVAL's request for input with the regard to the provision of assistance by Azerbaijan. It has previously been noted that dual criminality is applied strictly for coercive measures. Whilst the confiscation regime has been extended to cover all predicate offences and gaps have been addressed in terms of introducing predicate offences of insider trading and market manipulation and improving the terrorist financing offence, it is unlikely that Azerbaijan would provide assistance in respect of any offences for which dual criminality does not apply.

1280. 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, the authorities would still be able to decline assistance on provisional measures in cases where provisional measures could not be applied domestically. Possible difficulties in respect of indirect proceeds third party assets and tools and instrumentalities intended for use to commit a crime (see recommendations and comments in respect of R.3) may impact on ability to assist.

Arrangements for coordinating seizure and confiscation actions with other countries (c. 38.3)

1281. Article 5 of the Law of the Republic of Azerbaijan on "*Legal Assistance in Criminal Matters*" states that with the allowance of the Ministry of Justice or other competent authority of the Republic of Azerbaijan the official representatives of the relevant authority of the requesting foreign state could participate in execution process of the request on legal assistance. Though it is understood that arrangements could be made for co-ordinating seizure and confiscation actions on a case by case basis, the evaluators have not been made aware of any examples showing the existence of any specific arrangements to co-ordinate seizure and confiscation actions with other countries in practice.

Creation of a fund for assets seized (c. 38.4)

1282. By the Presidential Decree of 16.10.2006 "*Regulations on assignment of part of confiscated property to improvement of material and technical basis of law enforcement and other agencies*" was approved. Pursuant to the Paragraph 1.2 of the Regulations part of the confiscated property on the basis of judicial decision shall be submitted to the law enforcement agencies, which conducted preliminary investigation and bodies, which instituted administrative execution. According to the Paragraph 2 of mentioned Regulations assignment of part of confiscated property to law enforcement and other agencies shall be conducted as follows:

1. auction sale of relevant property and assignment of derived funds;
2. deposit of funds in national and foreign currency to the account of MFA at the National bank of Azerbaijan;
3. in kind.

1283. The evaluators are advised that no property has been sold at auction by the General Prosecutor's Office of the Republic of Azerbaijan. However, the evaluators are advised that on the basis of criminal cases investigated the following have been deposited into the accounts of the Central

Bank and the MFA: (i) 100,217.80 AZN and US$ 63,800 in 2011; (ii)_2,067,397.20 AZN, US$ 41,738 and jewellery equivalent to 1,107 AZN in 2012; and (iii) 903,326 AZN and US$ 14,381 in 2013.

Distribution of confiscated assets (c. 38.5)

1284. The Azerbaijani authorities point to Article 14 of the Palermo Convention which permits (but does not oblige) countries to give consideration to concluding arrangements with other contracting parties to share such proceeds. However, the evaluators are advised that no such arrangements have in fact been entered into.

Additional elements (c. 38.6)

1285. The evaluators understand that non-criminal confiscation orders are currently not consistent with the principles of Azerbaijani domestic law. Therefore, Article 465 of the Civil Procedure Code would appear to give a ground for refusal of such a foreign order.

Special Recommendation V (rated PC in the 3rd round report)

International Co-operation under SR. V (applying 38.1 – 38.5 in R.38, c.V.3)

1286. The same legal provisions are available in respect of terrorist financing. Therefore c.38.1 to 38.3 deficiencies would apply equally here.

Additional element under SR V (applying c. 38.6 in R. 38, c.V.7)

1287. The same conclusions apply in respect of terrorist financing. Therefore c.38.1 to 38.3 deficiencies would apply equally here.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1288. The evaluators are advised that, in terms of criminal mutual legal assistance, three people are currently employed and there are vacancies for three additional people to be employed in this team. There is a separate team for civil mutual legal assistance.

Recommendation 32 (Statistics – c. 32.2)

1289. Statistics on mutual legal assistance are not readily available. This impedes an assessment of effectiveness and could prevent the authorities from identifying trends in connection with the provision of mutual legal assistance.

Effectiveness and efficiency

1290. In terms of Recommendation 36, international cooperation in the area of ML could in some instances suffer from the remaining gaps identified in compliance with the Palermo and Vienna conventions. The lack of corporate liability could impede effective mutual legal assistance. The evaluators are advised that no requests for mutual legal assistance in relation to ML have been received which makes it more difficult to assess effectiveness in this regard. The evaluators have also not been made aware of any mutual legal assistance having been provided in respect of fiscal matters. Statistics on mutual legal assistance are not readily available.

1291. In terms of Recommendation 38, possible difficulties in respect of indirect proceeds and third party assets (see recommendations and comments in respect of R.3) may impact on ability to assist. There are no formal arrangements for co-ordinating seizure and confiscation actions although ad hoc arrangements could be put in place if the need arose. Although the Azerbaijani authorities point to Article 14 of the Palermo Convention which permits (but does not oblige) countries to give consideration to concluding arrangements with other contracting parties to share such proceeds, the evaluators are advised that no such arrangements have in fact been entered into.

1292. The authorities confirm that they have not received or made any mutual legal assistance requests related to identification, freezing, seizure, or confiscation and confiscation of corresponding value.

1293. In terms of SR.V, international cooperation in the area of FT could in some instances suffer from the remaining gaps identified in compliance with the Terrorist Financing Convention. The absence of corporate liability has the potential to impede cooperation. C.38.1 to 38.3 recommendations and comments apply equally in a SR.V context.

6.3.2 Recommendations and comments

Recommendation 36

1294. International cooperation in the area of ML could in some instances suffer from the remaining gaps identified in compliance with the Palermo and Vienna conventions. In particular, the lack of corporate liability could impede effective mutual legal assistance.

1295. Statistics on mutual legal assistance are not readily available. This impedes an assessment of effectiveness and could prevent the authorities from identifying trends in connection with the provision of mutual legal assistance. Steps should be taken to ensure such statistics can be provided going forward.

Recommendation 38

1296. Possible difficulties in respect of indirect proceeds, third party assets and tools and instrumentalities intended for use to commit a crime (see recommendations and comments in respect of R.3) may impact on ability to assist.

1297. There are no formal arrangements for co-ordinating seizure and confiscation actions although ad hoc arrangements could be put in place if the need arose. Consideration should be given to putting such formal arrangements in place.

1298. Although the Azerbaijani authorities point to Article 14 of the Palermo Convention which permits (but does not oblige) countries to give consideration to concluding arrangements with other contracting parties to share such proceeds, the evaluators are advised that no such arrangements have in fact been entered into. Consideration should be given to whether steps could be taken to enter into such arrangements.

1299. It was not clear to the evaluators that the recommendation at paragraph 680 of the 3rd round report that "The Azerbaijani authorities are recommended to consider a review of existing law and practice in this area to identify features which may act as barriers to the development of practical co-operation" has been taken forward. The evaluators endorse this recommendation.

Special Recommendation V

1300. International cooperation in the area of FT could in some instances suffer from the remaining gaps identified in compliance with the Terrorist Financing Convention. C.38.1 to 38.3 recommendations and comments apply equally in a SR.V context.

Recommendation 30

1301. The evaluators note that the resources of the central authority for sending/receiving mutual legal assistance/extradition requests are in the process of being increased.

Recommendation 32

1302. Steps should be taken to ensure that statistics on mutual legal assistance can be provided going forward.

6.3.3 Compliance with Recommendations 36, 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**LC**[15]	• The remaining technical shortcomings in respect of R.1 and R.2 have the potential to impede effective mutual legal assistance; **Effectiveness** • Lack of statistics means that effectiveness could not be assessed.
R.38	**LC**	**Effectiveness** • Possible difficulties in respect of indirect proceeds and third party may impact on ability to assist; • No formal arrangements for co-ordinating seizure and confiscation actions.
SR.V	**LC**	• Difficulties in respect of indirect proceeds and third party assets may impact on ability to assist.

Other Forms of International Co-operation (R. 40 and SR.V)

6.4.1 Description and analysis

Recommendation 40 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1303. The report on the third round evaluation of Azerbaijan's AML/CFT system in 2008 produced a PC rating for Recommendation 40 based on the following factors:

- 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.

Legal framework

1304. The legal framework applicable to Recommendation 40 is:

- The Law of the Republic of Azerbaijan "*On the Prevention of the Legalisation of Criminally Obtained Funds or Other Property and the Financing of Terrorism*";
- Decree "*on approval of the Statute of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan".*

Wide range of international co-operation (c.40.1), Provision of assistance in timely, constructive and effective manner (c.40.1.1), Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

1305. The general legal framework for international cooperation on anti-money laundering and terrorist financing matters in Azerbaijan is provided by article 20 of the AML/CFT Law. Based on these provisions state authorities of the Republic of Azerbaijan carrying out their activity in the AML/CFT field, shall cooperate with the competent authorities of foreign states in the

[15] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 28.

sphere of combating against legalisation of criminally obtained funds or other property and the financing of terrorism, exchange of information on committed crimes, execution of the court decisions and criminal prosecution in accordance with the legislation of the Republic of Azerbaijan and the international treaties to which the Republic of Azerbaijan is a party.

FIU

1306. As already mentioned, paragraph 1 of article 20 of the AML/CFT Law authorises the FMS to cooperate with competent authorities of foreign states in the sphere of combating against legalisation of criminally obtained funds or other property and the financing of terrorism.

1307. To this end, the FMS submits information on AML/CFT issues to foreign competent authorities upon their requests or on its own initiative, and requests such information from the foreign competent authorities in accordance with the legislation of the Republic of Azerbaijan and the international treaties to which the Republic of Azerbaijan is party (article 20.2 of the AML/CFT Law).

1308. From an operational perspective, the Analytical Department within FMS is responsible for performing information exchange with foreign financial intelligence units. The process itself is regulated by paragraph 13 of the *Methodological guidance on analytical activities of the Analytical Department of the Financial Monitoring Service under the Central Bank of the Republic of Azerbaijan* and is conducted through the relevant electronic information system of the Egmont Group, the Egmont Secure Web (ESW), pursuant to Principles of Information Exchange between Financial Intelligence Units, with the security of information ensured. The FMS became a full member of the Egmont Group of Financial Intelligence Units in 2011 and is connected to the ESW.

1309. In this respect, the FMS has one analyst from the Analytical Department, dedicated full time to information exchange (communication via ESW) with foreign counterparts, while the other analysts of the structure assist in research for foreign information requests.

1310. Exchange of information with relevant competent authorities of non-Egmont Group member states is conducted through official mail.

1311. During the reference period, the authorities indicated that FMS received 82 requests for information from foreign FIUs and 8 spontaneous disseminations. Also, the unit sent 13 requests to counterparts and was involved in one spontaneous dissemination of information. The Azerbaijani authorities indicated that the difference between incoming and outgoing requests is related to the fact that relatively few reports received by the FMS relate to an extraterritoriality element. The average interval for answering requests is one month, which is in line with the provisions of Item 21 of the "*Egmont Group of Financial Intelligence Units - Operational Guidance for FIU Activities and the Exchange of Information*". According to representatives of the FMS, the vast majority of the requests received by the unit (75 requests) were responded within a month. All the urgent requests received by the FMS were answered on the bases of first priority. Only the responses to 7 requests which targeted a large number of subjects were answered within two months. In these later cases the foreign FIUs were informed that the time to respond to their requests would be prolonged.

Table 42: Information requests to the FMS

Year	Incoming requests	Incoming spontaneous information	Total	Outgoing requests	Outgoing spontaneous information	Total
2009	1		1			2
2010	4	1	5	3		3

2011	5	2	7	1		1
2012	36	4	40	4	1	5
2013*	36	1	37	5		5
Total	82	8	90	13	1	14

* To 1 December 2013

1312. The FMS submits information to the competent authority of foreign states as long as it does not contradict with the legislation of the Republic of Azerbaijan and does not affect its national interests or the submitted information forms a basis for a competent authority of the foreign state to initiate a criminal investigation or to send a relevant request (article 20.3 of the AML/CFT Law). Also, the information shall be submitted to the competent authority of the foreign state provided that the information will not be used for purposes not indicated in the request (article 20.4 of the AML/CFT Law).

1313. The FMS has signed one MOU and one Agreement in AML/CFT field with the FIUs of Republic of Moldova and Belarus. Presently, discussions and procedures for signing of MoUs with Israel, San Marino, “The former Yugoslav Republic of Macedonia”, Russia, Slovenia and Ukraine are in an advanced stage. The FIUs of Turkey, Latvia and Poland have also expressed their willingness to sign MOUs with the FMS.

1314. The evaluation team considers that the wording of the current legislative framework is wide enough to allow the FMS to provide the widest range of international cooperation to foreign counterparts, both spontaneously and upon request and in relation to both money laundering and the underlying predicate offence. To this end, the FMS uses the channels of information exchange provided by the Egmont Group of Financial Intelligence Units. Also, no reports have been received on possible issues affecting information exchange with the FMS.

Supervisory authorities

CBA

1315. International cooperation and exchange of information by the CBA for the use of supervisory purposes is regulated in the CBA Law which provides for a wide range of both (Art. 9 &51 Law on the CBA).

1316. In addition, the ability to exchange information arises from Art.5.3 of the Law on Banks that prescribes that the CBA may exchange information with foreign banks’ supervisory and regulatory authorities through maintenance of confidentiality of the data, and for that purpose the CBA may enter into cooperative agreements with foreign banking regulatory and supervisory authorities.

1317. Consequently, bear in mind the requirements of the Azerbaijan legislation signing of MOU or a cooperation agreement is a mandatory precondition for the CBA to be able to exchange information with other Central Banks. There is no constraint on responding to requests related to ML/TF issues.

1318. As well there is no provision in the Azerbaijan legislation that prescribed clearly that CBA will provide exchange of information in a rapid, constructive and effective way.

1319. Central Bank signed a mutual cooperation Memorandum with Turkey, Georgia, Russia, Belarus Central Banks.

1320. The legal basis for exchange of information by all the other supervisory authorities (SCS, Ministry of Taxes, MFA, Ministry of Communications and information, Ministry of justice, BAR and Chamber of auditors), should again be seeing in the wording used by article 20.1 of the AML/CFT Law. This provision refers to *state authorities of the Republic of Azerbaijan*

carrying out their activity in the field of combating against the legalisation of criminally obtained funds or other property and the financing of terrorism when regulating information exchange. It is thus the opinion of the evaluation team that all supervisory authorities in Azerbaijan are covered by the provisions of article 20.1 of the AML/CFT Law and are fully authorised to perform information exchange with foreign competent authorities, for the purpose of combating against legalisation of criminally obtained funds or other property and the financing of terrorism.

1321. Furthermore as state bodies, all supervisory authorities are entitled to sign agreements on the exchange of information with their foreign counterparts in accordance with their statute. According the Azerbaijan authorities, direct communication channels are used for the exchange of information.

Law enforcement authorities

General Prosecutor's Office

1322. During on-site interviews, representatives of the General Prosecutor's Office indicated that international cooperation on AML/CFT issues is carried out by the Anti-corruption Directorate. In addition to that, an important informal cooperation component has been set up by the General Prosecutor's Office, which relies on a focal point within this authority that has direct communication channels with counterparts in other jurisdictions (i.e. Iran, Russia, Belarus, Georgia, Nigeria, and Turkey). According to statistics provided, during the evaluated period several requests were sent/received by the GPO to/from foreign counterparts. No information was provided on how many of these requests were related to investigations on ML/TF.

Table 43: Requests responded to by the GPO

	2011	2012	2013	2014
Iran	0	2	1	3
Russia	1	3	1	1
Belarusian	0	1	0	1
Georgia	1	0	1	1
Nigeria	0	0	0	1
Turkey	0	2	1	2

1323. Also, a list of 14 agreements on legal assistance and cooperation with similar authorities from the Russian Federation, Georgia, Ukraine, Kazakhstan, Lithuania, Republic of Moldova, Turkmenistan, China, Austria, Thailand, and Uzbekistan has been provided by the representatives of the General Prosecutor's Office.

Ministry of Internal Affairs

1324. As regards the Ministry of Internal Affairs, its structures are authorised to conduct information exchange through INTERPOL. According to statistics provided, during 2012 - 2013 the INTERPOL unit in Azerbaijan received 2,905 surveys from the member countries and 3,822 requests were sent by Azerbaijan's law enforcement agencies. Out of these totals, there were 45 requests on economic crime, received from other countries, and 5 requests for the same category sent by investigative bodies in Azerbaijan. No information was provided on how many of these requests were related to investigations on ML/TF.

Ministry of National Security

1325. The Azerbaijani authorities informed the evaluation team that, for the purpose of exchange of information with foreign counterparts, the Ministry of National Security sends requests for information to foreign jurisdictions via direct channels. This method of cooperation is also extended to spontaneous exchange of information. During on-site interviews, representatives of

the Ministry of National Security confirmed that intelligence exchange is performed by this authority with foreign counterparts sometimes on a daily basis.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

FIU

1326. The Azerbaijani authorities indicated that the legislation in force does not place any limitations in respect of the FMS' authority to search its own or other databases upon a foreign request. Also, it was confirmed that approximately all the requests received by the FMS from the foreign FIUs have been responded based on the searching of its own databases and the databases of other state authorities.

Supervisory authorities

CBA

1327. Article 46.6 of the Law on Banks prescribes that CBA must not conduct examinations in banks and local branches of foreign banks, on the enquires of other persons, with the exception of enquiries under the cooperation arrangements from foreign banking regulatory and supervisory authorities, as well as in cases of valid court orders. The CBA thus has the authority to conduct examinations in banks under the cooperation arrangements from foreign banking regulatory and supervisory authorities.

SCS

1328. Pursuant to Paragraph 9.3 of the Statute of the SCS, "*the Committee is entitled to send within its powers requests related to necessary information (documents) to government and local self-government authorities, participants of the securities market, natural and legal persons and obtain such information (documents) from them.*"

1329. There are no restrictions on responding to incoming requests for information from foreign counterparts with which the SCS does not have any agreements. In the case of an incoming request for information, the SCS holds the right to respond within its powers to the requests pursuant to the legislation.

1330. The SCS has signed Memoranda of Understanding on supervision in the securities market with the Financial Market and Financial Institutions Regulation Agency of the Republic of Kazakhstan, on cooperation with the Securities and Capital Market Committee of the Republic of Ukraine, on cooperation Ministry of Finance of the Republic of Belarus, on cooperation and exchange of information with Capital Markets Council of the Republic of Turkey and on cooperation and exchange of information on securities market with National Bank of the Republic of Georgia. These Memorandums allow for the exchange of information between supervisors.

1331. The Azerbaijani authorities did not provide information relating to the legal basis for conducting inquires on behalf of foreign counterparts for the MFA or MCIT.

Law enforcement authorities

1332. As regards the authority to conduct investigations on behalf of foreign counterparts, law enforcement authorities indicated that they can only do that within the framework of a bilateral agreement concluded in this respect. No statistics were provided to the evaluation team on the number of investigations carried out at the request of a foreign investigative authority in general and in relation to ML/TF in particular.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIU

1333. Under the provisions of article 20.3 of the AML/CFT Law, the FMS submits information to the competent authority of foreign states only if it does not contradict with the legislation of the Republic of Azerbaijan and does not affect its national interests or the competent authority of the foreign state has a basis to initiate a criminal investigation or to send a relevant request. According to the representatives of the FMS this basis is regarded in the context of the Egmont Principles for Information Exchange.

1334. Also, the information shall be submitted to the competent authority of the foreign state provided that the information will not be used for purposes not indicated in the request (article 20.4 of the AML/CFT Law). Although the Azerbaijani authorities did not provided clear examples of categories of restrictions that could be opposed to a request in accordance with the provisions of article 20.4, the evaluation team was informed that no request for information has been rejected so far by the FMS, based on reasons that fall under the provisions of article 20.4 of the AML/CFT Law, or based on any other reasons. This is supported by the responses provided by MONEYVAL countries in relation to their information exchange experience with Azerbaijan. Based on these facts the evaluation team concludes that the information exchange performed by the FMS is not affected by unreasonable or unduly restrictive conditions.

Supervisory authorities

CBA

1335. Art. 51 of the Law on the CBA provides that the Central Bank may exchange confidential information with a bank regulatory and supervisory body of foreign countries, which will be used only for supervisory purposes and shall be treated as confidential by the receiving party. No unduly restrictive conditions are mentioned in the law.

1336. In the MER, the Azerbaijani authorities did not provide any information referring to the legal basis under which the MFA or MCIT may conduct exchange of information with foreign counterparts without restrictions. During on-site visit, the Azerbaijani authorities clarified that the legislation of the Republic of Azerbaijan does not envisage any unreasonable or unduly restrictive conditions on exchange of information between supervisory authorities

Law enforcement authorities

1337. The legislation provided to the evaluation team does not envisage any unreasonable or unduly restrictive conditions on exchange of information between law enforcement authorities.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

FIU

1338. Article 20.3 of the AML/CFT Law describes the grounds for refusal of information sharing by the FMS. Information shall be submitted to the competent authority of the foreign state only if it does not contradict with the legislation of the Republic of Azerbaijan and does not affect its national interests or the submitted information forms a basis for a competent authority of the foreign state to initiate a criminal investigation or to send a relevant request. Also, the information shall be submitted to the competent authority of the foreign state provided that the information will not be used for purposes not indicated in the request.

1339. The legal provisions do not restrict the provision of assistance for the sole ground of possible involvement of fiscal matters. Moreover, the FMS indicated instances where requests related to suspicions on fiscal and customs legislation breaches have been answered to foreign counterparts.

Supervisory authorities

1340. Under Article 20 of AML/CFT Law, supervisory authorities can exchange information regardless of the involvement of fiscal matters. In Article 20 of the AML/CFT Law there is no restriction specifically mentioned regarding fiscal matters.

Law enforcement authorities

1341. The legislation provided to the evaluation team does not envisage any restrictive conditions on exchange of information between law enforcement authorities, when fiscal matters are involved.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

FIU

1342. Article 20.3 of the AML/CFT Law describes the grounds for refusal of information sharing by the FMS. Information shall be submitted to the competent authority of the foreign state only if it does not contradict with the legislation of the Republic of Azerbaijan and does not affect its national interests or the submitted information forms a basis for a competent authority of the foreign state to initiate a criminal investigation or to send a relevant request. Also, the information shall be submitted to the competent authority of the foreign state provided that the information will not be used for purposes not indicated in the request.

1343. The legal provisions do not restrict the provision of assistance based on the existence of secrecy and confidentiality laws. Moreover the FMS indicated that information protected under confidentiality and secrecy legislation has been exchanged with foreign counterparts.

Supervisory authorities

1344. No secrecy and confidentiality related limitations in the international cooperation were identified in the relevant supervisory laws.

Law enforcement authorities

1345. The legislation provided to the evaluation team does not envisage any restrictive conditions on exchange of information between law enforcement authorities, based on secrecy and confidentiality laws.

Safeguards in use of exchanged information (c.40.9)

FIU

1346. In relation to this essential criterion, authorities indicated the provisions of article 17.4 of the AML/CFT Law which reads that the information held by the FMS is securely protected and used solely for the goals of the Law. In this respect the FMS has created an information protection system, and indicated that information exchanged with foreign FIUs is bound by the same confidentiality regime within the FIU as any other information.

1347. However, under Essential Criteria 7 of Recommendation 26 concerns were expressed by the evaluation team on the fact that some of the enforcement means available for breaching obligations in relation to information protection are narrower in scope that one would expect to be in compliance with the Criterion. In particular, negligent dissemination of information covered by commercial and/or bank secrecy does not seem to be covered.

Supervisory authorities

1348. Pursuant to Article 51 of the Law on the CBA, Central Bank may exchange confidential information with a bank regulatory and supervisory body of foreign countries, which will be used only for supervisory purposes and shall be treated as confidential by the receiving party.

Law enforcement authorities

1349. No information was provided by the Azerbaijani authorities in relation to this criterion.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.40.1), Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

FIU

1350. Article 20 of the AML/CFT Law provides that exchange of information for AML/CFT purposes may be performed by state authorities in Azerbaijan only with competent authorities of foreign states.

1351. Also, during on-site interviews it was confirmed to the evaluation team that the FMS is not allowed to exchange information with non-counterparts.

Supervisory authorities

1352. No information was provided by the Azerbaijani authorities in relation to this criterion.

Law enforcement authorities

1353. No information was provided by the Azerbaijani authorities in relation to this criterion.

Special Recommendation V (rated PC in the 3rd round report)

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5)

1354. The text under Recommendation 40 is applicable to SR. V.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1355. The text under Recommendation 40 is applicable to SR. V.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1356. During the reference period, the authorities indicated that FMS received 82 requests for information from foreign FIUs and 8 spontaneous disseminations. Also, the unit sent 13 requests to counterparts and was involved in a spontaneous dissemination of information. The average interval for answering requests is one month.

Table 44: Incoming and outgoing requests through the FMS

Year	Incoming requests	Incoming spontaneous information	Total	Outgoing requests	Outgoing spontaneous information	Total
2009	1		1			2
2010	4	1	5	3		3
2011	5	2	7	1		1
2012	36	4	40	4	1	5
2013 *	36	1	37	5		5
Total	82	8	90	13	1	14

* To 1 December 2013

1357. As regards terrorist financing and money laundering, the Ministry of National Security provided the following statistics related to the interval under evaluation:

Table 45: Information requests received by the Ministry of National Security

Year	Country	Nature of request
2012	Germany	2 (financing of terrorism)
	UK	1 (financing of terrorism)
	USA	5 (financing of terrorism), 1 (money laundering)
	Pakistan	2 (financing of terrorism)
2013	Germany	2 (financing of terrorism), 1 (money laundering)
	USA	4 (financing of terrorism), 1 (money laundering)
2014	Iraq	2 (money laundering)
	UAE	1 (money laundering)

Effectiveness and efficiency

Recommendation 40

FIU

1358. The FMS has managed to implement a secure and consistent exchange of information with foreign financial intelligence unit. Based on the available statistics, information exchanged is still in relatively low volumes, but this relates to the overall cases opened and disseminated by the unit to law enforcement.

Supervisory authorities

1359. The statistics provided by the authorities on the exchange of information performed in the AML/CFT field by supervisory authorities were not adequate to allow for an evaluation of the efficiency of the legal channels in place.

Law enforcement authorities

1360. Based on the available statistics, information exchanged by law enforcement authorities is still in relatively low volumes. This relates directly to the low number of ML/TF investigations started, but most importantly seems to be a confirmation of the fact that during predicate offence investigations not enough focus in placed on identifying and tracing the proceeds of crime for a subsequent ML/TF conviction and confiscations.

Special Recommendation V

FIU

1361. The text under Recommendation 40 is applicable to SR. V

Supervisory authorities

1362. The text under Recommendation 40 is applicable to SR. V.

Law enforcement authorities

1363. As regards the domain of CTF, the representatives of the Ministry of National Security, authority responsible for investigating such crimes, indicated that, for this purpose, information is exchanged with foreign counterparts on a daily basis. To this end the MNS holds intelligence exchange channels with 70 security services from 50 countries around the world.

6.4.2 Recommendation and comments

Supervisory authorities

1364. Supervisory authorities should put extra effort into extending their practice of information exchange for AML/CFT purposes.

1365. Statistics should be maintained to demonstrate and assess the effectiveness of information exchange and cooperation.

Law enforcement authorities

1366. Law enforcement authorities should put extra effort into extending their practice of information exchange for AML/CFT purposes. This would mean first of all an increase in the number of ML/TF cases opened and determination on going after the proceeds that were placed outside the borders of Azerbaijan.

Special Recommendation V

FIU

1367. The text under Recommendation 40 is applicable to SR. V.

Supervisory authorities

1368. The text under Recommendation 40 is applicable to SR. V.

Law enforcement authorities

1369. The text under Recommendation 40 is applicable to SR. V.

6.4.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.40	**LC**	• No clear obligation for supervisory authorities to provide exchange of information in a rapid and constructive way; **Effectiveness:** • There is still little practical experience of supervisory cooperation in AML/CFT issues; • There is still little practice in law enforcement intelligence information exchange on AML/CFT issues.
SR.V	**LC**	• International cooperation in the area of FT could in some instances suffer from the remaining gaps identified in compliance with the Terrorist Financing Convention.

7 OTHER ISSUES

Resources and Statistics

7.1.1 Description and analysis

Recommendation 30 (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1370. Azerbaijan was rated PC for R30 in the 3rd round as while supervisors and law enforcement overall were adequately resourced, the resources assigned to AML/CFT were inadequate, there were no integrity standards for law enforcement or supervisors of which the evaluators were aware and there was inadequate training on AML/CFT for law enforcement and prosecutors and other competent authorities.

FIU

1371. In terms of technical resources, FMS uses the GoAML, software solution developed by UNODC, which receives and processes the data from the reporting entities electronically. Also, all employees of the FMS are equipped with computers. The analytical department's staff are equipped with 2 computers each, one for open source research and the other for analytical purposes.

1372. Overall the FMS seems well staffed and public information available on the dedicated software solution used (GoAML) is supportive for an increased capacity in processing the current volumes of financial information received, both for intelligence analysis and supervision functions. This was also the opinion of the FMS representatives, expressed during on-site interviews. However, being a young system and as the volumes of financial information register an ascending trend, the FMS should constantly evaluate the appropriateness of its human analytical capabilities

1373. In order to ensure high professional standards, including standards concerning confidentiality and integrity the employees sign an agreement with the head of FMS regarding prohibition of disclosure of service information. All security protocols are regulated by the Guidance "*On the information security*" approved by Director of FMS and all employees must take responsibility to comply with the safety protocol during the whole period of employment and after that. Also, in order to ensure high ethical standards, "*Rules of ethical conduct of the FMS staff*" were adopted by the Head of FMS.

1374. Based on information provided, none of the current employees of the FMS seems to have previous experience in financial or criminal intelligence analysis. This seems to be indicative of the fact that the selection procedure itself does not take into consideration such aspects. The FMS compensated that by allowing its analysts to participate in training programmes dedicated to tactical analysis. However it is the opinion of the evaluators that on-going training programmes should be provided to analysts within the Analytical Department on operational and tactical analysis issues.

Law enforcement and prosecution agencies

1375. The Anti-Corruption Department under the auspices of the General Prosecutor is financed from the state budget through the funds allocated to General Prosecutor's Office. For the interval 2011-2013 the unit's budget was increased from 1.4 million manats (€1.3m) to 6.3 million manats (€5.9m). During the on-site visit no indications of undue influence or interference over the operations of the Anti-Corruption Department were observed by the evaluation team. Also, the unit seems properly staffed and positive opinions were expressed during on-site interviews on the adequacy of the technical and financial resources available.

1376. No detailed information was provided by the Azerbaijani authorities to the evaluation team on the resources available for the Ministry of National Security in investigating terrorist financing offences. However, the Azerbaijani authorities consider that this structure has adequate human resources and technical capacity to properly carry out its mission.

1377. No detailed information was provided to the evaluation team on the resources available for the Ministry of Internal Affairs in investigating proceeds producing crimes. However, the Azerbaijani authorities consider that these structures have adequate human resources and technical capacity to properly carry out their mission.

1378. Azerbaijani authorities indicated that staff of all competent authorities designated by the AML/CFT Law are considered to be civil servants. Relations between the Azerbaijani state and civil servants as well as issues related to the legal status of civil servants are regulated by Law of the Republic of Azerbaijan "*On Civil Service*". Article 18.0.8 of this Law requires civil servants to keep confidential information revealed during performance of official duties and not demand such information except for cases provided by the Law of the Republic of Azerbaijan "*On Civil Service*".

1379. Based on information received during on-site interviews, it is the opinion of the evaluation team that further training is needed for the investigative bodies in Azerbaijan on investigating ML/TF crimes and especially on financial investigations. Although a good level of knowledge in this respect was noticed in the Anti-corruption Directorate and the Ministry of National Security, opinions were expressed by these bodies that the domain is new for everybody and problems are faced especially when investigating ML/TF where an extraterritoriality element is present. Moreover, although the other investigative bodies in Azerbaijan hold no investigative competence for ML/TF, proper training in recognising such criminal behaviour and dealing with the procedural issues under the current Criminal Procedure Code would be highly beneficial for the whole AML/CFT system.

1380. The evaluators note that the resources of the central authority for sending/receiving mutual legal assistance/extradition requests are in the process of being increased. The evaluators are advised that, in terms of criminal mutual legal assistance, three people are currently employed and there are vacancies for three additional people to be employed in this team. There is a separate team for civil mutual legal assistance.

Customs Authorities

1381. At the time of the on-site visit, the State Customs Committee had approximately 3,000 staff that were deployed across 25 border crossing points, local customs departments and the headquarters. Also, a special department responsible for currency control at the border has been set up at the State Customs Committee level. To fulfil the functions assigned to them completely and effectively, the customs authorities of the Republic of Azerbaijan are provided with proper facilities and modern technical control tools and other equipment. A special program is being carried out at the level of the State Customs Committee to ensure the protection and confidentiality of the information and that staff observe the high professional standards.

1382. In respect of professional standards, Article 53 of the Customs Code provides for the requirements that have to be met by persons that want to become officials of the customs authority in Azerbaijan. These requirements relate to education, professionalism, health conditions, working, physical and moral capabilities and fluency in the official language.

Supervisory authorities

1383. The CBA, SCS and MFA all appeared to have adequate resources both in terms of staff and facilities to perform AML/CFT supervision. Regular training is provided on AML/CFT issues

for staff of the CBA and SCS. However, according to statistics provided, the MFA only participated twice in MONEYVAL plenaries and only once in a seminar on "Taxes and Law: revealing of illegal financial activities" organised by an international organisation. Therefore, the evaluation team is of the opinion that training for the MFA employees needs to be enhanced.

1384. MCIT does not currently appear to have sufficient resources to properly undertake AML/CFT supervision of the post offices and no statistics were provided indicating that employees of the MCIT participated or had active role in any seminar or workshops regarding AML/CFT matters.

1385. The staff of all competent authorities designated by the AML/CFT legislation are considered to be civil servants. Article 18 of the Law on Civil Service stipulates that civil servants are required to protect state secrecy and comply with high ethical standards. In particular, the Azerbaijani authorities have adopted the Law "*On rules of ethical conduct of civil servants*" the Objective of which is to determine ethical conduct rules in relation to civil servants, as well as provide a legal framework to comply with the ethics conduct rules.

Policy makers

1386. According to information provided by the Azerbaijani authorities, all employees of policy makers in Azerbaijan are considered civil servants. The professional standards for the civil servants are regulated by the Law on Civil Service and the Rules of Ethic Conduct of Civil Servants. The first normative act provides, in addition to the definition of the civil servants, clear rules on topics like who has the right to be recruited as a civil servant, the recruitment procedure, ongoing training of civil servants and the performance evaluation of this category. The Rules of Ethic Conduct of Civil Servants regulates topics including: honest conduct for such category (Article 4); increasing professionalism and private responsibility (Article 5); impermissibility of acquiring material and non-material gifts, privileges and concessions (Article 12); prevention of Corruption (Article 13); restrictions on acceptance of gifts (Article 14); prevention of conflict of interests (Article 15); control over observance of the ethics conduct rules (Article 20); and responsibility for violation of ethical conduct rules (Article 23).

Recommendation 32 (rated NC in the 3rd round report)

Summary of 2008 factors underlying the rating

1387. Azerbaijan was rated NC for R32 in the 3rd round as it was not clear which authority was responsible for keeping statistics in relation to money laundering and financing of terrorism, there was no review of the AML/CFT system on a regular basis, no statistics were provided on where "STRs" went, there was an absence of authoritative statistics on AML/CFT investigations and cases involving provisional measures and confiscation and there was an absence of statistics on MLA and supervisory cooperation.

Criminalisation of money laundering and the financing of terrorism

1388. Statistics were provided in respect of money laundering and financing of terrorism investigations, prosecutions and convictions which show whether convictions are for self or third party laundering but these statistics did not include any analysis of penalties.

1389. Some statistics on property seized, confiscated and recovered following conviction for ML/FT have been provided. However, no data was submitted to the evaluators highlighting the number of seizures and confiscations related to predicate offences to ML, including FT.

FIU

1390. The FMS provided a comprehensive set of statistics. It appeared to the evaluators that the FMS were making good use of these statistics to analyse trends and draw strategic conclusions.

Law enforcement agencies

1391. The Ministry of National Security and the General Prosecutor's Office submit statistical information on the offences related to the legalisation of criminally obtained funds or other property and the financing of terrorism once in six month to the FMS. By using this information, FMS generalises this information and uses it for strategic analyses.

1392. Monthly reports are also prepared by the State Customs Committee on cross-border transportation of currency and/or currency valuables, the number of natural persons that made declarations and the amount of currency involved.

Supervisory authorities

1393. The supervisory authorities maintained statistics on the number and nature of AML/CFT supervision as well as sanctions applied. However, there were no statistics available on cooperation and exchange of information with other supervisory bodies both domestically and internationally.

Policy makers

1394. Although there is a solid system in place for the collection of statistical information on AML/CFT matters, the fact that information is aggregated into one place is not sufficient for an effective review of the works of the system. It is the spirit of Essential Criteria 1 of Recommendation 32 that the strategic analyses developed by the FMS are subject to common review of the actors involved in the AML/CFT field for policy development purposes. The Azerbaijani authorities indicated that the results of such analyses are discussed during the meetings of the FMS with other actors in the AML/CFT field.

Mutual legal assistance

1395. Statistics on mutual legal assistance are not readily available. This impedes an assessment of effectiveness and could prevent the authorities from identifying trends in connection with the provision of mutual legal assistance.

7.1.2 Recommendations and comments

Recommendation 30

1396. On-going training should be provided to all the investigative bodies in Azerbaijan in recognising ML criminal behaviour and in dealing with the ML procedural issues under the current provisions of the Criminal Procedure Code.

1397. Although the other investigative bodies in Azerbaijan hold no investigative competence for ML/TF, proper training in recognising such criminal behaviour and dealing with the procedural issues under the current Criminal Procedure Code would be highly beneficial for the whole AML/CFT system.

1398. Measures should be taken to ensure that investigative bodies in Azerbaijan are equipped with a proper toolbox of investigative techniques that assist the investigation of money laundering and terrorist financing.

1399. The authorities should develop and implement training, data collection and enforcement programs on AML/CFT issues for the State Customs authority.

1400. Training for the MFA employees should be enhanced.

1401. The MCIT is under staffed and training for the employees should be improved.

Recommendation 32

1402. Statistics collated and prepared by the FMS should be available to all key stakeholders and used to develop AML/CFT policy and strategy.

1403. Money laundering statistics should include an analysis of whether they refer to cases of self-laundering, third-party laundering or autonomous laundering and indicate the underlying predicate offences. They should also clearly indicate whether the penalties imposed refer exclusively to money laundering.

1404. Measures should be introduced to collect statistics for seizures and confiscations related to all funds-generating offences, not just money laundering. Information on confiscation of indirect proceeds, value confiscation and third-party confiscation should also be collected. These statistics should be utilised, along with statistics on the level of funds-generating crime to determine strategic priorities in developing the AML/CFT regime.

1405. Steps should be taken to ensure that statistics on mutual legal assistance can be provided going forward.

1406. Statistics should be maintained on cooperation and exchange of information with other supervisory bodies.

7.1.3 Compliance with Recommendations 30 and 32

	Rating	**Summary of factors underlying rating**
R.30[16]	**LC**	• No internal regular training programs dedicated to intelligence analysis available for staff of the FIU; • Inadequate resources available to MCIT for AML/CFT supervision of Post Offices.
R.32[17]	**PC**	• Inadequate statistics kept on penalties for money laundering; • Statistics maintained on the level of funds-generating crime together with seizures and confiscations are not being utilised to perform a strategic assessment of the AML/CFT risk; • Lack of statistics on mutual legal assistance • No statistics available on cooperation and exchange of information with other supervisory bodies.

Other Relevant AML/CFT Measures or Issues

General Framework for AML/CFT System (see also section 1.1)

[16] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report.

[17] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 39.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Azerbaijan. *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[18]
Legal systems		
1. Money laundering offence	**PC**	• Acquisition, possession or use of property is criminalised only with respect to "significant amounts". **Effectiveness** • Low number of convictions for ML and absence of cases of stand-alone and autonomous ML and no cases which relate to predicate offences conducted in another jurisdiction; • Lack of certainty as to whether a conviction for a predicate offence is a prerequisite to obtaining a conviction for money laundering.
2. Money laundering offence Mental element and corporate liability	**PC**	• The legislation extending criminal liability to legal persons for money laundering is not yet in force. **Effectiveness** • The principle that criminal intent, knowledge or purpose can be inferred from objective factual circumstances is not tested in practice in relation to the money laundering offence.
3. Confiscation and provisional measures	**PC**	• Property can only be confiscated from third parties if they knew or ought to have known that it had been obtained by criminal means, regardless of whether they obtained it for value or

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

		not. **Effectiveness** • Lack of clarity on whether confiscation of indirect proceeds and corresponding value are routinely made; • Effectiveness of confiscation in predicate offences to ML is not demonstrated.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• There is no clear provision in legislation which would require banks to share information about their customers CDD to correspondent banks.
5. Customer due diligence	**PC**	• The lack of issued guidance on simplified CDD measures could give rise to confusion in relation to the scope of application; • Monitoring entities which have a quarterly turnover of less than 50,000 Manats are exempted from the obligation to terminate the established business relationship and to consider making a STR when the business relationship has already been commenced and the monitoring entity is not able to comply with CDD measures; • No provision to verify the identity of beneficiaries of life insurance policies at time of pay-out or the time when the beneficiary intends to exercise vested rights under the policy. **Effectiveness** • Monitoring entities still establish business relationships in circumstances where a foreign legal person who is a beneficial owner is not identified.
6. Politically exposed persons	**LC**	**Effectiveness** • Circumstances where monitoring entities establish business relationships where a foreign legal person who is a beneficial owner is not identified could allow PEPs to conduct business without being identified as such; • No effectiveness was demonstrated with regard to determination of the beneficial owner of legal person who is PEP.
7. Correspondent banking	**LC**	• No requirement for monitoring entities to document or have a clear understanding of the

		respective AML/CFT responsibilities of each institution during the relationship.
8. New technologies and non face-to-face business	**C**	
9. Third parties and introducers	**N/A**	
10. Record keeping	**LC**	• Business correspondence and other relevant documents only required to be kept for at least 5 years following the completion of a transaction.
11. Unusual transactions	**LC**	• No requirement to provide findings to law enforcement authorities and auditors. **<u>Effectiveness</u>** • No effectiveness was demonstrated regarding keeping findings and submitting written analysis on complex and unusual large transactions.
12. DNFBPS – R.5, 6, 8-11[19]	**PC**	• Accountants are not subject to the AML/CFT Law; • DNFBPs whose quarterly turnover is less than 50,000 Manats are not subject to a number of the AML/CFT requirements. ***Applying Recommendation 5*** • Deficiencies under Recommendation 5 also apply to the DNFBP sector. **<u>Effectiveness</u>** • DNFBPs are experiencing problems when identifying the BO. ***Applying Recommendation 6*** • Deficiencies under Recommendation 6 also apply to the DNFBP sector. ***Applying Recommendation 10*** • Deficiencies under Recommendation 10 also apply to the DNFBP sector. ***Applying Recommendation 11*** • Deficiencies under Recommendation 11 also apply to the DNFBP sector.
13. Suspicious transaction	**LC**	**<u>Effectiveness</u>**

[19] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report.

reporting		• Limited training and lack of typologies has led to a low level of suspicious transaction reports from the banking sector; • Lack of awareness has led to a very low level of STR reporting from financial institutions other than banks.
14. Protection and no tipping-off	**LC**	• Directors and officers (permanent and temporary) are not explicitly protected when they are not personnel of the reporting entity.
15. Internal controls, compliance and audit	**LC**	• Monitoring entities whose quarterly turnover is less than 50,000 Manats are not required to establish internal procedures, polices and controls.
16. DNFBPS – R.13-15 & 21[20]	**PC**	***Applying Recommendation 13*** **Effectiveness** • No STRs received from DNFBPs; • DNFBPs have a relatively low capacity in recognising suspicious transactions. ***Applying Recommendation 14*** • Deficiencies under R.14 are also applicable to DNFBPs. ***Applying Recommendation 15*** • DNFBPs that have the quarterly turnover less than 50,000 Manats are excluded from the requirement to establish the internal control system. ***Applying Recommendation 21*** • Deficiencies under R.21 also apply to DNFBPs.
17. Sanctions	**PC**	• Sanctions are not effective, proportionate and dissuasive. **Effectiveness** • No sanctions have been applied to financial institutions' senior management; • No sanctions apart from writing warnings have been imposed; • No sanctions have been applied by the MCIT;

[20] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report.

		• Low number of sanctions applied by the CBA, SCS and MFA raises concerns about the effectiveness of the AML/TF sanctions regime.
18. Shell banks	**C**	
19. *Other forms of reporting*	***C***	
20. Other DNFBPS and secure transaction techniques	**LC**	• No analysis had been undertaken to identify which other non-financial businesses and professions could also potentially pose a ML/TF risk.
21. Special attention for higher risk countries	**LC**	• No requirement that the written findings should be available to auditors.
22. Foreign branches and subsidiaries	**LC**	• No general requirement in the AML/CFT Law that would oblige non-banking 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 local laws and regulations permit; • Requirements of R.22 do not apply to monitoring entities whose quarterly turnover is less than 50,000 Manats.
23. Regulation, supervision and monitoring	**PC**	• There is no requirement to prevent persons who are associated with criminals 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 in financial institutions. **Effectiveness** • The Postal Office was not subject to on-site supervision; • Adequate effectiveness of the risk based approach on supervision not demonstrated due to recent adoption of the procedures (referring to MFA and MCIT).
24. DNFBPS - Regulation, supervision and monitoring	**PC**	• Undue procedural hurdles for all supervisory authorities of the DNFBPs to initiate procedures for violation of the AML/CFT Law provisions. **Effectiveness** • Minimal active supervision undertaken for

		AML/CFT purposes; • Several supervisory authorities are not fully aware of their supervisory function.
25. Guidelines and Feedback	**LC**	• Lack of guidance on: o identification and verification of beneficial owners, especially a description of reasonable measures that should be taken by the financial institution in order to identify and verify ownership and control structure of the non-resident legal entities; o measures that financial institutions should take regarding enhanced and simplified due diligence; o complex and unusual transactions. **Effectiveness** • The low number of STR reports by all monitoring entities, especially from non-banking credit institutions and DNFBPS, questions the issue of the sufficiency and helpfulness of the ML/TF typologies and trends that are issued by the FMS; • Apart from regulations issued from FMS no sector specific guidance for the implementation on the AML/CFT Law were issued. The lack of guidelines for FIs, also applies to the DNFBP sector.
Institutional and other measures		
26. The FIU	**LC**	**Effectiveness** • Low number of cases taken forward based on FIU dissemination.
27. Law enforcement authorities	**PC**	**Effectiveness** • Competence in investigating money laundering is affecting the effectiveness of the AML/CFT system; • Limited access of law enforcement to financial information affects its ability to identify, trace and seize proceeds of crime; • Legal limitations on the use of special investigative techniques in ML cases may impact on the ability of LEA to act; • Divergent interpretation between law

		enforcement and judiciary on the level of proof required to convict a person of TF; • Low level of investigations, prosecutions and convictions on money laundering and terrorist financing as opposed to the general volume of proceeds-generating crimes.
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	**LC**	**Effectiveness** • The division of the supervision powers of the CBA and the MCIT is not appropriate, and undermines the overall effectiveness of the supervision of post office for AML/CFT purposes.
30. Resources, integrity and training[21]	**LC**	• No internal regular training programs dedicated to intelligence analysis available for staff of the FIU; • Inadequate resources available to MCIT for AML/CFT supervision of Post Offices.
31. National co-operation	**LC**	• Although bilateral cooperation exists, there is no real mechanism in place for AML/CFT policy coordination of all the AML/CFT stakeholders. • Lack of cooperation between the GPO and Police on financial intelligence.
32. Statistics[22]	**PC**	• Inadequate statistics kept on penalties for money laundering; • Statistics maintained on the level of funds-generating crime together with seizures and confiscations are not being utilised to perform a strategic assessment of the AML/CFT risk; • No statistics available on cooperation and exchange of information with other supervisory bodies.
33. Legal persons – beneficial	**PC**	• Amendments to the Law on Commercial

[21] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report.

[22] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendation 39.

owners		Information place unnecessary restrictions on access to ownership and shareholder information; • Commercial, corporate and other laws do not require adequate transparency concerning the beneficial ownership and control of legal persons.
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35. Conventions	**PC**	• Deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property; • Offences in the Annex to the Terrorist Financing Convention not fully transposed into the Criminal Code; • Authorities should be able to attack property held by third parties where there is a gift made or inadequate value in exchange for the property; • Criminal liability for ML not yet extended to legal persons and no civil or administrative liability for money laundering by legal persons.
36. Mutual legal assistance (MLA)[23]	**LC**	• The remaining technical shortcomings in respect of R.1 and R.2 have the potential to impede effective mutual legal assistance; **Effectiveness** • Lack of statistics means that effectiveness could not be assessed.
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	**LC**	**Effectiveness** • Possible difficulties in respect of indirect proceeds and third party may impact on ability to assist; • No formal arrangements for co-ordinating seizure and confiscation actions.

[23] The review of Recommendation 36 has taken into account those Recommendations that are rated in this report.

39. *Extradition*	***LC***	• *The absence of statistical data means that 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	**LC**	• No clear obligation for supervisory authorities to provide exchange of information in a rapid and constructive way; **Effectiveness:** • There is still little practical experience of supervisory cooperation in AML/CFT issues; • There is still little practice in law enforcement intelligence information exchange on AML/CFT issues.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Offences in the Annex to the Terrorist Financing Convention not fully transposed into the Criminal Code; • Various deficiencies identified in respect of SR.III.
SR.II Criminalise terrorist financing	**LC**	• The FT offence does not cover all elements of SRII, defined as terrorist offences in the Annex of the FT Convention; • The legislation extending criminal liability for terrorist financing to legal persons has yet to come into force.
SR.III Freeze and confiscate terrorist assets	**PC**	• Absence of a procedure detailing the asset freezing obligation provided for under Regulation No. 124 and lack of specification as what is intended by “freezing without delay”; • The freezing action provided by the law does not extend to funds or other assets of persons acting on behalf of, or at the direction of designated persons, nor does it prohibit that these or other funds or assets are made available, directly or indirectly for such persons’ benefit by their nationals or by any persons within their territory, as per UNSCR 1267; • The freezing action provided by the law does not

		extend to: funds or other assets of persons acting on behalf of, or at the direction of designated persons; funds of entities owned or controlled directly or indirectly by such persons as per UNSCR 1373; • Reliance on the criminal justice system risks creating problems with the effective implementation of UNSCR 1267 and 1373; • The designation criteria provided to implement UNSCR 1373 are too restrictive as they require that criminal proceedings have been instituted or that a conviction has been secured against a person; • The crimes listed in Article 7 of Regulation #124 do not appear to include all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention; • There is no formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373; • Regulation No. 124 restricts the freezing action to funds or other “financial” assets, thereby potentially limiting the implementation of the standard. A definition of funds and other assets/financial assets is not provided for under the law; • With regard to c.III.6, there is no formal guidance in place which supplements the legislation; • Other than in the context of criminal proceedings, there are no other effective and publicly known procedure to unfreeze funds or other assets in a timely manner for persons inadvertently affected, other persons whose assets or other funds have been frozen, or bona fide third parties; • There does not appear to be a provision stating that, once a person is removed from the Domestic List, their assets shall be unfrozen; • There are no procedures in place for authorising access to funds or other assets that were frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses; • No civil, administrative or criminal sanctions are provided for by the law for breach of Regulation No. 124.

SR.IV Suspicious transaction reporting	**LC**	**Effectiveness** • Uneven understanding of the reporting requirement by financial institutions: • Low number of TF STRs in relation to the terrorist threat of the country.
SR.V International co-operation[24]	**LC**	• Difficulties in respect of indirect proceeds and third party assets may impact on ability to assist; • International cooperation in the area of FT could in some instances suffer from the remaining gaps identified in compliance with the Terrorist Financing Convention.
SR.VI AML requirements for money/value transfer services	**PC**	• Deficiencies under Recommendations R.4-R.11, R13-15, R.21-23, and SR.VII) referring to banks and postal office will be reflected in SR.VI; **Effectiveness** • Money Transfer service provided by post office are not adequately monitored and controlled by the authorities; • No on-site supervision in postal offices as a consequences lack of effective supervision of MVT services in the Post Office; • No effective sanctioning regime for Post Offices; • Duplication of supervisory powers towards Azerpost.
SR.VII Wire transfer rules	**PC**	• Monitoring of Azerpost was not fully developed at the time of the on-site visit; **Effectiveness** • There is a division of supervision function over the Azerpost between the CBA and the MCIT that affects the effectiveness of performing supervisory function regarding the SR.VII requirements; • Restricted infringements/deficiencies were found and the sanctions regime concerning SR VII has been applied in practice only once, towards one bank.
SR.VIII Non-profit	**C**	

[24] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37 and 39.

organisations		
SR.IX Cross Border declaration and disclosure	**PC**	• The declaration system does not cover physical transportation of currency in AZN; • There is no clear legislative provision requiring customs authority to stop or restrain currency valuables when indications of ML/TF are present; • No provision in place that would require the State Customs Committee to report suspicions of money laundering and terrorism financing to the FMS; • There are no programs on training and enforcement; **Effectiveness** • Information exchange with counterparts is limited to situations when reasons to believe that a serious customs offence will be committed in the territory of another state; • There are no money laundering and/or terrorist financing investigations started based on action taken by the State Customs Committee.

9 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)	***Recommendation 1*** The deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property (acquisition, possession and use "in significant amounts" and the purposive element) should be addressed in order to bring them fully in line with the requirements of the Vienna and Palermo Conventions. Article 194.1 of the Criminal Code should be clarified to make it clear that acquisition, possession or use are criminalised regardless of whether the purpose is to conceal or disguise the illicit origin of the funds. The money laundering provisions should make a direct reference to the AML/CFT law with respect to the definition of funds or other property. The authorities should clarify that a conviction for a predicate offence is a not prerequisite to obtaining a conviction for money laundering. This could be achieved either by way of amendments to the law or with training to prosecutors and judges. Education and training with regard to third-party money laundering and stand-alone money laundering together with investigation and prosecution related to predicate conduct in another jurisdiction should be provided to law enforcement, prosecutors and the judiciary. ***Recommendation 2*** The practice of inferring the intentional element of money laundering from factual circumstances should be tested in practice. The Azerbaijani authorities should consider 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. The Azerbaijani authorities are strongly encouraged to enact the amendments which extend criminal liability to legal persons.

2.2 Criminalisation of Terrorist Financing (SR.II)	All of the offences defined in the treaties listed in the Annex of the TF Convention should be duly transposed into Azerbaijani legislation. The offences listed in Article 214-1 of the Criminal Code should accordingly be expanded to include all the elements required by SR.II, namely all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention.. A clear definition should be provided under the CC for "terrorist" and "terrorist organization", in line with the interpretative note of SRII. The practice of inferring the intentional element of financing of terrorism from factual circumstances might benefit from being reflected in legislation. The Azerbaijani authorities should ensure that legislation extending criminal liability for terrorist financing to legal persons comes into force without further delay
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	The Criminal Code should be amended to allow for the confiscation of property held by third parties where there is a gift made or inadequate value in exchange for the property, and it should be irrelevant that the property subject to confiscation has been transferred or sold by the convicted person or by other third parties. Value confiscation of instrumentalities to ML, FT and other predicate crimes should clearly be provided for by the law. Consideration should be given to reversing the burden of proof after conviction for the criminal offence, when the court is considering the lawful origin of property in the hands of the convicted person.
2.4 Freezing of funds used for terrorist financing (SR.III)	The authorities should provide a clear procedure to freeze without delay funds or other assets of terrorists, those who finance terrorism and terrorist organizations implementing the obligation under Regulation No. 124. They should also specify the time-line to freeze funds (without delay). In order to comply with UNSCR 1267, the authorities should extend the freezing action to funds or other assets of persons acting on behalf of, or at the direction of designated persons and prohibit that these or other funds or assets are made available, directly or indirectly for such persons' benefit by their nationals or by any persons within their territory. In order to comply with UNSCR 1373, the authorities should extend the freezing action to: funds or other assets of persons acting on behalf of, or at the direction of designated persons; and to funds of entities owned or controlled directly or indirectly by such persons as per UNSCR 1373. The authorities should consider how to ensure freezing and

	confiscating terrorist assets without relying solely on the criminal justice system. The authorities should ensure that criminal proceedings or a conviction are not a requirement for the designation of persons and legal entities and for the subsequent freezing procedure under UNSCR 1373. The crimes listed in Article 7 of Regulation #124 and those listed in Article 214-1 of the Criminal Code and should be amended to include all the offences within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention. The authorities should put in place a formal procedure governing the receipt and assessment of requests based on a foreign request to designate/freeze in order to comply with obligations under UNSCR 1373. The authorities should amend Regulation No. 124 so that it extends the freezing action to funds or other assets, in line with the standard. They should also provide a definition of funds and other assets under the law. The authorities should provide guidance to FIs and DNFBPs concerning their obligations in taking action under freezing mechanisms which supplement the legislation. The authorities should introduce a provision stating that, once a person is removed from the Domestic List, their assets shall be unfrozen. The authorities should ensure that, other than in the context of criminal proceedings, there are effective and publicly known procedures to unfreeze funds or other assets in a timely manner for persons inadvertently affected, other persons whose assets or other funds have been frozen, and bona fide third parties. Appropriate procedures should be introduced to authorise access to funds or other assets that were frozen pursuant to UNSCR 1267 and that have been determined to be necessary for basic expenses Civil, administrative or criminal sanctions should be provided for by the law for breach of Regulation No. 124.
2.5 The Financial Intelligence Unit and its functions (R.26)	The FMS should adopt measures aimed at increasing the percentage of suspicious transactions reported before the execution of transaction. Further training and awareness raising initiatives have to be put in by the FMS in order to increase the reporting component of the system. Consideration should be given to a mechanism to prevent the discretionary removal of the Management of the FMS. This could include a clear dismissal and appeals procedure. Such procedures should set out the grounds on which the

	Management of the FMS could be dismissed. Sanctions should be introduced for negligent dissemination of information by FMS staff. The FMS should identify issues that have an impact on the quality of its analytical reports and should properly assess the reasons for the low confirmation rate with law enforcement of such reports. Consideration should be given by the FMS together with other stakeholders on the benefits of a centralised informational resource on the accounts opened by natural and legal persons in Azerbaijan. Internal training to FIU staff, especially on intelligence analysis should be provided on a regular basis.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	A stronger focus should be placed by the investigative bodies competent to investigate proceeds-producing crimes on the identification and recovery of proceeds of crime. On-going training should be provided to all the investigative bodies in Azerbaijan in recognising ML criminal behaviour and in dealing with the ML procedural issues under the current provisions of the Criminal Procedure Code. The Azerbaijani authorities should consider extending the competence for investigating money laundering offences to other investigative bodies; especially the Ministry of Internal Affairs and the Ministry of Taxes, as proceeds-producing crimes investigative bodies could have an important input for the efficiency of the system. Measures should be taken to ensure that investigative bodies in Azerbaijan are equipped with a proper *toolbox* of investigative techniques that assist the investigation of money laundering and terrorist financing. Also, the legal conditions for deploying such techniques should not be limited in nature (e.g. only applicable when the ML/TF crime is perpetrated by an organised criminal group). Measures should be taken to provide law enforcement with the authority to request from the FMS financial information when investigations for ML/TF or predicate offences are conducted. Consideration should be given by the Azerbaijani authorities on the benefits of a centralised informational resource on the accounts opened by natural and legal persons in Azerbaijan. Law enforcement together with other actors in the AML/CFT system should conduct periodical reviews to determine the reasons for the low number of ML/TF investigations, prosecutions and convictions. Such reviews should also include the outcome of disseminations from the FMS. Revisions of the ML/TF typologies and trends should be

	disseminated among all investigative bodies in Azerbaijan. Consideration should be given to share such sanitised revisions with the private sector also. Investigative authorities should increase the number of TF cases put forward before the courts. Regular training on money laundering and terrorist financing substantial, procedural and investigative issues should be provided to the judiciary system.
2.7 Cross Border Declaration or Disclosure (SR.IX)	Measures should be taken to extend the applicability of the declaration system to amounts transported over the borders in the national currency of Azerbaijan (AZN). Clear legislative provisions should be implemented in order to grant the State Customs Authority the authority to stop or restrain currency valuables when indications of ML/TF are present. Measures should be taken to ensure that information on ML/TF suspicions in relation to cross-border transportation of currency and currency valuables are immediately reported by the customs authority to the FMS. Measures should be taken to ensure for the State Customs Committee the authority to exchange information with counterparts for AML/CFT purposes. The authorities should develop and implement training, data collection and enforcement programs on AML/CFT issues for relevant staff of the State Customs Committee.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	The exemption under Article 12.4 of the AML/CFT Law for monitoring entities which have a quarterly turnover of less than 50,000 Manats from terminating the established business relationship and to consider making a STR when the business relationship has already been commenced and the monitoring entity is not able to comply with CDD measures should be removed. **Recommendation 5** The authorities should issue a regulation or guidance on simplified CDD as foreseen in Article 17.8 of the AML/CFT Law and in order to remove any lack of clarity over the application of simplified CDD. Provisions should be introduced to require the identification

	and verification of the beneficiary under a life insurance policy at or before the time of pay-out or the time when the beneficiary intends to exercise vested rights under the policy. The authorities should issue guidance for monitoring entities in order to assist them in identifying the beneficial owners of a legal person if the customer is owned by a foreign legal person. Azerbaijan should consider introducing a requirement that the companies' register held by the Ministry of Taxes contains information on the beneficial owners. **Recommendation 6** The authorities should consider amending requirements on establishment of the internal control system so that foreign customers and beneficial owners who are foreign citizens are required to fill in the Questionnaire for a PEP of a foreign state. **Recommendation 7** Monitoring entities should be required to clearly document the respective AML/CFT responsibilities of each institution.
3.3 Third parties and introduced business (R.9)	
3.4 Financial institution secrecy or confidentiality (R.4)	The law should be amended to state clearly that capital market secrecy does not apply in situations specified by the AML/CFT Law or when this information is to be used for the purpose of AML/CFT comparable to the provisions which exist in the Law on Banks and in the Law on Insurance Activities. Where a correspondent relationship involves the maintenance of "payable-through accounts", local banks should be allowed to share information about their customers CDD to correspondent banks.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** The requirement to maintain records of account files and business correspondence for at least 5 years following the termination of an account or business relationship should also apply to those monitoring entities which have the yearly turnover less than AZN 50,000 per quarter. Monitoring entities should be required to ensure that all customer and transaction records and information are available on a timely basis to law enforcement authorities. The requirement to retain business correspondence and other relevant documents should be extended to for at least 5 years

	following the termination of an account or business relationship. ***Special Recommendation VII*** The requirement for each intermediary financial institution in the payment chain to ensure that all originator information that accompanies the wire transfer is transmitted with the transfer must be included in the legislation. The Azerbaijan authorities should issue guidelines for the beneficiary financial institutions in order to implement effectively risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. The fact that there is incomplete information is not in itself a reason for reporting wire transfers as suspicious or unusual per se. The sanctioning 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)	***Recommendation 11*** The authorities should consider issuing guidance for monitoring entities to assist them in identifying unusual transactions. Monitoring entities should be required to ensure that unusual transactions findings are available to law enforcement authorities and auditors. ***Recommendation 21*** There should be a requirement that the written findings should be available to auditors. The authorities should issue a list of counter-measures that could be applied by the Azeri authorities to countries which do not or insufficiently apply the FATF Recommendation.
3.7 Suspicious transaction reports and other reporting (R.13,14, 19, 25 & SR.IV)	***Recommendation 13 and Special Recommendation IV*** The authorities should clarify the reporting requirement by extending the requirement to explicitly include those who finance terrorism. To enhance effectiveness: • further training and awareness raising efforts are needed for the financial sector; and • more ML/TF typologies and trends should be made publicly available by the authorities involved in AML/CFT ***Recommendation 14*** Provisions should be introduced extending protection on reporting in good faith to directors and officers which are not

	employees of the reporting entity. ***Recommendation 25*** The FMS build up the awareness of the obliged entities and provide more general feedback by publishing more regular and extensive ML/TF typologies and trends and organising more workshops for participants of monitoring entities.
3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)	Monitoring entities whose quarterly turnover is less than 50,000 AZN (€47,000) should be required to establish internal procedures, polices and controls. ***Recommendation 15*** A requirement for financial institutions to maintain an adequately resourced independent audit function should be introduced. ***Recommendation 22*** There should be a general requirement in the AML/CFT Law that would oblige non-banking 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 local laws and regulations permit.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 and 25)	***Recommendation 23*** Legal provisions should be adopted to prevent persons who are associated with criminals 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 in financial institutions. ***Recommendation 17*** The FMS and the Ministry of Justice should be given the authority to initiate procedures for violation of provisions of the AML/CFT Law outside the process of on-site supervision, e.g. Standardised off-site supervisory examinations. The range of sanctions should be amended in order to be properly effective, proportionate and dissuasive. The other sectorial laws (apart from the CBA and the SCS) should provide for a procedure for withdrawing or suspending a financial institution's licence for not observing AML/CFT requirements. The full range of sanctions, in addition to writing warnings, should be applied for AML/CFT breaches.

	Each concrete requirement of the AML/CFT Law should be linked to sanctions. ***Recommendation 25*** The authorities should issue sector specific guidance in order to ensure that it goes further than repeating the provisions of the legislation. The guidance should identify best practice that would assist the institutions in meeting the AML/CFT legal requirements. Guidance should also set out the expectations of the supervisory authorities in respect of the requirements: to establish and verify the identity of beneficial owners, in particular the manner of identification of those which are non-residents in Azerbaijan; on identifying complex and unusual transactions; and on appropriate measures for simplified and enhanced due diligence. ***Recommendation 29*** The Law on Banks should be amended to provide the CBA with full powers to conduct on-site examination of foreign banks and branches. The Ministry of Communication and Information Technologies MCIT) should have adequate powers to monitor entities providing postal services. The division of the supervision powers of the CBA and the MCIT should be clearly stated in order not to undermine the overall effectiveness of the supervision of Azerpost. When conducting inspections the MFA should take into account the possible vulnerabilities of the insurance sector concerning ML/TF issues.
3.11 Money or Value Transfer Services (SR.VI)	The MCIT should conduct regular AML/CFT on-site inspections of both Azerpost and individual post offices. The MCIT should receive regular AML/CFT reports from Azerpost. The sanctioning system for infringements of the existing legislative acts should be amended to provide for an effective sanctioning regime.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	The exemption for DNFBPs whose quarterly turnover is less than 50,000 Manats (€47,000) from certain AML/CFT requirements should be removed. Accountants should be subject to the AML/CFT Law. More steps should be undertaken to raise awareness among

	DNFBPs on the importance of identification of beneficial owners of customers as one of the key points in conducting effective CDD measures. Recommended action points on Recommendations 5, 6, 10 and 11 should also be applied to DNFBPs.
4.2 Suspicious transaction reporting (R.16)	Further training and awareness raising efforts on reporting requirements are needed for the DNFBP sector. Recommended action points on Recommendations 13, 14 15 and 21 should also be applied to DNFBPs.
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** Notaries, Lawyers, other persons giving legal services and dealers in precious stones and precious metals remain unsupervised in practice due to a lack of involvement of the MJA, Lawyer Bar Association, MFA and MTA in performing their supervision function for AML/CFT purposes. On the whole, the Azerbaijani supervisory authorities need to have a more proactive role in this respect. The supervisory authorities should develop an action plan on how AML/CFT supervision will be integrated into their existing activities as well as undertake more AML/CFT inspections. An analysis of risks (global or sector-specific) should be carried out by the supervisory authorities to assist them in focusing supervisory efforts on areas identified as problematic due to higher risks. AML/CFT training should be provided for individuals conducting AML/CFT supervision in the Ministry of Justice, Lawyer Bar Association, MFA, and MTA. ***Recommendation 25*** The evaluators consider that sector specific guidelines should be developed to enhance the awareness of the sectors.
4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)	The authorities should consider developing and publishing a strategy on the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	A requirement should be introduced in respect of the commercial register for information on beneficial ownership to be collected or made available and for the registration system to provide adequate access to up-to-date information on

	beneficial ownership in a timely manner. The requirement that release of information is contingent upon receiving permission from all individuals named in the records as set out in the Law on Commercial Information should be removed. The authorities should assess the potential risk of the use of bearer shares for criminal activities as part of the upcoming national risk assessment.
5.2 Legal arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	The forthcoming national risk assessment should give consideration to what further training may be required.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31 and 32)	Efforts should be paid to implement a continuous and consistent, multilateral cooperation and coordination mechanism dedicated to problem identification at AML/CFT system level and the adoption of proactive or reactive policies to cope with emerging or existent issues. The FMS should have the authority to disseminate financial information to all relevant investigative bodies, when following analysis, indications of crimes other than money laundering or terrorist financing emerge. The FMS should be authorised to disseminate financial information, under proper safeguards, upon the request of another domestic authority for investigation purposes.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	The deficiencies identified in connection with the implementation of the Vienna, Palermo and Terrorist Financing Conventions and the Implementation of UNSCRs relating to Prevention and Suppression should be addressed; in particular: • deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property; • the authorities should be able to attack property held by third parties where there is a gift made or inadequate value in exchange for the property; • Criminal liability for ML should be extended to legal persons.
6.3 Mutual Legal Assistance	***Recommendation 36***

<table>
<tr><td>(R.36-38 & SR.V)</td><td>The remaining gaps identified in compliance with the Palermo and Vienna conventions should be remedied, in particular, the lack of corporate liability.

Statistics on mutual legal assistance should be used to identify trends in connection with the provision of mutual legal assistance.

Recommendation 38

Formal arrangements for co-ordinating seizure and confiscation actions although ad hoc arrangements should be put in place.

Although the Azerbaijani authorities point to Article 14 of the Palermo Convention which permits (but does not oblige) countries to give consideration to concluding arrangements with other contracting parties to share such proceeds, the evaluators are advised that no such arrangements have in fact been entered into. Consideration should be given to whether steps could be taken to enter into such arrangements.

The Azerbaijani authorities are recommended to consider a review of existing law and practice in this area to identify features which may act as barriers to the development of practical co-operation.

Special Recommendation V

International cooperation in the area of FT could in some instances suffer from the remaining gaps identified in compliance with the Terrorist Financing Convention and these deficiencies should be addressed.</td></tr>
<tr><td>6.4 Extradition (R.37 & 39, SR.V)</td><td></td></tr>
<tr><td>6.5 Other Forms of Co-operation (R.40 & SR.V)</td><td>Supervisory authorities should put extra effort into extending their practice of information exchange for AML/CFT purposes.

Law enforcement authorities should put extra effort into extending their practice of information exchange for AML/CFT purposes. This would mean first of all an increase in the number of ML/TF cases opened and determination on going after the proceeds that were placed outside the borders of Azerbaijan.</td></tr>
<tr><td>7. Other Issues</td><td></td></tr>
<tr><td>7.1 Resources and statistics (R. 30 & 32)</td><td>Resources

On-going training should be provided to all the investigative bodies in Azerbaijan in recognising ML criminal behaviour and in dealing with the ML procedural issues under the current provisions of the Criminal Procedure Code.

Although the other investigative bodies in Azerbaijan hold no</td></tr>
</table>

	investigative competence for ML/TF, proper training in recognising such criminal behaviour and dealing with the procedural issues under the current Criminal Procedure Code would be highly beneficial for the whole AML/CFT system. Measures should be taken to ensure that investigative bodies in Azerbaijan are equipped with a proper toolbox of investigative techniques that assist the investigation of money laundering and terrorist financing. The authorities should develop and implement training, data collection and enforcement programs on AML/CFT issues for the State Customs authority. Training for the MFA employees should be enhanced. The MCIT is under-staffed and training for the employees should be improved **Statistics** Money laundering statistics should include an analysis of whether they refer to cases of self-laundering, third-party laundering or autonomous laundering and indicate the underlying predicate offences. Money laundering and terrorist financing statistics should include an analysis of penalties. Measures should be introduced to collect statistics for seizures and confiscations related to all funds-generating offences, not just money laundering. Information on confiscation of indirect proceeds, value confiscation and third-party confiscation should also be collected. These statistics should be utilised, along with statistics on the level of funds-generating crime to determine strategic priorities in developing the AML/CFT regime. Statistics collated and prepared by the FMS should be available to all key stakeholders and used to develop AML/CFT policy and strategy. Steps should be taken to ensure that statistics on mutual legal assistance can be provided going forward. Statistics should be maintained on cooperation and exchange of information with other supervisory bodies.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

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

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

1.	**Corporate Liability**
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. What is the position in your jurisdiction?
Description and Analysis	Criminal liability for money laundering will be extended to legal persons when the law of the Republic of Azerbaijan on "Amendments to the Criminal Code of the Republic of Azerbaijan" dated 7 March 2012 comes into force. Legal persons are not subject to civil or administrative proceedings for money laundering.
Conclusion	Azerbaijani legislation is not yet in line with this provision of the Directive.
Recommendations and Comments	It is recommended that steps be taken to bring the law of the Republic of Azerbaijan on "Amendments to the Criminal Code of the Republic of Azerbaijan" dated 7 March 2012 comes into force.

2.	**Anonymous accounts**
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. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Article 9.1 of the AML/CFT Law stipulates that FIs are not permitted to keep anonymous accounts or accounts in fictitious names, or anonymous deposit accounts, as well as to issue the anonymous deposit certificates.
Conclusion	Azerbaijani legislation is in line with this provision of Directive
Recommendations and Comments	N/A

3.	**Threshold (CDD)**
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 and linked transactions of EUR 15 000 covered?
Description and Analysis	According to provisions in art. 9.2 of the AML/CFT law monitoring entities are obliged to conduct CDD measures before carrying out occasional transactions above the applicable designated threshold in the amount of 15,000 Manats (hereinafter – threshold); this also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked.
Conclusion	Azerbaijani legislation is in line with this provision of Directive.
Recommendations and Comments	N/A

4.	**Beneficial Owner**
Art. 3(6) of the Directive *(see Annex)*	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
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	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Definition of beneficial owner in art. 1.0.12. of the AML/CFT law is the same as one in Glossary of Methodology for Assessing Compliance with FATF Recommendations.
Conclusion	Azerbaijani legislation is in line with this provision of Directive
Recommendations and Comments	N/A

5.	**Financial activity on occasional or very limited basis**
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 Art. 3(1) or (2) of the Directive. Art. 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 (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	There is no requirement in the Azerbaijani legislation which allows 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 AML/CFT requirements. There is, however, an exemption for monitoring entities which have a quarterly turnover of less than 50,000 Manats (approximately €47,000) from implementing the internal control system. This exemption is intended to give relief to small businesses and has no impact on financial institutions as all relevant financial institutions in

	Azerbaijan have a quarterly turnover in excess of 50,000 Manats.
Conclusion	The authorities have introduced exemptions for small businesses that have a similar impact to those envisaged by Article 2 (2).
Recommendations and Comments	N/A

6.	**Simplified Customer Due Diligence (CDD)**
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 should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Although article 9.19 of the AML/CFT Law allows monitoring entities to apply simplified CDD measures in cases specified by the FMS. However, the simplified CDD measures have not yet been determined by the FMS. Currently all customers are subject full range of CDD measures.
Conclusion	This derogation has not been applied.
Recommendations and Comments	N/A

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive *(see Annex)*	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the

	Directive?
Description and Analysis	Definition of beneficial owner in art. 1.0.12. of the AML/CFT law is the same as one in Glossary of Methodology for Assessing Compliance with FATF Recommendations and it is in line with definition in art. 3(8) of the Directive. There is no legal provision to remove PEP after one year of the PEP ceasing to be entrusted with prominent public functions according to (Art. 2(4)) of the Directive 2006/70/EC.
Conclusion	There is no legal provision to remove a PEP after ceasing to be a PEP therefore, the legislation is not_in line with provisions of Directive 2005/60/EC Directive 2006/70/EC.
Recommendations and Comments	The authorities should consider introducing a requirement for removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions.

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 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 your country apply Art. 13(3) of the Directive?
Description and Analysis	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
Conclusion	Azerbaijani legislation goes wider then requirements set out in art. 13(3) of the Directive.
Recommendations and Comments	N/A

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
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 Art. 13(6) of the Directive is broader than that of FATF

	R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	The provisions of art. 12-1. of the AML/CFT Law are in line with requirements under Recommendation 8 and its focus is on prevention of misuse of technological developments and non-face to face business, while a wider range of transactions and products that favour anonymity is not cover.
Conclusion	Azerbaijani legislation is not fully in line with requirements set out in Art. 13(6) of the Directive.
Recommendations and Comments	Authorities should consider extending the requirement set out in art. 12-1. of the AML/CFT Law to be in line with Directive.

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	There is no provision in Azerbaijani legislation which allows reliance for CDD performance by third parties.
Conclusion	This derogation has not been applied.
Recommendations and Comments	N/A

11.	**Auditors, accountants and tax advisors**
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 to auditors and tax advisors; 2. apply to 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 (2004 AML/CFT Methodology 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 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Art. 5. of the AML/CFT Law prescribes that DNFBPs are obliged to conduct all AML/CFT measures concerning CDD measures, record keeping and submitting STRs to FMS.
Conclusion	Azerbaijani legislation is in line with Directive
Recommendations and Comments	N/A

12.	**High Value Dealers**
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 those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	According to Art. 4.0.8. of the AML/CFT Law monitoring entities are natural and legal persons engaged in buying and selling of precious stones, precious metals, as well as the jewellery or the other goods made of precious stones and precious metals. There are no provisions in Law which defines natural and legal persons trading in goods where payments are made in cash in an

	amount of EUR 15 000 or more as monitoring entities.
Conclusion	Azerbaijani legislation is not in line with Directive
Recommendations and Comments	The authorities should consider extending the scope of the AML/CFT Law to include natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.

13.	**Casinos**
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 a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3,000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Casinos (including internet casinos) are prohibited in Azerbaijan.
Conclusion	This article is not applicable in Azerbaijan.
Recommendations and Comments	N/A

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
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	According to Art. 7. of the AML/CFT Law, all monitoring entities are submitting STRs directly to FMS.

Conclusion	There is no provision in Azerbaijan legislation which provides option to submit STR to FMS through a self-regulatory body.
Recommendations and Comments	N/A

15.	**Reporting obligations**
Arts. 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 (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a 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? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	The AML/CFT Law requires reporting where there is a suspicion that funds are the proceeds of a criminal activity or related to terrorist financing, including attempted transactions. Where non–execution of a transaction is not possible or where it is known that non–execution of the transaction may cause impediments for identification of the beneficial owner, a report should be submitted to the FMS immediately after execution of the.
Conclusion	Azerbaijani legislation is in line with Directive
Recommendations and Comments	N/A

16.	**Tipping off (1)**
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 reflected in Art. 26 of the Directive)

Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	Article 14 of AML/CFT Law stipulates that where the monitoring entities and other persons involved in monitoring, its personnel, as well as the personnel of the supervision authorities submit the information on the transaction which is subject to monitoring in good faith to the financial monitoring organ in order as defined by this Law, they shall be exempt from any liability for breach of any restriction on disclosure of the bank or other legally protected secrecy, as well as causing the material and moral damage emerged as a result of the disclosure of information.
Conclusion	Azerbaijani legislation is in line with Directive
Recommendations and Comments	N/A

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
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 what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Under Article 11.7 of AML/CFT Law sets out an offence of making disclosures to the customer or to the other persons. No derogations are provided in the law.
Conclusion	Azerbaijani legislation is in line with Directive, although the derogations have not been applied.
Recommendations and Comments	The authorities may wish to consider introducing instances where the prohibition on tipping off is misapplied.

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.

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 Art. 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	According to Azerbaijani legislation they are procedures in place to establish whether AML/CFT requirements are met in foreign branches and subsidiaries
Conclusion	There is no clear provision in legislation requiring credit and financial institutions to communicate the relevant internal policies to branches and majority owned subsidiaries.
Recommendations and Comments	Authorities may consider amending current legislation to allowed credit and financial institutions to communicate the relevant internal policies to branches and majority owned subsidiaries.

19.	**Branches and subsidiaries (2)**
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 should 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, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	According to art. 7.4. of the AML/CFT Law appropriate counter-measures shall be applied in relation to the business relationships and transactions with natural and legal persons of the countries which continuously not applying or insufficiently applying the requirements of international instruments on prevention of the legalization of criminally obtained funds or other property and the financing of terrorism to which the Republic of Azerbaijan is a party.
Conclusion	Azerbaijani legislation is in line with Directive.
Recommendations and Comments	N/A

20.	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 6.3 of the AML/CFT Law contains a requirement for supervisory bodies, in cases where they detect non-compliance with the requirements of the Law by the obliged entities, to impose sanctions and to inform the FMS. This article requires the supervisory bodies to always inform the FMS when they imposed sanctions against monitoring entities. There is no obligation in the AML/CFT Law that supervisory bodies should inform the FMS in cases where they have suspicions of ML/FT resulting from obtained data or performed supervision.
Conclusion	Azerbaijani legislation is not entirely in line with the Directive.
Recommendations and Comments	They authorities should consider introducing a requirement for supervisory bodies to inform the FMS where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.

21.	Systems to respond to competent authorities
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 a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Item 11 of the Regulation “On requirements of internal control systems” requires that monitoring entities should have systems in place which ensures documentation, recording, copying and storing of the information in order to comply with AML/CFT legislation and the submission of information to the FMS.
Conclusion	Azerbaijani legislation is in line with the Directive.

Recommendations and Comments	N/A

22.	Extension to other professions and undertakings
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The AML/CFT Law has been extended to NGOs.
Conclusion	Azerbaijani legislation is in line with the Directive.
Recommendations and Comments	N/A

23.	Specific provisions concerning equivalent third countries
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, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	There are no provisions in Azerbaijani legislation which provide specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive.
Conclusion	As Azerbaijani legislation is not in line with Directive it does not benefit from applying provisions related to equivalent third countries.
Recommendations and	The Azerbaijan authorities may wish to consider the introduction of

Comments	specific provisions for equivalent third countries where this is beneficial.

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

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

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

(a) in the case of corporate entities:

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

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

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

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

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

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

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

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

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

Article 2

Politically exposed persons

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

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

(b) members of parliaments;

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

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

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

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

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

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

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

(a) the spouse;

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

(c) the children and their spouses or partners;

(d) the parents.

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

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

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

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

VI. LIST OF ANNEXES

ANNEX I	Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others
ANNEX II	Designated categories of offences based on the FATF Methodology and Convention Offences
ANNEX III	Anti Money Laundering and Terrorist Financing Law
ANNEX IV	Criminal Code of the Azerbaijan Republic - Extracts
ANNEX V	The Law on amendments to the Criminal Code of the Republic of Azerbaijan
ANNEX VI	Code of Criminal Procedure
ANNEX VII	Law on the struggle against terrorism
ANNEX VIII	Law on Banks
ANNEX IX	Regulation on determination of the list of countries (territories) that are suspected in either legalization of criminally obtained funds
ANNEX X	Regulation on approval of the General List of natural or legal persons designated on the basis of relevant United Nations Security Council Resolutions
ANNEX XI	Regulation on submission of data by monitoring entities and other persons involved in monitoring
ANNEX XII	Requirements on qualifications and experience of compliance officers
ANNEX XIII	Requirements on establishment of the internal control system
ANNEX XIV	Decree On application of the Law on the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism
ANNEX XV	Decree On approval of the Statute of the Financial Monitoring Service
ANNEX XVI	Statute of the Financial Monitoring Service
ANNEX XVII	Law on Regulation of Inspections
ANNEX XVIII	Guidelines on Cashless Settlements and Money Remittances
ANNEX XIX	Regulations on the currency transaction regime of residents and non-residents
ANNEX XX	Law on state registration and state registry of legal entities
ANNEX XXI	Law on Legal Assistance in Criminal Matters
ANNEX XXII	Law on Non- Governmental Organizations
ANNEX XXIII	Code on administrative violations
ANNEX XXIV	Statistics on Training