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EVALUATION OF ANTI-MONEY  
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FINANCING OF TERRORISM  
(MONEYVAL)

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# Report on Fourth Assessment Visit – *Summary*

## Anti-Money Laundering and Combating the Financing of Terrorism

# LATVIA

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## LIST OF ACRONYMS USED

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BoL	Bank of Latvia
CDD	Customer Due Diligence
CFT	Combating the financing of terrorism
CPL	Criminal Procedure Law
DNFBP	Designated Non-Financial Businesses and Professions
EC	European Commission
ECDD	Enhanced Customer Due Diligence
EU	European Union
FATF	Financial Action Task Force
FCMC	Financial and Capital Market Commission
FIU	Financial Intelligence Unit
FI	Financial Institution
FT	Financing of Terrorism
LCL	Latvian Criminal Law
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
MLA	Mutual Legal Assistance
ML	Money Laundering
ML/FT	Money Laundering and Financing of Terrorism
MoT	Ministry of Transport
NATO	North Atlantic Treaty Organization
NC	Non compliant
PC	Partially compliant
PEP	Politically Exposed Persons
SR	Special Recommendation
SRS	State Revenue Service

STRs	Suspicious transaction reports
TF	Terrorism Financing
TF Convention	UN International Convention for the Suppression of the Financing of Terrorism
UNSCR	United Nations Security Council Resolution
UTR	Unusual Transaction Report

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## 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 Latvia at the time of the 4<sup>th</sup> on-site visit (9 to 13 May 2011) and immediately thereafter. It describes and analyses these measures offering recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4<sup>th</sup> cycle of assessments is a follow-up round, in which Core and Key and some other important Recommendations in the FATF Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 have been re-assessed, as well as all those for which Latvia received non-compliant (NC) or partially compliant (PC) ratings in its 3<sup>rd</sup> round report. This report is not, therefore, a full assessment against the FATF Forty Recommendations 2003 and the 9 Special Recommendations on Terrorist Financing 2001 but is intended to update readers on major issues in the Latvian AML/CFT system.

### 2. Key findings

2. Latvia established an inter-agency working group to draft a national AML/CFT risk assessment in 2010 but at the time of the on-site visit the national AML/CFT risk assessment was not completed<sup>1</sup>. The authorities consider that the money laundering and financing of terrorism risk has not changed considerably since the last evaluation report. Nonetheless, the authorities identified the following money laundering (ML) threats to the Latvian economy: tax evasion involving organised criminal groups, money laundering through the real estate sector, grey economy, phishing schemes and fraud involving complex legal arrangements. The authorities consider the terrorist financing (TF) risk to be low.
3. Latvia has a comprehensive legal structure and has taken significant legislative steps to remedy many of the deficiencies identified in the third evaluation round, particularly on the preventive side. In particular, Latvia enacted a new Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing (AML/CFT Law) on 13 August 2008. The last amendment to the AML law, which entered into force on the 31st of March 2011, brought the material elements of the ML offence more into line with the Palermo and Vienna Conventions.
4. The TF offence is incriminated in the Criminal Law, but does not fully encompass all TF Convention and Special Recommendation (SR) II requirements. The evaluators noted that the Criminal Law does not specifically cover all acts which constitute an offence within the scope of, and as defined in, some of the treaties listed in the Annex to the TF Convention. The limitation arises from the fact that a part of the offences need to have an additional mental element in order to qualify as “*acts of terror*”.
5. The amendments made to the Criminal Procedural Law (CPL) since 2006 have improved the legislative framework for confiscation, particularly by subjecting indirect proceeds of crime to confiscation. The Latvian legal system has two confiscation concepts, which are the penalty confiscation and the confiscation of criminally obtained property. The Latvian legal framework provides for provisional measures and confiscation with regard to property laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences.
6. Latvia has implemented the UN Security Council Resolutions (UNSCRs) 1267 and 1373 by means of EU Council Regulations and Common Positions, as well as under the AML/CFT Law and other national legislation. The implementation of SR.III relies upon the application of

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<sup>1</sup> The results of the national risk assessment were planned to be published in September 2011 after the on-site visit concluded.

binding EU legislation; however, the overall co-ordination on dissemination of the lists is unclear. While on the financial side the persons subject to the AML/CFT Law seemed to be sufficiently aware of the obligations related to SR III, there is a lack of appropriate coordination on the dissemination of the lists which stem from the UNSCR and EC Regulations in respect of some designated non-financial businesses and professions (DNFBP) sectors (real estate agents, car dealers, auditors and lawyers).

7. The Latvian AML Law establishes the Financial Intelligence Unit (FIU) referred to as the “*Office for Prevention of Laundering of Proceeds derived from Criminal Activity*”, within the Prosecutor’s Office system. The Latvian FIU is entitled to disseminate its reports either to the pre-investigation institutions or directly to the Prosecutor’s Office. This is considered to be a welcome improvement from the position in the third round evaluation report. The Latvian FIU’s disseminations to the competent Law enforcement agencies (LEA) are mainly related to criminal offences of tax evasion and misuse of bank accounts (mainly abroad). Guidelines provided to the reporting entities are generic and not sector-specific to the financial institutions (FIs) and DNFBP.
8. Overall progress has been made to strengthen the preventive AML/CFT system. The AML/CFT Law has expanded the scope of persons subject to the AML/CFT Law (obligors), established enhanced customer due diligence measures, increased the number of supervisory authorities and their role in preventing money laundering and terrorism financing, and introduced a risk-based approach to customer due diligence (CDD). Since the last Mutual Evaluation Report (MER), the Latvian authorities have established the concept of Enhanced CDD through both law and regulation - where Latvia has applied it to PEPs, Correspondent banking, and non face-to-face business. In particular, the Financial and Capital Market Commission (FCMC) issued the Regulation for Enhanced Due Diligence that is binding on its obligors. The financial sector appears to be aware of the prohibition on the use of anonymous accounts; however fictitious accounts and numbered accounts are not expressly prohibited by law. With respect to politically exposed persons (PEPs), Latvia has adopted a restrictive legal approach, therefore not covering all categories of persons in the FATF definition.
9. The Latvian AML/CFT Law establishes an obligation for all covered entities to report to the FIU without delay any unusual or suspicious transaction for ML and TF.
10. Since the 3<sup>rd</sup> round report Latvia has improved the supervisory regime, transposing into the new AML/CFT law both the provisions of the third European Union (EU) AML/CFT Directive (2005/60/EC) and its Implementing Directive (2006/70/EC). Under the new AML/CFT legal framework, almost all FIs have a designated supervisory authority. However, the evaluation team found a lack of a dedicated supervisor for the following categories: persons providing money collecting services, reinsurance services, and micro-credit lending services provided by non-banks.
11. The AML/CFT supervision of the financial sector is divided between the FCMC, the Bank of Latvia (BoL) and the Ministry of Transport (MoT). However, according to the AML/CFT Law, only the FCMC is permitted to issue regulatory provisions for the supervision and control of AML/CFT regime. This raises questions with regard to the regulation and supervision of both sectors.
12. The FCMC is the only supervisory entity that can issue financial sanctions, according to the AML/CFT Law. The BoL, on the other hand, can suspend licenses for a limited period of time or withdraw the license. This power has been exercised in practice for failure to comply with AML/CFT regulations. The MoT’s sanctioning powers are unclear.
13. With regard to DNFBP, Latvia has also designated the Ministry of Finance’s State Revenue Service as a supervisory body for most DNFBP. During the on-site visit, the team noted that there was a lack of effective systems for monitoring and ensuring compliance with CDD requirements across most of the DNFBP sectors, as well as indications of gaps in CDD practices among DNFBP.
14. As set out in the 3<sup>rd</sup> round mutual evaluation report (MER), Latvia is a party to a number of international agreements, such as the 1959 European Convention on Mutual Legal Assistance

(MLA) in Criminal Matters and its Additional Protocols, and the 1990 Strasbourg Convention and 2005 Warsaw Convention. It is a party to several bilateral mutual legal assistance agreements. MLA is provided on the basis of international, bilateral, or multilateral agreements, where available. Where there is no agreement on MLA, the CPL states that MLA is provided on the basis of reciprocity.

### 3. Legal Systems and Related Institutional Measures

15. The new AML/CFT Law and the amendments to the CPL have improved the legislative framework. With reference to predicate offences, the AML/CFT Law explicitly provides that a person may be convicted of a ML offence even in the absence of a judicial finding of guilt in respect of the predicate offense. However, with regard to the practical application of the legal provisions, the evaluators received various opinions from the practitioners. Judicial practice seems to prefer a higher level of proof for the underlying predicate offence, which has made it difficult, if not impossible, to successfully prosecute an autonomous ML offence.
16. Under the Latvian AML/CFT Law, proceeds shall be considered as derived from criminal activity where a person, directly or indirectly, acquires ownership or possession of them as a result of a criminal offence, and in other cases specified by the CPL. In addition, the proceeds from criminal activity shall also mean the funds that belong to a person or that are, directly or indirectly, controlled by a person who is suspected to be part of terrorist groups or activities.
17. The report reveals that apart from self-laundering, third party laundering and autonomous laundering offences are being investigated and prosecuted in practice. However, on the basis of the evidence and data made available during the on-site visit, some doubts remain in relation to the effective implementation, as the evaluation team found that demanding levels of proof may have impacted the effective prosecution of the predicate offences.
18. The evaluation team welcomes the amendment made to the Latvian Criminal Law (LCL) where the TF offence is qualified as an especially serious crime. The offences considered as “terrorism” are provided by the LCL, but the evaluators noted that the list does not cover all acts which constitute an offence within the scope of, and as defined in, some of the treaties listed in the Annex to the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention), eg. the acts set out in the ‘Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents’. Therefore a limitation arises from the fact that the remaining unlisted offences need an additional mental element in order to qualify as “acts of terror”. With regard to effectiveness, there has not been any investigation, prosecution or conviction for TF offences in Latvia, though there are no statistics on the matter.
19. Latvia’s provisional measures and confiscation regime is generally comprehensive. The amendments made to the CPL have improved the legislative framework for confiscation particularly by subjecting indirect proceeds of crime to confiscation. The Latvian legal system has two confiscation concepts that are the penalty confiscation and the confiscation of criminally obtained property. The proceeds are to be recognised as derived from criminal activity by a court adjudication that has entered into effect, or by a decision of a public prosecutor regarding the termination of criminal proceedings. The evaluators were advised by the practitioners that the focus in practice is on seizing of the whole property of suspects during investigations. However, the effectiveness of the system is questionable due to confusing statistics on confiscations and provisional measures. An overall lack of coordination on the gathering of statistics on amounts frozen, seized and confiscated is noticeable. Furthermore, the authorities were unable to demonstrate whether the provisions related to third party confiscation, value confiscation and confiscation of indirect proceeds of crime have been applied effectively.
20. As a member of the EU, Latvia implements its obligations to freeze funds and assets of terrorists on the basis of EC Regulations and complementary domestic legislation. UNSCRs 1267 and

successor resolutions are implemented by EU Council Regulation No. 881/2002, whereas, the most important part of UNSCR 1373 is implemented by EU Council Regulation No. 2580/2001. The evaluation team noted that the overall dissemination of the new lists to the FIs subject to the AML/CFT Law is satisfactory and effective. The freezing system in place for listed persons in Latvia relies on a reporting mechanism to the FIU and the transactions performed by such persons are to be considered by the subject persons as “*unusual transaction*” and thus, a matter of automatic reporting. However, the evaluators have concerns about the effectiveness of the procedures in place to freeze assets of designated persons. While the FIU permits freezing up to 9 months, the system relies on a judicial-based mechanism, which has not yet been tested in practice, to ensure freezing of assets until the person is de-listed. There is no specific national legislation to meet the requirements in relation to access of frozen funds for expenses and other purposes. There is no national mechanism in place to consider freezing requests under UNSCR 1373 or by third countries that are outside the EU and NATO.

21. The Latvian FIU is a specially established public institution that, pursuant to the AML/CFT Law, exercises control of unusual and suspicious transactions reports. The FIU obtains, receives, makes records, processes, compiles, stores, analyses these reports and provides to a pre-trial investigation institution, the Office of the Prosecutor or the Court, information that may be used for the prevention, uncovering, pre-trial criminal proceedings or adjudication of money laundering, terrorist financing or an attempt or other criminal offence related thereto. The Prosecutor General establishes the structure and draws the list of positions within the FIU in accordance with the allocated state budget resources. Cabinet of Ministers’ Regulation 1071 establishes the unusual transaction indicators list and the procedure for reporting unusual and suspicious transactions. This Regulation partially covers the standards set by FATF for guidance on suspicious transactions reporting.
22. During the on-site visit the Latvian authorities indicated that in practice the FIU has access to all databases managed by the State or Municipality authority, but those databases are not integrated and thus, no automatic search can be performed in the course of the analytical work. In general, the cooperation between FIU and LEA appears to be good. Information flows go upon request both ways: from FIU to LEA and vice-versa.

#### **4. Preventive Measures – financial institutions**

23. An important development since the last mutual evaluation report is that the amended AML/CFT Law has expanded the number of supervisory authorities and introduced the concept of the risk-based approach. The amended AML/CFT Law now includes, *inter alia*, a comprehensive framework for defining and applying CDD, including enhanced CDD procedures and record keeping requirements. It additionally sets out provisions catering for simplified and enhanced CDD measures and provisions for exemptions from certain CDD measures, where financial activity is conducted (amongst others) on an occasional or very limited basis. The FCMC has adopted the Regulation for Enhanced Customer Due Diligence (ECDD) that is binding upon all entities supervised by the FCMC. However, this regulation does not cover all FIs only those supervised by the FCMC.
24. The Latvian authorities have promulgated a risk-based approach based on four categories of risk, that firms should consider when determining the risk of their client base and when setting their own internal control procedures. These four categories of risk are: country risk; risk associated with the legal form of the customer; risk associated with the economic or personal activity of the customer; and risk associated with the products or services used by the customer. This concept is articulated in the AML/CFT Law and repeated in the FCMC Regulation on ECDD and throughout various Government regulations and guidance.
25. Under the new AML/CFT legal framework, almost all obligors have a designated supervisory authority. The AML/CFT Law defines persons providing money collecting services as an obligor; however, this category does not have a dedicated supervisory and control authority under the

aforementioned Law. While there are no reinsurance activities within Latvia, and the AML/CFT Law does not include reinsurance as an obliged entity, the Reinsurance Law does provide some AML/CFT controls, including a requirement for firms to maintain internal AML/CFT procedures in order to obtain a license. Lastly, there are micro-credit lending services available through both banks and non-banks. While this financial service, when provided through a bank, would be subject to FCMC supervision, the other micro-lending services would not be covered by any designated supervisory authority.

26. The evaluators were concerned at the high level of accounts closed shortly after being opened due to failure to complete full CDD on the account holder. Interviewed representatives of the financial sector revealed that while they are required under Art. 43, part 2 to submit an STR when they close an account due to failure to complete CDD, they do not always do so. The Latvian authorities confirm that there have been cases where banks have been sanctioned for not reporting in such cases.
27. With respect to PEPs, Latvia has adopted a restrictive legal definition. The AML/CFT Law's definition is limited to a defined list, and as such, it does not allow for additional interpretation. Given the list-based approach, there is inadequate coverage of all of the FATF defined categories of PEPs.
28. The AML/CFT Law requires credit institutions to undertake various enhanced CDD measures before initiating a correspondent banking relationship with a credit institution or with an investment brokerage firm, including gathering information on the respondent institution to fully understand the nature of its business and determining from publicly available sources its reputation and the quality of supervision. Although the law does not explicitly say that a FI should assess whether a respondent institution's AML/CFT policy is adequate and effective, both regulators and FIs explained during the on-site visit that they do conduct a thorough analysis before beginning their relationship.
29. The implementation of AML/CFT preventative measures for new or developing technologies and non-face to face business in Latvia had improved since the last report. The AML/CFT Law requires reporting entities to regularly assess the efficiency of their internal control system to examine risks which may arise from the development of new technologies and when necessary, to take measures to improve the efficiency of the internal control system.
30. With respect to third party introduced business, the AML/CFT Law establishes that obligors are entitled to recognise and accept the results of customer identification and CDD performed by credit institutions and FIs, other than (capital) companies that buy and sell foreign currency and payment institutions, in a member state and a third country provided that the requirements in respect of prevention money laundering and of terrorist financing, as enforced in these countries, are equivalent to those of the AML/CFT Law. However, the assessors are of the opinion that the effectiveness of the legal provisions is diminished by the need for the customer's agreement to pass the information and copies of documents obtained as a result of the customer identification and CDD, which could delay the process or even cancel it.
31. With reference to financial institution (FI) secrecy laws, no major changes have been made to the legislation in relation to access to information at FIs since the 3<sup>rd</sup> round MER. During the on-site visit the evaluation team did not detect any problems in relation to the effectiveness and efficiency of the procedures.
32. The record keeping obligations are regulated by the AML/CFT law and by the FCMC Regulations on Enhanced CDD. The Latvian authorities consider that the records kept by FIs are sufficient for reconstruction of a transaction. Examination of the client accounts during the on-site examinations in banks has proved that the chain of transactions can be reconstructed. In the on-site interviews, law enforcement and prosecutors did not indicate any difficulty in getting necessary information when requested, and that full documentation is available when requested. However, the Latvian legal regime restricts the maximum time of keeping records to a period to 6 years, whereas the FATF standard requires at least five years or longer (without imposing an upper limit).

33. Regarding wire transfer rules, Latvia implements, as other EU countries, EU Regulation (EC) No 1781/2006 covering requirements for information accompanying transfers of funds without any additional implementation requirements. National implementation is therefore limited to establishing an appropriate monitoring, enforcement and penalties regime.
34. The FCMC addressed the issue of countries which do not or insufficiently apply FATF Recommendations, by adopting the Regulation for Enhanced Customer Due Diligence. This is binding upon all entities supervised by the FCMC. However, the Regulation on ECDD does not cover all FIs, but only those supervised by the FCMC. During the on-site visit, the evaluation team noted delays in updating references from the list which might negatively impact on effectiveness.
35. The new AML/CFT Law establishes the duty to report any unusual or suspicious transactions without delay. Regulation 1071 provides a comprehensive and sector specific list of indicators for unusual transactions which is binding upon all persons subject to the AML/CFT Law. Regulation 1071 provides for quantitative thresholds and all transactions meeting those criteria are subject to reporting on a compulsory basis regardless of any suspicious character of the transaction.
36. According to the AML/CFT Law a suspicious transaction is defined as a transaction that gives rise to a suspicion of laundering of proceeds from criminal activity (money laundering) or of terrorist financing or an attempt thereof, or of any other criminal offence related thereto.
37. The FIU promulgated a suspicious indicators list in the FIU Instruction of 19 January 2009 entitled "*On completion of the Paper Form of Unusual or Suspicious transaction reports*". Obligors can submit reports electronically or via paper copy forms, which are different. In addition, the evaluation team found that the distinction between unusual and suspicious transaction reports was very difficult to discern. Furthermore, a list of Indicators document relating to suspicious financial transactions, which also contains codes for each ground of suspicion, was issued by the FIU and is up-dated whenever necessary. Overall the evaluators considered that the various documents were confusing and should be consolidated. The number of reports received annually by the FIU appears to be high, but the Latvian authorities do not keep statistics on the total number of STRs and UTRs but only on the transactions reported.
38. The obligation to send reports on terrorist financing to the FIU is provided for in the Latvian legislation in the AML/CFT Law and the Cabinet of Ministers' Regulation 1071. The terrorism related reports are mentioned both under the STR and Unusual transactions reports (UTR) requirements. The distinction between the two instances appears to be related to the terrorist lists: the persons identified on various terrorist lists as described under SR III are to be considered as unusual transactions, and otherwise as suspicious. As a result of the terrorist financing offense's deficiency, the reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations.
39. With regard to foreign branches and subsidiaries, the AML/CFT Law requires obligors to ensure that its structural units, branches, representative offices and subsidiaries comply with a strict set of AML/CFT requirements, namely customer identification, due diligence and record keeping. There is no requirement to apply the higher standard where AML/CFT provisions differ between Latvia and the country of residence of the branch/subsidiary.
40. The sectoral legislative acts (Law on Credit Institutions, Law on the Financial Instruments Market, Law on the Investment Management Companies, Law on Payment Services and Electronic Money) regulating the licensing procedure of the credit and FIs in Latvia establish the necessary 'fit and proper' requirements to prevent criminals and their associates from being involved in owning, controlling or managing financial institutions.
41. The sanctioning regime related to FIs in Latvia in cases of non-compliance with AML/CFT legal framework consists of criminal sanctions, administrative sanctions, as well as fines and other penalties applied to legal persons, according to the sector specific Laws.
42. FIs subject to the Core Principles are subject to licensing and on-going supervision of the FCMC. Their supervisory duties extend to AML/CFT matters. The Law on Credit Institutions contains the

regulatory and supervisory measures that apply for prudential purposes and which are also relevant to ML.

43. The statutory powers on sanctions differ among supervisory authorities, as do the types of sanction that may be applied to the regulated entities. While the FCMC enjoys full sanctioning powers, the BoL cannot apply financial sanctions and the MoT only has the right to issue warning notices. Given this the full effectiveness of the sanctioning regime is questionable, and the FCMC has not imposed any sanctions on directors and management of FIs under its supervision.
44. Steps have been taken by the Latvian authorities to provide guidelines to the FIs to assist them in complying with AML/CFT requirements. The FIs are generally aware of their duties in relation to the AML/CFT Law. However, little guidance has been provided in relation to suspicion indicators both for ML/ and TF cases.

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

45. With the amendments to the AML/CFT Law, the Latvian authorities have covered all the categories of DNFBP to include both independent accountants and independent lawyers. The AML/CFT reporting obligations regarding FIs in Latvia apply equally to the DNFBP obligors.
46. According to the AML/CFT Law, the Lotteries and Gambling Supervisory Inspection is the supervisory authority in respect of the organisers of lotteries and gambling for AML/CFT purposes and they have been established in this regard. Based on discussions held on-site with the supervised entities and also with the supervisory authority they have the power to impose sanctions and they have exercised these statutory prerogatives.
47. The State Revenue Service (SRS) is the supervisory and control authority for most of the DNFBP, including among others: tax advisors (certified), external accountants, dealers in precious metals and stones, auto dealers, real estate dealers. During the on-site interviews it was indicated by SRS officials that most supervisory activities conducted by the SRS are carried out off-site. However, the SRS has also developed recommendations to perform thematic on-site checks to assess that their obliged entities are meeting the obligations of the AML/CFT Law.
48. In respect of AML/CFT compliance, there are three self-regulatory Organisations governing their respective professions: the Latvian Council of Sworn Advocates; the Latvian Council of Sworn Notaries; and the Latvian Association of Certified Auditors. Latvia has also provided coverage for transactions with movable and immovable values included in the list of state protected cultural heritage monuments through the State Inspection for Heritage Protection.
49. However, the supervision provided for some of the DNFBP still appears weak in a number of respects and the evaluators noted that the AML/CFT awareness among the self-regulatory organisations is uneven. The Association of Certified Auditors and the Council of Sworn Notaries appear to have a relatively adequate level of understanding of their AML/CFT supervisory functions, whereas the advocates do not appear to be fully sensitive to their role as a supervisory authority for their members.
50. The SRS is largely concentrated on its functions of tax collection. The SRS indicated that the main instrument for performing supervisory duties on AML/CFT issues is offsite assessment and monitoring, but no internal procedures appear to exist to support this process. The SRS has issued general guidance but its dissemination among the supervised entities is inadequate.

## **6. Legal Persons and Arrangements & Non-Profit Organisations**

51. The evaluation team welcomes the significant improvements made by the Latvian authorities since the last evaluation report in respect of R 33. The electronic collection of data on commercial companies has substantially improved the transparency of the Commercial Registry and the access to data concerning legal persons.

52. The definition of “*beneficial owner*” as prescribed by the FATF Recommendations was introduced into the AML/CFT Law in 2008, and it provides an explicit requirement for FIs and DNFBP to identify the beneficial owners of the legal persons.
53. Nevertheless, the statutory administrative sanctions for not providing full information to the Registry are low. In the evaluators’ view, this may have an adverse effect on the reliability and/or accuracy of the information maintained by the Commercial Registry.
54. With regard to the regulation of bearer shares, the Commercial Law provides that bearer shares may be issued only in dematerialized form, i.e. prohibiting the issuance in paper form. Furthermore, the Commercial Code requires that all bearer shares be registered in the Latvian Central Depository.

## **7. National and International Co-operation**

55. The authorities have a variety of mechanisms in place to facilitate internal co-operation and policy development. The evaluators welcomed the work of the Financial Sector Development Council chaired by the Prime Minister and the establishment of the working group for the national AML/CFT risk assessment. Furthermore, the FIU contributes to the training of other domestic authorities and law enforcement authorities, as well as the private sector.
56. The FIU’s cooperation and exchange of information at an international level is generally well regarded.

## **8. Resources and statistics**

57. There is a need for specialised continuous training for police officers in AML/CFT matters in economic and financial analysis. More specialised investigators and equipment are needed for the law enforcement authorities (especially the financial police).
58. The FIU is well structured and professional. All working places are appropriately equipped with hardware for users to fulfil their functions according the requirements of the AML/CFT Law. Despite the recommendations of the 3<sup>rd</sup> round mutual evaluation report, the number of employees has not increased. The FIU’s IT and other analytical tools could be improved to increase the FIU’s effectiveness in light of the significant number of reports and transactions which are still manually analysed by a limited number of employees.
59. The statistics kept by the Latvian authorities are not always comprehensive and do not contain all the necessary data for an accurate analysis of effectiveness. No reliable statistics are maintained with respect to the total number of STRs and UTRs received, as the authorities only track the total number of transactions and not the total number of reports. This makes it difficult to analyse the effectiveness of the reporting system and of the FIU’s analytical work, especially with regard to disseminated cases to the LEAs. The evaluation team recommends that the statistics system could be improved by tracking the number of STRs and UTRs.
60. In general, the statistics maintained by the Latvian authorities is an area which needs improvement.

**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 Latvia. <i>It includes ratings for FATF Recommendations from the 3<sup>rd</sup> round evaluation report that were not considered during the 4<sup>th</sup> assessment visit. These ratings are set out in italics and shaded.</i>		
<b>Forty Recommendations</b>	<b>Rating</b>	<b>Summary of factors underlying rating<sup>2</sup></b>
<b>Legal systems</b>		
1. Money laundering offence	<b>LC</b>	<ul style="list-style-type: none"> <li>• The financing of terrorism is not fully in line with requirements of the TF Convention.</li> <li>• Demanding proof level for the predicate offence impact effectiveness.</li> <li>• Autonomous ML investigations and prosecutions constitute a challenge for the judiciary.</li> </ul>
2. <i>Money laundering offence - Mental element and corporate liability</i>	<i>Compliant</i>	
3. Confiscation and provisional measures	<b>LC</b>	<ul style="list-style-type: none"> <li>• Deficiencies in criminalisation FT (noted in SR. II) limit the power to confiscate.</li> <li>• Effectiveness could not be fully demonstrated</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>C</b>	
5. Customer due diligence	<b>PC</b>	<ul style="list-style-type: none"> <li>• No explicit prohibition of accounts opened in fictitious names.</li> <li>• Insufficient process for establishing equivalency of jurisdictions for CDD purposes.</li> <li>• The BoL Recommendations do not appear to provide clear requirements for ongoing due diligence in two important areas: establishing the source of funds and nature of the business of the customer when the transaction does not qualify as an unusual or suspicious transaction or the customer is a high-risk customer or a politically exposed person.</li> </ul>

<sup>2</sup> These factors are only required to be set out when the rating is less than Compliant.

		<ul style="list-style-type: none"> <li>• The CDD regime provides exemptions from customer due diligence in some cases of simplified CDD.</li> <li>• Weak understanding and documenting origin/source of funds in practice. (Effectiveness issue)</li> <li>• Limited demonstrated understanding regarding documenting origin/source of funds in practice (Effectiveness issue).</li> </ul>
6. Politically exposed persons	<b>LC</b>	<ul style="list-style-type: none"> <li>• Not all PEP categories mentioned in FATF standards are covered.</li> </ul>
7. Correspondent banking	<b>C</b>	
8. New technologies and non face-to-face business	<b>LC</b>	<ul style="list-style-type: none"> <li>• Insufficiently stringent levels of CDD are undertaken given the significant size of non-face-to-face customer client base.</li> </ul>
9. Third parties and introducers	<b>PC</b>	<ul style="list-style-type: none"> <li>• The AML/CFT Law does not provide unconditional and immediate access to the necessary information from the third party related to the CDD process.</li> <li>• Lack of provisions to obtain upon request, without delay, from third parties, the CDD documentation.</li> <li>• Need for customer's approval for obtaining documentation hinders effectiveness.</li> <li>• No direct referral to the list of equivalent countries.</li> </ul>
10. Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>• Limited ability for authorities to ask obligors to keep records beyond five years.</li> </ul>
11. Unusual transactions	<i>Largely Compliant</i>	<i>AML Law seems to limit access to information to supervisory authorities, rather than provide that the information should be made available to all relevant authorities.</i>
12. DNFBP – R.5, 6, 8-11	<b>PC</b>	<ul style="list-style-type: none"> <li>• The same concerns in the implementation of Recommendations 5 and 10 apply equally to DNFBP.</li> </ul> <p><b>Recommendation 5</b></p> <ul style="list-style-type: none"> <li>• Lack of licensed Real estate brokerage agents hinders effectiveness.</li> <li>• Uneven application of AML/CFT requirements across the entire field of organizers of lotteries and gambling houses.</li> <li>• Lack of awareness on the importance of customer identification across the dealers in precious metals &amp; stones sector.</li> </ul> <p><b>Recommendation 6</b></p> <ul style="list-style-type: none"> <li>• Lack of awareness of PEPs requirements for some DNFBP, especially the real estate and casinos.</li> </ul> <p><b>Recommendation 8 and 9</b></p>

		<ul style="list-style-type: none"> <li>• Internet gambling negatively impact effectiveness</li> </ul>
13. Suspicious transaction reporting	<b>PC</b>	<ul style="list-style-type: none"> <li>• The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds.</li> <li>• Reporting obligation does not cover funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations.</li> <li>• Suspicion indicators not mentioned in Regulation 1071 but in subsequent guidance documents undermines the suspicion based reporting system vs. threshold reporting system.</li> <li>• Guidance limited to terrorism not to financing of terrorism.</li> <li>• Closed list of indicators for suspicion limits the possibilities for reporting.</li> <li>• Deficiencies in the incrimination of TF might limit the reporting obligations.</li> <li>• Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports.</li> </ul>
14. <i>Protection and no tipping-off</i>	<i>Compliant</i>	
15. <i>Internal controls, compliance and audit</i>	<i>Largely Compliant</i>	<ul style="list-style-type: none"> <li>• <i>There are no legal or regulatory requirements to establish an adequately resourced and independent audit function for financial institutions other than banks, electronic money institutions, and insurance companies, even where warranted by size and risk.</i></li> <li>• <i>There is no explicit requirement that the compliance officer should be at management level.</i></li> <li>• <i>Only bureaux de change are required to introduce screening procedures to ensure high standards when hiring employees.</i></li> </ul>
16. DNFBP – R.13-15 & 21	<b>PC</b>	<p><b>Applying Recommendation 13</b></p> <ul style="list-style-type: none"> <li>• Difficulties identified in distinguishing between UTRs (threshold based) and STRs, undermines criterion 13.3 in practice</li> <li>• The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds</li> <li>• Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations</li> <li>• Deficiencies in the incrimination of TF</li> </ul>

		<p>might limit the reporting obligations</p> <ul style="list-style-type: none"> <li>• General lack of sector specific guidance and low notion of “suspicion”</li> <li>• Closed list of indicators for suspicion limits the possibilities for reporting</li> <li>• Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports</li> <li>• Low level of reporting in general; no reports from real estate agents (effectiveness issue)</li> </ul> <p><b>Applying Recommendation 21</b></p> <ul style="list-style-type: none"> <li>• No requirements for special attention to transaction with no apparent economic or lawful purpose</li> <li>• Not enough awareness of DNFBP on recognizing the high risk jurisdictions (effectiveness issue)</li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• The BoL has no sanctioning powers over natural persons; range of sanctions under the BoL act are not effective, proportionate and dissuasive.</li> <li>• The MoT is not invested with adequate legal sanctioning powers.</li> <li>• No sanctioning regime for unsupervised financial institutions.</li> <li>• Limited effectiveness of the sanctioning regime (i.e. no sanctions on management of the supervised entities).</li> </ul>
18. Shell banks	<i>Largely Compliant</i>	<ul style="list-style-type: none"> <li>• <i>Measures to prevent the establishment of shell banks are not sufficiently explicit.</i></li> <li>• <i>No specific requirement to check that foreign respondents ensure that they are not used by shell banks.</i></li> </ul>
19. Other forms of reporting	<i>Compliant</i>	
20. Other DNFBP and secure transaction techniques	<i>Compliant</i>	
21. Special attention for higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>• No supervision on the implementation of the sanctioning mechanism for Latvian Post.</li> <li>• No requirements for special attention to transaction with any apparent economic or lawful purpose for financial institutions that are not subject to FCMC supervision.</li> <li>• The ECDD requirements for clients from countries that do not sufficiently apply FATF Recommendations still do not apply</li> </ul>

		to financial institutions that are not subject to FCMC supervision, including without being limitative Latvian Posts.
22. Foreign branches and subsidiaries	<b>LC</b>	<ul style="list-style-type: none"> <li>Limited requirements (to a list of activities) to ensure that foreign branches and subsidiaries observe AML/CFT measures.</li> <li>No requirement to apply the higher standard</li> </ul>
23. Regulation, supervision and monitoring	<b>LC</b>	<ul style="list-style-type: none"> <li>Reinsurance companies unsupervised for AML/CFT purposes</li> <li>Effectiveness issues: <ul style="list-style-type: none"> <li>The effectiveness of the AML/CFT supervisory activity is diminished by the uneven degree of application of AML/CFT requirements in some sectors (insurers, Latvian Post, bureaux de change).</li> </ul> </li> <li>Effectiveness of the e-money supervisory regime could not be assessed while their supervision was just implemented by FCMC starting with April 2011.</li> <li>No financial sanctions applied to directors and board members of supervised entities.</li> </ul>
24. DNFBP - Regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>On-site supervision performed by the SRS is weak.</li> <li>No procedures for off-site supervision performed by the SRS.</li> <li>Sanctions imposed in practice not enough dissuasive, effective and proportionate.</li> <li>Weak supervision performed by the SROs.</li> <li>Confusion in performing supervisory powers between Council of Sworn Notaries and the FIU.</li> </ul>
25. Guidelines and Feedback	<b>LC</b>	<ul style="list-style-type: none"> <li>Insufficient general feedback on TF reports.</li> <li>No FI sector specific guidelines on ML/FT techniques and methods.</li> <li>No specific guidelines on suspicion grounds including red flags and indicators (ML and TF).</li> <li>No guidance on TF suspicions (DNFBP).</li> <li>The guidance for auditors and notaries do not provide assistance on suspicious transactions reporting.</li> <li>Insufficient awareness of the SRS supervised DNFBP on the content of the specific guidance.</li> </ul>
<b>Institutional and other measures</b>		
26. The FIU	<b>LC</b>	<ul style="list-style-type: none"> <li>Guidelines provided to the reporting entities concerning the manner of reporting STs are set out in various documents which could lead to confusion over the reporting</li> </ul>

		<p>obligation.</p> <ul style="list-style-type: none"> <li>• Guidance on the manner of reporting limited to terrorism not to financing of terrorism.</li> <li>• The content of the FIUs disseminations are not a part of FIUs IT protected system against arbitrary modification and/or deletion.</li> <li>• FIU access to additional financial information requires prosecutor's approval.</li> <li>• Effectiveness could not been fully proved.</li> </ul>
27. Law enforcement authorities	Compliant	
28. Powers of competent authorities	Compliant	
29. Supervisors	<b>LC</b>	<ul style="list-style-type: none"> <li>• Insufficient supervisory power of the MoT to monitor and ensure compliance of regulated entities with AML/CFT</li> <li>• Limited expertise and conflict on interest in applying the risk-based approach requirements by the MoT in the context of limited AML/CFT qualified human resources and low number of inspections (effectiveness issue)</li> <li>• Not enough emphasis of the FCMC AML/CFT supervision of the insurance sector (effectiveness issue)</li> </ul>
30. Resources, integrity and training	<b>LC</b>	<ul style="list-style-type: none"> <li>• Human resources of the FIU not adequate to the high number of reports</li> <li>• IT software of the FIU not adequate to ensure automatic data processing</li> <li>• Limited AML/CFT qualified human resources of the MoT</li> <li>• Insufficient equipment and training for law enforcement dedicated to ML/FT</li> </ul>
31. National co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>• No cooperation mechanism to involve DNFBP's supervisory authorities or respective SROs</li> <li>• No regular review of the effectiveness of the AML/CFT system at policy level</li> </ul>
32. Statistics	<b>PC</b>	<ul style="list-style-type: none"> <li>• Statistics do not contain sufficient information on the number of police/prosecution generated cases, FIU generated cases and autonomous laundering cases.</li> <li>• Lack of detailed statistics on confiscations</li> <li>• Statistics received on confiscations from different authorities inconsistent</li> <li>• No statistics on STRs and UTRs</li> </ul>

		<ul style="list-style-type: none"> <li>• No statistics on the relation FIUs disseminations – LEA investigations/prosecutions/convictions are routinely maintained</li> <li>• No detailed statistics are available on the number of cases regarding the failure to comply with the obligation to declare and no statistics are available on information exchange with foreign counterparts regarding SR.IX.</li> <li>• Insufficient scrutiny of the collected statistics in the light of assessing AML/CFT system as a whole.</li> <li>• No comprehensive central database for MLA requests</li> <li>• No statistics on the average time of response for MLA requests</li> <li>• No statistics on time to reply to international requests under Recommendation 40</li> </ul>
33. Legal persons – beneficial owners	<b>C</b>	
34. <i>Legal arrangements – beneficial owners</i>	<i>N/A</i>	
<b>International Co-operation</b>		
35. Conventions	<b>LC</b>	<ul style="list-style-type: none"> <li>• The TF offence (in all its elements as provided under the FATF SR II) is not covered as predicate offences for ML</li> </ul>
36. Mutual legal assistance (MLA)	<b>C</b>	
37. <i>Dual criminality</i>	<i>Compliant</i>	
38. MLA on confiscation and freezing	<b>PC</b>	<ul style="list-style-type: none"> <li>• Enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally is only available if confiscation is a penalty for the same offence in Latvia.</li> <li>• It is unclear whether request for confiscation of property can extend to enforcement of confiscation of all proceeds of crime, intended instrumentalities and terrorist property due to deficiencies already identified.</li> <li>• No provisions to meet the requirements of the essential criterion 38.4.</li> </ul>
39. <i>Extradition</i>	<i>Compliant</i>	
40. Other forms of co-operation	<b>C</b>	
<b>Nine Special Recommendations</b>		

<p>SR.I Implement UN instruments</p>	<p><b>LC</b></p>	<ul style="list-style-type: none"> <li>• The criminalization of TF offence not fully in line with the TF Convention regarding the additional mental element required as explained under SRII</li> <li>• Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373.</li> </ul>
<p>SR.II Criminalise terrorist financing</p>	<p><b>LC</b></p>	<ul style="list-style-type: none"> <li>• Some of the financing of the offences covered in the Annex to the TF Convention have in Latvian legislation an additional mental element which is not required under A 2 (1) (a).</li> <li>• In the absence of investigations or convictions, effectiveness is challenged by various views expressed by practitioners in relation to the understanding of "State" mentioned under the LCL as to whether it refers to acts of terror against all the international community or only against the Latvian State.</li> </ul>
<p>SR.III Freeze and confiscate terrorist assets</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li>• Within the context of UNSCR 1373, Latvia does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanisms) or to freeze the funds of EU internals (citizens or residents). No evidence that designation of EU internals have been converted into the Latvian legal framework.</li> <li>• The scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities.</li> <li>• Concerns over effectiveness of freezing system at the request of another party that relies on judicial proceedings.</li> <li>• There is not any clear and publicly known procedure for de-listing and unfreezing.</li> <li>• Lack of awareness in a part of DNFBP sector of the UN and EU lists raise effectiveness concerns.</li> <li>• There is no specific national legislation to meet the requirements in relation to access to frozen funds for basic expenses and other purposes. National freezing system, which has not yet been tested in practice, relies only on judicial-based mechanism to ensure freezing of assets of designated persons.</li> </ul>
<p>SR.IV Suspicious transaction reporting</p>	<p><b>PC</b></p>	<ul style="list-style-type: none"> <li>• Deficiencies in the incrimination of TF</li> </ul>

		<p>might limit the reporting obligations, especially in relation to the list of acts that are defines as “terrorist” by the Law.</p> <ul style="list-style-type: none"> <li>• Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations.</li> <li>• Reporting obligation refers to terrorism not to financing of terrorism.</li> <li>• Reporting obligation refers to “transactions” and not to “funds”.</li> <li>• Insufficient guidance on suspicions of terrorism financing impacts effectiveness.</li> <li>• Confusion amongst FI between UT related reports and suspicion based reports (effectiveness concern).</li> </ul>
SR.V International co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>• The shortcomings in the criminalization TF offence might provide an obstacle to effective co-operation with foreign states.</li> </ul>
SR.VI AML requirements for money/value transfer services	<b>PC</b>	<ul style="list-style-type: none"> <li>• Lack of a consolidated list of agents</li> <li>• Lack of complete customer verification and record keeping being conducted by the Latvian Post</li> <li>• The MoT lacks effective supervisory powers, authorities and resources to supervise the Post.</li> </ul>
SR.VII Wire transfer rules	<b>C</b>	
<i>SR.VIII Non-profit organisations</i>	<i>Compliant</i>	
SR.IX Cross Border declaration and disclosure	<b>PC</b>	<ul style="list-style-type: none"> <li>• No provision to request and obtain further information in case of a false declaration/disclosure.</li> <li>• Limited freezing capabilities of the Customs Authority.</li> <li>• Low extent of practical enforcement on SR.IX measures in general (effectiveness issue).</li> </ul>