



# Mutual Evaluation Report of the Republic of Guatemala



NOVEMBER 2016

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## TABLE OF ACRONYMS

<b>AML/CFT</b>	Anti-money laundering and combating the financing of terrorism.
<b>DNFBP</b>	Designated Non-Financial Businesses and Professions.
<b>BANGUAT</b>	Bank of Guatemala.
<b>CGC</b>	General Comptroller's Office.
<b>CONABED</b>	National Council for Property Management in Asset Forfeiture.
<b>COPRECLAF</b>	Presidential Commission for the Coordination of Efforts Against Money Laundering or other Assets, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction.
<b>COPRET</b>	Presidential Commission for Transparency and E-government.
<b>CDD</b>	Customer Due Diligence.
<b>DIGICI</b>	General Directorate of Civil Intelligence.
<b>DIGICRI</b>	General Directorate of Criminal Investigation.
<b>ER</b>	Electronic Report
<b>NRA</b>	National Risk Assessment.
<b>FCLA</b>	PPO - Section Against Money Laundering and Other Assets.
<b>FPWMD</b>	Financing of Proliferation of Weapons of Mass Destruction.
<b>FTC</b>	Funds Transfer Companies
<b>TF</b>	Terrorism Financing.
<b>INACOP</b>	National Institute of Cooperatives.
<b>INGECOP</b>	General Inspectorate of Cooperatives.
<b>IVE</b>	Financial Intelligence Unit of Guatemala.
<b>JM</b>	Monetary Board.
<b>ML</b>	Money Laundering.
<b>AML Law</b>	Anti-money laundering law, Decree N° 67-2001.
<b>PRFT Law</b>	Law for countering the financing of terrorism, Decree N° 58-2005.
<b>LED</b>	Asset Forfeiture Law.
<b>MDN</b>	Ministry of National Defense
<b>MINECO</b>	Ministry of Economy
<b>MINEX</b>	Ministry of Foreign Affairs
<b>MINGOB</b>	Ministry of Interior.
<b>MOU</b>	Memorandum of Understanding.
<b>NPO</b>	Non-Profit Organization.
<b>PPO</b>	Public Prosecutor Office.
<b>OJ</b>	Judicial Branch.
<b>PEN 2014-2018</b>	Strategic National Plan AML/CFT.
<b>PEP</b>	Politically exposed persons.
<b>RBA</b>	Risk Based Approach
<b>OSs</b>	Obligated subjects.
<b>PNC</b>	National Civil Police.
<b>RENAP</b>	National Register of People.
<b>REPEJU</b>	Registry of Legal Entities
<b>REMER</b>	General Commercial Register.
<b>RTS</b>	Suspicious Transaction Report.
<b>SAT</b>	Tax Authority.
<b>SENABED</b>	National Secretary for Property Management in Asset Forfeiture
<b>SIE</b>	National Secretary of Strategic Intelligence.
<b>SIB</b>	Superintendence of Banks.
<b>SICOMP</b>	PPO System of Computer Control of Investigation.
<b>TFS</b>	Targeted Financial Sanctions
<b>UED</b>	Asset Forfeiture Unit.
<b>UNSCR</b>	United Nations Security Council Resolution.

## EXECUTIVE SUMMARY

1. This report provides a summary of the existing Anti-Money Laundering and Counter the Financing of Terrorist (AML/CFT) measures in the Republic of Guatemala (hereinafter Guatemala) as at the date of the on-site visit, conducted during the period of November 23rd to December 4th, 2015. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Guatemala's AML/CFT system and provides recommendations on how the system could be strengthened.

### Key findings

The Republic of Guatemala has various legislative, regulatory and institutional structures standing to cope with the fight against money laundering and terrorist financing (ML/FT). The level of compliance of the country is highlighted regarding most of the technical criteria of the FATF Recommendations. However, in certain areas of the AML/CFT system of Guatemala, improvements to achieve better effectiveness outcomes are required.

It is important to stress the activities of Guatemala in risk identification through the National Risk Assessment (NRA). In general, there is an adequate level of understanding of ML risks, as well as an adequate level of coordination and cooperation by the authorities and the private sector. However, in the case of TF risks, both the authorities and the Obligated Subjects (hereinafter OSs) still need a better understanding of the associated risks.

The financial intelligence generated by the Financial Intelligence Unit (*Intendencia de Verificación Especial –IVE–*, in Spanish, hereinafter IVE) is used by the competent authorities both in ML investigations as in predicate offences and asset forfeiture processes. The IVE gathers information from several sources of OSs and government agencies. In the field of TF, given the absence of TF related cases, verification of the existence and use of financial intelligence on TF was not possible.

Guatemala has provided evidence on combating ML and predicate offences related to most of its identified threats. It is also empowered to forfeit assets from the proceeds of illegal activities. Additionally, the country has a property management system that allows their administration and disposition. However, while there is a legal mean which provides for the Court forfeiture of property of corresponding value, this law has not been applied in practice yet in the case of asset forfeiture procedures.

Deficiencies in the appropriate criminalization of TF would affect the effectiveness in the fight against TF. There has not yet been any case or investigation on TF. Guatemala has recently created the prosecution agency specialized in TF, which is considered a positive step in the fight against TF.

Guatemala has taken regulatory measures for the implementation of United Nations Security Council (UNSC) Resolutions 1267/1989 and 1988 on terrorist funds and assets and UNSC Resolutions 1718 and 1737 on funds and assets related to the financing of proliferation of weapons of mass destruction (FPWMD). However, the regulatory framework still needs to be strengthened to enforce the obligations set out in Recommendations 6 and 7, particularly regarding the implementation of UNSCR 1373.

Financial Institutions (FIs) in the financial system are aware of the nature and level of ML risks in their sector and, in general, have appropriate policies and procedures to mitigate and control these risks. However, in the case of microfinance institutions (except those registered as non-profit organizations (NPOs) that meet the criteria to be considered OSs), they are not yet OSs to the AML/CFT regulations in Guatemala.

It is observed that designated non-financial businesses and professions (DNFBPs or non-financial OSs), still need to increase their efforts to adequately understand their obligations, as well as the ML/TF risks to which they are exposed. Activities carried out by lawyers and notaries referred to by the FATF Standards are not all subject to AML/CFT regulations and they are not supervised for such purpose. Casinos and video lotteries are not OSs under AML/CFT regulations.

The IVE performs the supervision of AML/CFT obligations of FIs and DNFBPs with a ML/TF risk-based approach (RBA). Although the IVE has imposed some monetary sanctions on OSs, it is considered that these are limited and that the sanctions regime is not proportionate, dissuasive or effective.

The issuance and the circulation in the market of bearer shares are forbidden. The IVE has efficiently disseminated typologies regarding legal persons and arrangements. Information on beneficial ownership of corporations cannot be gathered reliably, since legal entities are not obliged to gather such information from their shareholders, irrespective of the fact that they may be natural persons or legal persons or arrangements. Access to information on legal persons or arrangements cannot be performed in a timely and effective fashion for the OSs to conduct their CDD.

Guatemala has a wide range of legal and administrative instruments to foster international cooperation from all relevant agencies aimed at preventing and combating ML/TF. In this sense, the country has provisions in force to provide broad levels of collaboration with foreign authorities.

### ***Risks and general situation***

2. Pursuant to the ML/TF NRA, the major threats were drug trafficking, illicit cross-border transportation of cash, goods smuggling and extortion. Also, active/passive bribery, offence including embezzlement and corruption of public officials are legally defined as medium crime threats in the ML context. In terms of vulnerabilities, the ML/TF NRA detected as medium-high funds transfer companies (FTC) and the credit union had medium-high level of importance as vulnerable to ML activities. On the side of DNFBP, casinos –video lotteries, lawyers and notaries are not subject to AML/CFT requirements and ML/TF NRA regulations determined a high level of vulnerability to ML for those activities.

3. Guatemala has considered, with a limited scope, the ML/TF risks of the volume of the informal economy and the impact in the context of ML/TF. Additionally, microfinance companies, whose activity is not regulated and not subject to obligations, were not considered in the ML/TF NRA, with the exception of funds from microcredits loaned by entities in the microfinance sector which in the context of risks related to financial inclusion were rated with a medium-low vulnerability level. The ML/TF NRA determined that TF represents a medium-low level of threat.

### ***Overall Level of Effectiveness and Technical Compliance***

4. Guatemala has a fairly high level of compliance with respect to the technical criteria of the FATF Recommendations, except for some areas where some major improvements, such as a proper criminalization of terrorist financing, the implementation of targeted financial sanctions (TFS) and some preventive measures are required. In terms of effectiveness, the AML/CFT system in Guatemala has achieved substantial levels of effectiveness, primarily regarding financial intelligence, investigation and prosecution of ML, asset confiscation and means of crime and international cooperation. Other areas feature moderate levels of effectiveness.

*Assessment of risks, coordination and policy setting (CHAPTER 2 – IO 1; R. 1, R. 2, R. 33)*

5. Guatemala, and particularly its authorities, has identified and properly understood the risks of ML nationwide. However, the degree of understanding of the risks in terms of TF is not at the same level. Guatemala has mechanisms for coordination and adequate cooperation within the Presidential Commission for the Coordination of Efforts Against Money Laundering or other Assets, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction (hereinafter COPRECLAF) that allows the development of actions for the mitigation of ML/TF risks.

6. In the case of DNFBPs, the necessary regulations are not yet in effect and there is a low level of understanding of the ML/TF risks to which they are exposed.

*Financial intelligence, money laundering and confiscation (CHAPTER 3 - IOs 6-8; R. 3, R. 4, R. 29-32)*

7. In terms of generating financial intelligence, Guatemala presents characteristics of an effective system. The financial intelligence generated by the IVE is used by the competent authorities in ML investigations, criminal activities and asset forfeiture. The IVE has access to various databases to provide added value to the suspicious transaction reports (STRs) it receives, which results in intelligence products used by the competent authorities. However, there are aspects that should be improved. The IVE work of financial intelligence could be increased with a higher number of DNFBP registrations. The use of financial intelligence in relation with this crime could not be evaluated due to the absence of cases related to TF.

8. Regarding the prosecution and conviction of crimes, Guatemala has characteristics that make its system effective. However, it is necessary to provide more human and technological resources to the PPO and the police for the investigation and further prosecution of ML offences and predicate offences, in order to have greater presence in the Guatemalan territory, especially in areas which are relevant for such investigation due to its geographical condition and economic activities, in accordance with the findings of the NRA. The development and implementation of all Special Investigation Techniques are necessary. Besides, it is essential to update experts in the investigation of these crimes by conducting regular training on new typologies, trends and research methods.

9. In order for assets and proceeds of crime to be confiscated, Guatemala mainly resorts to asset forfeiture to achieve significant progress in the recovery of assets and proceeds of criminal conduct. It is important to keep enforcing measures of repatriation, distribution and restitution, in the case of funds and assets, by developing international cooperation through the various agreements and bodies of Guatemala, as well as the application of recovery measures of property and funds of correspondent value in asset forfeiture cases.

*Terrorist financing and proliferation financing (CHAPTER 4 - IOs 9-11; R. 5-8)*

10. There are deficiencies in the criminalization of TF that affect actual TF awareness and combating in Guatemala. Not a single case has been detected, either at investigation or prosecution stages, nor even filing of cases with courts regarding TF.

11. Guatemala has enforced regulations and mechanisms allowing up to some extent the implementation of UNSC Resolutions 1267, 1988, 1989 and 1373 regarding TF and UNSC Resolutions 1718 and 1737 related to FPWMD. However, significant improvements are required for the system to be effective. Financial and non-financial OSs are not at the same pace regarding awareness of the update of listings, which deters freezing

measures from being applied without delay. Therefore, it is necessary to improve efforts to raise awareness with respect to obligations in the OSs, in particular, in the case of DNFBPs.

#### *Preventive Measures (Chapter 5 - IO 4; R. 9-23)*

12. Banking, finance companies and off-shore banks have developed timely procedures pursuant to the regulation. However, DNFBPs are not aware of the ML/TF risks to which their activities may be exposed. Moreover, the development of policies, procedures and controls to help minimize risks is not observed. Although, there was an increase in the number of STRs submitted by DNFBP, the percentage remission of STR by DNFBPs is reduced to a lesser amount compared to the finance sector. Banks are still the main generators of STRs which contributes to the perception by other regulated entities of minimal effectiveness of the policies and procedures in place.

13. Due to the foregoing, it is necessary to deepen the outreach and training in what represents the risk of ML/TF between regulated subjects, especially DNFBPs. Also to include into the monitoring programs actions that help identify whether the OSs have correctly understood the risks of ML/TF and whether this understanding has resulted in the development of policies, procedures and controls in force and operational in the OSs. Finally, the dissemination of local and international typologies should be improved to allow OSs to identify possible risks of ML/TF, so that this will lead to further identification of unusual or suspicious transactions.

#### *Supervision (Chapter 6 - IO 3; R. 26-28, R. 34-35)*

14. The IVE supervises OSs(financial and nonfinancial) with a risk-based approach, besides, it has enforced applicable procedures, information and tools, even their action plans and monitoring are based on risk matrices. However, there are sectors and/or activities identified as risky, and therefore capable of being used for ML/TF, not included as OSs, such as microfinance institutions, lawyers, notaries and casinos/video lotteries. The IVE has made efforts to register DNFBPs as regulated entities, especially those most representative. However, some DNFBPs remain unregistered. Also, efforts have been made to inform regulated entities of their risks of ML/TF, its reporting obligations and associated typologies; however, it is noted that in the case of DNFBPs, even more work is required in this area. Supervisions made by the IVE to DNFBPs do not achieve the objective of mitigating the risks of ML/TF or improving the level of compliance. The sanctions applied by the IVE are neither proportional nor dissuasive.

15. It is required to take clear actions to include as OSs those DNFBPs that has not been included as subject to AML/CFT regime, as well as microfinance institutions and that all those activities or physical or legal subjects that should be OSs are duly registered and in compliance with the AML/CFT obligations. The support in training and awareness activities by the IVE of understanding the risks of ML/TF especially for DNFBPs should be galvanized. Also, the necessary means to redesign the regulatory framework regarding the structure of possible sanctions to be applied so that proportionate and dissuasive administrative financial penalties in relation to the different sectors (financial and nonfinancial) are imposed.

#### *Transparency of Legal Persons and Arrangements (Chapter 7 - IO 5; R. 24-25)*

16. Pursuant to the legislation in force in Guatemala, the issuance and the circulation in the market of bearer shares are forbidden. The IVE has efficiently disseminated typologies regarding legal persons and arrangements. Information on beneficial owners of corporations cannot be gathered reliably, since legal entities are not obliged to gather such information from their shareholders, irrespective of the fact that they may be natural persons or legal persons or arrangements. In addition, access to information on legal persons or arrangements cannot be performed in a timely and effective fashion for the OSs to conduct their CDD, due to lack of electronic records.

*International Cooperation (Chapter 8 - IO 2; R. 36-40)*

17. International Cooperation of Guatemala is based on multiple mechanisms available regarding Mutual Legal Assistance (MLA) and Extradition, in addition to the cooperation on financial intelligence through the IVE, asset recovery and other cooperation provided by agencies such as the police, customs, and immigration authorities. Additionally, the Agreements on exchange of information between financial supervisors. Through adequate international cooperation, Guatemala has worked to prosecute perpetrators of these crimes across borders and to provide the assistance necessary to cooperate with those nations in the fight against ML. Added to this are the cooperation agreements signed by Guatemala with other countries such as the United States of America, where they have received technical and financial assistance necessary to deepen their strategies in the fight against transnational organized crime. However, it is necessary to optimize the development of international cooperation through the MLA and the agreements and treaties signed and ratified by Guatemala, in particular it must be clear what procedures to follow when required and to act in a most expeditious manner.

**Priority Actions**

18. Guatemala must implement the following priority actions:

1. Conduct a review of the risk analysis of TF which includes in the analysis, possible abuses in the financial sector, DNFBPs and NPOs, particularly those who are not yet regulated entities. Also the role of the informal economy that causes lack of transaction control and has an impact on the calculation of TF risk.
2. Take clear action for the inclusion of DNFBPs and microfinance institutions as reporting subjects and that all activities, individuals or legal entities that should be OSs to be duly registered and comply with AML/CFT obligations.
3. Issue the relevant regulations and training for DNFBPs and NPOs on the implementation of ML/TF risk management policies regarding those risks to which they are exposed, as well as to inform them on the results of the NRA. The aforementioned with the aim of improving the understanding of the risks by the OSs and increase STRs, especially those from DNFBPs.
4. Amend the TF criminalization to cover what is required under Recommendation 5.
5. Provide more resources to the IVE in the corresponding areas for risk supervision, to strengthen the effective performance of said attribution.
6. Dedicate greater efforts to implement the national policies and strategies in order to combat the identified threats. For this purpose, it is necessary to enforce the provisions of the PPO Strategic Plan 2015-2019, where the actions to deal with this criminal phenomenon are established, this institution being in charge of the axes of criminal investigation and prosecution, the COPRECLAF National Strategic Plan, where priority is established for the coordination of all competent authorities to fulfil the tasks together in order to mitigate detected threats.
7. Provide more human and technological resources to the PPO for investigation and prosecution of ML offences and predicate offences in order to have greater presence in the Guatemalan territory, especially in areas more likely to have higher incidence of these crimes due to their geographical condition, economic activities, products and services offered and in accordance with the evidence of the NRA.
8. Apply the necessary means to redesign the regulatory framework related to the sanctions available in order for monetary administrative sanctions to be proportionate and dissuasive vis-à-vis the different sectors (financial and non-financial).
9. Develop and implement all Special Investigation Techniques in force in the Guatemalan legal framework. This will allow and facilitate the work of various investigative subsidiary bodies responsible for carrying out this fight, allowing the consolidation of the objectives as a country.

10. Implement mechanisms or procedures, such as working groups to provide feedback to judges and prosecutors on cases filed with the corresponding Courts.
11. Update specialists in investigations of these crimes, by conducting regular training on new typologies, trends and investigation methods both in ML and predicate offences and TF.
12. Keep enforcing measures of repatriation, distribution and restitution in the case of funds and assets by developing international cooperation through the various agreements and bodies of Guatemala.
13. Apply the law on forfeiture of property with a value equal to the proceeds of criminal activities committed by natural persons and legal entities where these crimes are related to internal and foreign predicate offences.
14. Articulate the work between the competent authorities to generate intelligence and to find out possible circumstances and initiate investigations relating to the commission of the crime of TF, if applicable.
15. Develop policies and activities to fight the FPWMD.
16. Strengthen the legal framework to apply in full the UNSC Resolutions regarding TF and FPWMD. Additionally, enforce mechanisms to perform domestic designations under UNSCR 1373 and provide for the unfreezing or termination of the measure.
17. Set forth training programs for OSs, especially non-financial, to reach a better understanding of the legal provisions in force structured for the performance of TFSs for TF and FPWMD.
18. Prepare operating procedures for NPOs to facilitate their compliance with the standards and a greater approach by the relevant authorities, including supervisors, to join efforts and to ensure a higher level of understanding of this sector regarding the policies that they should apply in ML/TF cases. Moreover, to unify criteria and sort the ideas in the development of strategies that allow them to know their donors better.
19. Implement monitoring and supervision of the specific obligations of OSs to carry out TFSs.
20. Incorporate in the monitoring programs actions that help identify whether the regulated entities have failed to adequately understand the risk of ML/TF and that this understanding has resulted in the development of policies, procedures and controls in place and active in the supervised regulated entity.
21. Improve the dissemination of local and international typologies that allow regulated entities to identify potential geographic areas/services/customers/products where the risk of ML/TF could arise, so that this will lead to further identification of unusual or suspicious transactions. OSs
22. Issue the corresponding regulations for legal entities to identify the beneficial ownership of their shares.
23. Develop a legal framework to publish data on beneficial owners of legal persons and arrangements.
24. Put mechanisms in place for the timely access to information of legal persons and arrangements for the regulated subjects to perform an efficient CDD.
25. Foster international cooperation through the MLA and agreements and treaties signed and ratified by Guatemala, it should be especially clear what procedures to be followed when requested and to act in the most expeditious manner.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings

<b>IO. 1</b> Risk, policy and coordination	<b>IO. 2</b> International Cooperation	<b>IO. 3</b> Supervision	<b>IO. 4</b> Preventive measures	<b>IO. 5</b> Legal persons and arrangements	<b>IO. 6</b> Financial Intelligence
<b>Moderate</b>	<b>Substantial</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>
<b>IO. 7</b> ML investigation & prosecution	<b>IO. 8</b> Confiscation	<b>IO. 9</b> TF investigation & prosecution	<b>IO. 10</b> TF preventive measures & financial sanctions	<b>IO. 11</b> TF preventive measures & financial sanctions	
<b>Substantial</b>	<b>Substantial</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	

### Technical Compliance Ratings

#### AML/CFT Policies and coordination

<b>R. 1</b>	<b>R. 2</b>
<b>MC</b>	<b>C</b>

#### Money laundering and confiscation

<b>R. 3</b>	<b>R. 4</b>
<b>LC</b>	<b>LC</b>

#### Terrorist financing and financing of proliferation

<b>R. 5</b>	<b>R. 6</b>	<b>R. 7</b>	<b>R. 8</b>
<b>PC</b>	<b>PC</b>	<b>PC</b>	<b>LC</b>

#### Preventive measures

<b>R. 9</b>	<b>R. 10</b>	<b>R. 11</b>	<b>R. 12</b>	<b>R. 13</b>	<b>R. 14</b>
<b>C</b>	<b>LC</b>	<b>C</b>	<b>LC</b>	<b>C</b>	<b>PC</b>
<b>R. 15</b>	<b>R. 16</b>	<b>R. 17</b>	<b>R. 18</b>	<b>R. 19</b>	<b>R. 20</b>
<b>PC</b>	<b>PC</b>	<b>PC</b>	<b>C</b>	<b>C</b>	<b>LC</b>
<b>R. 21</b>	<b>R. 22</b>	<b>R. 23</b>			
<b>C</b>	<b>PC</b>	<b>PC</b>			

#### Transparency and beneficial ownership of legal persons and arrangements

<b>R. 24</b>	<b>R. 25</b>
<b>LC</b>	<b>LC</b>

#### Powers and responsibilities of competent authorities and other institutional measures

<b>R. 26</b>	<b>R. 27</b>	<b>R. 28</b>	<b>R. 29</b>	<b>R. 30</b>	<b>R. 31</b>
<b>C</b>	<b>LC</b>	<b>PC</b>	<b>C</b>	<b>C</b>	<b>C</b>
<b>R. 32</b>	<b>R. 33</b>	<b>R. 34</b>	<b>R. 35</b>		
<b>C</b>	<b>C</b>	<b>C</b>	<b>PC</b>		

#### International cooperation

<b>R. 36</b>	<b>R. 37</b>	<b>R. 38</b>	<b>R. 39</b>	<b>R. 40</b>
<b>C</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>

## MUTUAL EVALUATION REPORT

### *Preface*

19. This report summarizes the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

20. This evaluation was carried out based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Guatemala and information obtained by the evaluation team during its on-site visit from November 23rd to December 4th 2015.

21. The evaluation was carried out by an assessor team conformed by: Claudia Andrea Soracá Yepes from the Financial Information and Analysis Unit of Colombia (Operational Expert), Claudia Carolina Soriano of the Financial Investigation Unit from the Attorney General's Office of El Salvador (Operational Expert), Michelle Gonzalez from the Financial Analysis Unit of Panama (Financial/Legal Expert), Franklin Boccia from the Central Bank of Paraguay (Financial Expert), Alfredo Delfín Trillo from the Financial Intelligence Unit of Peru (Financial Expert), Major Jose Antonio Delgado from the National Anti-drugs Office of Venezuela (Legal Expert) and Alejandra Quevedo and Esteban Fullin from the Executive Secretariat of GAFILAT. The report was reviewed by Wendy Acosta from the Financial Intelligence Unit of Honduras, Victor Amaury Romero from the Superintendence of Banks of the Dominican Republic and Kevin Vandergrift from the FATF Secretariat.

22. Guatemala previously underwent a Mutual Evaluation by the Caribbean Financial Action Task Force (CFATF) in June 2009, conducted according to the 2004 FATF Methodology. Guatemala's assessment was approved in November 2010 and is available in [www.gafilat.org](http://www.gafilat.org).

23. The 2010 Mutual Evaluation of Guatemala concluded that the country was compliant (C) with eight (8) of the Recommendations, largely compliant (LC) with twenty-one (21) of the Recommendations, partially compliant (PC) with sixteen (16) of the Recommendations and non-compliant (NC) with four (4) of the Recommendations. It was concluded that Guatemala was compliant or largely compliant with eleven (11) of the sixteen (16) Key and Core Recommendations.

24. In 2012, when Guatemala gained membership status in GAFILAT, it was in the process of enhanced follow up and the XXIX Plenary of GAFILAT Representatives held in Cartagena, Colombia, carried out from July 10th, 2014 to 11th, 2014, approved the removal of Guatemala from enhanced follow up to regular follow up.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

25. The Republic of Guatemala is located in the northern part of Central America, with a total area of 108,889 square kilometers, with access to the Atlantic and Pacific Oceans, bordered to the west and north by Mexico, east by Belize and the Gulf of Honduras, and southeast by Honduras and El Salvador. Guatemala is the most populous country in Central America, with approximately more than 16 million according to the projections for 2015 (INE 2015). The official language is Spanish and twenty-three other languages are also spoken in Guatemala.

26. Guatemala is a democratic, constitutional and independent republic. The legal system is based on continental law (or “civil law”). The Executive power is vested in the President, who is elected by direct popular vote for four-year terms and not eligible for re-election. The President is the Head of State and Government and autonomously appoints his Cabinet of Ministers. Guatemala is divided into 22 Departments, each with a governor appointed by the President, and a total of 340 municipalities.

27. The legislative power is exercised by a unicameral Congress, composed of deputies elected by popular vote by direct ballot every four years. The highest court is the Supreme Court, the members of which are elected by the Congress for a period of four years. The Supreme Court is also in charge of appointing the judges of the lower courts. There are also, independently, the Constitutional Court, the Supreme Electoral Tribunal and the Public Prosecutor’s Office (PPO).

28. Guatemala is an emerging economy, is currently the largest in Central America with 2014 GDP in GTQ M 231,267.8 (USD 30,310 M), with a variation of 4.2% (BANGUAT). According to BANGUAT, the global financial crisis slowed the growth to 0.5% in 2009, although the increase in exports and a moderate fiscal stimulus helped cushion the impact of the crisis. Additionally, a series of natural disasters hit the country in 2010 and 2011, with estimated damages and losses of more than GTQ 13,500 million (USD 1.833 million). However, Guatemala’s economy has rebounded with growth of 3.0% in 2012, 3.7% in 2013 and 4.2% in 2014. The official currency is the quetzal (GTQ).

### *ML/TF Risks and Scoping of Higher-Risk Issues*

#### *Overview of ML/TF Risks*

29. According to the ML/TF National Risk Assessment (NRA), due to its geographical location and topography, Guatemala meets the conditions to be host of drug trafficking, stockpiling and transit of drugs, mainly cocaine, en-route from South America to North America. At the same time, information reveals that the authorities have identified at least ten (10) land routes of drug trafficking, through which drugs are transported, of which nine (9) travel to Mexico from Belize, the Caribbean, Honduras and El Salvador.

30. Cross-border transportation of illicit money has been identified as a ML threat of particular importance in the context of Guatemala (2015 ML/TF NRA). Thus, there have been arrests of people carrying sacks of cash, the origin of which was not justified, but presumed to be the proceeds of illegal activities. Most of these amounts have been seized from motor vehicles with secret (double-bottom) compartments. Also, the smuggling of goods entering Guatemala from neighboring countries affect its economy and security. According to estimates by the Chamber of Industry of Guatemala (CIG), illicit trade represents between 15% and 20% of domestic consumption.

31. As threats, particularly of an internal nature due to their recurrence and resources generated, the crime of extortion was detected and granted a considerable level of importance (2015 ML/TF NRA). The crime of extortion has an impact on the economic and social activities of the country, affecting economic

sectors such as: urban and suburban transport service, trade, individuals, among others. This crime is committed in most cases by the *maras* (gangs), instilling fear in which people are forced to pay sums of money.

32. Also, it was identified that the active/passive bribery includes the offences of misappropriation and embezzlement (public corruption) and are crimes of medium threat in the ML context (2015 ML/TF NRA).

33. Given the volume of the activity and the characteristics of fund transfer (remittances) companies, it was considered in the ML/TF NRA that such activity, due to the difficulties of identification, including certainty of identity verification of the payer in the country of origin, represents a vulnerability of ML of a medium-high level.

34. The credit and savings cooperatives, given the conditions of their geographical location and measures of customer knowledge and transaction monitoring, were placed with a level of vulnerability medium-high regard to ML.

35. It is noteworthy that Guatemala has currently criminalized illicit gambling, under Section 477 of Decree Number 17-73 of the Congress of the Republic of Guatemala, Penal Code (PC), which states: “*Illicit gambling: Bankers, administrators, businessmen, managers or other persons in charge and the owners of houses for gambling, stakes or chance games will be sanctioned with one to five years of imprisonment and a fine of one thousand to ten thousand quetzals*”. However, the existence of casinos-video lotteries was evident during the on-site visit; authorities are aware of this and, in this line, there is a bill called “Act to Regulate Bets, Casinos, Video lottery, Bingo and Gaming”, in order to promote “*the timely regulation of casinos, stakes, lotteries and video lotteries in a sector that until this moment does not have an adequate regulatory framework and does not provide the authorities with the tools to control and have oversight on persons dedicated to this activity*”, as established by the grounds of said bill. The aforementioned document also mentions that “*there are no reliable registries in Guatemala on the proceeds of those establishments authorized by the Ministry of Interior (MINGOB, Spanish acronym) to operate slot machines or other stakes games, with some calculations being approximate to GTQ 1,500 million a year. National regulations for this activity are incipient and do not have the controls required to ensure the adequate taxing and verification on the origin and destination of financial resources, the financial management of large sums of cash being generated, credit accounts and international wire transfers, among others.*”

36. Lotteries, raffles and similar activities are regulated entities subject to AML/CFT measures, however, casinos and video lotteries, which represent the largest volume of activity of gambling, are not regulated entities and according to the ML/TFTF NRA, the level of vulnerability of these activities with respect to ML is high.

37. Lawyers and notaries in Guatemala may exercise both professions simultaneously and represent fifty-one percent (51%) of the Designated Non-Financial Businesses and Professions (DNFBPs) identified in Guatemala. According to the regulations, lawyers and notaries are not reporting subjects in cases where they act on behalf of their clients, render services for the management of bank accounts, money or assets, and does only apply to the cases in which they manage legal entities. According to the findings of the ML/TF NRA, to date lawyers and notaries that render this kind of services are not subject to regulation and supervision of AML/CFT measures. The ML/TF NRA rated these professional activities with a high level of vulnerability to ML.

38. In Guatemala, there have been no cases of terrorism or terrorist financing. Additionally, according to other studies, there does not seem to exist terrorist financing activities (US Department of State, 2015). The ML/TF NRA determined that terrorist financing is a medium-low level of threat.

### *Country's risk assessment & Scoping of Higher Risk Issues*

39. Guatemala carried out its ML/TF NRA in 2014, which enabled it to identify, assess and understand the country's ML/TF risks. During the preparation of said assessment (3 stages) representatives from public and private sector entities as well as research centers collaborated and participated, all of which were informed on the results of the assessment in a timely manner, in order for them to implement the necessary measures and actions and to allocate the resources that allow them to effectively address the identified risks, threats and vulnerabilities.

40. For the development of the ML/TF NRA, Guatemala requested the support of the World Bank to provide technical assistance by facilitating its ML/TF NRA methodology and counselling regarding the use of the methodological tools. For the identification and assessment of ML risks, the methodology develops through eight (8) modules, the analysis of: 1) national threats and products of crime, 2) national vulnerabilities, 3) vulnerabilities of the banking sector, 4) vulnerabilities of the securities sector, 5) vulnerabilities of the insurance sector, 6) vulnerabilities of other financial institutions, 7) vulnerabilities of DNFBPs and 8) financial inclusion. Additionally, such tool provides a specific module for TF risk analysis.

41. Entities and technicians of the public sector, relevant to the AML/CFT system, provided support and collaboration for the implementation of the tool. Likewise, private sector entities also participated. Investigation organisms of the country were also involved in the ML/TF NRA, which worked in thematic workshops. The level of participation, especially from the relevant authorities, in the development of the modules, provides evidence of a high commitment to counter ML/TF by the different stakeholders involved in the AML/CFT system. Statistics and information covering January 1st, 2012 to June 30th, 2014 were generally available under two perspectives: the first one related to the amount of cases that were reported, analyzed or investigated by entities that prevent, detect and prosecute ML, and the second one, on the amount of resources that the aforementioned offences could be producing for criminal organizations, through an estimation of criminal products.

42. For the identification of the priority issues, the ML/TF NRA of Guatemala and its action plan have been reviewed, as well as the National Strategic Plan (NSP) 2015-2018, additional documents provided and external sources that consider the risks. The most relevant risks and items that require special attention have been identified as a starting point for the Mutual Evaluation considering the weight they may have on the AML/CFT system of Guatemala.

43. The following list of issues are likely to be at higher risk and therefore were examined in more detail during the on-site visit and in this Mutual Evaluation Report (MER).

44. Illicit traffic of narcotic drugs and psychotropic substances. According to the ML/TF NRA of Guatemala, drug trafficking is the main threat of ML and is a high priority for the authorities. The effective response to combat criminal groups engaged in drug trafficking activities and ML was revised, including tools used by law enforcement authorities, identification of suspicious transactions and prosecutions of cases.

45. Cross-border transportation of illicit money. According to the ML/TF NRA, is another of the major ML threats registered in the country. During the on-site visit, the work of the authorities including law enforcement authorities, particularly customs, was analyzed.

46. Money or value transfer services (MVTs), particularly those who act as money transferrers, as well as the credit unions are important ML risk activities for the authorities in Guatemala. Whereupon there was an analysis of the measures taken by the authorities, as well as specific sectors, in terms of customer knowledge, identification of operations and other AML/CFT measures.

47. Regarding DNFBPs, lawyers, notaries and casinos (including lotteries, video lotteries, etc.) particularly constitute risk activities for Guatemala, especially vulnerable to ML. Thus, the way in which such activities are implementing measures to reduce vulnerabilities was addressed in this regard.

48. In addition, the visit emphasized topics such as extortion, organized crime and corruption that appear to be important ML threats in the context of Guatemala. In addition, activities of trading vehicles and real estate represent a risk in Guatemala.

### *Materiality*

49. The ML/TF NRA indicates that as of June 30th, 2014, the banking sector had 3,429 agencies, 6,541 agents and 3,259 ATMs, making a total of 13,229 access points; being the figure of banking agent particularly, which has allowed to strengthen the financial inclusion in the country.

50. With regard to financing sources of the Guatemalan economy, BANGUAT reports that although the Guatemalan economy has had a small financial market, it has the freedom to determine their financial conditions and, therefore, companies find on the market sources and conditions that they deem most appropriate for financing their economic activities (BANGUAT). At June 18, 2015, the money supply in foreign currency stood at 17,587.5 million GTQ and means of payment in foreign currency GTQ totaled 36,605.2 million. BANGUAT reports that as of March 31, 2015, foreign exchange earnings from remittances reached an amount of USD1,395.9 million, up USD158.5 million (12.8%) compared to the same period of 2014, the result associated mainly to the improvement in the labor market in the United States of America.

51. Regarding the informal sector, the size of the informal economy in Guatemala nears values of 50.5% vis-a-vis the Gross Domestic Product (GDP) for the 1999-2007 period (CEPAL 2012). Additionally, the results from the National Employment and Income Survey from 2014, carried out by the National Statistics Institute (INE) reveals that 69.3% of the employed population nationwide is employed in the informal sector, with approximately 4 million people.

### *Structural Elements*

52. In the last four (4) years Guatemala has issued laws, regulations and guidelines in order to strengthen the system against ML/TF. Among the main laws it may be mentioned the Law against Corruption, which also criminalizes acts of corruption, reforms the Penal Code, reforms the Art. 2 of the Law against Organized Crime (LCDO, Spanish acronym) and Art. 2 of the Asset Forfeiture Law (LED, Spanish acronym), which allows the precautionary measures set out in the LED to be exercised on assets that may arise as a result of crimes related to acts of corruption, including property of corresponding value.

53. Regarding cooperation and national coordination, the Presidential Commission for the Coordination of Efforts Against Money Laundering or other Assets, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction (COPRECLAF, Spanish acronym) has been created, whose purpose is to coordinate the efforts and cooperation between state institutions involved within the framework of prevention, control, surveillance and punishment of crimes of ML/TF and financing of the PWMD, in order to contribute to the effective compliance of the law and international treaties approved and ratified by the State of Guatemala, within a national system of prevention, control, monitoring and sanctions, respecting the competence and autonomy of each institution.

### *Background and other Contextual Factors*

54. According to the Global Peace Index (2015), Guatemala ranks 118th of 162<sup>1</sup>, therefore, it ranks within the five most insecure countries in the continent. Regarding governance, the World Bank indicators (2015) located Guatemala below the average of the other countries of the region, particularly with regard to political stability, rule of law, government effectiveness and control of corruption.

55. It is important to mention that in relation with fighting corruption, derived from the international Agreement between the Government of Guatemala and the United Nations in 2006, the International Commission against Impunity in Guatemala (CICIG, Spanish acronym) was created as an independent international organ, whose purpose is to support the PPO, the National Civil Police (PNC, Spanish acronym) and other state institutions both in the investigation of crimes committed by members of illegal security forces and clandestine security apparatus, as generally in actions that tend to dismantle these groups. This, by supporting investigation and prosecution of a limited number of complex cases, as well as through other actions within its mandate, to strengthen the justice sector institutions in order to enable them to continue confronting these illegal groups in the future.

56. CICIG's mandate, as set out in the Agreement, is composed of three main objectives:

- Investigate the existence of illegal security forces and clandestine security apparatus which commit crimes that affect fundamental human rights of citizens of Guatemala, and identify the structures of these illegal groups (including their links with state officials), activities, operational modalities and funding sources;
- Collaborate with the State in dismantling clandestine security apparatus and illegal security forces and promote research, criminal prosecution and punishment of crimes committed by their members;
- Make recommendations to the State of Guatemala to adopt public policies to eradicate clandestine and illegal security forces and prevent their recurrence, including legal and institutional reforms necessary for this purpose.

57. In the development of such agreement, as well as in compliance with the bilateral cooperation agreement between the PPO and CICIG, the Special Prosecutor Against Impunity (SFIC, Spanish acronym) was established by Agreement number 26-2008 from the Attorney General of the Republic and Head of PPO, which was modified by the Agreements 98-2011 and 18-2012. Under this, the SFIC is the specialized prosecution of the PPO who is responsible for directing criminal investigations and conduct criminal prosecution in the corresponding cases so that the CICIG can attribute in any of the cases investigated, the crime of money laundering or other assets. CICIG through the SFIC, has carried out high-impact cases against former government officials, including a former president and former vice president for acts of corruption in which they are also being processed for ML. According to information provided by the authorities during the on-site visit, the IVE has collaborated with technical reports and relevant information in investigations of PPO in these processes.

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<sup>1</sup> Among the indicators to reach the referred index are: homicide level, perception of crime, violent demonstrations and intensity of internal conflict, among others.

**Case 1**

The Higher Risk Court sentenced five persons accused of being involved in corruption in the Antigua municipality, which is the cause for the preventive imprisonment of the Mayor.

Through the abbreviated proceedings, the Court sentenced the five individuals to three years of imprisonment for the crime of corruption, plus two years for fraud.

Furthermore, the Judge prohibited them from tendering, contributing or holding contracts with the State. Investigations determined that the five sentenced individuals were representatives of several companies that had a direct relationship with Mayor, and that thus irregularly benefitted from the provision of their services.

***Background***

The Higher Risk Court prosecuted six persons, including employees and former employees of the municipality, after finding signs of their alleged involvement in this case.

The Mayor and other persons allegedly formed a structure to deviate resources from the budget through the creation of several companies, some of them construction companies, which were assigned with overvalued projects. The misappropriation of funds also took place through the payroll of alleged workers of the city and liquidation of non-provided services.

58. Furthermore, as mentioned above, the size of the informal economy is between 50.5% and 69.3%. Informality bears some relation to financial inclusion, which in Guatemala is forty point one percent (40.1%), still below the Latin American average (51.1%) according to World Bank indicators (Global Findex 2015). In Guatemala, microfinance has developed spontaneously in the absence of access to financial services of certain groups of the population and companies, especially micro and small enterprises, a group that comprises much of the informal sector of the economy<sup>2</sup>.

59. Microfinance institutions, whose main product is microcredit, are governed by the laws of the Commercial Code and do not have a specific law regulating their operations. However, it is important to mention that the bill of microfinance institutions and microfinance non-profit institutions is in the legislative process<sup>3</sup>.

60. According to the ML/TF NRA, microcredit services rendered by microfinance entities were rated with a medium-low vulnerability level. However, said institutions are not OSs in terms of AML/CFT obligations, unless they are under the NPO group regime to which said regulations apply, according to what was informed by the authorities. Notwithstanding the latter, information was not available to verify it in practice.

***Overview of the AML/CFT strategy***

61. By means of the National Coordination conducted by the COPRECLAF, the “Action Plan of the ML/TF NRA” was developed based on the results of the NRA, which seeks to “contribute to the strengthening of security and the national economy” through strategic issues to strengthen the rule of law

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<sup>2</sup> Association for Research and Social Studies. Year 29 No. 1 2014

<sup>3</sup> It is worth mentioning as subsequent to the on-site visit, in May 2016, The Microfinance Institutions and Microfinance Nonprofit Entities Act was published, through which a new legal framework is given to said sector. Art. 4 provides that institutions are governed by that law, the Law on Banks and Financial Groups, the Financial Supervision Act, the CLDA Law, the PRFT Act, the regulations issued by the JM and the SIB. However, this information is outside the scope of the Mutual Evaluation, whose scope is limited to the last day of the on-site visit date.

and the national economy. This is implemented and executed by four (4) working groups: Group 1: Strengthening and Strategy; Group 2: Training and Awareness; Group 3: Exchange and Coordination Agreements; Group 4: Statistics and Technology, all of them made up of officials of the institutions of said Commission, who meet periodically to make strategic decisions, learn about the progress of the inter-agency work and propose strategic initiatives to improve the prevention, control, surveillance and punishment of ML/TF offences.

62. The national policy of Guatemala is divided into three areas: training, institutional strengthening and technology, which are developed through the following initiatives: a) improve the efficiency and effectiveness of prevention measures against ML/TF; b) strengthening the regulatory framework; c) promote awareness and citizenship participation in the field of AML/CFT; d) optimize inter-agency coordination and transfer of information to take appropriate action; e) set forth mechanisms to measure the effectiveness of actions against ML/TF; f) set forth and, if necessary, improve the technical, financial and technological capacities of institutions; g) set forth a system of Intelligence and Information Analysis.

63. The Action Plan of the ML/TF NRA outlined the activities to be developed by the OSs and whose regular monitoring will be undertaken by the IVE as a supervisory body in the prevention of ML/TF. Among the general actions to be implemented according to the plan are focused on the financial institutions and DNFBPs to take measures to manage and mitigate the risks of ML/TF.

64. The process of preparing the NSP 2014-2018, updated after the ML/TF NRA action plan, involved the participation of the following entities members of the COPRECLAF: the Judiciary; the PPO through the Public Prosecutors of Section Against Corruption, Against Drug Trafficking and Against Money Laundering or Other Assets and Computer Information System of the PPO; the Presidential Commission for Transparency and Electronic Governance; the Ministry of Interior through the Anti-Drug Fifth Vice Ministry and the Directorate General of Civil Intelligence; the Ministry of Economy through the Registry of Securities and Commodities Market; the Strategic Intelligence Secretariat of State; the BANGUAT; the Tax Authority through the Intendancies Control and Customs; the Superintendence of Banks (SIB, Spanish acronym) and the IVE.

### *Overview of the legal and institutional framework*

65. The institutions involved in combating ML/TF are:

66. Presidential Commission for the Coordination of Efforts Against Money Laundering or other Assets, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction (COPRECLAF): its purpose is “To coordinate the efforts and cooperation between state institutions involved in the legal framework for the prevention, control, surveillance and punishment of offences of money laundering or other assets and terrorist financing, as well as the financing of proliferation of weapons of mass destruction, in order to contribute to the effective enforcement of the law and international treaties approved and ratified by the State of Guatemala, within a national system of prevention, control, surveillance and punishment, respecting the legal competence and autonomy of each institution” and “Analyze national problems related to money laundering or other assets and financing of terrorism, to identify vulnerabilities and risks to suggest actions to mitigate them”. The COPRECLAF is composed of the following officials:

- a) Vice President of the Republic, who presides and coordinates;
- b) Minister of Foreign Affairs;
- c) Minister of Interior;
- d) Minister of National Defense;
- e) Minister of Economy;
- f) Strategic Intelligence Secretary of State;

- g) Secretary General of the National Secretariat for Property Management in Asset Forfeiture;
- h) Director General of Civil Intelligence;
- i) Superintendent of Tax Administration; and
- j) Superintendent of Banks.

67. Additionally, the COPRECLAF may invite the President of the Judiciary and the Supreme Court, the Attorney General of the Republic and Head of PPO to participate in its meetings and those who are considered necessary to invite.

68. The Presidential Commission for Transparency and eGovernment: its purpose is to support the actions of the Ministries and Institutions of the Executive Branch to coordinate the implementation of measures stemming from international conventions on transparency, e-government, fighting corruption and open government.

69. National Council for Property Management in Asset Forfeiture (CONABED): corresponds to approve, adjudicate and ultimately resolve on the investments to be made on the merits of seized money and hiring, leasing, management, trust, sale, auction, or donation of confiscated goods. SENABED is subordinate to the CONABED, executive body under the responsibility of a Secretary General and a Deputy Secretary General, who are senior officials for purposes of management and administration of the Secretariat.

70. Ministry of Foreign Affairs (MINEX): is responsible for the formulation of policies and the implementation of the legal framework concerning relations of the State of Guatemala with other States and persons or legal institutions of international law; the diplomatic representatives of the State; Guatemalan nationality; the demarcation of the national territory; international treaties and agreements, and diplomatic and consular affairs.

71. Ministry of Interior (MINGOB): its responsibility is formulating policies, comply with and enforce the legal regime for maintenance of peace and public order, the safety of people and their property, guarantee their rights, enforcement of orders and judgments, the immigration regime and endorsing the appointment of ministers of State including successor in office. The following entities rely on the Ministry:

- National Civil Police (PNC);
- General Directorate of Civil Intelligence (DIGICI);
- General Directorate of Criminal Investigation (DIGICRI).

72. Secretary of State Strategic Intelligence (SIE): responsible for producing intelligence in strategic areas, while respecting the jurisdiction of the other institutions of the system. Its nature is civil and acts under the direct responsibility of the President of the Republic.

73. National Secretary for Property Management in Asset Forfeiture (SENABED): ensures the proper administration of all assets under their responsibility and all declared forfeited under that Act. It is also being in charge of the reception, identification, inventory, monitoring, maintenance and reasonable preservation of property. It will also be responsible to follow up the goods subject to this Act and that represent an economic interest to the State. It will also be responsible for the sale, auction or donation of the assets declared forfeited.

74. Con General Comptroller's Office (CGC): decentralized technical institution with supervisory functions relating to the income, expenditures and general interest of all state agencies, municipalities, decentralized and autonomous entities, as well as any person who receives funds from the State or public collections". Additionally, it is the principal technical body of audit and government control, and its main goal is to lead and conduct efficiently, timely, diligently and effectively government actions of financial and external control as well as ensuring transparency of management from State entities or entities that manage

public funds, promotion of ethical values and responsibility of officials and public servants, control and quality assurance of public spending and probity in public administration.

75. Public Prosecutor's Office (PPO): is an institution with autonomous functions, it promotes criminal prosecution and directs the investigation of public action crimes; also ensures strict compliance of the laws of the country. It also acts independently of its own will and in compliance with the functions attributed by laws without subordination to any of the organs of the State. The entities dependent on the PPO are:

- PPO – Section of Drug Trafficking Offences: is responsible for the investigation and the exercise of criminal action in all offences related to the legal production, manufacture, use, possession and sale of narcotics.
- PPO - Section against Corruption: has jurisdiction to investigate and prosecute offences constituting acts of corruption involving officials and public employees.
- PPO - Section Against Money Laundering and Other Assets (FCLA, Spanish acronym): responsible for all processes of criminal acts and actions regarding activities related to ML, concerning the AML Law (Spanish acronym).
  - Asset Forfeiture Unit (UED, Spanish acronym).
  - Department of Information Technology for Investigation Control.
  - PPO Agency for TF cases,

76. Attorney General of the Nation (PGN): is responsible for the function of advisory and consulting of state bodies and institutions and participates in the exercise, procedure and process of forfeiture action.

77. Bank of Guatemala (BANGUAT, Spanish acronym): exercises supervision over all matters relating to the circulation of money and public debt. Its main objective is to contribute to the creation and maintenance of the most favorable conditions for the orderly development of the national economy, for which it will propitiate the most favorable monetary, exchange and credit conditions for the orderly development of the national economy, and promote stability in the conditions in the general price level.

78. National Institute of Cooperatives (INACOP, Spanish acronym): decentralized and autonomous state entity charged with enforcing the laws and regulations related to cooperatives, promotes the organization of same, carries out its registration and provides technical and administrative assistance and promotes laws and regulations for the better development of cooperatives.

79. General Inspectorate of Cooperatives (INGECOP, Spanish acronym): entity attributed to INACOP, with practical, administrative and economic independence. It is responsible for the control and surveillance of cooperatives, federations and confederations of cooperatives.

80. Superintendence of Tax Administration (SAT, Spanish acronym): is a decentralized state entity, with competence and jurisdiction throughout the national territory, to exercise exclusively the functions of tax administration, contained in the legislation. This institution has functional, economic, financial, technical and administrative autonomy and has legal personality, property and resources.

81. Superintendence of Banks (SIB, Spanish acronym): body exercising supervision and inspection of banks, credit institutions, financial companies, surety entities, insurance and other provided by law. In addition, exercises supervision and inspection of the Bank of Guatemala, banks, finance companies, credit institutions, bond entities, insurance companies, general warehouses stores, exchange offices, financial groups and holding companies of financial groups and other entities provided by other laws.

82. Financial Intelligence Unit (IVE, Spanish acronym): exercises the functions of regulator and supervisor of the regulated entities referred to by the regulations against ML/TF. According to its functions, it is the Financial Intelligence Unit of Guatemala.

#### *Overview of the financial sector and DNFBPs*

83. Guatemala's financial system is divided into two (2) segments, the regulated formal financial sector and the unregulated financial sector. The first segment consists of institutions whose authorization is at state level and are subject to the supervision of the SIB, consists of 105 institutions including banks, financial institutions, insurance companies, specialized companies in financial services among others, and also credit unions are considered as financial institutions. In the second segment, there are microfinance institutions that as mentioned their execution's operations has not been regulated and are not subject to AML/CFT obligations. As mentioned above, the Microfinance institutions and microfinance non-profit entities Act is currently in the legislative process. In the category of financial intermediation, insurance and auxiliary activities represent five point thirty-six percent (5.36%) of the GDP, of which eighty-eight percent (88%) corresponds to financial intermediation, represented by banks, private financial companies and offshore entities (offshore banks), this informed by BANGUAT considering national accounts.

84. The ML/TF NRA indicates that as at June 30<sup>th</sup>, 2014, the banking sector had 3,429 agencies, 6,541 agents and 3,259 bank ATMs, making a total of 13,229 access points; being the figure of the banking agent particularly, which has allowed to strengthen financial inclusion in the country. According to information reported to the IVE, the banking industry operates:

- 98% of cash transactions equal to or above USD 10,000.00 or its equivalent in national currency.
- 100% of cashiers or managers checks.
- 93% of the purchases and sales of foreign currency.

85. Insurance companies in Guatemala grant insurance for risk of various authorized sectors such as life, accident, disease, injury and surety; this sector is not significant compared to the banking system, as its assets, as of June 30<sup>th</sup>, 2014, are equivalent to 3%, and this amount represents a low penetration of insurance in terms of gross domestic product (GDP); universal life insurance, including a savings component, is not significant, since in 2013 it represented 0.8% of the total sum insured.

86. The securities sector is formalized with the creation of the BVN which provides the location, infrastructure, services and regulations for stockbrokers to conduct trading effectively and centrally and audits compliance of the established regulations. In 1996 the RMVM was created by the Securities and Commodities Act, whose object is the control and registration of acts performed and contracts concluded in the stock, securities and over the counter markets.

87. Derived from the ML/TF NRA, it is known that the Stock Market in Guatemala, as at June 30<sup>th</sup>, 2014, was comprised of 15 brokerages, of which 11 (73%) belong to financial groups, which are under the supervision and inspection of the SIB. Based on the analysis, it was determined that the sector size is not significant compared to the banking system, considering the amount of its assets and stockholders' equity as at June 30<sup>th</sup>, 2014, these items amounted to 0.08% and 0.54%, respectively.

88. The ML/TF NRA identified as at June 30<sup>th</sup>, 2014 that fund transfers (remittance) companies represented approximately the equivalent to 10% of the total annual foreign exchange earnings to Guatemala reported by the financial system under the concept remittances, according to the information provided by the BANGUAT.

89. The savings and credit cooperatives are institutions that operate through contributions from its members and raise funds through their savings. As at July 15, 2015, the cooperative system was composed of 306 credit unions, existing three federations of credit unions, representing approximately 80% of the associated credit union. In accordance with Art. 31 of the General Law on Cooperatives, the National Institute of Cooperatives (INACOP) is created as a decentralized and autonomous state entity, which is “(...) in charge of enforcing laws and regulations related with cooperatives, promote their organization, carries out its registration, provide technical and administrative assistance and promote laws and regulations for the better development of cooperatives and serve as an advisory body in this area”. In addition, Art.53 of said law, creates the General Inspectorate of Cooperatives (INGECOP) as a body attached to INACOP, with practical, administrative and economic independence, responsible for the control and surveillance of cooperatives, federations and confederations of cooperatives.

90. DNFBPs are considered OSs in accordance with Article 18 of the AML Law, 5 of the Regulations of the AML Law and 15 of the PRFT Law and subject to supervision by IVE, the latter being empowered to direct instructions to the OSs and has a Department of Prevention and Compliance to perform risk-based ML/TF monitoring, evaluating prevention system and verify compliance with ML/TF, and impose appropriate administrative sanctions.

91. Non-profit Organizations (NPOs) are institutions or entities that obtain and allocate funds for religious, cultural, educational, social, and fraternal or any other type of charitable, social or non-profit activities. Due to the nature of their subject, they benefit from tax exemptions. In Guatemala, through non-governmental organizations (NGOs), which fall within the NPO organizations, state projects for building roads, schools, bridges, provision of health and education, among others have been implemented. They represent approximately 5.5% of total DNFBPs, it was estimated that the volume of cash transactions greater than USD 10,000.0 represents 75.8% (USD 569.9 million) and international funds transfers sent or received higher to USD 2,000.0, 25.1 % (4,707 transactions) of the total handled by DNFBPs.

### *Overview of preventive measures*

92. The source of preventive measures in Guatemalan regulation constitutes the Art.19 AML Law and 15 of the PRFT Law, additionally, they have complementary operational regulations such as:

- IVE Official Letter 1818-2012, “Instructions to Meet Obligations Related to Regulations Against the ML and TF”.
- For DNFBPs, the IVE-AF-01 “Instructions to Meet Obligations Related to Regulations Against the ML or TF”.
- IVE Official Letter no. 434-2009, No. Guide. SBR 01/09 “ML/TF Risk Management-2” applicable to banks, finance companies and Off- shore Banks.
- IVE Official Letter no. 721-2011, communicated to banks, finance companies, Off-Shore Banks, credit unions, exchange offices, brokerage firms, Storage installations and Credit Card Issuers. The “Requirements and measures simplified for starting relationships“ and “Simplified Form to start relationships IVE-IOS-01”.
- IVE Official Letter no. 2582 and 2644-2015, the IVE sent to all Regulated Entities the Executive Report of the ML/TF NRA of Guatemala, where it is indicated that they must implement measures and actions to mitigate ML/TF risks and the designation of resources to effectively address them.

93. The problems identified are:

- DNFBPs are not aware of the risk of ML/TF to which their activities may be exposed. No development of policies, procedures and controls to help minimize the risks is observed; this translates into lower percentage of submission of Suspicious Transaction Reports (STRs) by DNFBPs in relation to the financial sector.

- Banks are the main generator of STRs, they send 67% of the total and FTC 15% with which there is a concentration; this contributes to the perception of minimal effectiveness of policies and procedures developed by other regulated entities.
- Microfinancing institutions, lawyers, notaries, casinos and video lotteries are not regulated entities, which are not subject to AML/CFT obligations and therefore do not have an AML/CFT system, so they do not develop DDC, nor can identify and report suspicious transactions if necessary.

94. In Guatemala, those engaged in the purchase and sale of cars have been incorporated as regulated entities, it is to clarify that the said regulated entities as at June 2015 have forwarded 6.8% of the STRs for 2015.

#### *Overview of legal persons and arrangements*

95. The types of legal persons that can be constituted in Guatemala are:

- Business Partnerships;
- Limited Partnerships;
- Limited Liability Companies;
- Corporations, and
- Limited Partnerships by Shares.

96. The profitable legal entities are entered in the General Commerce Register (REMER, Spanish acronym), the information provided by the country indicates that 98% of companies are corporations.

97. Non-profit legal persons are entered in the Register of Legal Entities (REPEJU, Spanish acronym), cooperatives are registered with the INACOP and the trusts are registered with the SIB; each record is managed by different entities. The records are public; however, this system of decentralized records lacks efficiency and homogeneity to collect information.

98. In the case of finance profitable legal entities, which are under the SIB, access to information is complete, there is not restricted information protected by any secret whatsoever. Non-delivery of information is an offence punishable by fine.

#### *Overview of supervisory agreements*

99. Regarding cooperation and national coordination, as it was previously mentioned, the COPRECLAF aims to coordinate efforts and cooperation between State institutions involved within the framework of prevention, control, surveillance and punishment of ML/TF offences as well as the FPWMD, in order to contribute to the compliance with the international law and treaties approved and ratified by Guatemala, within a national system of prevention, control, monitoring and sanctions, respecting the competence and autonomy of each institution.

100. On September 8<sup>th</sup>, 2011, the agreement on the framework of Inter-Agency Coordination and Exchange of Information was signed by entities comprising the COPRECLAF, and invited entities that are also part of the legal framework for the prevention, control, surveillance, research, prosecution and punishment of these crimes.

101. Art. No. 32 of the AML Law states that “*the IVE is created within the SIB, which may be designated only as Intendancy or acronym -IVE-, which will be responsible for overseeing the purpose and compliance with this law and its regulations, with the functions and powers set out there in*”.

102. The IVE is the Financial Intelligence Unit of Guatemala, and in accordance with Art. No. 32 of the AML Law No. 24 of its Rules of Procedure, is part of the structure of the SIB.

103. Also in the Art. 7 of AG. No. 132-2010 of the President of the Republic of Guatemala a technical secretary is designated: *“The IVE of the SIB will act as Technical Secretary of the Commission and, in his absence, will act as such, the Director of the IVE of the SIB. The Technical Secretary will be the technical and logistical support to the Coordinator of the Commission and perform its functions ad honorem”*.

104. Also in Art. 20 of the first paragraph of the Regulations of the PRFT Act states that *“The SIB through the IVE, will be the body responsible for ensuring, within the strictly administrative scope, to fulfil the objective of this Act; for such effect it will have the same powers, functions and attributions conferred by the Law Against the Laundering of Money or Other Assets, its regulations, and other provisions on this matter”*.

105. Due to the above, SIB through the IVE has conducted monitoring of OSs on the compliance of ML/TF and the instructions that have been issued. IVE consists of the Departments of Analysis of Financial Transactions and Prevention and Compliance, as well as by the Legal Support Unit, Information Technology and Data Analysis.

106. The IVE is empowered to exchange information under Art. No. 34 of the AML Act and No. 20 of the PRFT Act, which provide that all public and private entities are required to provide the assistance it requests them to carry out their goals.

## CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- In general, Guatemala has an adequate level of ML risk understanding and has developed a National Action Plan, which mitigates the ML risk identified. Regarding the TF risk, terrorism is not considered a direct threat to the country, and regarding TF a level of medium-low risk, in view of the geographical location, is assigned. However, the TF risk analysis is based on absence of information from the authorities, apparently without having a proper analysis of threats and vulnerability of TF.
- The participation of the relevant authorities of the public sector and private sector actors, both in the development of the NRA and the NSP against ML/TF denotes an adequate level of coordination and cooperation in the above processes.
- In general the level of understanding of the risks of ML/TF by financial OSs is considered adequate, however there are still some sectors, as in the case of non-financial OSs (DNFBP), which evidence a low level of understanding of the ML/TF risks to which they are exposed.
- The following offences are identified as ML threats, due to recurrence and resources generated: trade, trafficking and illegal storage (drug trafficking); tax/customs fraud; active/passive bribery, embezzlement (public corruption); trafficking/human trafficking; Customs smuggling and extortion, of which the latter has the highest incidence, or identification and prosecution by the authorities. It deserves special importance the use the country as a route for drug trafficking, storage and trafficking of drugs, mainly cocaine, illicit cross-border transportation of money and smuggling of goods.
- The COPRECLAFIT allows authorities responsible for the fight against ML/TF to coordinate the development and implementation of policies and activities in the field. There are also numerous working groups with participants from different agencies and mechanisms to facilitate operational coordination.

#### **Recommended actions**

- Guatemala must implement the following recommendations in order to have adequate AML/CFT policies commensurate to the ML/TF risks and strengthen their level of national coordination:
- Conduct a review of the risk analysis of TF which incorporates in the analysis, possible abuses in the financial sector, DNFBPs and NPOs, particularly those who are not yet regulated entities. Just as the role of the informal economy that causes lack of control of transactions has an impact on the calculation of ML/TF risk.
  - Issuing regulations and relevant training directed to DNFBPs and NPOs on the implementation of policies for managing ML/TF risks to which they are exposed, and the results of the NRA. This with the aim of improving the understanding of the risks by the OSs.
  - Develop policies and activities to address the FPWMD

107. The relevant Immediate Outcome considered and evaluated in this chapter is IO 1. The relevant recommendations for the assessment of effectiveness in this section are R. 1-2.

## ***Immediate Outcome 1 (Risk, Policy and Coordination)***

### *Country's understanding of its ML/TF risks*

108. As mentioned above, Guatemala conducted the ML/TF NRA in 2014, which allowed the identification, assessment and understanding of the risks of ML/TF for the country.

109. As a result of the analysis of ML threats, major offences were identified, due to recurrence and resources generated: trade, trafficking and illegal storage (drug trafficking); tax/customs fraud; active/passive bribery, misappropriation/embezzlement (public corruption); trafficking/human trafficking; customs smuggling and extortion, of which extortion is the highest incidence, or identification and prosecution by the authorities. Main threats identified were: the use of the country as a route for drug trafficking, storage and trafficking of drugs, mainly cocaine, illicit cross-border transportation of cash and smuggling of goods.

110. The ML/TF NRA points out, according to studies by MINGOB, that at least ten (10) land routes of drug trafficking from Belize, Honduras, El Salvador and Mexico have been identified, also the National Commission against Contraband states that there are 117 blind border crossing points with Mexico, where goods are decanted, mainly fuel. With regard to seizures of illicit money, this has increased considerably in recent years, from USD 2.6 million in 2012 to USD 3.1 million in 2013 and USD 10 million in 2014.

111. Furthermore, based on analysis of thirty-five (35) of the sixty (60) judgments entered by the Judicial Branch, relating to ML, the following characteristics were identified: a) the highest number of judgments analyzed corresponded to cases of cross-border transportation of money. In these cases, people were caught at the international airport, trying to leave the country with cash. The money was transported hidden in luggage or inside their body, and at the time of arrest, they could not justify or prove the legal origin of cash and b) the most used financial products were deposits in savings accounts and cash accounts, from which transfers of national and international funds were subsequently sent. The accounts used corresponded to individuals or legal persons without commercial activity, therefore without economic justification.

112. In the analysis of threats, regarding offences related to corruption, taking into account the information provided, its analysis and the corresponding rating could have been more rigorous, as the level of ML risk associated with these behaviors seems to be higher.

113. On the side of the vulnerability analysis, from the methodological tool of NRA two types of analysis were performed: national and sectorial. National vulnerability analysis took into account the capacity of national struggle from policy analysis and implementation, the criminalization, investigation and prosecution on ML, convictions and seizure of assets. According to information provided, government support is demonstrated to provide human and technical resources to the various authorities that are part of the fight against ML/TF, since 2011 there has been a growth in recruitment (prosecutors, assistants, clerks, analysts, drivers and security staff) from fifteen (15) employees in 2010 to a total of fifty-eight (58) employees in 2013. Importantly, by the Asset Forfeiture Law (LED, Spanish acronym), there is an effective tool to seize and confiscate goods, since one of its objectives is the identification, location, recovery, repatriation of assets and extinction of rights relating to domain thereof; as well as profits, proceeds, products, returns or exchanges of illicit origin, in favor of the State.

114. For the sectoral vulnerability analysis, in addition to having the involvement of the relevant authorities, it was conducted with the involvement and gathering of information from institutions and guilds of the financial sector and the Chamber of Commerce for the case of DNFBPs.

115. According to the findings of the NRA and what was already informed by the competent authorities of the financial sector, the banking sector is the most exposed to ML, through monetary deposits and savings accounts, as well as domestic and international funds transfers. Additionally, on the side of DNFBPs, in the analysis of ML vulnerabilities, lawyers, notaries and casinos were identified as high risk level; NPOs, purchase and sale of vehicles, services of armoring as medium-high level and sales of precious metals and stones, trade in art objects and antiques, public accountants and auditors, company and trust service providers as medium level of risk. The main input used to determine the level of vulnerability was through the assessment (by the public and private sectors) of the control measures that exist in the sector, such as the existence of regulatory authority or specific supervisor in the field, rules against ML, controls to prevent ML, among others.

116. In Guatemala there are no AML/CFT regulations with obligations established for lawyers and notaries and casinos. For the specific case of casinos there is a project bill called “Law Regulating Bets, Casinos, Video Lotteries, Bingo and Gambling”. Notwithstanding the foregoing, there are other activities such as lotteries, raffles and the like, authorized by the MINGOB, which are OSs according to AML regulations.

117. Guatemala has incorporated as regulated entities sectors that by their ML risk exposure in particular, deserve special attention, such as NPOs, activities related to trade in art objects and antiques, the services provided by the companies involved in manufacturing, transportation or related services armoring property of any kind. It should be stressed that in the case of fiduciary services, the only ones who can provide this service are banks and financial companies comprising the national financial system.

118. The analysis of the informal economy and the unregulated microfinance industry deserves review by taking into account what was indicated in the NRA itself and the information obtained during the on-site visit. Microcredit services provided by entities of the microfinance sector were rated with a medium-low vulnerability level. Part of the analysis took into account the KYC measures and monitoring, among others, indicating that these are carried out. However, since the activity of microfinance - that are not NPO- is not regulated by the SIB4, or by the IVE, in regard to AML/CFT measures, this means that they do not have to obtain a license for operation, no fit and proper requirements are in place for these institutions and it is not possible to know the scope of application and implementation of the above measures, which should have had an impact on the result of the analysis of the vulnerability of these institutions.

119. The issue of the informal economy and microfinance is particularly relevant in the context of ML, as mentioned above the estimated size of informal economy by ECLAC accounted for approximately 50.5% of the GDP, which impacts on lower regulatory and law enforcement capacity, limited economic regulation in the lack of transactional controls regarding AML/CFT and in the country's context, high levels of social exclusion and tax considerations, among others. Thus it arises the need for a current approximation of the size of the informal economy and perform an analysis of ML/TF risks taking into account that context.

120. With regard to the TF risk, the NRA determined that the level of risk of TF was medium-low. The NRA performed a TF threat and vulnerability analysis.

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<sup>4</sup> After the on-site visit, in May 2016, the Law of Microfinance Entities and Non Profit Microfinance Entities was published, thus providing a new legal framework to the aforementioned sector. Art. 4 establishes that institutions will be under said Law, the Law of Banking and Financial Groups, the Financial Supervision Law, the AML Law, the CFT Law, by the provisions issued by the Monetary Board and the SIB. However, this information is outside the scope of the Mutual Evaluation, as it is limited to the last date of the onsite visit.

121. On the threats side, it was analyzed: the existence of internal and/or external threats, challenges and gaps in data collection and typologies. No internal or external threats were identified, as there were no cases to obtain information for analysis. Due to the geographical location, it is noted that Guatemala could serve as a bridge for suspected terrorists on their way to the United States of America, which would represent a potential threat to national level, which corresponds properly to terrorism, and would require an analysis of possible specific TF threats. In terms of data collection and typologies, the NRA describes that no challenges and shortcomings were presented in collecting data to assess the threats, as the participating entities had no cases relation to the TF and as there have been no cases, no typologies have been identified.

122. With regard to national TF vulnerability, shortcomings are measured in the economic, legal and institutional environments that make the country vulnerable and therefore attractive to commit TF. To set the level of vulnerability, analysis of legislation, the FIU, international cooperation, intelligence gathering and political commitment in relation to TF was considered. Identified needs and opportunities for improvement were relative to the regulatory field, in penalization of TF and implementation of UNSCR 1267 and 1373, and since there have been no known cases of TF, the institutions in charge of investigation, prosecution and punishment of TF offences, have not been tested and the time of the NRA there was no specialization in TF in these areas.

123. Before the analysis of TF, it is important to note that it can be strengthened by the study of the financial sector vulnerabilities, such as the flow of international transactions, especially remittance entities. It is also important to incorporate possible abuses of DNFBPs and NPOs in the TF analysis, particularly those who are not yet regulated entities. As in the field of ML, the role of the informal economy that causes lack of transaction control has an impact on the calculation of TF risk.

124. Overall, the Guatemalan authorities have proven to have an adequate level of understanding of the ML risks. The IVE being the entity that executes functions both of financial intelligence, supervision and technical secretariat of the COPRECLAFIT is identified as a strength, which provides evidence of the capacity needed to both understand the risks and supervise the OSs with a RBA.

125. The action plan implemented for the mitigation of the risk identified is coherent with the needs set by the NRA, it focuses its main actions in strengthening and building capacities of the task forces, authorities and judges. Likewise, it identifies activities to improve the efficiency and effectiveness of ML/TF preventive measures, such as optimizing criminal investigation and management of justice, as well as institutional strengthening.

126. Allocation of resources and time by the prosecutors, authorities and reporting entities prove that countering ML/TF is a priority for the country and that many of the identified risks are addressed through the execution of the specific activities set forth in the NSP. Importance should be given to the work carried out by implementing the obligation of preventive measures with entities different to those set by the FATF Recommendations, such as: purchase and sale of motor vehicles, trade of works of art and antiques and armoring services.

127. Overall, according to the information gathered it is evident that both the authorities and the private sector financial institutions understand the risks faced by Guatemala in terms of ML. The TF assessment could be strengthened with the vulnerability analysis of the stakeholders and sectors exposed to TF.

#### *Objectives and activities of competent authorities*

128. Guatemala has effective mechanisms in most areas to mitigate the risks. The competent authorities are committed and well-managed and have adequate coordination by the COPRECLAFIT.

129. COPRECLAF is the body responsible for the overall coordination of the system and the high-level assessment of the risks, but in practice, as a collegiate body, mainly approves the material provided by the IVE, the Secretary of the Commission, or other members of the Commission.

130. The IVE has shown a high level of understanding of the risks. Risk analysis by the IVE appears to determine compliance with the responsibilities of the IVE both as FIU and supervisor. The IVE has an area of strategic analysis which has been derived from the analysis of vulnerabilities of the NPO sector. In particular, there is a high degree of communication and feedback between its two main functions (as FIU and supervisor), which has been helpful in improving the ability of understanding the risks and to supervise the regulated entities with an approach based on the risk. The IVE is clearly the engine of most of the material and information related to risks, actions and monitoring presented to and formally approved by the Commission.

131. The law enforcement authorities and the members of the PPO have a solid understanding of the risks affecting their specific areas of activity. Knowledge is backed by not only the processes carried out to date, but by the clear joint work evidenced between the IVE and the PPO.

132. Some specialized operational units, specifically specialized prosecutors, are able to identify and meet trends in the types and methodologies used by criminals for ML. This knowledge is clearly reflected with good results in their joint work and the approach of Guatemala's criminal policy embodied in the Strategic Plan of the PPO.

*Exemptions, enhanced and simplified measures.*

133. Prior to the development of ML/TF NRA, the IVE has issued preventive measures for financial and non-financial OSs in order to manage and mitigate greater risks. Among these measures are the following:

**Table 1: Summary of strengthened and simplifies measures for REs**

Number Official Doc	Summary of the measure
IVE No. 1741-2011 and 1054-2013.	Implement measures to carry out an analysis of operations of every customer who engages in foreign currency exchange, particularly those identified as moneychangers.
IVE No. 2126 and 2127-2012 and 3650-2014	Communicate the existence of typologies and inform the OSs of the technical document that contains them so that measures are implemented to prevent ML.
IVE No. 366-2011 and 1307-2015.	Measures to identify, control and monitor the accounts of political organizations.
IVE No. 612-2010.	Implement prevention and control mechanisms for product or financial service usually called "Pre-paid Cards".
IVE No. 624-2010.	Measures that OSs should consider in order to constitute a trust.
IVE No. 13-2009.	Account Control on behalf of companies or other entities in formation.
IVE No. del 1030 to 1034-2013	Instruction on Politically Exposed Persons (PEP).
IVE No. 1432-2009 and 1420-2013	Measures that OSs should consider in order to end business relationship with customers or not initiate with individual or legal persons suspected or linked to drug trafficking and/or organized crime and criminal organizations
IVE No. 434-2009.	ML/TF Risk Management Guide

134. In addition, the ML/TF NRA has identified the principal risks of ML, by analyzing threats and vulnerabilities. From this evaluation the ML/TF NRA Action Plan has been established, whose general actions to be implemented are focused on the OSs taking measures to manage and mitigate the risks of ML/TF. According to the results of the ML/TF NRA, both financial and nonfinancial sectors were reflected as most vulnerable to the risk of ML/TF, whose activities are set out in the Action Plan to mitigate its risks, as detailed below:

**Table 2: Activities to be developed pursuant to the ML/TF NRA Action Plan**

Sectors with High and Medium-High Vulnerability	Activities to develop action plan as ML/TF NRA
Casinos, lawyers and notaries.	Monitoring the bill that was presented to Congress (Initiative: 4294: Law Regulating Bets, Casinos, Video lotteries, Bingo and Gambling).
	Preparation of draft amendment of legislation, to include new activities increased risk in prevention of ML/TF, according to international standards
NPOs, purchase and sale of real estate, property development, purchase of vehicles, armoring services, funds transfer companies.	Issue instruction to financial institutions, requiring the implementation of enhanced measures of KYC if detected or start relationships with clients whose activity corresponds to these sectors, in order to strengthen mechanisms to prevent and detect regulated entities are still pending IVE registration.
FTC (remittances)	Strengthen actions that enable them to identify PEP customers, by issuing forms to initiate relationships for money transfer companies
Credit unions	Intensify the control measures taken by cooperatives taking into account their geographical risk
	Strengthen the control measures taken by the cooperative sector in order to identify partners that meet the category of PEP.
	Optimize the transactional monitoring system of the cooperative sector focused on riskier operations.

*Cooperation and coordination at the national level*

135. As mentioned, the COPRECLAF was created to coordinate efforts and cooperation between State institutions involved in the legal framework for the prevention, control, surveillance and sanction of ML/TF and FPWMD. To achieve its purpose and functions, the Guatemala MER approved by the CFATF in 2010 was used as a domestic diagnosis, in order to focus their efforts to prioritize closing compliance gaps and strengthen the national system. On that basis, the NSP 2010-2014 was drafted to strengthen the rule of law and the national economy by strategic analysis, implemented and executed by four working groups made up of officials of the institutions of this Commission who have been meeting periodically since 2010 to make strategic decisions, learn about the progress of the inter-agency work and propose strategic initiatives to improve the prevention, control, surveillance and punishment of crimes of ML/TF. These groups have the following purposes:

- Group 1 Strengthening and Strategy: Strengthening the national system of prevention and suppression of ML and TF by improving the efficiency and effectiveness of prevention measures ML/TF; optimizing criminal investigation and the administration of justice, setting forth a system of information exchange and analysis, and providing for the institutional strengthening of the entities related to combating these crimes.
- Group 2 Training and Awareness: Develop a comprehensive and permanent training program with different levels of content according to the results of the needs assessment performed. Proposal for a comprehensive and ongoing awareness program aimed at the

general population, which assists in the prevention and encourages the detection and reporting of ML/TF/FPWMD.

- Group 3 Exchange and Coordination Agreements: To propose the creation, modification and improvement of regulations related to the prevention, repression and combat crimes of money laundering or other assets, financing of terrorism and financing of proliferation of weapons of mass destruction, in order to facilitate its implementation and effectiveness at the country level and optimize and develop cooperation agreements and exchange of information at national and international level in these subjects.
- Group 4 Statistics and Technology: Implement mechanisms to measure the effectiveness of actions aimed to mitigate the risk of ML/TF/FPWMD.

136. It is important to note that the NSP 2010-2014, which is comprised of 88 activities and in force until May 31st, 2014, in accordance with information provided by the authorities, presented a level of compliance of 96%. Subsequently, the COPRECLAFAT approved the NSP 2014-2018 following the FATF Recommendations. In the aforementioned NSP, strategic objectives, activities, actions to be undertaken, expected results, entities involved and their responsibilities were reflected. As a result of the ML/TF NRA and the development of the Action Plan which includes the priority actions to mitigate the identified risks, the NSP 2014-2018 was updated for priority actions to be incorporated and developed by the Groups listed according to their functions and capabilities. In accordance with the information provided by the COPRECLAFAT, 77.1% of activities set forth to be implemented have been enforced to date.

**Table 3: NSP development by Group**

Actual developments by Group – October 2015				NSP Development
Group No. 1	Group No. 2	Group No. 3	Group No. 4	NSP Avg.
72.4%	84.8%	61.0%	90.2%	77.1%

137. The creation of a special Office within the PPO’s FCLA dedicated to TF and the execution of a permanent, updated and specialized training program for ML/TF are activities worth stressing. In particular, the work of Group 4, regarding centralization of statistical information, is specially noted. As part of the development of the activities of the Group of statistics and technology, under the NSP 2010-2014 and providing continuity in the NSP 2014-2018, it has designed a technology platform called Inter Statistics System ML/TF (SIRE, Spanish acronym) whereby the competent authorities channeled and centralized in a unified platform, relevant statistics for AML/CFT purposes, which reflects the fight against these offences in Guatemala. At the time of the on-site visit, the platform was already in operation and the relevant institutions were just beginning to use the platform.

*Awareness of the risks of the private sector*

138. As mentioned above, the private sector, the financial sector participated in the process of NRA in the implementation of the modules of the tool for the study of sectoral vulnerabilities, although the participation of institutions which are DNFBPs was needed, while members of the Chamber of Commerce were present. Once the NRA process was concluded, the NRA report document was issued, which, by IVE circulars, during 2015, and sent a total of 2071 financial and non-financial OSs. Some private sector entities interviewed during the on-site visit, however, still had not viewed the NRA report.

139. The level of understanding of ML/TF risks, particularly of ML by financial OSs is considered appropriate, in particular the banking sector best knows risks and applies a RBA. However, in the rest of the financial sector, understanding of risks and implementation of measures is lower. In the case of DNFBPs, according to information from the on-site visit, it is evident that DNFBPs have a low level of understanding of the ML/TF risks to which they are exposed.

140. In addition, with respect to the understanding of risks, it is important to note that there are still sectors, both from financial (microfinancing companies) and non-financial sectors, that are not OSs and require to be included in the AML/CFT system. In addition, there are still OSEs that need to comply with their AML/CFT obligations, which affects the understanding of the risks by the private sector.

*Conclusions on the Immediate Outcome 1*

141. According to the above, **Guatemala has a moderate level of effectiveness regarding Immediate Outcome 1.**

## CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL PROBLEMS

### *Key findings and recommended actions*

#### **Main Findings**

##### **Immediate Outcome 6**

- The financial intelligence generated by the IVE is used by the competent authorities in ML investigations, which is evidenced in particular by the PPO investigations arising from IVE legal reports. Furthermore, a good level of cooperation is seen by the IVE both with the authorities and with the regulated entities. In the case of TF, the absence of related cases did not allow to evaluate the use of financial intelligence associated with this crime.
- The IVE receives STRs of financial OSs and DNFBPs. However, significant efforts should still be made in registering OSs and further submission of DNFBPs STRs.
- The IVE has access to various databases that allow it to provide added value to the STR and produces quality legal reports.

##### **Immediate Outcome 7**

- As regards the investigation and prosecution of ML, Guatemala has sound legislation that allows to develop the investigations and penalize the alleged perpetrators, either natural or legal persons, associated with the materialization of these crimes.
- Authorities in Guatemala, through their competent bodies, have made significant efforts to address this problem which is derived from the offences identified as a threat in the ML/TF NRA, this work demonstrates the efforts of the authorities, IVE, PPO, investigative authorities, who in coordination with the financial and DNFBP, perform the necessary actions to fight ML threats.
- Guatemala has made efforts to achieve in criminal proceedings in process, convictions and seized and forfeited assets, which have allowed a weakening of these criminal structures, allowing in some cases their disarticulation.

##### **Immediate Outcome 8**

- Guatemala performs the necessary actions permitted through two (2) figures established in law to recover the funds, assets and/or other assets from crime, forfeiture and confiscation.
- However it is necessary to optimize some procedures required by the international standard as the forfeiture or confiscation of property of corresponding value, which could contribute to the damages caused by the criminal structures of the Guatemalan State.
- Through CONABED and SENABED, all assets under their responsibility and declared forfeited under the LED are managed.

#### **Recommended Actions**

##### **Immediate Outcome 6**

- There should be mechanisms or procedures in place, such as working groups, to provide feedback to judges and prosecutors on cases presented.
- Relevant legal changes must be made so that the IVE officials and compliance officers do not participate as witnesses in the processes of ML or asset forfeiture.
- Incorporate as OSs the sectors that are needed and generate training mechanisms for increasing STRs by DNFBPs and TF STRs.

##### **Immediate Outcome 7**

- Greater efforts to implement their national policies and strategies to combat the identified threats, this should be reflected in the consolidation in the PPO Strategic Plan 2015- 2019, where actions have to be set against the criminal phenomenon, taking this institution in charge of the axes of criminal investigation and prosecution, in line with the COPRECLAF NSP, where the articulation of all competent authorities to fulfil the tasks together is set as a priority in order to mitigate the identified threats.
- It is required to provide greater human and technological resources to the PPO and the police for investigation and prosecution of ML offences and predicate offences in order to have greater presence in the Guatemalan territory, especially in the areas due to its geographical condition, economic activities, products and services offered and in accordance to what is evidenced in the NRA, are more likely to have higher incidence of these crimes.
- The development and implementation of all Special Investigation Techniques that are established in the Guatemalan legal framework is necessary, as this will allow and facilitate the development of investigations of different auxiliary research bodies responsible for carrying out this fight, allowing consolidation of the objectives as a country.
- In turn it is necessary to design and establish policies that allow incorporating coordinated actions to combat other ML risks and threats that are considered to be increasing in the country as is the issue of illegal arms trafficking.
- It is also considered essential to update the specialized staff in the investigations of these crimes, conducting regular training on new types, trends and research methods.

#### **Immediate Outcome 8**

- It is important that the issue of repatriation, distribution and restitution of funds and assets, where applicable, deepens through developing international cooperation through the various agreements and institutions that the Republic of Guatemala has.
- The enforcement of forfeiture of property and funds of corresponding value of natural and legal persons who are involved in criminal actions involving domestic and foreign predicate offences are required.
- There must be a continuous training of the competent authorities to carry out this work in order to keep up with the demands involved in an investigation of this type, in turn link and close cooperation with the authorities of neighboring countries and countries with which it has cooperation agreements for the purpose of designing strategies to achieve the identification, tracing and confiscation of funds and assets derived from illicit activities.

142. Relevant Immediate Outcomes considered and evaluated in this chapter are IOs. 6-8. the relevant Recommendations for the assessment of effectiveness in this section are R. 3, R. 4 and R. 29-32.

#### ***Immediate Outcome 6 (financial intelligence ML/TF)***

##### *Use of financial intelligence and other information*

143. In Guatemala, the entity responsible for performing the functions of financial intelligence is the IVE, created within the structure of the SIB, pursuant to Article 32 of the AML Law. Such entity is responsible for ensuring order and compliance with this law and its regulations, contained in Government Agreement No. 118-2002. Under the provisions of Articles 20 and 16 of the PRFT Law, the IVE is also the body responsible for ensuring, within the strictly administrative level, compliance with the objective of that law, and the effect has the same powers, functions and powers conferred upon the AML Law, its regulations and other provisions on the subject.

144. The IVE has appropriate resources to perform its duties. The Division of Financial Transactions Analysis is comprised of forty officials and it is backed up by the technology sector (5 people). The Division is organized in three main areas: Initial Analysis, Financial Transactions I and Financial Transactions II. Such areas analyze STRs in search of criminal activities by way of several methods, including STRs analysis, requests for additional information to OSs and their foreign counterparts, preparation of ML/TF typologies reports, and objective reports analysis.

145. The IVE through the tool “Portal of Regulated Entities” besides STRs, also receives the following types electronic reports (ER) of transactions carried out by the OSs, which must be sent monthly:

- ER of Transactions over USD 10,000.00. Sent during the first five working days by the OSs registered in the IVE (banks, financial, funding, offshore entities, cooperatives, leasing, warehousing, bonding, insurance companies, brokerages, exchanges, forex trading, house pawn, check cashing companies, pension fund, factoring, raffles and similar lotteries, credit card operators, companies fund transfers and credit card companies).
- ER cashier’s checks over to USD 10,000.00. Sent during the first five working days for the banking system. Contains all purchase transactions made in cashier’s checks for amounts greater than USD 10,000 or its equivalent in national currency;
- ER purchase of foreign currency in cash. Sent during the first fifteen days by banks, financial and exchange of all the buying or selling foreign currency in cash;
- ER of cash income and expenses in local currency. Sent during the first fifteen days by the banking system. Contains all transactions involving entry or exit of national currency (quetzals);
- ER larger transactions to USD 10,000.00 or its equivalent in national currency. Sent during the first five working days by non-financial OSs registered in the IVE (trade in art objects and antiques, leasing motor vehicles armored, public accountant and auditor, sale of property, property development or sale of property, jewelry trade, precious stones and metals, non-profit organization that manage foreign funds, non-profit organization that manage state funds, tax offices provision, property development, provider company service provider, independent insurance service agents, armoring property services of any kind, insurance brokers and sale of motor vehicles).
- ER of moneychangers’ operations. Sent during the first five working days by financial, exchange houses and banks in the system, in respect of all cash transactions and documents made by clients whose main activity is buying and selling national or foreign currency, and in particular identified or denominated money-changers.
- ER of financial statements. ER in which information of name and account number and amount of the account persons particularly those who are under investigation or at the request of PPO is requested from OSs.
- ER of credit card operations. Sent during the first five working days by credit card operators, which includes the amount and number of transactions by credit card by facility type during a calendar month.
- ER of cross-border transfer of cash. Sent during the first fifteen working days by banks and offshore entities. In this report transactions of cross-border cash transfers in local and/or foreign currency must be reported.
- ER of values mobilization. It must be sent during the first fifteen working days by value transportation companies. In the same it is due to enter the value information that companies send outside the national territory.
- ER of foreign currency receipt of cash. Must be sent during the first fifteen working days by banks, finance, offshore entities, funding, credit cards, money exchange, companies fund

transfers, warehousing, leasing, insurance companies, brokerages, pawn shops, cooperatives affiliated to FENACOAC, factoring, lotteries, raffles and the like, credit card issuers.

- ER of funds transfer over USD 2,000.00 or its equivalent in national currency. It must be submitted during the first ten working days for funds transfer companies, banks, credit unions, offshore entities, financial entities, and the Institute for Promotion of Insured Mortgages.
- ER of the purchase and development of real estate. It must be submitted during the first ten working days by companies engaged in the purchase, sale and/or promotion of real estate, with the reporting of all transactions with customers for the purchase, sale or promotion of real estate.
- ER of the purchase of motor vehicles. It must be submitted during the first ten working days by companies engaged in buying and selling of motor vehicles, armoring service companies of any kind and armored vehicles leasing companies, with the report of all transactions with customers for buying or selling motor vehicles whether land, sea or air and operations armoring property of any kind and leasing of armored vehicles.

### *Usefulness of the information and reports*

146. The IVE through a specialized unit analyses the information contained in internal databases, which include electronic reporting information, as well as information obtained from external sources, with the objective of identifying patterns or possible financial mechanisms of ML or TF, to assist in the effective prevention and suppression of such crimes; example of the above are the strengthening prudential regulatory measures that have been issued as a result of that analysis, such as Resolution JM-108-2010, Measures on Regulations and Minimum Requirements for Receiving Foreign Currency Cash, among others.

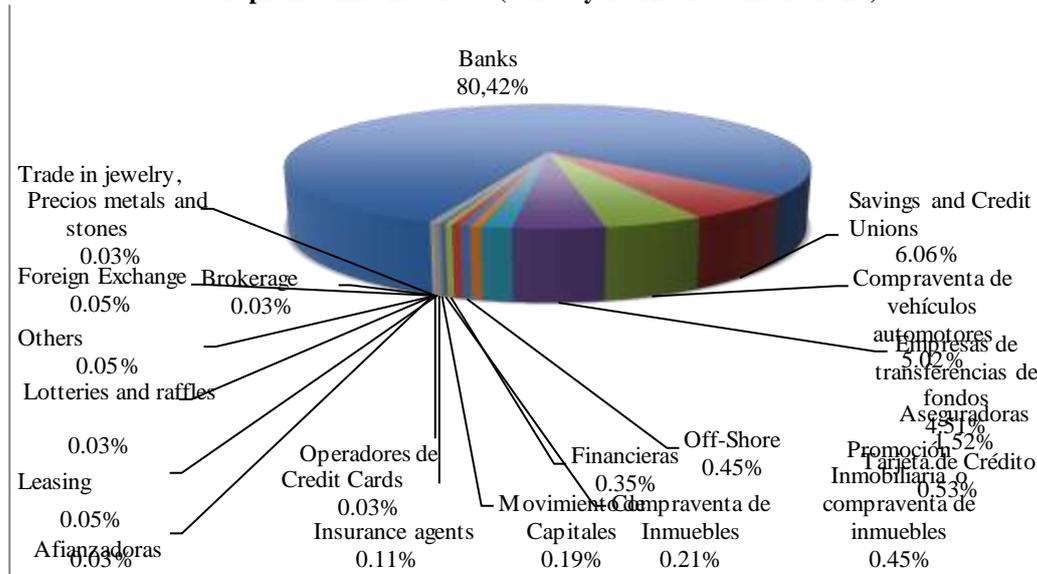
147. During the period under review (January 2011- November 2015), the IVE received from the OSs a total of 3,748 STRs, of which 80.31% were submitted by banks, 6.06% by credit unions, 4.51% by fund transfer companies, and 5.02% by motor vehicle purchases and sales.

**Table 4: STRs Received (January 2011 – November 2015)**

Type of regulated subjects	2011	2012	2013	2014	2015	Total	%
Banks	434	409	497	884	786	3,010	80.31%
Credit Unions	46	29	16	47	89	227	6.06%
Motor vehicle purchase and sale	0	0	13	64	111	188	5.02%
Fund transfer companies	7	4	6	40	112	169	4.51%
Insurance companies	7	12	18	7	13	57	1.52%
Credit cards	2	2	3	3	10	20	0.53%
Off-Shore	5	3	2	3	4	17	0.45%
Real Estate publications or purchase and sale	0	2	4	6	5	17	0.45%
Financial companies	3	2	3	4	1	13	0.35%
Real Estate purchase and sale	0	0	0	0	8	8	0.21%
Capital transactions	1	3	1	1	1	7	0.19%
Independent insurance brokers	0	0	0	0	4	4	0.11%
Currency exchange offices	0	0	1	1	0	2	0.05%
Financial lease	0	0	0	0	2	2	0.05%
Other institutions	0	0	0	0	2	2	0.05%
Credit cards operators	0	0	0	0	1	1	0.03%
Lotteries, raffles and others	0	0	0	0	1	1	0.03%

Type of regulated subjects	2011	2012	2013	2014	2015	Total	%
Jewelry, precious stones and metals trade	0	1	0	0	0	1	0.03%
Stock brokerage companies	0	0	1	0	0	1	0.03%
Surety companies	1	0	0	0	0	1	0.03%
<b>Total</b>	<b>506</b>	<b>467</b>	<b>565</b>	<b>1,060</b>	<b>1,150</b>	<b>3,748</b>	<b>100%</b>

Graph 1: STRs Received (January 2011 – November 2015)



148. This shows that the STRs used as input for the production of financial intelligence are derived mainly from the financial sector, especially from banks. On the other hand, there is a low percentage share of STRs reported by the DNFBBs compared to those of financial OSs. However, it is important to point out that during the period under evaluation there has been an increase of STRs submitted by DNFBBs. Therefore, in 2011, only one STR was received and by 2015 this figure has increased to 130 STRs. In particular, STRs for the purchase and sale of motor vehicles has increased during the last two years. It is important to stress that the information provided by DNFBBs has been employed in processing ML cases, for instance, in the case 2 below, in the analysis of this IO.

149. In addition, based on the analysis of the STRs received and other sources to carry out intelligence activities, the IVE makes multiple requirements or requests for additional information. Such requests amount to 59,712 during the last five years. There follows a detail of the requests for information to the OSs sent by the IVE. During the period under analysis (January 2011- November 2015), the IVE made 59,712 requests for information, of which, regarding financial OSs, 14,037 were made to banks and 9,967 to credit unions, mainly. In the case of non-financial OSs, 10,308 were made to real estate companies or purchase and sale operations, 1,128 to accountants, 80 to companies advisors and 173 to NPOs/international transfers.

Table 5: Number of requirements to regulated subjects (January 2011 - November 2015)

Type of regulated subjects	2011	2012	2013	2014	2015	Total	%
Banking	3,886	2,469	2,963	2,990	1,729	14,037	23,5%
Property development companies or sale of properties	45	370	3,149	4,867	1,877	10,308	17,3%
Credit unions	376	488	2,731	4,650	1,722	9,967	16,7%

Type of regulated subjects	2011	2012	2013	2014	2015	Total	%
Finance	1.626	1.063	982	822	537	5.030	8,4%
Independent Insurance Agents	0	0	0	1.290	2.947	4.237	7,1%
Sale of motor vehicles	11	85	796	1.635	611	3.138	5,3%
Off-Shore	685	458	501	459	314	2.417	4,0%
Jewelry, precious stones and metals trade	9	64	527	1.019	504	2.123	3,6%
Insurance	142	68	585	338	360	1.493	2,5%
Public Accountant and Auditor	0	0	0	411	717	1.128	1,9%
Funds transfer companies	342	62	260	249	104	1.017	1,7%
Trade of objects of art and antiques		23	223	427	192	865	1,4%
Brokerages	133	16	276	223	112	760	1,3%
Credit card	170	65	174	110	39	558	0,9%
Warehousing	28	14	230	175	48	495	0,8%
Sale of Properties	0	0	0	56	408	464	0,8%
Insurance broker	0	0	0	109	210	319	0,5%
Movement of capital	1	5	64	100	49	219	0,4%
Financial leasing	12	2	87	75	30	206	0,3%
Forex trading	0	0	71	80	43	194	0,3%
Non-profit Entity-Funds Abroad	0	0	0	55	118	173	0,3%
Company service provider	0	0	0	29	51	80	0,1%
Non-profit Entity-State Funds	0	0	0	28	44	72	0,1%
Credit card operators	6	2	24	18	4	54	0,1%
Shielding property Service of any kind	0	0	0	21	30	51	0,1%
Exchange Offices	3	1	29	14	4	51	0,1%
Lotteries, raffles and similar	5	2	7	21	10	45	0,1%
Provision of legal address	0	0	0	18	26	44	0,1%
Bonding Company	33	0	0	0	0	33	0,1%
Factoring	2	0	12	11	3	28	0,0%
Leasing armored motor vehicles	0	0	0	9	15	24	0,0%
Funders	0	1	11	7	3	22	0,0%
Check cashing companies	0	0	12	7	2	21	0,0%
Pawnshops	2	0	10	7	2	21	0,0%
Other institutions	0	0	9	7	2	18	0,0%
<b>Total</b>	<b>7.517</b>	<b>5.258</b>	<b>13.733</b>	<b>20.337</b>	<b>12.867</b>	<b>59.712</b>	<b>100%</b>

150. As additional information, the IVE can query online at the following sites directly and immediately. This information is updated.

- Procurement System of the State of Guatemala;
- Vehicle Registration Tax;
- Unified Tax Registry (RTU);
- Supreme Electoral Tribunal;
- Consultation companies, firms and representatives of the REMER of the Republic;
- Query Properties, Farms, Registration and Duplicates the General Property Registry;
- Enrolling Consultation State Cadaster and Real Estate Appraisal (DICABI);
- Information and Consultation System of Judicial Records of the Judicial Branch;
- Central Registry of Detainees of Judicial Branch.

151. Additionally, the IVE consults the listings by OFAC, UNSC, INTERPOL, and the Central Credit Risk of the SIB of Guatemala, the portal of the College of Lawyers and Notaries of Guatemala, and the portal of the National Police for information on stolen vehicles and the National Register of People (RENAP).

152. In addition to the information sources described under Article 34 of the AML Law and 20 of the PRFT Act, all public or private entities are required to provide cooperation that the IVE requests for the realization of its objectives. Similarly, the IVE receives a monthly report of entry/exit customs declarations of Guatemala.

153. Accordingly, the IVE has access to substantial volume of information used for purposes of producing financial intelligence useful for competent authorities. However, it is important to mention that microfinance institutions, notaries, lawyers (regarding some of the activities established by the Standards) and casinos are not considered as OSs, which are not subject to AML/CFT obligations. Additionally, in the field of DNFBPs established as OSs, some are still not registered before the IVE. This then could limit the ability of the IVE to produce more financial intelligence by the lack of reports of the above sectors. This deficiency is not considered substantial in the context of Guatemala, as the IVE has the necessary legal powers to require information from said sectors in case it is necessary. Additionally, it is worth mentioning in this regard that the IVE has made the necessary efforts to ensure that non-financial OSs with greater representation are registered.

*STRs received and requested by the competent authorities*

154. During the period under review (2011-2015), the IVE received a total of 3,748 STRs, with an associated dollar amount of USD 2.399.841.055.

**Table 6: STRs received and amounts**

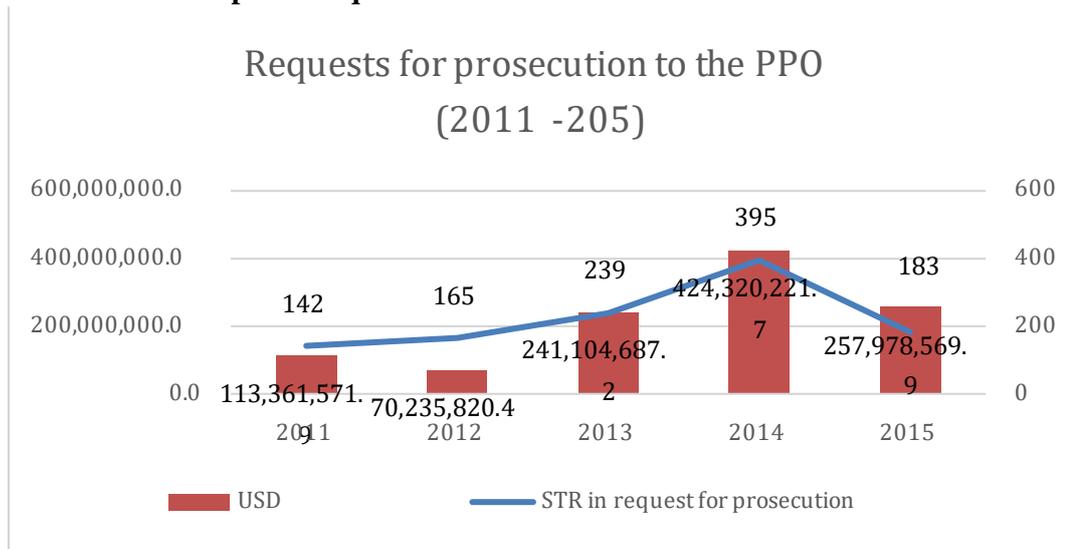
Year	STR received		
	Number	Amount in USD	Amount in Quetzals
2011	506	769.687.629	5.872.716.609
2012	467	595.466.974	4.543.413.014
2013	565	184.362.507	1.406.685.927
2014	1060	419.381.354	3.199.879.732
2015	1150	430.942.591	3.288.091.966
Total	3748	2.399.841.055	18.310.787.248

155. From the total amount of STRs (3,748), 1124 STRs were analysed and used for the filing of FIU legal reports to the PPO, which is equal to an amount of USD 1.107.000.871,04, i.e., 64% of the amount reported by the OSs.

**Table 7: STRs used for the filing of legal reports**

Year	STRs used to file legal reports				
	Number	%	USD	Quetzals	%
2011	142	13%	113,361,571.89	864,948,793.54	10%
2012	165	15%	70,235,820,44	535,899,309,97	6%
2013	239	21%	241,104,687,20	1,839,628,763,35	22%
2014	395	35%	424,320,221,65	3,237,563,291,17	38%
2015	183	16%	257,978,569,85	1,968,376,487,99	23%
Total	1124	100%	1,107,000,871.04	8,446,416,646,02	100%

**Graph 2: Requests for Prosecution to the PPO**



156. Of the total legal reports and complementary legal reports filed to the PPO for ML offences, the ratio between the number of STRs received and the number of STRs used in the production of legal reports:

**Table 8: STRs received and used**

Year	STRs received	STRs used to produce legal reports	Legal reports and complementary Legal reports sent to the PPO	Persons under PPO investigation
2011	506	142	104	1050
2012	467	165	150	1580
2013	565	239	205	1664
2014	1060	395	224	1801
2015	1150	183	129	4640
Total	3748	1124	812	6095

157. It is important to bear in mind that the legal reports filed to the PPO by the IVE are the outcome of the financial analysis of the STRs, the objective reports, the requests for information to the OSs and other sources of information to which the IVE has been granted access for financial intelligence reasons.

158. With regard to the number and amount of legal reports for ML, these are integrated as follows in terms of the identified the possible predicate offences, which are related to the main crimes identified as threats in the ML/TF NRA: 364 (44.83%) correspond to extortion by GTQ 28.4 million; 238 (29.3%) to trade, trafficking and illegal storage (drug trafficking) for GTQ 5,997.8 million; 111 (13.7%) to active/passive bribery, misappropriation and/or embezzlement (state corruption) for GTQ 1,149 million, 16 (3%) to tax fraud for GTQ 743,1 million and 40 (4.9%) to human traffic/trafficking for GTQ 267.4 million (USD 16.6 million), among other offences. The IVE has not received TF STRs, thus, as previously mentioned in other sections of this MER, it is important to increase OSs training regarding TF patterns and indicators, since some OSs do not understand their vulnerability towards TF yet so that they can be alert should an event of TF arise. The IVE has human resources in place, as well as the capacity to perform possible TF analysis if need be.

159. In addition, it is worth pointing out that the analysis of the IVE also result in reports to the Asset Forfeiture Unit (UED Spanish acronym) to implement asset forfeiture.

Table 9: Reports from IVE sent to UED

	2012	2013	2014	2015	Total
Asset forfeiture reports	5	112	305	152	574
Amount in millions of Quetzals	Q -	Q. 1.827,4	Q. 3.245,2	Q. 1.945,1	Q. 7.017,7

### Case 2

A OS dedicated to mobilization of resources applied CDD to its provider of securities transportation services (gold bars), determining through the analysis carried out that the value transported for two months to said customer (AM, S.A.) was not consistent with its profile, as it corresponded to a corporation (legal entity) of recent incorporation and, according to the verification carried out at the premises of the company, it did not have evidence on the adequate storage capacity and the level of security to safeguard such amounts of gold. The OS submitted the corresponding STR to the IVE with the support documentation for the shipments and other documents gathered by it.

Furthermore, the IVE received an STR from another OS which, based on transaction monitoring applied to the deposit account of AM, S.A. determined that, in a period of two months it received wire transfers from another country for approximately GTQ 75.0 million, an amount beyond the economic profile stated when due diligence was applied. Additionally, the fact that, immediately after receiving them from abroad, the funds were moved to two recently created corporations whose economic activities were unrelated to the exporting legal entity was observed as a red flag, along with the link of the legal representative of the latter with one of the corporations that immediately received the money.

Both STRs were jointly analyzed by the IVE in order to establish the existence of signs of money laundering offences and, therefore, proceed to file the corresponding legal report to the PPO. During the analysis stage for the reports, the IVE requested additional information to the reporting subject in order to determine the destination of the funds coming from abroad, which enabled them to identify that 80% of the funds were destined to pawn shops and to owners, administrators and managers of jewelry companies located in high-risk zones along drug trafficking routes.

Furthermore, information from the IVE's databases was gathered, identifying that other companies with similar business had not received the amounts of wire transfers from the same sender of the foreign country, under exportation of gold, in one year as AM, S.A. had received in about two months, with the additional note that the latter was of recent incorporation; this is evidence of an economic behavior atypical to that of the economic activity. On the other hand, to establish a legal and organizational relationship of legal entities and their possible link through the same beneficial owner, information provided by reporting subjects was considered, along with other information gathered in public databases, observing as follows:

- AM, S.A. registered the same address as another entity owned by one of its partners;
- The legal representative of AM, S.A. is owner of a jewelry company; likewise, the person has registered signature for a deposit account that immediately receives the funds coming from abroad to the deposit account of AM, S.A.
- The two corporations that receive wire transfers with the funds received from abroad in the deposit account of AM, S.A. have a link, due to the apparent kinship between partners in both;
- The corporations to which funds are immediately transferred after being received from abroad have the same registered address, with a different office number, as those from other pawn shops

that have benefitted from the transfer of funds; furthermore, they have been legally represented by the same person, which provides evidence of relation with the administration.

As a result of the analysis performed, transactions were considered to fall within the definition of one of the international money laundering typologies, with enough signs pointing at the financial operations being carried out by the involved entities to be linked to illicit activity, thus proceeding with the corresponding technical report before the PPO.

Afterwards, the OSs with the capital transfer activity sent an update to the STR reporting that its client had requested the liquidation of the service under the name PPO, S.A., but requesting another service to XP, S.A. with one of the partners and legal representative being the same as that of PPO, S.A. thus making it evident that both companies were linked. Based on the new findings, the IVE requested additional information to the reporting financial institution in order to determine the origin and destination of the funds of the accounts for XP, S.A. finding the same pattern in transactions performed by this company, and thus updating the technical report filed before the PPO.

160. As previously mentioned, the IVE and the competent authorities have the resources to effectively use this information in the analysis and financial investigations, identification, location, property confiscation and asset forfeiture.

161. Therefore, the financial intelligence generated by the IVE is used to begin investigations with the legal reports filed to the PPO, also as support and annex of investigations and UED reports to foster asset forfeiture. As at the on-site visit, there were 574 reports filed with the UED and 812 legal reports and complementary legal reports filed to the FCLA.

*Cooperation and exchange of information/financial intelligence*

162. The IVE receives requirements of different prosecution offices and support units for the various denounced investigations initiated by the IVE or those specific to the PPO. The higher requirements come from the FCLA for investigations and procedures for ML, the UED and the CICIG for high-impact cases that are jointly worked with the FECCI:

**Table 10: National reporting requirements attended by the IVE  
January 2011 - November 2015**

Prosecutor's Office	2011	2012	2013	2014	2015	Total
FCLA	250	185	343	448	303	1529
CICIG	5	0	0	9	35	49
Forfeiture Unit	3	111	346	334	566	1360
Crimes against life	8	11	9	1	1	30
Special Unit against Criminal Organizations devoted to Drug Trafficking and/or Money Laundering and other crimes (UNILAT)	16	3	4	0	0	23
Economic Crimes	3	0	2	13	1	19
Crimes against drug trafficking	3	0	2	13	1	19
Banking	9	2	0	2	0	13
Prosecution against impunity	8	0	3	1	0	12
Corruption	0	2	3	3	1	9
Metropolitan	3	2	1	1	1	8
Environment	2	2	1	1	0	6

Prosecutor's Office	2011	2012	2013	2014	2015	Total
Special Unit on international attention	0	5	0	1	0	6
Organized crime	1	2	0	1	1	5
Kidnapping	1	0	2	0	0	3
Administrative Offences	1	1	0	1	0	3
Intellectual property	2	0	1	0	0	3
Extortion	3	0	0	0	0	3
Nueva Villa Municipality	1	1	0	0	0	2
Patrimony	1	1	0	0	0	2
Frauds	2	0	0	0	0	2
Escuintla	0	2	0	0	0	2
Internal Affairs	0	1	0	0	0	1
Smuggling	0	0	0	1	0	1
<b>Total</b>	<b>322</b>	<b>331</b>	<b>717</b>	<b>830</b>	<b>910</b>	<b>3110</b>

163. The various units of the National Police and the PPO work together in a coordinated manner with the IVE. On several occasions, given the complexity, meetings have been held in order to work cases together.

164. With respect to the confidentiality of information, there is a deficiency related to the potential use of STRs as a means of evidence by the PPO. However, during the on-site visit, there were findings evidencing such STRs are not used for this purpose. Due to the work of the IVE and its coordination with the PPO, the usual practice of the PPO and judges is not to incorporate STRs as evidence. Moreover, there is a chance for compliance officers to appear before the Court during proceedings as witnesses or IVE analysts as experts in the context of criminal proceedings. However, according to the information provided by the authorities, this is a practice that they seek to avoid. Therefore, from 718 technical reports filed, 35 of them have generated a summons to render an expert opinion and only 2 caused the summons of compliance officers. Besides, it is important to bear in mind that in said opportunities, pursuant to the provisions of the IVE, there can only be one expert who is specifically named for these cases, not the STRs analysts. Regardless, these deficiencies have not weakened the IVE's ability to trigger cases or to cooperate at the international level. As per the MOU of the IVE with related organizations, all information exchanged is used for analysis and intelligence purposes. On top of that, when the sharing of intelligence information with the PPO is authorized this cannot be used as evidence.

### *Conclusions on the Immediate Outcome 6*

165. According to the above, Guatemala has attained **a substantial level of effectiveness in the Immediate Outcome 6.**

### *Immediate Outcome 7 (investigation and prosecution of ML)*

166. As regards the investigation and prosecution of ML, Guatemala has strengthened legislation within the legal framework it has the Penal Code, Criminal Procedure Code (CPP), the AML Law and Law against Organized Crime (LCDO), which come to constitute the main legal instruments for the investigation, prosecution and sanction of this offence. Under the Constitution, preliminary and investigation stages correspond to the PPO, as this is the entity in charge of the exercise of criminal action.

167. The PPO has specialized agencies on investigation and persecution, of criminal structures engaged in these criminal activities, such as the section offices for crimes which are considered as ML threats as explained below. By means of the Agreement No. 2-2002 Council of PPO, dated June 24<sup>th</sup>, 2002, the

Prosecution Section Against Money Laundering and Other Assets (FCLA) was created, which is responsible for all processes of criminal acts and actions that relate to the ML; and which is part of the UED. In turn this entity relies on the security agencies of the State as the National Civil Police (PNC) and its specialized agencies for the development of their investigations as it is the subsidiary body to carry out the investigations. The country's work regarding this offence has been arduous and significant, which has led to the beginning of prosecutions and forfeiture of funds and property of criminal organizations.

168. On the issue of international cooperation, there is a significant number of requests for mutual legal assistance (MLA) and extradition of nationals and foreigners linked to this offence which has already materialized and others are being currently executed, awaiting for response by the countries to which MLA has been requested, pursuant to what is established in their internal legislations in order to establish the judgments on natural and legal persons who committed these criminal actions within the Guatemalan territory.

### *Identification and investigation of ML*

169. Guatemala is characterized by having an adversarial criminal justice system and corresponds to the PPO the exercise of criminal action. The PPO is supported by the auxiliary investigative bodies, taking the National Civil Police (PNC), under the MINGOB agencies, who with other attached units, which some Division mentioned Against Gangs of the National Civil Police (PANDA), Department Against Economic and Financial Crimes PNC, Division of Ports, Airports, Border Posts PNC), turn the Sub Address Counternarcotic 5th Vice Ministry of Fight against Drug Trafficking, Interpol and the Directorate General of Civil Intelligence (DIGICI), an organization that supports the development of ML investigations through intelligence generation. All these bodies work together articulately to investigate, prosecute and punish this offence. Additionally, in 2012, by Decree 15-2012, the DIGICRI was established, as is a civil State organ, administratively dependent of the Ministry of Interior specialized in criminal investigation, auxiliary of the administration of justice and with competence throughout the Republic. To fulfil the functions of criminal investigation, the staff of the DIGICRI are subordinate to the PPO's prosecutors. During the on-site visit, the assessment team was advised that the DIGICRI was neither established, nor in practice. Whereupon, in the field of criminal investigation it is considered appropriate to work on the institutionalization of DIGICRI, as means to collaborate in investigations related to ML offences, further strengthening prevention, prosecution and repression actions against this criminal activity.

170. For the development of this investigations, the PPO depends on the Secretary of Criminal Policy, responsible for preparing and presenting strategies to combat crime in Guatemala, where organized crime and ML are especially considered. This strategy is developed in four (4) areas: Preventive, Investigation, Punishment and Prison system, in regard to the investigation it establishes or develops strategies on more effective and efficient development of these investigations to achieve the dismantling of these criminal elements engaged in ML, for it relies on the following directions and units within the MP.

171. The PPO' Training Unit (UNICAP-MP), which is responsible for updating, specialization of prosecutors as to the approach for this offence and how to develop the investigation.

172. The Criminal Analysis Direction (DAC-MP), which cooperates with the PPO agencies that develop investigations in this area, has two (2) departments, the assessment and case analysis and financial analysis. The first one is responsible for developing criminology reports with strategic information for the development of investigations through the criminal analysis of records by timelines, inter-communicational relationships, graphing links and events, analysis of criminal structures, analysis of telephone wiretaps. The second is based on the reporting of forensic audits and financial expertise, relationships reports of financial transactions, financial-economic profiles and reports on dubious origin of goods, money counting reports

and projections on damages. The FCLA for the period 2013-2015 has made 192 requests to the department of financial analysis and six (6) to the department of assessment and case analysis.

173. The PPO' Unit for Special Methods (UME-MP), which has the specialized staff on the issue of wiretapping. In specific ML cases, UME-MP has participated in five (5) cases. According to the information provided during the on-site visit, most cases worked by the UME have to do with criminal structures of drug trafficking, linked to arms trafficking and ML and extortion. In total, since 2011 to the date of the on-site visit, the UME-MP has received 1307 cases, where it is estimated to have disarticulated forty (40) criminal structures per year. The capacity of the UME and effectiveness of this unit can be improved with increasing listening rooms as at the date of the on-site visit only it had capacity to intervene one hundred (100) telephone lines. Also, it is necessary for the implementation of other special investigative methods established in the legislation as undercover agents and controlled deliveries is activated. The needs of the UME are evident as future plans by the MP, in order to further strengthen the work of this unit as a function of assisting in crimes considered threats in the ML/TF NRA, the draft sets the creation of two (2) additional rooms for monitoring wiretapping, creation and hiring new staff for the UME-MP and DIMEI as well as adaptations of equipment and training facilities. Importantly, the work of the UME, has allowed the dismantling of gangs of Organized Crime in Guatemala, linked to ML the proceeds of Drug Trafficking, as the emblematic Case 3 of ML in Guatemala.

### Case 3

Operations of an investigative team conducted between October 2013 and November 2014. On 16 September 2013 the PPO received a communication from a foreign government anti-drugs agency, which requested support under the agreement to combat organized crime. The Drug Enforcement Administration informant mentioned being aware that the target of the investigation, communicated via telephone with suppliers of drugs entered the country, sought support for using special investigative methods with utilized by the PPO (method of wiretapping) in order to obtain information to disband the aforementioned criminal structure and identify those involved in the crimes. In order to coordinate actions to profile the criminal structure and proceed to dismantle and prevent and avoid moving drugs and ML proceeds of sale thereof, a working group was created which consisted of: several agencies of the PPO and the PNC, with priority inter-agency team, identification of the criminal structure, mode of operation and the places used to conduct their criminal activities. During the investigative process conducted, six (6) events took place together with the MP, seizure of USD 4,513,510.00 was achieved, as well as several firearms including AK-47 rifles, M-16, a grenade launcher and three hand grenades. This was possible, derived from surveillance and monitoring carried out on members of the criminal organization, supported by the intervention of phone numbers and activation record of telephone antennas designed to determine the location and places of operations of the persons comprising the criminal structure. To run the operations, they worked in coordination with the aforementioned PPO agencies, same as those who documented the procedures and carried cases separately on the investigation, in order for members of the criminal structure not to have knowledge that they were being investigated as a structure, in order to determine the full identification of the leader and senior officers of same, to achieve complete disbandment.

174. The PPO' System of Computer Control of Investigation (SICOMP) provides computer support, software development, interfacing with the other PPO agencies related to criminal prosecution, allowing for information exchange between agencies to provide input in the development of their ML investigations and other crimes that, once processed, are addressed to the other PPO agencies with jurisdiction over the crime denounced.

175. The PPO in order to continue contributing to the fight against offences considered as threats according to the results of the NRA 2014-2015, has prepared and approved the PPO’ Strategic Plan 2015-2019, which provides a vision of team work oriented to the multidisciplinary development of criminal prosecution, i.e., focusing on building teams composed of prosecutors, investigators, expert witnesses and experts, as well as the fostering of inter-agency coordination to optimize investigation and exercise of criminal action.

176. Another aspect to be addressed in the PPO’ Strategic Plan, is related to being more efficient in investigations involving international collaboration, particularly in regard to transnational crime. In this regard it is imperative to develop the necessary procedures to provide assistance to the prosecuting agencies regarding investigation procedures abroad, collaborative research of transnational crime with teams from other countries in Guatemala and abroad, tracking and asset recovery in other countries, in coordination with the prosecutor in charge of asset forfeiture processes and procedures: extradition; MLA in criminal matters and transfer of sentenced persons, based on the different predicate offences linked to ML, work carried out by the PPO’s Section of international affairs, but requires growth to meet the demands in this matter as observed during the on-site visit, is increasingly necessary.

177. There are several ways to identify the commission of a ML offence: verbal or written complaint, *flagrante delicto*, crime news among other forms, besides this also from the IVE, entity that receives and processes information from different OSs and other information that allows knowledge of the development of alleged offences related to ML, which becomes intelligence reports that constitute legal reports, which are sent to the PPO.

178. According to statistics provided by the authorities during the period from 2011 to 2015 (until the date of the on-site visit), specifically for ML cases, from 1,618 complaints presented, 812 (legal reports and complementary legal reports) come from the IVE technical reports.

**Table 11: Source of complaints**

Source of the complaint / year	2011	2012	2013	2014	2015	Total
<b>IVE (reports and addenda)</b>	102/2	131/19	180/25	198/26	107/22	718/94
<b>Other whistle-blowers</b>	139	146	94	224	297	900
<b>Total</b>	241	277	274	422	404	1618

179. As mentioned above, 718 were specific legal reports on ML produced by the IVE, added to ninety-four (94) complementary legal reports. The legal reports filed by the IVE before the FCLA, as mentioned above, are the result of the integration of the information analysis of the STRs, as well as from information gathered from other sources. The filings by the IVE provide the foundations for the development of all the investigation stage of ML as per the information gathered at the on-site visit.

*Coherence of investigations and prosecutions of ML with threats and risk profile, and national policies AML.*

180. Guatemala determined by the NRA ML/TF, what are their internal threats regarding crimes which due to recurrence and resources were necessary to generate strategies and decisive action to address them with the consent of all competent authorities that have responsibility be defined on the issue, hence through COPRECLAF and NSP they have established a series of tasks necessary for criminal prosecution and criminal investigation aimed at mitigating and managing the risks and threats detected and be able to conduct work which permits the challenges faced by the country to be met.

181. The Action Plan of the NRA has established a series of measures to mitigate the ML risks identified, among which are mentioned updating diagnostics to determine the various regions, institutions and economic activities nationwide more percentage of vulnerability to illicit identified as threats; strengthening inter-agency cooperation in combating them and in regard to fighting ability promote the dissemination of information on ML/TF between authorities and institutions in prevention, detection and prosecution of such crimes, as well as the development of a permanent training program, updated and specialized in financial crimes.

182. The criminal prosecution policy of the PPO aims to maximize and optimize personal and financial resources of the institution, as well as the procedural mechanisms available, including streamlining the rationalization of persecution through the application of principles such as procedural legality and opportunity, so that the available resources are organized and the social impact and serious cases, such as ML, are investigated and processed correctly and those misdemeanors can be evacuated in other ways.

183. Within these strategies it could be observed that the PPO has established a National Criminal Policy that focuses on the four (4) axes mentioned above, where the ML offence and other predicate offences are included. This commitment is framed in the PPO Strategic Plan 2015-2019, defining this criminal policy as a set of responses that the State organized to address the criminal phenomenon; these responses are expressed and embodied in policies, strategies, guidelines and actions, which are divided into three levels: 1) Principles contained in the Constitution of the Republic and in international instruments adopted by the State; 2) Ordinary laws that develop criminal policy, i.e. establishing what behaviors are defined as crimes and penalties, as well as the procedures for trial and; 3) Guidelines and the institutions are responsible for a central axis of the criminal policy which guides and organizes their operation guidelines.

184. As mentioned above, in relation to high incidence offences, it is highlighted trade, trafficking and illegal storage (drug trafficking); tax/customs fraud; active/passive bribery, misappropriation and/or embezzlement (state corruption); smuggling/human trafficking; Customs smuggling and extortion, of which extortion is the highest incidence or identification and prosecution by the authorities.

**Table 12: Cases admitted for trial in the first instance criminal courts  
January 2011 - October 2015**

Offence	2011	2012	2013	2014	2015	Total
ML	128	214	164	313	441	1260
Active/Passive Bribery	210	451	639	436	357	2093
Tax/Customs Fraud	347	401	436	460	391	2035
Kidnapping or Abduction	250	289	482	433	402	1856
Trade, Traffic, Illegal Storage	80	209	333	292	350	1264
Embezzlement and/or Embezzlement	57	255	213	127	159	811
Customs Contraband	174	212	227	378	258	1249
Trafficking	33	41	86	113	100	373
Money Transfer	0	0	0	2	0	2
Extortion	402	485	848	1337	1273	4345
Extortion on Continuous Basis	2	0	2	7	13	24
Attempted Extortion	0	5	2	11	12	30
Total	1683	2562	3432	3909	3756	15342

185. As it can be seen, the number of cases of ML admitted to the courts has increased and particularly from 2013 to 2014, the increase was almost double. From 2015 to the date of the on-site visit the largest number of cases filed corresponded to extortion followed by ML.

186. It is worth mentioning as the factors that have contributed to the increase in cases admitted before criminal courts of first instance:

- The PPO Strategic Plan, aimed at the specialization on criminal phenomena that mostly affect the protected legal property, such as economic and organized crime. Likewise, personal and financial resources of the institution are optimized, in order for them to be organized in such a way as for serious and social impact cases, such as the laundering of money and other assets, being correctly investigated and prosecuted.
- The PPO aims, plans and organizes criminal prosecution with strategic information that is obtained from directorates and technical units, such as the Directorate of Criminal Investigations, the DAC-MP and the UME-MP.
- A vision of work teams is considered, oriented at multi-disciplinary development of the criminal prosecution and fostering interinstitutional coordination relationships to optimize the investigation and execution of the criminal action.
- Strengthening of the several PPO prosecutor offices, which includes training programs, use of technology, and increase in staff, among others.
- Increase in the effective use of financial intelligence produced by the IVE by the PPO.

**Table 13: Judgments of processing  
January 2011 - October 2015**

Offence	Type of Ruling	2011	2012	2013	2014	2015	Total
ML	Conviction	19	89	296	214	191	809
	Acquittal	13	157	25	166	29	390
Active/Passive Bribery	Conviction	19	45	45	43	48	200
	Acquittal	9	13	43	28	13	106
Tax/Customs Fraud	Conviction	31	69	63	11	11	185
	Acquittal	1	1	9	13	3	27
Kidnapping or Abduction	Conviction	50	68	206	205	102	631
	Acquittal	19	6	33	73	55	186
Trade, Trafficking and Illegal Storage	Conviction	31	55	117	177	158	538
	Acquittal	5	5	82	22	12	126
Misappropriation and/or Embezzlement	Conviction	2	14	14	33	39	102
	Acquittal	4	0	0	8	3	15
Customs Contraband	Conviction	9	3	10	9	2	33
	Acquittal	0	1	3	7	3	14
Human trafficking	Conviction	9	29	36	27	26	127
	Acquittal	12	10	3	8	19	52
Money transfer	Conviction	0	0	0	2	0	2
	Acquittal	0	0	0	0	0	0
Extortion	Conviction	89	199	445	532	604	1869
	Acquittal	39	78	85	133	123	458
Extortion on continuous basis	Conviction	0	0	9	7	25	45
	Acquittal	0	0	0	0	0	0
Attempted extortion	Conviction	0	0	14	16	58	88
	Acquittal	0	0	0	0	1	1

187. It should be noticed that, according to the ML/TF NRA, the illicit movement of money was identified as a threat, yet only two (2) sentences have been produced for money transfer. However, the PPO has informed that for the cases of unjustified omission in declaring the cross-border movement of cash, they have opted to accuse for ML offence, as it considers a higher penalty.

188. The work of the SFIC is worth noting; as previously stated, it is the specialized prosecutor office responsible for directing criminal investigations and conducting criminal prosecution in cases corresponding to CICIG, with a high impact nature, where investigations conducted include, among others, ML offences. Being able to demonstrate the Maskana Case in which the crime of extortion with ML, which are demonstrated as the most important actions in this case, were the following:

- Conviction was issued on charges of extortion and ML against a person who held two different positions within the public administration.
- In addition to the prison term and a fine, you will be disqualified for public office for double the time of imprisonment, denoting application of proportionate and dissuasive sanctions in the Guatemalan context.

189. Additionally, it is important to mention in this field the existence of judicial proceedings under high impact against former public officials, including a former president and former vice president for acts of corruption in which they are also being processed for ML.

190. In relation to the crime of extortion, the PPO Section against extortion and FSLA have worked together in one (1) case where the conviction in the respective case was obtained. At the same time three (3) forfeiture actions were initiated. However, at the time of the on-site visit, the incorporation of more specialized personnel could be seen, along with advances in technology platform through database with phone numbers used to extort, so when a user receives a call and is detected which comes from one of these numbers, and they have been reported in order that these complaints are processed by the Section of the PPO that specializes in the subject, in turn the PPO created a 24 hours call center that serves as a platform to denounce the occurrence of this offence. However, it is necessary to strengthen the development of these investigations by activation of the 6 tax agencies located in areas identified with greatest incidence of this crime, which must have specialized personnel in research techniques that allow contribution to the clarification of this offence together with the development of ML investigations, come from the predicate offence, while keeping training and strengthening interagency coordination with the Task Force against Extortion of the MINGOB.

191. As for the actions taken by the Guatemalan state for strengthening the PPO Section Against Corruption, evidence of this includes the aspects relating to financial, technical and staff professionalization, with the allocation of more staff to comprise multidisciplinary work teams, in which technical staff and analysts specializing in issues of corruption and public administration management participate. As part of the information provided in the on-site visit, some cases such as that involving the Director of Transit of the PNC, who was referred to said prosecution for the offence of passive bribery which subsequently resulted in the filing of forfeiture action, were presented.

192. It is also important to note that the staff of the PPO of Administrative Crimes Section is participating in processes of continuous training to develop the skills necessary for the investigation and prosecution of corruption offences, in turn to comply with the provisions of international conventions on corruption approved and ratified by Guatemala, a prosecutor's office of Internal Affairs was established which has jurisdiction to investigate and prosecute criminal acts committed by officials or employees of the PPO in the exercise of their duties in all the national territory.

193. With respect to Human Trafficking the commitment has also been shown through AG 306-2014 Public Policy Against Human Trafficking and Comprehensive Protection of Victims 2014-2024, which has among other objectives to coordinate and strengthen state institutions, in implementing actions towards the full realization of the criminal prosecution and punishment of the crime of trafficking. Strengthening the Office of specialized section in this crime with increasing staff and inputs, such as vehicles, furniture and computer equipment, training of technical personnel, types, new trends and the use of special investigative techniques that are operating in Guatemala.

194. With regard to economic crime, combating smuggling and tax fraud is a priority for the Guatemalan government and responsibility of PPO, setting up a technical committee to discuss the necessary measures to strengthen the Office of Economic Crimes. Of the work conducted the need to rely on technological tools, creating a website where citizens can anonymously report people or marketing places of smuggled goods, was concluded.

195. In addition, at the level of international cooperation in order to assist in the investigation and prosecution of crimes considered high risks and threats, with the authorities of neighboring countries have been able to dismantle criminal structures operating in Central America. Also, there have been exchanges of experience with these countries in order to understand trends, *modus operandi*, types that are mutated to different countries thus defining strategies to combat them. A sample of these is the signing of a cooperation agreement on programs of narcotics control, law enforcement, public and citizen security, and reform of the justice sector between the government of the Republic of Guatemala and the US Government. Through the aforementioned agreement letter, both sides agreed to establish and support projects designed to improve public safety and promote the rule of law, as well as improving justice and fighting drug trafficking, among other sectors. The projects are focused on issues such as the development of skills and abilities in the security forces, technical advice, implementation of prevention programs and strengthening the institutional strengthening of the justice system.

196. On Anti-Narcotics assistance, the UNILAT, sensible unit composed mainly of PPO prosecutors conducting operations and support in the communications interception program which works with foreign anti-narcotics agencies in complex counter narcotics investigations aimed at the highest levels of drug traffickers and those engaged in ML, so equipment, resources, training and experience in this type of research by the authorities of the United States of America, will be provided.

197. It is important to mention that within the threats identified in the NRA 2014-2015 it could be observed during the on-site visit that the realization of the strategies and actions to combat other crimes considered threats is required. In the document entitled Democratic Crime Policy 2015-2035, prepared by the PPO, the section "*Strategic Guidelines*", which establishes the priority actions to address these crimes considered high incidence in the country, where this offence is considered to require the execution of these actions, strategies, policies in order to minimize the actions of organized crime, through scientific, efficient, effective and strategic approach to the criminal phenomenon.

198. During the on-site visit, the importance of arms smuggling was mentioned for the Guatemalan context; however, as a threat for ML it was determined that said conduct is linked to criminal organizations and not as an activity generating illicit products to be laundered by itself. Regarding the foregoing and being applicable in general to all possible criminal actions which may arise, the PPO has drafted a democratic criminal policy 2015-2035, which provides, among other areas, for strategic standards setting priority measures to combat crime. It is because of the above that these measures must be followed up.

199. Inter-agency coordination should be strengthened through the implementation of policies, strategies, coordinated actions between all competent authorities to carry out the analysis and the incidence of this behavior in the context of the risk of ML. Taking advantage of all financial, technological, and human

resources of the Guatemalan State to face these threats, leading to training, exchange of information between counterpart agencies engaged to investigate, prosecute and punish this offence, and feedback between all competent authorities, Regulated Entities to address the identified ML threats.

200. At the same time strengthening the PPO by increasing fiscal specialized agencies offences considered as threats in the twenty-two (22) departments in the Guatemalan territory especially in those departments that are considered high risk need the materialization of these crimes, such circumstance would be even more efficient and effective in the development of joint investigations of ML. At the same time, as regards the confiscation of funds and products of these criminal activities, through on-site investigations drawing on the expertise of the prosecutors in each specific crime and ML prosecutors and Forfeiture through coordinated work by both agencies together with ancillary investigative body.

*Types of ML cases prosecuted*

201. According to the provisions of Art. 2a of AML Law, ML is autonomous and for its prosecution, a process, sentencing or prior conviction of the predicate offence is not required.

202. The test of knowledge of the origin or illicit origin of the goods, money or other assets required in ML, may be made by any available evidence in accordance with the Criminal Procedure Code (CPP), including the inferences arising from the objective circumstances of the case.

203. ML is transnational in nature, predicate offences should be extended to behavior in other countries, and in that sense, and the UNCCD Art.1 Law states that it aims to prevent, control, monitor and punish ML from the commission of any crime. Under those rules, ML offence is an open criminal offence by which the illicit origin of the goods is punishable, regardless of the place in which criminal behavior was carried out. Additionally, Art.5 of the Penal Code, regulates extraterritoriality of criminal law, and in paragraphs 3 and 5 indicate that it also applies to an offence committed by a Guatemalan abroad, when his extradition has been refused; or offence by treaty or convention must be punished in Guatemala, even though it may not have been committed in its territory.

204. This legal framework has allowed the PPO in charge of prosecution and the Judicial Branch in charge of judgment and establishing penalties and sentences, to continue ML cases involving the conviction of the accused parties, either natural or legal persons, and asset forfeiture and confiscation of funds and goods depending on the case, seeing that the application of this legal framework allows unrestricted judgement to nationals or foreigners who commit this crime within the country or outside its borders.

205. During the period from 2011 to 2015 (date of the on-site visit), the PPO has made 538 indictments for the ML offence.

**Table 14: Prosecutions for ML offences**

	2011	2012	2013	2014	2015	Total
ML	87	104	84	151	112	538

206. As mentioned later, Guatemala has managed to obtain 371 convictions for the crime of ML from the cases specifically filed by the FCLA. It is particularly noteworthy that there have been forty-seven (47) autonomous sentences for the crime of ML.

**Table 15: Convictions for the crime of ML as a stand-alone offence**

	2011	2012	2013	2014	2015	Total
ML	0	0	17	15	15	47

207. In addition, it is worth mentioning case 4, where in addition to the eight people convicted, Guatemala achieved the first conviction of a legal person.

#### Case 4

The IVE received from the banking and financial system an STR in which it was reported that the corporation -X- for a certain period of time, recorded in an account of monetary deposits constituted in a bank system, cash deposits and checks from various bank accounts on behalf of individuals, who apparently engaged in forex trading in border areas. Also among the accounts that transferred funds to X, there was an account in the name of one of the founding members of that corporation incorporated under the laws of the country.

Those funds were subsequently used for sending 1,849 international transfers for 250 different beneficiaries located in different countries. Such transfers were ordered by X for large sums of money with proof of payment to existing overseas suppliers, posing for effect, photocopy of current account contract and receipts and payments for others, signed as a private document between X and other legal entity located in a neighboring country, entity incorporated under the laws of the country, with headquarters in that country; entity represented by a citizen of X nationality. Also, for the justification of its operations to the required person, involved entity X presented a statement of income, for the period of 10 months where sales and purchases are reported for high amounts of quetzals, values that did not warrant transactions recorded in their bank accounts.

The two company representatives constituted the business entity called X which has the son of one of the shareholders listed as Legal Representative, being the business of the corporation buying and selling of fruits (avocados) and vegetables. For the start of its commercial and financial operations, they opened various monetary accounts in the banking system of the country, with the aim of receiving multiple deposits in cash and checks, financial transactions were conducted by the same representatives of the company, its family, staff working for the company as well as individuals who presumably engaged in the sale of foreign currency in the borders of Guatemala with a neighbor country.

The aforementioned cash deposits were made without any apparent commercial justification or of any other nature that would support such deposits and/or financial transactions made to company X, his legal representative and shareholders. During the investigation it was determined that the funds deposited in favor of "X" were used to make international transfers of large sums of quetzals, simulating as justification for such transfers payments to suppliers, for alleged business of import and/or export of avocados.

At the stage of prosecution and generation of different means of conviction, the PPO:

- a) requested and received timely information from various public registries and State institutions, as well as from the banking and financial systems of the country, who through the due diligence policies were instrumental in the development of the investigation.
- b) Also, requested support when having obtained them to the DAC-PPO for specialized personnel to conduct a financial analysis to determine the economic profile of each of the people involved in research, allowing financial intelligence generated by the IVE, to assist with the investigation.
- c) Likewise, requested support for the PNC for the location, detection and surveillance of people and movable and immovable property, documenting these proceedings through video and photography for subsequent arrest and search, with inter-institutional cooperation being developed for this work.

Considering that the structure operated in various countries, information of legal and individual persons requested via MLA through the International Affairs Unit of the MP, and similarly, coordination was achieved with authorities of the neighboring country for the exchange of information, mentioning, among others, the Federal Police, FIU through its counterpart in Guatemala and the Attorney General of the Republic. The obtained information derived from this international cooperation was relevant in the process because it made it possible to establish the participation of Guatemalan people who had accounts in financial institutions in the neighbor country, which fed cash funds to the accounts of the corporation in Guatemala and then moved them to a neighbor country to withdraw the funds.

The result of the investigation allowed to prove the unlawfulness of operations and as a result, to obtain a conviction against the legal person referred to above, to this date there are communications with the neighbor country authorities, as there is a parallel process in that country.

The PPO obtained convictions against eight (8) individuals and one (1) against a legal person, with their respective fines; also the result of this process was sent to the UED, and is currently under investigation and preliminary injunction issued on real estate, financial products, vehicles on behalf of persons related to this process which is inactive since the request.

208. On investigating ML offences by third parties, the PPO, in coordination with the DIGICI a team of researchers was formed in order to identify members of the criminal structure, resulting from field research, that the latter provides services to various criminal groups engaged in various illegal activities, transferring money from illegal sources to another country, using various mechanisms, among them the regional banking service and the executive traveler typology.

#### Case 5

Investigation initiated under a legal report filed by the IVE against a group of people which, taking advantage of regional banking service, open dollar accounts in Guatemala in a banking institution with regional banking service. Afterwards, after making bank deposits, the people are physically transferred to country A and withdraw money through check.

In the first IVE legal report 11 people are listed, and the amount reported equals USD 6, 429,740.00. And the second has 16 people listed, and the amount reported equals USD 3, 228,744.67.

#### Case operation

- a) In coordination with the DIGICI a team of investigators was appointed in order to identify members of the criminal structure as well as the location of its members, resulting from field work that the criminal structure provides its services to different criminal groups engaged in various illegal activities, in order to transfer money of illicit sources to country A, using different mechanisms, through which each member has developed some expertise. Among the typologies used by the structure there are:
  - The transfer of money through the Regional Banks, using a Guatemalan banking institution agency in country A;
  - The transfer of cash by travelers (smurfing); and
  - The money transfer by land, by inserting cash into the battery (accumulator) of vehicles used for such effect.
- b) Investigations were carried out to identify previous investigations involving the members of the criminal organization, finding that some of them were related to high-impact cases that were being worked by the prosecutor's office
- c) The IVE, at the request of the PPO, performed the mapping of financial transactions by members of the structure.
- d) Derived from the investigation, the testimony of two effective collaborators was obtained: the collaborator "A" is the person who contracts the structure for recording companies that were used to transfer money to country A, with amounts up to USD 90,000.00 through the typology called Executive Traveler, which is that a person moves to another country through air and is used as a carrier for the transfer of cash, patents, trade of a corporation and letters of authorization from the legal representative, quotes from a foreign company and foreign companies bills that are never imported products to Guatemala. The employee "B" is the person who handles transfers to the airport to travelers (Smurfs, people who move to country A with less than USD 10,000.00 amount), and has knowledge, in turn, of the type by vehicle batteries used by the criminal structure.
- e) Three MLA requests were made to the country A in order to determine the income of people in that country and financial transfers made to it.
- f) Similarly, derived from investigations conducted in country A, the authorities of that country requested legal assistance to Guatemala, in order to identify persons and financial transactions.

g) The Analysis Unit, in support of the prosecution, conducted the criminal analysis of the structure, determining the money trail and its link to drug trafficking groups.

209. In addition to the ML sentences mentioned above, according to reports by the authorities, there have been cases of mixed sentence, i.e. by ML in conjunction with other criminal actions.

**Table 16: Mixed convictions**

Offence	2011	2012	2013	2014	2015	Total
Racketeering, conspiracy, concealment, ML, obstruction of justice, international transit, transportation and/or transfer of illegal firearms	0	30	0	0	0	30
Self-Concealment, ML	0	0	1	8	0	9
Racketeering, ML, kidnapping or abduction, use of forged documents, public use of an assumed name	0	6	0	0	0	6
Racketeering, conspiracy, ML, extortive obstruction of traffic	0	5	0	0	0	5
Embezzlement, ML	0	0	3	0	1	4
Providing means, ML, illegal possession of crafted or makeshift firearms, weapons with registration # altered, weapons legally # deleted or not marked.	4	0	0	0	0	4
Grand larceny, ML, manipulation of information, use of information	0	0	0	4	0	4
Criminal association, conspiracy, crime of financial intermediation, embezzlement, ML	0	2	0	0	0	2
Criminal association, conspiracy, ML, extortive obstruction of traffic	0	2	0	0	0	2
Criminal association, active bribery, trading, trafficking and illegal storage, ML	0	0	2	0	0	2
Criminal association, conspiracy, ML, possession for use, illegal possession of weapons of exclusive use of the army of Guatemala, security forces and law-enforcement of the state, explosives, chemical, biological and nuclear weapons, tramp, illegal possession of ammunition, use of forged documents.	0	2	0	0	0	2
Extortion, ML	0	0	0	1	0	1
Conspiracy, ML, obstruction of traffic extortive	0	0	0	1	0	1
Concealment, extortion, ML	0	0	0	0	1	1
Illegal association of armed people, racketeering, conspiracy ML, illegal possession of weapons of exclusive use of the army of Guatemala or security forces and law enforcement of the State, explosives, chemical, biological and nuclear weapons, tramp, illegal possession of ammunition	0	1	0	0	0	1
Concealment of assets, special cases of customs smuggling, special cases of tax/customs fraud, ML	0	0	1	0	0	1
Falsifying, ML, use of forged documents	0	0	0	0	1	1
Special cases of fraud, ML	0	0	1	0	0	1
Falsifying, ML, perjury	0	0	0	0	1	1
Concussion, ML	1	0	0	0	0	1
Forgery of private documents, ML	0	0	1	0	0	1
Conspiracy, fraud by accounting information, aggravated theft, ML	0	1	0	0	0	1
Conspiracy, ML	0	1	0	0	0	1

Offence	2011	2012	2013	2014	2015	Total
Trade, trafficking and illegal storage, ML	0	0	0	1	0	1
Concealment of assets, misappropriation of taxes, misappropriation and withholding, tax fraud, financial intermediation crime, fraud by accounting information, embezzlement, falsifying, material falsehood, ML, removal, concealment or destruction of documents, usurpation	1	0	0	0	0	1
Trade, trafficking and illegal storage, ML, illegal possession of crafted or makeshift firearms, weapons with registration # altered, weapons with # deleted or not legally marked.	0	0	0	0	0	1
<b>Total</b>	<b>7</b>	<b>50</b>	<b>9</b>	<b>15</b>	<b>5</b>	<b>85</b>

*Effectiveness, proportionality and deterrence of sanctions*

210. The ML offence under Article 4 of the AML Law provides that the natural person (s) responsible (s) for the ML offence shall be punished with commutable prison of six (6) to twenty years (20) plus a fine equal to the value of goods, instruments or products object of the crime, confiscation, loss or destruction of objects from the crime or instruments used for its commission; payment of costs and expenses and publication of the judgment in at least the two media in writing with the largest circulation in the country's social communication. If the offence is committed by a foreign person, in addition to the penalties imposed, the penalty of expulsion from the national territory, will be implemented immediately once the previous imposed penalties have been met.

211. For its part, Art. 7 of the AML Law states that in cases where the offence is committed by persons holding a public office, a public official or employee, or an official of the IVE, based on the performance of his/her office, the penalty is increased by one third and also the additional penalty of disqualification from exercising public office or employment for twice the time of imprisonment, is imposed.

212. With regard to legal persons, Art. 5 of the AML Law provides that it will be attributable to legal persons, regardless of the criminal liability of its owners, directors, managers, directors, officers, employees or legal representatives, offences under this law when they involve acts of its regular bodies provided they are within the order or normal objective or apparent business.

213. In this case, in addition to the penalties applicable to those responsible in the legal entity shall be imposed a fine of USD 10,000.00 to USD 625,000.00 or its equivalent in national currency, the seriousness and circumstances in which the offence was committed, and warned that in case of recidivism the definitive cancellation of its legal personality will be ordered.

214. The legal person is also punishable with confiscation, loss or destruction of objects arising from the offence or instruments used for its commission; payment of costs and expenses and publication of the judgment in at least the two media in writing with the largest circulation in the country's social communication. Confiscation only materializes when the judgment is declared not from the action of asset forfeiture.

215. Of the cases initiated from complaints filed with the PPO or initiated from financial investigations conducted within the framework of a criminal investigation, it is noteworthy that during the period 2011-2015 there have been 1260 cases:

**Table 17: ML cases filed**

Cases filed for ML					
2011	2012	2013	2014	2015	Total
128	214	164	313	441	1260

216. According to information provided by the authorities, 809 convictions for ML have been entered at the federal level, from which 371 convictions have resulted from the agencies of the FCLA.

**Table 18: ML convictions**

ML convictions prosecuted by FCLA						
	2011	2012	2013	2014	2015	Total
Convictions	20	73	98	92	88	371
Acquittals	13	39	23	64	11	150
TOTAL	33	112	121	156	99	521
National ML convictions						
	2011	2012	2013	2014	2015	Total
Convictions	19	89	296	214	191	809
Acquittals	13	157	25	166	29	390
TOTAL	32	246	321	380	220	1199

217. According to the above tables it is noteworthy that 67% of the cases filed in the courts for the ML offence, a conviction was obtained, and only 33% of cases were acquitted.

218. It is important to stress that criminal proceedings in Guatemala are divided in three stages: investigation or pre-trial, trial and argumentative debate. These stages have their own duration pursuant to the circumstances of the case, its complexity, the number of persons being accused, among others. Therefore, the number of cases filed per year does not necessarily amount equally to the number of convictions per year.

219. For the purpose of establishing a penalty, Art. 65 of the Penal Code provides that the judge or court shall determine, in its judgment, the applicable sentence, within the maximum and minimum specified by law for each offence, taking into account the degree of dangerousness of the criminal, personal history of the criminal and the victim, the motive for the crime, the extent and intensity of the damage caused and the mitigating and aggravating circumstances in the fact appreciated both in number and by your organization or importance. The judge or court shall state expressly the extremes considered crucial to regulate it. According to the information submitted by the authorities during the on-site visit, in most cases sentences range from the minimum sentence of six (6) years and ten (10) years, with the maximum additional financial fee which equals to the amount resulting from assets, securities and proceeds from the criminal activity.

**Table 19: Monetary fees to sentenced persons for ML according to the conviction**

Monetary fee range	2011	2012	2013	2014	2015	Total
USD 0.00 to USD 10,000.00	100%	-	33%	-	-	19%
USD 10,000.01 to USD 50,000.00	-	9%	43%	13%	-	23%
USD 50,000.01 to USD 100,000.00	-	-	14%	13%	-	9%
USD 100,000.01 over <sup>5</sup>	-	91%	10%	75%	100%	49%
Total	100%	100%	100%	100%	100%	100%

<sup>5</sup> The highest monetary fee imposed amounts to, approximately, USD 2.5 million.

220. Besides, together with the figure of asset forfeiture, criminal structures associated with the crime may be dismantled by attacking the financial structure to limit and neutralize crime.

221. As mentioned above in the Case 4 the legal person involved in the particular case was convicted, which makes evident a first start of effectiveness in this aspect of sentencing of legal persons.

#### *Alternative measures used when a ML conviction is not possible*

222. Guatemala contemplates the figure of assets forfeiture, through which the confiscation of assets of illicit origin is permitted, even in cases where it was not possible to obtain a criminal conviction for ML (e.g.-when given the grounds for termination of criminal action). As it is shown in this MER, as part of the implementation of its criminal policy, asset forfeiture is used as a mechanism to track and counter criminal action. In addition to the implementation of the action of asset forfeiture in case of ML and associated predicate offences, Guatemala also enforces the forfeiture action, as a measure through which the illicit origin of the goods is punishable, regardless of the prosecution and criminal punishment.

#### **Case 6**

Subject A was linked to criminal proceedings on March 1, 2005 for the crime of passive bribery, pursuant to a complaint filed with the PPO, in which he was accused of making illegal payments to owners of management academies authorized in the country for each certificate of approval of a theoretical and practical exam to qualify for motor vehicle driver's license; the above, taking advantage of the position occupied to that date as Director of Transit of the PNC.

Under the complaint, the PPO coordinated an operation, which was found the subject in flagrante to with money that minutes earlier had been given to him by the owner of a driving school.

The PPO in conjunction with the PNC, executed a search warrant in which they were authorized to open two safe deposit boxes that were in the name of the subject, in which they found money, whose origin was not justifiable.

Subject A was declared rebel in the criminal proceedings against him; however, the PPO, through the UED, established that the seized money came from illicit activities in the country, which constitute a cause of forfeiture action, since the money comes from related acts passive bribery offences and money laundering or other assets.

On 8 April 2013 the verdict was announced declaring the forfeiture action on the seized money. The aforementioned Forfeiture process developed when the subject A had died, demonstrating that unlike liability and criminal prosecution, action of asset forfeiture is not extinguished by the death of the owner of the property, in which case the rights of defense and due process may be exercised by the representative.

The decision also illustrates the retrospective application of LED, because the events occurred in 2005, before the effective date thereof; thereby confirming that, over time the acquired illicitly domain is not legitimated and the action of domain may exercise in favor of the state, even in cases where criminal prosecution has ceased, thereby demonstrating that the forfeiture action is distinct and independent of criminal action.

#### *Conclusions on the Immediate Outcome 7*

223. According to the above, Guatemala has **a substantial level of effectiveness in the Immediate Outcome 7.**

#### *Immediate Outcome 8 (confiscation)*

224. Guatemala has made the necessary efforts, as regards the confiscation of funds and proceeds of criminal activities related to ML and associated predicate offences. With the Asset Forfeiture Act and the Criminal Code, two (2) figures are set, the seizure and forfeiture, allowed to achieve seizure, freezing of assets and confiscation. Also, the PPO has the FCLA which is responsible for the Asset Forfeiture Unit (UED), under Agreement No. 143-2015, Attorney General of the Republic, to the Prosecution section also corresponds the exercise of the action and criminal prosecution of acts committed throughout the territory of Guatemala which fall in the scope of offences committed under the PRFT Law. For administration, adjudication of these goods is handled by CONABED and SENABED, who are responsible for reception, identification, inventory, monitoring, maintenance, management and preservation of assets and funds that happen to be owned by the State under their illegal origin.

*Forfeiture of proceeds, instrumentalities and property*

225. The application of forfeiture and confiscation has enabled the competent authorities of Guatemala to achieve and succeed in the development of investigations for ML and other associated predicate offences, dismantling and weakening criminal structures by addressing its economic apparatus in the development of their illegal activities. Such funds and property have been seized and reinvested in the fight against crimes considered threats according to NRA 2014-2015, allowing it to optimize and strengthen security forces, PPO, OJ and other state institutions with the responsibility of fighting these offences.

226. The LED came into force on June 2011, through Agreement 18-2011 of the Supreme Court, which created the First Instance Court of Forfeiture . According to that agreement, the Fifth, Eighth and Tenth Criminal, Drug Trafficking and Environmental Crimes Courts of the Department of Guatemala had jurisdiction to know of Forfeiture matters, as operations began in the First Instance Court of Forfeiture on January 26, 2012. Therefore, the statistics are as of that date.

227. As a result of the action of asset forfeiture the following instruments and property product of criminal activities has been obtained.

**Table 20: Forfeited Money. January 2012- July 2015**

	2012	2013	2014	2015	Total
Dollars	\$7.141.436,88	\$6.804.691,81	\$ 6.510.465,48	\$9.118.091,02	\$29.574.685,19
Quetzals	Q1.597.293,45	Q 1.584.499,30	Q 886.520,01	Q6.462.880,57	Q 10.531.193,33

**Table 21: Movables (transportation) and real estate forfeited January 2012- July 2015**

	2012	2013	2014	2015	Total
Land (vehicle)	22	19	37	67	145
Sea (boat)	2	2	1	1	6
Air (planes)	0	1	2	0	3
Property	2	2	33	22	59

**Table 22: Firearms confiscated. January 2012- July 2015**

	2012	2013	2014	2015	Total
Firearms	45	2	2	2	51

228. The confiscation of criminal funds and assets is a priority issue in the criminal policy of Guatemala, where criminal prosecution must be combined with the asset forfeiture, in order to attack the economic benefit and sources of financing of organized crime, it is important to note that according to the existing law, in the same judgment, the competent court must declare the forfeiture of property of

corresponding value of the holder, where the execution of the judgment does not lead to identify, locate or extinguish the domain of certain goods on which see the action. According to information obtained from the on-site visit have not yet produced the seizure of instruments, products, properties of corresponding value, such circumstances the effectiveness of the implementation of this regulatory legal framework, it cannot demonstrate or qualify, this being a topic from the COPRECLAF and also within the PPO Strategic Plan policy development and coordinated actions between the institutions should be made. It is likewise necessary that these policies be developed considering the international cooperation of those assets and funds of corresponding value beyond the borders of Guatemala, and there must be clear procedures that allow the enforcement of this figure established under the LED and perform mutual legal assistance in forfeiture procedures.

*Confiscation of products of national and international predicate offences, and products located abroad*

229. Among the actions taken by the competent Guatemalan authorities to dismantle the criminal organizations that operate within the country and across borders, criminal activities related to the product of previous ML offences is to identify and track these assets to achieve their forfeiture or confiscation and to reduce the operational capacity of these organizations, preventing its continuity over time to materialize these measures, to assist with this work based on the agreements and treaties signed with different countries on international cooperation.

230. Through forfeiture, it has been possible to dismantle criminal structures that develop their legal activities in border departments and countries such as Honduras, El Salvador, and Mexico, led by Guatemalan nationals who have been tried and sentenced abroad, thanks to the articulation of the competent authorities.

**Table 23: Filings received in Forfeiture court (October 2015)**

	2012	2013	2014	2015	Total
Filings received	74	69	71	85	295

231. Within the statistics on asset forfeiture judgments of the Forfeiture Court since January 26, 2012 it has issued 195 judgments, upheld 179, with 16 not declared, could assist with this work that allows to disrupt and weaken the criminal organizations.

**Table 24: Forfeiture judgments entered by the Court. October 2012 - 2015**

	2012	2013	2014	2015	Total
Upheld	58	53	36	32	179
Not upheld	3	3	9	1	16
Total	61	56	45	33	195

232. Referring to the confiscation of funds and proceeds of predicate offences abroad, the competent authorities have developed arduous work relying on MLA for confiscation, having been able to forfeit assets located within national territory from crimes committed in Guatemala and abroad. However, as at the time of the on-site visit, forfeiture of funds or assets located abroad has not been achieved, i.e. the seizure of these funds and property of those convicted abroad, this was reaffirmed in the on-site visit where the authorities expressed that if this action is employed but has not yet been realized under the processes and laws of each country, not being able to determine the degree of effectiveness in reference to this issue, making it necessary for in depth action for due follow-up to achieve these actions in favor of Guatemala and the return of such

funds and assets as products of consolidated criminal activities, which are located outside the borders of Guatemala.

*Confiscation of false or undeclared border currency transactions/bearer negotiable instruments (BNI)*

233. The AML Law provides that any natural or legal, national or foreign, person who transports to or outside of the Republic, himself or through an intermediary, cash or documents, in an amount higher than ten thousand dollars of the United States of America or its equivalent in national currency, must report it at the port of departure or entry of the country in the formats designed for this purpose.

234. In this sense there is an interagency agreement between the SIB, the SAT, the Directorate General of Immigration where a unique form of declaration when entering and exiting the Guatemalan territory has been designed and developed. Customs agents or PNC officers may verify, by interview, the information provided in the affidavit; they can also check baggage, containers or shipments of passenger and legal persons, as appropriate, as well as the passenger himself.

235. In case of unjustified omission of the statement or falsity, the money or the related documents are seized and made available to the PPO for investigation and the exercise of the action of asset forfeiture contemplated in the law. In case of false declaration, the person is subject to criminal prosecution for the offences of falsifying a document, perjury, and given the legal, money laundering or concealment or other assets, as appropriate.

**Table 25: Cases involving omission or false statement border transportation of cash - 2011-2015**

2011	2012	2013	2014	2015
31	11	23	25	26

**Table 26: Seized amounts - 2011-2015**

Currency	2011	2012	2013	2014	2015
Dollars	2.443.830,74	503.364,07	1.387.497,44	10.197.707,39	2.550.743,38
Mexican Pesos	0	141.00	1.879,00	124.220,00	609.413,00
Quetzals	531,90	1.331.00	2.673.90	2.316.915,35	627.857,75
Canadian Dollars	0	0	0	120.00	280.00
Yuan	0	11,390.00	0	0	4,254.00
Colombian Pesos	826.00	0	148,000.00	56,000.00	0
Brazilian Real	0	0	0	0	2.00
Venezuela Bolivar	0	0	0	0	10.00
Euros	0	0	1,670.00	11,467.13	0
Lempiras	0	10.00	0	0	217.00
Cordobas	0	0	0	0	10.00
Credit Titles	0	0	0	120,457.44	0
Hong Kong Dollars	0	0	0	170.20	0
Argentine Pesos	0	0	0	50.00	0
Costa Rica Colones	11.000,00	0	0	0	0
Ecuador Weights	100.00	0	0	0	0
British Pounds	0	0	100.00	0	0

236. Importantly, cross-border transportation of illicit money is one of the situations identified as high risk in the NRA 2014 to 2015, so that the competent authorities diligently work in investigative matters to strengthen criminal action against criminal structures engaged in these illegal activities. To achieve this one relies on the Special Investigation methods established in the legislation, specifically the only one currently employed, but has generated satisfactory results in this area, is wiretapping, which has contributed to the capacity of the competent authorities to manage and mitigate this threat, making successful blows to criminal structures, in turn with the help of the authorities of the bordering neighbor countries they have conducted operations that have led to the forfeiture of funds and foreign and domestic capital in Guatemalan territory linked to this offence.

*Consistency of forfeiture results with the risks of ML/TF national AML/CFT policies and priorities*

237. According to the results of the NRA 2014-2015 offences that due to their recurrence and resources generated represent internal threats are traffic and storage of drugs, tax-customs fraud, active-passive, embezzlement bribery and/or embezzlement, trafficking, customs smuggling, cross-border transportation of illicit money, extortion; based on these threats the PPO in its Strategic Plan 2015 - 2019, is aimed towards specialization in the prosecution of these criminal phenomena that affect the legal rights, among them economic and organized crime and other threats that are considered by the institution in charge of prosecution as growing offences, reason for which in cases where it is appropriate criminal prosecution combined with non-penal disincentives such as asset forfeiture, in order to attack the economic benefit and sources of financing of organized crime; what is sought is to reduce the operational capacity of criminal structures.

238. Thus all competent authorities work diligently to assist in achieving the confiscation of funds and assets resulting from the investigation of these offences, considered the threats that most affect Guatemala, together with international cooperation to achieve their goals beyond Guatemala's borders. However, regarding these threats, during the on-site visit, other illegal activities that were not considered threats in the context of ML are relevant and necessary to develop strategies and national policies to achieve the forfeiture and confiscation of funds and property of members of these criminal structures, as is the case of illicit arms trafficking. According to reports by the PPO, that crime is growing and generates huge profits which are laundered in Guatemalan territory and abroad so it is necessary to establish policies to work to avoid spreading this offence that causes so much damage to the country's economy, having to incorporate the issue for the meetings of the COPRECLAF, in order to generate the incentives and strategies to mitigate and manage this risk.

239. According to the statistics presented by the authorities during the period 2012-2015, the various prosecutors have referred cases to the UED. The FSLA should be especially mentioned, which has sent 200 cases, the prosecution against drug trafficking, which has sent 160 cases, the prosecution of economic crimes has sent 88 cases, the SFIC which has sent fourteen (14) cases and the prosecution of against extortion that sent 4 cases.

**Table 27: cases referred by the offices to the UED. 2011-2015**

Prosecutor office	2011	2012	2013	2014	2015	Total
Special Impunity	0	4	3	2	5	14
Against Corruption	1	2	0	0	0	3
Economic Crimes	0	4	13	33	38	88
Against Extortions	0	0	0	1	3	4
FCLA	26	32	40	57	45	200
Metropolitan District	0	0	0	2	0	2
Against Drug	12	12	22	61	53	160

Against Trafficking	0	0	0	1	3	4
UNILAT	0	0	0	0	1	1
Offences Against Life	3	3	8	3	1	18
District and Municipal	0	2	12	12	5	31
Against Intellectual Property	0	0	1	0	0	1
Human Rights	0	0	0	1	0	1
Against Organized Crime	2	1	0	1	0	4
Juvenile	1	0	0	0	0	1
<b>Total</b>	<b>45</b>	<b>60</b>	<b>99</b>	<b>174</b>	<b>150</b>	<b>527</b>

240. As for the forfeiture actions that have materialized it has become apparent that they comply with the threats and risks identified in the ML/TF NRA on cases related to trade, trafficking and illegal storage (drug trafficking), with active, passive bribery, misappropriation and/or embezzlement, customs and tax fraud and cases of extortion, among others.

241. During the period under review (2011-2015), according to the information submitted by the SENABED, the following results were evidence regarding Extinction and Seizures:

242. The sum for the final result was final judgment records with more records with precautionary measure giving 159 dossiers for a total amount between confiscated and seized USD 68.9 million.

Table 28: Files

	Year				Total
	2012	2013	2014	2015	
Cases Entered	65	54	75	68	262
Cases with Precautionary Measure	15	11	16	30	45
Records with Final Judgment	50	43	54	37	184
Confiscated Amount (USD)	2.655.722	953.022	5.638.450	4.126.848.02	22.621.236
Confiscated Amount (QTG)	2.772.879	646.633	333.303	41.403.483.51	45.156.298.5
Confiscated Amount (USD)	8.642.991	5.563.562	2.033.435	3.865.046.00	20.105.034
Confiscated Amount (QTG)	440.922	1.478	2.011.073	82.695.85	2.536.168.85
Invested cash	13.894.146	7.613.927	49.353.407	78.775.459.61	149.636.940
Amount of the investment	14.160.900	7.818.600	50.893.895	80.727.763.78	153.601.158
Conversion amount seized QTZ to USD	19.410.151	4.526.432	2.333.120	5.441.433	31.711.136
Conversion amount seized QTG to USD	3.086.456	10.343	14.077.509	10.868.15	17.185.176
Total Confiscated USD	22.065.873	5.479.454	7.971.570	9.568.281	45.085.178
Total Confiscated USD	11.729.447	5.573.905	16.110.944	3.875.914	37.290.210
<b>Total</b>	<b>33.795.320</b>	<b>11.053.359</b>	<b>24.082.514</b>	<b>13.444.195</b>	<b>82.375.388</b>

243. According to the provisions of Article 47 of the LED, SENABED will allocate resources as follows:

- 20% with exclusive use to cover the expenses of the units of special investigation methods created under the Law Against Organized Crime, task forces or unities in charge of aerial and maritime interception of drugs
- 20% corresponds to private funds of the PPO and shall be invested in witness protection programs, as well as the investigation and judging of money laundering offences, drug trafficking and organized crime

- 18% corresponds to private funds of the MINGOB for training and acquisition of equipment for direct support of investigative units related to the Law of Asset Forfeiture and the Centre to Gather, Analyze, Distribute Criminal Information of the PNC
- 15% corresponds to private funds of the SENABED to cover expenses for the management of goods that are seized and forfeited until their sale is possible
- 25% corresponds to private funds of the OJ
- 2% is for the Attorney General of the Nation.

244. Likewise, regarding forfeited assets, SENABED can donate them to public interest entities, prioritizing:

- Special units of INGOB, PNC and the PPO, when dealing with vehicles, equipment and weapons that are not exclusive to the army
- The Ministry of National Defense when dealing with goods, equipment or weapons of exclusive army use, maritime ships or airships of either fixed or rotation wing, shall be used to support the PPO, MINGOB and the PNC in preventing and prosecuting organized crime
- OJ, as it corresponds

245. As a result of the work of the SENABED, forfeiture money has been distributed to the beneficiary entities as follows:

**Table 29: Forfeited cash transferred to entities**

Beneficiary	2012	2013	2014
PPO	1.943.052,79	1.369.970,39	830.297,06
MINGOB	1.797.323,84	1.267.222,61	768.024,78
SENABED	1.092.967,20	770.608,35	467.042,10
OJ	1.821.653,22	1.284.347,25	778.403,50
Attorney General	145.732,26	102.747,78	62.272,28
Ministry of National Defense	485.774,20	342.492,59	207.574,26
<b>Total</b>	<b>7.286.503,51</b>	<b>5.137.388,97</b>	<b>3.113.613,98</b>

*Conclusions on the Immediate Outcome 8*

246. According to the above, Guatemala has **a substantial level of effectiveness in the Immediate Outcome 8.**

## CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### *Key findings and recommended actions*

#### **Key findings**

##### **Immediate Outcome 9**

- In Guatemalan law TF is criminalized. However, the TF offence does not extend to financing of an individual terrorist or terrorist organization for any purpose, even in the absence of a link to a terrorist act (s).
- At the time of the on-site visit there has not been not been any case involving this offence, or request for MLA regarding this matter.
- According to what the ML/TF NRA evidenced, it was determined that the risk of TF is considered medium-low. However, the TF risk analysis requires analysis of vulnerability to TF sectors.
- In November 2015, the PPO created a specialized agency which would be responsible for bringing an action and criminal prosecution of acts committed in the territory of Guatemala related to the TF, which has not yet developed its functions as it is working on the adequacy of space, allocation of qualified personnel and other administrative-logistics activities to start up its activities.

##### **Immediate Outcome 10**

- There are measures and controls established through the relation between IVE with institutions and OSs concerning individuals and entities designated by the UNSC, in order to comply with UNSC resolutions.
- Efforts that Guatemala has done, in order to develop measures that allow to implement financial sanctions effectively stand out.

##### **Immediate Outcome 11**

- The IVE and PPO have worked together to create a framework for the implementation of the TFS related FPWMD. However, it needed more training of OSs on obligations to ensure the implementation of the TFS without delay.

#### **Recommended Actions**

##### **Immediate Outcome 9**

- Amend the criminalization of TF as required by Recommendation 5.
- It is necessary for the competent authorities to work together in order to generate intelligence and to know possible circumstances and initiate investigations relating to the commission of the crime of TF being the case.
- It is necessary for a continuous training and induction to the authorities of the PPO, Judicial Branch (Court Judges of High Risk), auxiliary research organizations that allows them to be updated on trends, typologies, modus operandi to adapt their investigative techniques and on presenting this offence to have the ability and proper knowledge for effective, proportionate and dissuasive sanctions.
- The incorporation and regulation of those economic and professional activities to perform the activities under international standards issued by the FATF, which are not yet regulated and supervised so as to minimize the risk and vulnerability that are captured and/or used by criminal organizations for the development of activities related to this criminal activity, so they enter the status of OSs.

##### **Immediate Outcome 10**

- It is recommended to strengthen the procedural and legal framework that allows to fully implement TFS under Resolution 1267 and successors and Resolution 1373. In addition, to perform domestic designations and establish procedures for unfreezing or termination of the measure,
- It is recommended to implement awareness programs that allow the OSs, especially non-financial OSs to have a greater understanding of current legislation and structured to implement the TFS.
- To assist NPOs to establish procedures handbooks to facilitate their compliance with the standard. Greater outreach by the relevant authorities, including supervisors, to join efforts and to ensure that this sector has a higher level of understanding about the policies that should apply in ML/TF. Moreover, to unify criteria and sort the ideas in the development of strategies that allow them to better know their donors.

### **Immediate Outcome 11**

- Increased awareness and training of non-financial OSs are required on the obligations described in the IVE Official letter on the revision of the lists of UNSCRs 1718 and 1737, most of which, by the date of the on-site visit were unaware of the requirements established in the regulations.
- Implement monitoring and supervision of OSs' specific obligations in the implementation of the TFS.

247. Relevant Immediate Outcomes considered and assessed in this chapter are the IO. 9-11. The relevant recommendations for the assessment of effectiveness in this section are R. 5-8.

### ***Immediate Outcome 9 (TF investigation and prosecution)***

#### *Prosecution/conviction of the types of TF activity consistent with the risk profile of the country*

248. Guatemala after the development of ML/TF NRA, has determined that the TF risk of the country is Medium Low, which results from its geographical position and proximity to Mexico and the United States. In Guatemala, it has not known any cases of TF by the competent authorities to investigate and prosecute this crime, nor has the OSs developed STRs of cases involving this offence or have typologies detected on this point. As it was mentioned in the analysis of Immediate Outcome 1, the NRA indicates that given the absence of information, no cases have been presented, no challenges presented in the risk assessment, and for the same reason of lack of this information, typologies have not been generated. The only thing that was considered in terms of threats were qualitative aspects such as the geographical location, where it is noted that Guatemala could serve as a bridge for suspected terrorists on their way to the United States, which would represent a potential threat to national level however this is specific to terrorism. With regard to vulnerabilities, a specific analysis of sectoral vulnerabilities is necessary to consider their risk exposure to TF.

249. However, despite not opening investigations in development or trial process, through the COPRECLAF, as governing body of efforts and cooperation between state institutions that have responsibility for the crime of TF, through its NSP 2014-2018 have begun to develop actions at interinstitutional level to combat the TF crime.

250. These efforts have been materialized through the recent creation of a Prosecutor Agency attached to the FCLA at the PPO to exercise action and criminal prosecution of TF acts committed throughout the territory of Guatemala that incorporate offences contained in the LPRFT Law. This Prosecutor agency will be specialized in carrying out investigations related to the TF offence, allowing the Guatemalan authorities to have specialized staff for the prosecution, and repression of these criminal activities. This new Prosecutor Agency was created on November 18, 2015, and will have specialized staff to carry out investigations related to this criminal offence when it begins operations, for the development of its investigative activities.

However, at the time of the on-site visit, staff was still not yet appointed to the Agency<sup>6</sup>. Prior to the creation of the Agency, in the event of a TF case, they had trained and competent professionals to investigate ML by the FCLA and the UED.

251. In addition, the “Framework Agreement of Interagency Coordination and exchange of information from the entities that make up the COPRECLAFIT in Guatemala, and invited entities that are also part of the legal framework for the prevention, control, surveillance, investigation, prosecution and punishment of such illegal activities” allows for the exchange of information between competent authorities.

252. OSs should adopt, develop and implement programs, policies, procedures and appropriate internal controls to prevent misuse of their products and services in TF activities. These actions must be supported by the IVE, institution that performs verification and monitoring in accordance with the provisions of the AML Law, the PRFT Law and their respective regulations. Likewise, the OSs, are obliged to send STRs to the IVE in the case that suspicious transactions are detected that may be related to TF, in accordance with the procedures established for the IVE. As of the on-site visit, the IVE had not received STRs on TF from the OSs, nor from the analysis of the IVE have been conclusions on the existence of operations related to this crime. Non-financial OSs require greater awareness regarding TF in order to properly understand the risks of TF and are in the ability to identify if any potential suspicious transactions are related to TF.

#### *Identification and investigation of TF*

253. Guatemala has a legal and institutional framework for the prevention, investigation and conviction for committing TF offences. However, it is relevant to mention that the TF criminalization is not completely in line with the FATF standards. The TF offence does not extend to the financing of individual terrorist and terrorist organization for any purpose, even in the absence of a link to a terrorist act(s) which limits the possibility that the authorities generate financial intelligence and can investigate this criminal conduct.

254. As mentioned previously, at the time of the on-site visit investigations related to terrorism and TF cases had not been developed, nor has intelligence been generated to enable the authorities of PPO to open investigations on this matter.

255. However, within the measures to prevent and detect activities aimed or involving TF offences, a series of measures has normatively implemented. The IVE has instructed and oriented OSs accordingly to prevent their products and services from being used by criminal organizations dedicated to TF, on which constant and comprehensive monitoring of these OSs should be secured regarding the non-financial sector.

256. Also according to the provisions in Guatemalan law the OSs must submit to the IVE, monthly information concerning the operations under the PRFT Law, referring to the Report of International Transactions whose threshold is greater than \$ 2,000.00<sup>7</sup>; reporting is done through the technology platform

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<sup>6</sup> According to information provided by the authorities, after the onsite visit, the Prosecutor’s Office attached to the FCLA of the PPO for TF has the staff to act in the event of a TF case.

<sup>7</sup> It should be mentioned that after the onsite visit, the new “Instructions for the Elaboration of the Electronic File for the Monthly Report of Funds Transfers” was issued, which states that beginning in June 2016, in order to file form IVE-TF-21, remittances above or equal to USD 300.00, or their equivalent in another currency, and wire transfers (international, local or cluster) above or equal to USD 1,000.000, or its equivalent in another currency, should be considered when being carried out in one or several transactions during one month; the instructions were issued through Official Letter IVE No. 1274-2016. However, this information is beyond the scope of the Mutual Evaluation, which is limited to the last day of the onsite visit.

maintained by the IVE with these OSs, allowing this intendency to perform the analysis of the information reported by the OSs, though, as at the date of the on-site visit a specific analysis of TF had not been submitted. For the development of these analyses the IVE has computer systems that allow verification of information and eventually detection of transactions that may be related to the TF offence, through historical databases, geo referencing system (geographical analysis of information), statistical analysis of databases, access to databases with specific instructions (UN, OFAC and Interpol lists) and issuing reports that are easy to interpret, manage and present. As of the date of the on-site visit there has not been any case involving terrorism or its financing.

257. The PPO, being in charge of criminal proceedings, has a duty to conduct investigation alongside with the investigate auxiliary bodies, with capability to determine the degree of participation in the offence by the accused, as well as depend on the Guatemalan legislation with a series of special investigative techniques that allow assistance in the development of the investigative process of this offence, along with the Directorates of Criminal Analysis and Investigation, which through their reports may allow direct TF investigations be that the case.

258. In addition, according to Guatemalan legislation, there are Courts of Greater Risk which allows conducting the judicial process of giving the necessary security to trial judges, PPO, acting investigative bodies, witnesses where ordinary protection measures are insufficient. These courts shall know of the eventual TF and terrorism cases, where exceptional security measures should be adopted.

#### *TF Investigation integrated and backed with national strategies*

259. Guatemala has implemented necessary mechanisms for the exchange of information (such as the agreement mentioned above) and the pertinent authorities to detect possible events related to TF. The COPRECLAF, within its responsibilities has the need to analyze national problems related to TF, they have developed a series of actions and long-term strategies to mitigate the risks related to ML/TF vulnerabilities, which is currently under development by the authorities inherent in the subject.

260. Inter-agency working groups have been created through the COPRECLAF, designed to meet specific objectives to develop investigations of integrated ML/TF, having among its working groups, Working Group No. 1, which is aimed at strengthening the national system of prevention and suppression of ML/TF, by optimizing the efficiency and effectiveness of ML/TF prevention measures, optimization of criminal investigation and the administration of justice, the establishment of a system of intelligence and strategic information exchange and information analysis and institutional strengthening of the entities related to combating these offences. The joint actions of the Judicial Branch, the MINGOB, the Ministry of National Defense, the PPO, the SIE, the DIGICI, the Office of Migrations, the SAT, the CGC and the IVE, generated tools to work in coordination to handle information, exchange and cooperation in a useful manner for the detection of crimes and the corresponding investigation and prosecution of TF cases.

261. To materialize this national strategy, it is proposed to promote interagency working mechanisms for the exchange and analysis of information, which is expected to occur within the COPRECLAF NSP 2014-2018, through a series of activities related to implement working mechanisms for inter-agency, to stimulate exchange and analysis of information, development of internal tables between the PPO, reporting aimed at strengthening the fight together through ML/TF information, held by different institutions.

#### *Effectiveness, proportionality and deterrence of sanctions*

262. In Guatemala criminal or financial penalties have not been enforced on natural or legal persons associated with this criminal sanctions, however Guatemalan law provides criminal and financial penalties

to the aforementioned persons committing or co-participating in these crimes, establishing penalties ranging from 6 to 25 years plus a fine ranging between USD 10,000.00 and USD 625,000.00, or its equivalent in national currency for individuals and legal persons, notwithstanding criminal responsibility of its owners, directors, managers, directors, officers, employees or legal representatives, offences under the PRFT Law shall be prosecuted, in the case of acts of its regular bodies, coupled thereto shall be liable to a penalty equal to the amount of goods or money subject of the offence, and in case of recidivism, legal personality will be cancelled, as well as the confiscation, loss or destruction of the objects of the offence or the instruments used for its commission, payment of costs and legal costs and publication of judgment in at least two national media publications.

263. Considering the latter, and performing an abstract analysis, should an event related to this crime arise, the Judicial Branch has sanctions available in any form of participation, which are proportional and dissuasive according to the severity of the crime, which is considered against humanity and depending on its severity does not have non-prosecutorial measures in favor of the accused.

#### *Alternative measures used when a conviction for TF is not possible (p. e.g., Interruption)*

264. Despite the absence of cases or investigations concerning TF, the competent authorities have established the legal authority to operate and develop actions to disrupt any activities related to TF.

265. Among these actions based on the provisions of Art.289 of the CPC, which states that “(...) PPO to have knowledge of an offence by any means, to avoid the occurrence of further consequences and access information relating to the offence (...)” from this premise the PPO is on duty to prevent acts related to terrorism and its financing, that may produce further effects. In this sense, among the developed actions mention can be made of measures of locating and freezing of funds and assets according to the urgency of the case of waiting for the order of the judge, which it may be filed within twenty-four (24) hours after application of the measure, in light of the danger of delay as the eminently financial TF offence.

266. The IVE and the PPO have the legal authority to obtain the necessary information from the OSs and public institutions that serve as support for investigation. Also, they can implement precautionary measures and perform forfeiture actions that could be applicable in the event that a TF investigation, prosecution or conviction is not obtained.

#### *Conclusions on the Immediate Outcome 9*

267. According to the above, Guatemala has a **moderate level of effectiveness in the Immediate Outcome 9**.

#### *Immediate Outcome 10 (TF preventive measures and financial sanctions)*

268. Guatemala has made efforts, to develop mechanisms that allow application of TFS but should improve effectiveness in this area. Likewise, the effort and work being carried out with NPOs in order to get closer to the sector should be highlighted, as it allows the sector to be more aware of its obligations.

269. Therefore, it is recommended to strengthen and develop the legal framework, in addition, to implement programs of knowledge of the layout that is currently structured for such TFS, developing or updating the procedure manuals and guidelines to help compliance with the current standard, taking Official Letter IVE 838-2009, which issues the Basic Guidance on measures to be adopted by OSs in case of assets or property that could be related to Terrorism, TF and other related acts, as an example. According to information provided during the on-site visit it was evident on the one hand, a degree of commitment and

understanding of the subject by the banking financial sector, while non-financial sectors showed lack of knowledge of their obligations and responsibilities on the topic.

270. It is necessary to establish regulations and appoint responsible authorities to propose the appointment of persons or entities at the federal level, and to establish mechanisms, applying the standard of assessment of evidence or substantiation of reasonable grounds for suspicion, same rules will turn to be taken into consideration when proceeding to an unfreezing or exclusion from lists.

271. Similarly, even though there are provisions in place by way of the LED and the directions of the PPO to OSs by the IVE, evidencing the mechanism in force to freeze terrorist funds or assets without delay, it could not be determined the speed with which freezing measures can be applied in cases in which it may be required, at least not as indicated by international standards in some occasions. While it is true that the PPO and the judge are aware of the procedures to follow in a positive case, this is not what happens for some OSs, especially in the non-financial sector. In accordance with the mechanism set forth, OSs are obliged to revise permanently UNSC Committees listings. During the on-site visit and in the interviews with OSs, it was noticeable that there are subjects who reviewed the lists on their own initiative for varying periods of time, without taking into consideration listing updates as instructed by the PPO. However, attention should be paid to the fact that in 2012, a false positive emerged where a DNFBP reported to the PPO a possible coincidence under UNSCR 1267, without identifying goods or funds to freeze; after the corresponding analysis by the PPO the corresponding report was discharged.

272. Guatemala should strengthen awareness of the important need to meet the TF obligations, especially on TFS, and double efforts in order to implement the legally enforceable measures, just as it is necessary for financial supervisors to double efforts to monitor that these obligations are complied with in a timely manner and with the frequency required to meet international standards.

#### *Implementation of targeted financial sanctions without delay for TF*

273. Guatemala has a policy for the implementation of TFS under UNSCR 1267 and successor resolutions. The LED Law, the PRFT Law and the AML Law grant powers to the PPO to implement precautionary measures due to risks of delay without prior court authorization. Hence, the PPO issued a request and order to freeze assets (Record file LIST-UN 01-2015), which by way of Official IVE Letter No. 3646-2015 orders OSs to screen immediately and permanently the possible existence of funds or assets of natural and legal persons mentioned by the UNSC, with the corresponding updates of such listings, as well as to freeze assets immediately in case of a match. Therefore, OSs should review immediately and permanently their databases and other records to check if there are matches with their clients; this also applies in the case of performing transactions. Should any matches arise, OSs must freeze assets and report as soon as possible to the FCLA for the purpose of confirmation of this measure.

274. Even though there is a mechanism in force to freeze terrorist funds or assets without delay, the speed of these proceedings when required –which is not determined in the relevant provision- cannot be precisely assessed, at least not in the same way the international standards establishes, in some circumstances. While it is true that the PPO and the judge are aware of the procedures to follow in a positive case, this is not what happens for some OSs, especially in the non-financial sector. During the on-site visit and in the interviews with OSs, it was noticeable that there are subjects who reviewed the lists on their own initiative for varying periods of time, without taking into consideration listing updates as instructed by the PPO. However, attention should be paid to the fact that in 2012, a false positive emerged where a DNFBP reported to the PPO a possible coincidence under UNSCR 1267, without identifying goods or funds to freeze; after the corresponding analysis by the PPO the corresponding report was discharged.

275. It is important to point out that after the on-site visit, measures have been implemented for the IVE to send listings updates to all OSs<sup>8</sup>. They should establish measures to diminish in practice the times for revision of listings by the non-financial OSs. In addition to offering greater disclosure of the rule that allows the OSs to have a clearer vision of their responsibilities and obligations. The latter, by concentrating on non-financial OSs where most ignorance was detected.

276. As for the UNSCR 1373, Guatemala can comply with the requests from other countries by virtue of LED mechanisms; however, it has neither authority nor a mechanism to identify or designate at a federal level according to the criteria of the UNSCR 1373 on grounds or a reasonable basis. Therefore, it should work on a legislation that allows Guatemala to answer effectively to this criterion. The same applies to the mechanisms for unfreezing or removing lists. Once the abovementioned can be relied upon, a training campaign should be initiated that manages the effectiveness of the measure.

### *Directed approach, scope and supervision of NPOs at risk*

277. In 2013 the SIB, through the IVE, concluded the Study on sectors vulnerable to ML/TF risk. To develop the study, the information available to the IVE from January 2009 to December 2012 was analyzed. Resulting from the analysis, it was determined that there is ML/TF vulnerability in the NPO sector, specifically on those receiving and/or managing public funds, as well as those involved in international transfers of funds. As a result of that study and the identified risk, the AG 443-2013, through which the NPO listed as OSs modifying Regulation Act UNCCD was included, was approved and enacted.

278. Subsequently, starting from the development of the ML/TF NRA, Guatemala determined that the NPO sector has a medium-high vulnerability level. Regarding ML, the IVE has filed several legal reports involving NPOs (until December 2012, 12 reports have been submitted) and one case was subject to Forfeiture action of an NPO under ML, which denotes the special vulnerability of NPOs to be abused for criminal activities.

279. NPOs are subject to registration for the recognition of their legal status, same as is done in the REPEJU, attached to MINGOB and must also register before the RTU SAT, who verifies compliance with tax obligations to which they are subject, the correct use of the benefits enjoyed is verified as exempt entities. The Comptroller of General Accounts (CGC), through its Directorate of Audits on Special Entities, performs the audit of non-profit organizations that receive, manage or execute public funds, whose scope is focused on auditing the administrative, financial and operational implementation of special entities who receive, manage and invest public funds, including infrastructure running directly or indirectly with public funds. It should be noted that the CGC could receive more training in prevention of ML/TF.

280. In addition, NPOs (in special, those which receive and/or manage public funds and those which perform international fund transfers) mentioned above, since they are covered by the regulations against ML/TF (by application of Art. 15 of the PRFT Law), are subject to supervision in AML/CFT obligations and have specific instructions regarding programs, policies, procedures and internal controls to be implemented on KYC (benefactors and beneficiaries), in order to prevent their activities from being involved in ML/TF, which include registration with the IVE, the form to record daily operations, reporting on cash

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<sup>8</sup>After the on-site visit, by Official Letter IVE No. 261-2016, an automated system was established by which the IVE immediately informs RERSs of all the updates to the CSNU lists. RERSs have an obligation to inform the IVE in less than 24 hours about the existence or absence of matches. However, this information is outside the scope of the Mutual Evaluation, whose scope is limited to the last day of the date of the *on site* visit.

transaction equal or greater than USD 10,000.0 or its equivalent in national currency, RTS, training, application of measures as ordered by the PPO pursuant to the UNSCR, among others.

281. However, according to the information provided, as at the date of the on-site visit, there had been no supervision of NPOs registered with the IVE, although for 2015 on-site visits had been scheduled.

282. The IVE has conducted some training for the NPO sector, particularly regarding ML issues and obligations in terms of ML prevention.

**Table 30: AML/CFT training to NPOs**

CTRaining FOR NPO				
From January 1, 2014 to September 10, 2015				
Date	Name	Persons trained	Type of person	Topic
06/03/2014	"A" NPOs – International transfers	25	OC	Obligations under AML/CFT legal framework.
07/08/2014	"B" NPOs – public funds	2	ON	
29/10/2014	"C" NPOs – International transfers	2	OC	
18/02/2015	"D" NPOs – International transfers	36	OC	ML/TF Prevention
10/09/2015	"E" NPOs – International transfers	46	OC	ML/TF Prevention

283. Despite significant steps taken regarding NPOs to deter their use in TF, there should be closer outreach by the relevant authorities, including supervisors, to join efforts and to ensure that this sector has a higher level of understanding of their ML/TF obligations. It also must strengthen supervision to improve their follow-up in order to implement preventive measures ensuring that funds, objectives and beneficiaries coincide with their registration purposes. Similarly, there should be more training, especially regarding TF. Moreover, the sector should be encouraged to maintain an updated list, available upon request by the competent authorities. Internal manuals should be drafted to implement mechanisms for a better knowledge of officers and enforcement of AML/CFT obligations.

284. It is recommended to have a greater approach by supervisors with the sector so that they can understand their obligations regarding ML/TF prevention. Increase the number of training, especially on the issue of TF. This in order to develop internal manuals, establish mechanisms for a better understanding of its donors and implement their obligations.

285. Similarly, in order to maintain current knowledge of the vulnerabilities of NPOs against ML/TF, it would be appropriate to update the 2013 study, focusing on specific TF vulnerabilities and integrate said analysis to subsequent national risk assessments.

#### *Forfeiture of assets and instrumentalities of TF*

286. Guatemalan legislation, through the LED Law, empowers the competent authorities to order, even in the absence of a criminal proceeding and without warrant, upon the basis or reasonable grounds for suspicion, the seizure or freezing of assets related to illicit activities related to terrorism or TF.

287. As a result of the execution of the NSP, it is important to note the above on the extension of the FCLA, with the creation of a prosecutor's office attached to the FCLA whose main function is to exercise the action and criminal prosecution of acts committed throughout the territory of Guatemala which incorporate criminal offences contained in the LPRF Law.

288. On the other hand, the LED strengthens the capacity of deprivation of assets and asset investigation carried out by the PPO on goods related to the commission of crimes. However, to date it was not possible to verify implementation of the action of asset forfeiture for TF cases.

289. Guatemala has implemented through DIGM measures to prohibit the travel of persons listed by the UNSC as per identified risks.

290. It is recommended to provide the new PPO agency for TF matters, the human and financial resources to perform its functions and contribute to the training and formation program for the staff of the aforementioned agency.

### *Consistency of measures with the overall risk profile of TF*

291. As previously mentioned, the risk level of TF identified for Guatemala as a result of ML/TF NRA, is medium-low and, as indicated by the authorities is conditioned by the geographical location of the country which could serve as a bridge for suspected terrorists on their way to the United States, which would represent a potential threat to national level, however this is specific to terrorism.

292. As already mentioned, authorities have the measures that can contribute to mitigating the risks of both ML and TF. The authorities responsible for the criminal investigation have the powers to investigate, with the new prosecutor's office the resources to prosecute cases of TF will be increased. At the same time, the Asset Forfeiture Unit has the possibility of freezing and confiscation of property that may be related to illicit activities, including terrorism and its financing, except those limited related cases involving an absence of criminalization. The Judicial Branch has created specialized courts of increased risk to hear of possible cases of TF and forfeiture. However, as mentioned, none of these powers and tools have yet been used.

293. To ensure the effective development of the above and achieve the same goal with the new units created, it is desirable to provide resources and qualified personnel to new offices and strengthen human and financial capital of existing ones in order to extend special investigative methods applied by national authorities, acting in a combined manner.

### *Conclusions on the Immediate Outcome 10*

294. According to the above, Guatemala has a **moderate level of effectiveness in the Immediate Outcome 10.**

### *Immediate Outcome 11 (financial sanctions FPWMD)*

295. In the same way as expressed in the analysis of Immediate Outcome 10, Guatemala has made efforts in generating a mechanism to implement targeted financial sanctions on FPWMD.

296. As mentioned in this report, through AG 145-2014 the objective and functions of COPRECLAF were modified in order to incorporate the issue of FPWMD, so that actions were coordinated at a national level with regard to FPWMD in order to contribute to the effective enforcement of international law and treaties approved and ratified. Also the Framework Agreement of Interagency Coordination and Exchange

of Information of the entities that comprise the COPRECLAFIT, and invited entities that are also part of the legal framework for the prevention, control, surveillance, investigation, prosecution and punishment of such illegal activities, was modified in 2014 in order to expand the objective and include the FPWMD.

297. For purposes of implementing the TFS related to UNSCRs 1718 and 1737 by the Official Letter IVE 3646-2015 October 2015<sup>9</sup>, the measures concerning the freezing of assets related to UNSC lists on the WMD program of the Democratic People's Republic of Korea (1718) and the nuclear weapons program of the Islamic Republic of Iran (1713), were incorporated.

298. The aforementioned Official Letter requires from the OSs a permanent review of these lists and in the case of matches, they should immediately freeze related funds or assets and inform FCLA of such action taken.

299. In the application of this new instrument, greater awareness and training of the OSs on the obligations described in the IVE Official Letter is required. At the time of the on-site visit, the understanding of obligations by the OSs, except for the financial sector was limited especially with regard to DNFBNs, so it cannot be determined whether the freezing measures were conducted with the required speed. As indicated, the OSs that review listings do so on their own initiative during varying periods of time, without taking into consideration listings updates. However, it should be mentioned that the IVE and the PPO have been available to the regulated entities to attend to inquiries from OSs on implementation of the instruments mentioned.

300. The efforts carried out by the IVE in outreach with the OSs, through training and communication activities, aimed at them knowing and applying TFS under UNSCR 1718 and 1737, should be highlighted, as it provides evidence on the commitment of Guatemalan authorities regarding FPWMD.

301. The financial and non-financial OSs are monitored and supervised by the IVE, however given the recent nature of these measures there is no evidence of specific surveillance of these obligations. In order for OSs to be able to better implement their obligations regarding TFS and to be duly updated as for designations, it is recommended for supervisors to further approach OSs, as well as to increase the number of trainings regarding FPWMD and UNCS designations, in order for them to reach a better understanding and certainty of their corresponding obligations and responsibilities.

### *Conclusions on the Immediate Outcome 11*

302. According to the above, Guatemala has a **moderate level of effectiveness in the Immediate Outcome 11.**

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<sup>9</sup> After the on-site visit, by Official Letter IVE No. 261-2016, an automated system was established by which the IVE immediately informs the RSs of all the updates to the UNSC lists. RSs have an obligation to inform the IVE in less than 24 hours about the existence or absence of matches. However, this information is outside the scope of the Mutual Evaluation, whose scope is limited to the last day of the on-site visit date.

## CHAPTER 5. PREVENTIVE MEASURES

### *Key findings and recommended actions*

#### **Key findings**

- Guatemalan regulators, especially the IVE, have developed both regulatory efforts and training for the regulated entities to properly understand their risks and based on that develop policies, procedures to mitigate same. However, it has been found that:
  - The banking system, particularly finance companies and offshore banks have developed procedures in a timely manner and in line with what is indicated in the regulation.
  - DNFBPs are not aware of the risk of ML/TF to which their activities may be exposed, no development is observed regarding the implementation of policies, procedures and controls to help minimize the risks; this translates into minimal or almost non-existent remission of STR by DNFBPs.
  - Banks are the main generator of STR, sends 67% of the total and FTC 15% and thus there is a concentration; this contributes to the perception of minimal effectiveness of policies and procedures developed by other OSs.

#### **Recommended actions**

Guatemala should take the following actions:

- Deepening the dissemination and training on the implications of the ML/TF risk between OSs, especially DNFBPs and those activities that should be OSs and are not yet.
- Update the legal framework for preventive measures according to the FATF Standards, especially for the DNFBPs to adequately implement preventive measures.
- Incorporate in monitoring programs, actions that help identify whether the regulated entities have failed to adequately understand the risk of ML/TF and that this understanding has resulted in the development of policies, procedures and controls implemented and active in the supervised regulated entities.
- Improve dissemination of local and international typologies that allow regulated entities to identify potential geographic areas/services/customers/products from which the risk of ML/TF could originate in order for it to translate into a greater identification of suspicious or unusual transactions.

303. The relevant Immediate Outcome considered and assessed in this chapter is IO. 4. The relevant recommendations for the assessment of effectiveness in this section are the R. 9-23.

### **Immediate Outcome 4 (preventive measures)**

#### *Understanding ML/TF risks and AML/CFT obligations*

304. Financial OSs registered in the prevention of ML/TF is comprised of:

**Table 31: Financial OSs registered**

Oss I. Group A.	Authorization, Registration and Inspection	Registration and supervision in ML/TF	Registered with IVE
a) BANGUAT	JM and SIB	IVE	1
b) Banking System	JM and SIB	IVE	18
c) Financial Companies	JM and SIB	IVE	14
d) Exchange Offices	JM and SIB	IVE	28

Oss I. Group A.	Authorization, Registration and Inspection	Registration and supervision in ML/TF	Registered with IVE
e) Individual or legal persons dedicated to brokerage or intermediation in securities trading	RMVM, BVN and SIB*	IVE	18
f) Issuers and credit card operators; and	JM and SIB *	IVE	10
g) Offshore entities (offshore)	JM and SIB *	IVE	7

\* The SIB supervises when part of financial groups.

Res II. Group B.	Authorization, Registration and Inspection	Registration and supervision in ML/TF	Registered with IVE
a) Companies engaged in systematic or substantial transfers of funds and/or capital movement	---	IVE	27
b) Insurance Companies and Bonds **	JM and SIB	IVE	28
c) Companies engaged in making systematic or substantial cashing of checks	JM and SIB	IVE	1
d) Institute for the Promotion of Insured Mortgages	JM and SIB	IVE	1
e) Entities engaged in factoring	JM and SIB	IVE	1
f) Entities engaged in leasing	JM and SIB	IVE	10
g) General deposit warehouses	JM and SIB	IVE	15
h) Other legislation specifically subject to the supervision and inspection of the SIB;	JM and SIB	IVE	---
i) Cooperatives engaged in savings and credit operations, regardless of their definition.	INACOP and INGECOP	IVE	306
l) Insurance Intermediaries referred to the letters b) and c) of Article 80 of Decree No. 25-2010, the Congress of the Republic, Law on Insurance Activity (brokers and independent agents)	SIB	IVE	633

305. With regard to non-financial OSs (DNFBPs), they are registered at the IVE and distributed as follows:

**Table 32: Non-financial OSs registered**

OSs	Registration and supervision in ML/TF	Registered with IVE
j) The entities authorized by the MINGOB to conduct lotteries, raffles and the like, regardless of the name used;	IVE	2
m) Individuals or legal persons performing the following activities:		
i. Property development or sale of property	IVE	448
ii. Sales of automobiles, land, sea or air vehicles	IVE	119
iii. Related to the trade in jewelry, precious stones and metals	IVE	97
iv. Related to the trade in objects of art and antiques	IVE	38
v. Armoring services of property of any kind and/or lease of armored motor vehicles	IVE	7

OSs	Registration and supervision in ML/TF	Registered with IVE
n) Public Accountants and Auditors providing services related to any of the following activities:		
i. Management of money, securities, bank accounts, investments or other assets. Accounting and auditing activities in general.	IVE	178
ñ) Individuals or legal entities engaged in providing services under instructions and/or on behalf of their clients or third parties related to any of the following activities (corporate services):		
i. Performance, by itself or through third parties, as holder of registered shares, partner, associate or founder of legal persons	IVE	12
ii. Acting by itself or through third parties, as director, member of the board or board of directors, administrator, guardian or legal representative for legal persons	IVE	
iii. Provision for physical address listed as tax domicile or headquarters of legal persons	IVE	6

306. According to the list above and as mentioned in this report, microfinance, lawyers, notaries and casinos-video lotteries, at the date of the on-site visit, were not part of the OSs to be subject to the obligations AML/CFT, which is not aligned with the results of the ML/TF NRA where it was concluded that some of these activities pose a ML/TF risk, particularly in the case of DNFBPs, whose vulnerability level against ML, according to the NRA is high.

307. For financial and non-financial OSs, Guatemala has been developing its regulation in a phased manner; this is reflected in the level of understanding of the ML/TF risks of the OSs.

308. The financial regulated entities, especially banking, seem to have a proper understanding of the risks on the subject, in the case of other financial regulated entities seems to have an understanding of the ML/TF risks; however, they minimize its effects by the shallowness of their markets. In the case of those financial institutions which are branches of international Banks, understanding of the risks is even more evident, which was evidenced during the on-site visit during interviews with OSs.

309. In 2009, the IVE issued Official Letter No. 434-2009 which communicated the Banks, Finance Companies and Offshore Banks on the guide “RISK MANAGEMENT MONEY LAUNDERING OR OTHER ASSETS AND FINANCING OF TERRORISM - ML/TF “, the document, updated by Official Letter IVE 3955-2015, gives a framework to the entities to implement its AML/CFT system according to the risk to which they may be exposed; this also explains why bank financial institutions have developed a better understanding of risk ML/TF and implemented the obligations established by regulation.

310. In the case of non-financial OSs, of information obtained during on-site visit, specifically in talks with representatives of non-financial OSs, warned of a proper understanding of the risks of ML/TF; to clarify that non-financial OSs are under the general scheme since November 26, 2013, the date on which the Governmental Agreement 443-2013 was issued.

*Implementation of measures to mitigate risk*

311. The enforcement of risk mitigation measures has been implemented by Banks, Financial Companies and Off-Shore Banks, spurred by regulation, through the guidance “RISK MANAGEMENT MONEY OR OTHER ASSETS AND TERRORIST FINANCING -LD/TF” which has been issued in 2009, was recently updated by the Official Letter IVE 3955-2015. Also the mentioned regulated entities have developed internal policies and procedures to identify risks and mitigate their exposure; an example of this

is the case of banks that have developed some union procedures for exchange of information that allows them to mitigate risk.

312. The situation described in the preceding paragraph does not extend to other OSs, especially non-financial, where the perceived risk of ML/TF reflected in policies, procedures and effective and efficient controls that help mitigate it is not present. Guatemala requires work on understanding and implementing controls for mitigating risk in different regulated entities of Banks, Finance Companies and Off-shore Banks.

*Implementation of specific or reinforced CDD and recordkeeping requirements*

313. As for the specific or enhanced CDD, it was observed that financial institutions are aware of the products, services, geographical areas and customers that require enhanced CDD, having identified that it is diligently applied. In particular it is worth noting that banks have developed lists of customers of increased risk that are safely shared using the IVE platform.

314. The enhanced CDD in the field of non-financial OSs (DNFBP) has not been implemented. Although from a regulatory point of view such obligations do exist, the information obtained from the OSs during the on-site visit, knowledge and understanding of them was not observed. They had not developed efficient controls, nor had defined what aspects of their activities and customers should be analyzed to determine the highest risk and require the development of enhanced CDD.

315. With regard to record keeping, it was observed that several record keeping requirements concur, such as the provisions of the AML/CFT regulation, established for tax purposes and tax purposes indicated; in all, it requires the regulated entities in Guatemala to maintain information at least five (5) years following the close of trade relations.

*Reporting obligations and disclosure (tipping-off)*

316. It is clear that the regulated entities are aware of their obligation to submit suspicious transaction reports to the IVE also to any request for information from the IVE or other authorities to combat crime, attention is timely. This is evident in the delay of response to requests for information by the regulated entities, the following table shows that despite the increase in the number of requests for information, the response time has decreased (information at July 2015).

**Table 33: Requests to OSs**

Year	Number of requests per year	Average working days
2012	380	19
2013	770	10
2014	858	6
2015	572	3

317. However, with a low awareness of the concept of risk, in hierarchies of entities, there is an awareness of the regulated entities of exposure to be used in ML/TF schemes and therefore there is a concentration of referral of STR in financial activities, especially in banking (67% of total), credit unions (8% of total) and FTC (15.31%) as the three activities meet 90.31% of the total STR system to June 15; in the case of DNFBPs we could quote the regulated entity for the sale of motor vehicles having sent 6.8% of STR to June 2015.

318. An exceptional scenario is for domestic PEPs and possible situations of corruption. The regulated entities are attentive to identify cases where their customers are involved in the offence mentioned.

319. Regarding tipping-off, while it is true that AML Law establishes the legal reserve which limits the disclosure of the regulated entities or identity of compliance officers who have sent some information to the IVE, as analyzed in the Immediate Outcome 6, there is a chance that compliance officers and IVE officials (only one expert) may be summoned to participate in judicial proceedings. However, the impact in the reporting system according to the STRs submitted and the activity of complaints by IVE is not substantial as explained above.

#### *Imminent implementation of internal controls and legal/regulatory requirements*

320. The implementation of internal controls and legal/regulatory requirements are presented in two different areas, the financial regulated entities have developed internal controls that requires regulation and others whose dynamic business also require it, associated with supervision pacing, take care to implement policy changes immediately, likewise, it is noteworthy coordination's that effect entities of the banking financial system among them and in turn the union that meets with the IVE.

321. It is substantially different from the case of DNFBPs, where it is perceived that the implementation of internal controls and legal/regulatory requirements is still insufficient, which is directly related to low or almost zero perceived ML/TF risk, that was observed in the interviews, with said regulated entities.

#### *Conclusions on the Immediate Outcome 4*

322. According to the above, Guatemala has a **moderate level of effectiveness in the Immediate Outcome 4.**

## CHAPTER 6. SUPERVISION

### *Key findings and recommended actions*

#### **Key Findings**

- The IVE performs supervision to the OSs (financial and non-financial) with a risk-based approach and has procedures, information and tools for it, including action plans and monitoring are based on risk matrices.
- There are sectors and/or activities identified as risky, and therefore vulnerable of being used for ML/TF, which are not incorporated as regulated entities, such as microfinance institutions, lawyers, notaries, casinos and video lottery.
- The IVE has made efforts in registering DNFBPs as regulated entities, especially the most representative ones. However there are still countless unregistered DNFBPs.
- The IVE has made efforts with regard to regulated entities to know their ML/TF risks, its reporting obligations and associated typologies, however it is noted that for DNFBPs, even more work is required in this area.
- The supervision conducted by the IVE on DNFBPs does not achieve the objective of mitigating ML/TF risks, or improve the level of compliance because failures are denoted in risk management and implementation of policies and procedures by these OSs.
- The sanctions applied by the IVE are not proportionate or dissuasive.

#### **Recommended Actions**

- Take clear actions to include DNFBPs as regulated entities, as well as microfinance institutions and all those activities or individuals or legal entities that should be OSs are duly registered and in compliance with the AML/CFT obligations.
- Providing larger resources to the IVE in the areas corresponding to risk supervision, for it to strengthen the effective development of this function.
- Boosting support in training and awareness activities to achieve a better understanding the ML/TF risks, especially for DNFBPs.
- Arbitrate the means to redesign the regulatory framework regarding the structure of possible sanctions to be applied so that proportional administrative pecuniary and dissuasive sanctions in relation to the different sectors (financial and nonfinancial) are imposed.

323. The relevant Immediate Outcome considered and assessed in this chapter is the IO. 3. The relevant recommendations for the assessment of effectiveness in this section are the R. 26-28 R. 34 and 35.

### ***Immediate Outcome 3 (supervision)***

#### *License, registration and controls that prevent criminals and their associates from entering the market*

324. The Monetary Board (JM, Spanish acronym) exercises the supreme direction of the BANGUAT, which grants or denies authorization for the establishment of banks and insurance companies, with the prior expert opinion of the SIB, the latter is responsible for issuing the authorization to operate in the financial market to banks, finance companies, bureau de change, bonded warehouses, insurance companies, companies specializing in issuing and/or managing credit cards, leasing companies, factoring companies, brokerages, and offshore entities, among others.

325. The SIB also is charged with the responsibility of supervising them and others as required by law. As provided by the Law on Banks and Financial Groups referred to in the Art. No. 6, 7, 8, 9, 13, 19, 20, 24 and 27 and the Law on Insurance Activity in Articles 6, 7, 8 subsection c), 9, 10, 14, 20, 21 and 25, which also address aspects related to the incorporation; authorization; process; start of operations of banks; impediments to act as organizers, seriousness; honor and responsibility of the founding partners, reinsurance, among others.

326. The INACOP is responsible for its part of the registration of the credit unions and to enforce related laws and regulations; the General Inspectorate of Cooperatives (INGECOP) is responsible for financial supervision of same

327. Regarding Brokerage firms, the Law on Securities and Commodities Markets, in their Art.8 establishes the creation of the Registry of Securities and Commodities Market, which aims to take control of the legality and registration of documents and performing contracts entered into by persons involved in the securities market, stock market and over the counter; and Article No. 16 establishes its powers, among which is enrolling the stock exchanges and regulated agents in same; and Art. No. 23, the authorization of stock exchanges is established.

328. Through Ministerial Agreement No. 99-87 the National Stock Exchange, SA, was established which in Art. No. 10 and 12 of its internal regulation provides that it shall keep a complete record of their stockbrokers who have been admitted and the applications for brokerages, respectively; in the case of the latter the requirements to be admitted as a shareholder and member of the Board of Directors are included.

329. As for Exchange Houses, the Law of Foreign Exchange in Art. No. 3 provides that they must be authorized by JM and that the SIB will exercise its monitoring and inspection. Art. N 18 AML Law provides as OSs DNFBPs and Art. No. 5 of the Regulations of the AML Law and No. 15 of the PRFT Law.

330. DNFBPs, with the exception of casinos-video lotteries, notaries and lawyers, are considered as OSs in accordance with Art. No. 18 of the AML Law, Art. No. 5 of the Rules of the AML Law and the Art. No. 15 of the Law PRFT.

331. It is worth mentioning that both institutions under the supervision and inspection of the SIB, and INGECOP, as well as the rest of OSs listed in Art. 18 of the AML Law and No. 5 of the Regulations, must register the IVE, in accordance with the provisions of Art. No. 7 of the Rules of the AML Law and Regulation No. 16 of the Act PRFT, which are subject to supervision by the IVE.

332. However, while Guatemala has carried out a very important effort to prevent criminals and their accomplices to possess or being beneficial owners of a significant or majority stake of OSs, particularly those related to financial sector OSs, with the exception of the microfinance sector, whose activity is not regulated not subject to AML/CFT regulations and that while authorities point out that some of these entities are NPOs subject to AML/CFT regulations, it is not possible to conclude that this group of entities is practice under the regulatory and supervision oversight of the IVE, based on the information submitted by the authorities.

333. The effectiveness of the system on this regard is also affected regarding the omission as OSs of sectors that have higher risks according to the NRA, such as casinos-video lotteries, which do not have the authorization or licensing and are neither registered. In the case of notaries and lawyers, the coverage of the activities established by the Standards is incomplete and, as a consequence, are not registered.

334. Likewise, the following example should be noticed, as they relate to situations that contribute to the conclusion on the level of effectiveness of this fundamental criterion, according to the information provided by the authorities during the on-site visit, it was mentioned that for purposes of DNFBP registration

of real estate companies, authorities had to reach for the phone books or other similar means to obtain information on OSs to perform the registry process, as they did not have the necessary information and mentioned difficulties on this issue, due to the number of companies being inconsistent with the companies registered, as they had not independently or voluntarily undergone such process as expected.

### *Understanding and identification of the ML/TF risks by supervisors*

335. Guatemala conducted its ML/TF NRA which contains the diagnosis of risks at country level on ML/TF, action plans were designed based on NRA results - for Financial Institutions, Securities, Insurance, DNFBPs and Financial Inclusion, in order to mitigate and prevent risks identified therein.

336. Prior to the completion of the ML/TF NRA Guatemala conducted an analysis of sectors vulnerable to ML/TF risks. The study concluded the need to incorporate non-profit organizations that receive or execute State funds or receiving funds from abroad, armoring companies and entities under the special regime.

337. With regard to these processes carried out by the country to identify and know threats and vulnerabilities the work done by the IVE with regard to the identification and understanding of the ML/TF risks in the financial and not financial market should be noted. The IVE has weighting tools of ML/TF risk, which are segmented by type of OSs, -financial or non-financial, and establishes the priority of supervision.

338. These tools or risk matrices weigh and evaluate aspects such as breaches of periodic reports; electronic report IVE-TF-21 transfer of funds greater than USD 2,000.00 or its equivalent in national currency; electronic report IVE-DV-17 cash income in foreign currency; IVE-05 electronic reporting of cash transactions equal to or greater than USD 10,000.00 or its equivalent in national currency, among others.

339. Even the result obtained in the application of matrices, is similar to the result obtained in the ML/TF NRA conducted between 2014 and 2015; in the sense that financial OSs identified with a level “Medium High” vulnerable to ML were fund transfer companies and credit unions, followed by banks with a “Medium” level of vulnerability; in the case of non-financial OSs, the sectors that were most at risk were NPOs; the sale of real estate and property development; the purchase of vehicles; and shielding services.

340. However, despite the fact that the NRA has determined that DNFBPs as lawyers, notaries and casinos-video lottery have a high level of vulnerability to ML, they have not been included as OSs. This is particularly important, since it even has the possibility offered by the legal framework, the AML Law in Art. N18, the OSs, “5.g.” empowering relevant institutions to regulate and consider regulated entities to other activities required by the nature of its operations can be used for ML/TF, in fact by Government Agreement No. 443-2013 which came into force on November 26, 2013, Art. 5 reformed Governmental Agreement No. 118-2002, Regulations of the Law against ML, incorporating new OSs without taking into account the OSs identified. In addition, as mentioned, microfinance institutions that are unincorporated non-profit associations have been incorporated as regulated entities subject to AML/CFT obligations<sup>10</sup>.

341. Lawyers and notaries in Guatemala may exercise such professions simultaneously and represent, by the SAT information on taxpayers by activity-, approximately fifty-one percent of DNFBPs identified,

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<sup>10</sup> It is worth mentioning as subsequent to the site visit, in May 2016 Microfinance Institutions Act and Microfinance Entities Nonprofit published, through which is given a new legal framework to the said sector. Art. 4 provides that institutions are governed by that law, the Law on Banks and Financial Groups, the Financial Supervision Act, the AML Law, the PRFT Act, the regulations issued by the JM and the SIB. However, this information is outside the scope of the Mutual Evaluation, whose scope is limited to the last day of the site visit date

they are not subject to AML/CFT regulation and supervision measures, which was identified in the ML/TF NRA and professional activities with a high level of vulnerability to ML. Possible risks of microfinance institutions were not evaluated or taken into count in the ML/TF NRA.

342. The possible risks of microfinance institutions were not assessed nor considered for the ML/TF NRA, with the exception of what is related to the risks from the financial inclusion perspective. According to the information provided by the authorities, some microfinance companies are NPOs of those categories subject to IVE regulation and supervision for AML/CFT purposes. However, authorities were not able to provide a proportion of the microfinance-NPO sector, nor their registry. It should be mentioned that there is no ML/TF risk management, particularly among the policies and tools for the identification of the aforementioned risks, for the adequate supervision of these institutions at the moment of being identified.

343. Regarding casinos, while there is a draft bill that regulates Bets, Casinos, Video Lottery, Bingo and Gaming, which is held by the Congress of the Republic, pending approval, they now operate outside any rule and/or AML/CFT regulation, without even observing international standards in this regard which basically indicates that countries, when they identify greater risks must ensure that their AML/CFT regime addresses these risks.

*Risk-based supervision of compliance with AML/CFT requirements*

344. The entities under the supervision and inspection of the SIB and INGECOP; as well as other financial institutions that do not have supervisory body on financial matters, are referred to in Art. 18 of the AML Law and Article 5 of the AML Law Regulations and 15 of the PRFT Law as OSs, which must register with the IVE, in accordance with applicable laws, and are subject to supervision by the latter. The IVE has the power to direct instructions to the OSs and has a Department of Prevention and Compliance to perform risk-based supervision of ML/TF, evaluate prevention system and verify compliance with ML/TF and in breach of legal obligations, enforce appropriate administrative sanctions.

345. It is noteworthy that since 2003 the IVE has conducted monitoring in the OSs on the implementation of the AML Law since 2005 of the Law PRFT; counting with specific areas of supervision, as in the case of Areas of Supervision of ML/TF Risks I and III, which are responsible for carrying out the supervision of financial institutions in general and credit unions, respectively; and meanwhile Area II is responsible for the supervision of non-financial OSs

346. The areas of monitoring of ML/TF risks I and III performed the following audits on financial OSs:

**Table 34: Areas of Supervision of ML/TF Risks I**

Type of OSs	2011	2012	2013	2014	2015	Total
Banks	42	19	5	17	15	98
Insurance	6	9	20	6	8	49
Financial	5	9	13	6	5	38
Brokerage House	0	9	11	3	6	29
Cooperatives	4	12	10	0	0	26
Storage installations	3	9	14	0	0	26
Off Shore	0	6	6	4	3	19
Issuers of Credit Cards	2	6	2	2	1	13
Funds Transfer Companies	3	2	0	3	3	11
Exchange Offices	1	1	1	0	0	3
Leasing	0	1	1	0	0	2
Financial	0	1	0	0	0	1

Credit Card Operators	1	0	0	0	0	1
<b>Total</b>	<b>67</b>	<b>84</b>	<b>83</b>	<b>41</b>	<b>41</b>	<b>316</b>

**Table 35: Areas of Supervision of ML/TF Risks III**

Type of regulated entity	2011	2012	2013*	2014	2015	Total
Cooperatives	-	-	20	71	56	147
Storage installations	-	-	0	1	0	1
Funds transfer companies	-	-	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>20</b>	<b>73</b>	<b>56</b>	<b>149</b>

\* The risk supervision area was created from November 2013; therefore, previous registries are not verified.

347. In addition, as a result of the audits conducted, the respective areas of risk supervision with respect to the findings, appropriate follow-up audits are performed.

**Table 36: Areas of Supervision of ML/TF Risks I**

Type of regulated entity	2011	2012	2013	2014	2015*	Total
Banks	19	19	0	0	14	52
Insurance	0	9	6	0	0	15
Financial	0	9	4	0	0	13
Storage Installations	0	0	12	0	0	12
Offshore	0	6	0	0	0	6
Brokerage House	0	0	3	2	0	5
Cooperatives	0	0	3	0	0	3
Funds Transfer Companies	0	0	0	0	3	3
Issuers of Credit Cards	0	0	2	0	0	2
Exchange Offices	0	0	1	0	0	1
Leasing Companies	0	0	1	0	0	1
<b>Total</b>	<b>19</b>	<b>43</b>	<b>32</b>	<b>2</b>	<b>17</b>	<b>113</b>

\* Audits scheduled

**Table 37: Areas of Supervision of Risk ML/TF III**

Type of regulated entity	2011	2012	2013*	2014	2015	Total
Cooperatives	0	0	9	21	38	68
Storage Installations	0	0	0	1	0	1
Funds Transfer Companies	0	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>22</b>	<b>38</b>	<b>69</b>

\* The risk supervision area was created from November 2013; therefore, previous registries are not verified.

348. The area of monitoring risks of ML/TF II has completed the following audits, on non-financial OSs:

**Table 38: Non-financial OSs audits. January 2011 to December 31 2014**

No.	Type of regulated Subject	2011	2012	2013	2014	TOTAL
1	Property Development or Sale of Properties	28	52	70	21	171
2	Sale of Motor Vehicles	7	10	9	13	39
3	Trade Jewelry, Precious Stones and Metals	4	4	4	1	13
4	Capital Movement	1	3	0	4	8
5	Trading Objects of Art and Antiques	1	4	1	0	6

6	Lotteries, Raffles and Similar	1	1	0	1	3
TOTAL		42	74	84	40	240

349. Supervision of DNFBPs according to the programs presented are performed for verification and monitoring of compliance with AML Law and PRFT Law; specific instructions regarding programs, policies, procedures and internal controls that must be implemented to know their customers in order to prevent their activities from being involved in ML/TF. The audits scheduled for 2015 were as follows:

**Table 39: 2015 scheduled audits**

No.	Type of regulated Subject	2015
1	Property Development or Sale of Property	65
2	Sale of Properties	4
3	Sale of Motor Vehicles, Land, Sea or Air Vehicles	73
4	Trade Jewelry, Precious Stones and Metals	30
5	Trading Works of Art and Antiques	4
6	Non-Profit Entity - Foreign Funds	13
7	Non-Profit Entity - State Funds	6
8	Leasing Motor Vehicles Armored	2
9	Provision of Legal Address	2
10	Property Development	4
11	Company Service Provider	2
12	Armoring Services of Property of Any Kind	7
TOTAL		212

350. It should be noticed that beginning in 2013, the number of OSs has increased with the areas of risks supervision I and III, without the resources allocated to supervision having increased in a similar manner. While the IVE prepares an operations plan for each following year, where the entities to be visited and the type of audit are defined, which is carried out under a risk-based approach, the IVE carries out other activities that consume time and human resources, such as: providing training to Oss and issuing prudential regulations, among others. From the latter, audits have decreased and as a consequence the capacity to duly comply with the functions of supervising ML/TF risks are undermined. This makes it necessary to increase the IVE's resources for the supervision areas, particularly that of DNFBPs, which currently is staffed by five (5) persons.

351. In this regard it is clear that the IVE performs the supervisions to the OSs (financial and nonfinancial) with a risk-based approach. The IVE has developed risk matrices to define areas requiring further analysis when performing the OSs supervisions and has adequate procedures, information and tools for it, including action plans and monitoring based on risk matrices. Additionally, from 2015, they have developed a system in which taking into account the risk, prioritize the respective supervisions. The monitoring work plan is based on this new system. However, from the interviews held on-site with the DNFBP sector supervised by the IVE, serious doubts emerged on the effectiveness of the audits, considering that reporting subjects showed a lack of knowledge in the AML/CFT obligations, as well as inobservance of current regulations in implementing the minimum required procedures in the established policies. Regarding supervision and/or oversight carried out by the IVE to DNFBPs it is considered that it does not comply with the objective of mitigating ML/TF risks, notwithstanding the aforementioned efforts.

*Corrective actions and effective, proportionate and dissuasive sanctions*

352. The SIB exercises supervision and inspection of BANGUAT, banks, finance companies, credit institutions, bond entities, insurance companies, general warehouses, exchange, financial groups and holding

companies of financial groups and other entities provided by other laws established in Art. 133 of the Constitution and the Law of Financial Supervision in Art. 1.

353. The IVE, created within the SIB, Art. 32 of the AML Law and 24 of its Regulations, will be responsible for supervision of the AML/CFT obligations of the OSs, ensuring compliance with the object and the Act and its Regulations, with the functions and powers set out therein, which must be conducted strictly in the administrative field; Also, the Art. No. PRFT 20 of the Act establishes the function of the IVE.

354. The SIB to fulfil its purpose -as established under Art. 3 Supervision Act- should impose appropriate sanctions in accordance with the Law. The laws and regulations provide the SIB with the possibility to sanction OSs either monetarily or with other measures, which may be applied to the board of directors, CEO, managers or assistant managers, legal representatives, agents, auditors and other executives (Art. 101 other measures of Law on Banks and Financial Groups), and suspend or cancel the registration of insurance intermediaries or reinsurance (Arts. 97 and 98 of the Law on Insurance Activity).

355. For its part, the IVE has the power to impose administrative sanctions (pecuniary) to OSs for breach of the current regulations derived on-site or off-site supervision, in accordance with Art. No. 19, 31, 32 and 33, paragraph g) of the Act CLD; in addition, the Act provides in PRFT Art. No. 19 on sanctions and Art. No. 20 the functions of the IVE.

356. The AML Law provides that among the functions of the IVE, it can impose the relevant administrative fines on the OSs; and Art. 31 establishes the procedures and sanctions. It states that the OSs will be sanctioned by the competent administrative authority with a fine of ten thousand dollars (USD 10,000) to fifty thousand dollars (USD 50,000).

357. On the other hand, Agreement Number 43-2002 of the Superintendent of Banks sets the scale for the sanctioning system which is used by the IVE to impose sanctions on the OSs, as detailed:

**Table 40: Types of violations**

EU\$	Violations on
10.000	<ul style="list-style-type: none"> <li>- On Non-adoption, development and implementation of programs, policies, procedures and appropriate internal controls including:               <ul style="list-style-type: none"> <li>a) Procedures to ensure a high level of integrity of personnel and knowledge of personal, employment and financial history of employees. (Art. No. 19, Law CLD)</li> <li>b) Permanent staff training and instruction as to the responsibilities and obligations of this law. The training should also include knowledge of techniques that allow employees to recognize operations which may be linked to money laundering or other assets and ways to proceed in such cases. Art. No. 19, Law CLD)</li> <li>c) Establishment of an audit mechanism to verify and assess compliance programs and standards Art. No. 19, Law CLD)</li> </ul> </li> <li>- Maintaining anonymous account and/or under fictitious names) (Art No. 23, Law CLD.)</li> <li>- Update of records</li> <li>- Failure to request for information (Art. No. 28, Law CLD)</li> </ul>
20.000	<ul style="list-style-type: none"> <li>- Do not carry the established records, failure to keep records, not to take the daily record; for non-reporting of transactions that must be reported as suspicious (Art. No. 21, No. 23 and No. 24, AML Law</li> <li>- Communication of suspicious or unusual transactions RTS (Art. No. 26, Law CLD)</li> </ul>
25.000	<ul style="list-style-type: none"> <li>- Failure to comply with any measures to know and identify customers (Art No. 19, No. 21 and No. 22, AML Law.)</li> </ul>

	- No appointment of compliance officer (Art. No. 19, Law CLD)
10.000	Any other failure not covered in this table contemplating a penalty of <b>USD10.000-</b>

358. According to the statistics provided, the IVE has imposed 23 penalties totaling USD710,000.00 on financial OSs - January 2009 to July 2015, as detailed below.

**Table 41: OSs sanctions**

Type of regulated subject	Quantity	Amount in EU\$
Banks	14	465.000,00
Funds Transfer Companies	4	130.000,00
Financial Corporations	1	55.000,00
Offshore Entities (Banks Off Shore)	1	30.000,00
Issuers Credit Card	1	10.000,00
Credit Union	1	10.000,00
Bonded Warehouses	1	10.000,00
<b>Total</b>	<b>23</b>	<b>710.000,00</b>

359. Generally, sanctions have been applied for breaches to the AML Law detected through conducting audits. In this regard, it is important to stress that most of these sanctions do not match the number of violations registered by the IVE, since each sanction may entail several violations, statistics show that most of them account for lack of compliance with reporting requirements (12 violations), lack of communication of STRs (12 violations), lack of KYC measures (6 violations), lack of proper updating of records (6 violations).

360. The rules mentioned in relation to the capacity of the IVE to impose sanctions, limit the ability of it to monetarily sanction the OSs and this entails that the statistics denote that the penalties imposed by this authority do not involve the deterrent effect intended nor that they are proportionate to the diversity of regulated entities. Furthermore, in addition to financial penalties, there is no information on other penalty applied to the OSs. In the case of non-financial OSs (DNFBPs) no sanction has been imposed on the date of the on-site visit.

### *Impact of supervisory actions in compliance*

361. Through Official documents, the results of the supervision conducted by the IVE to OSs are reported, attaching the certificate of verification results; likewise, depending on the relevance of the findings, they are asked to: 1) implement the necessary measures to remedy, within a specified period, the identified deficiencies and inform at certain intervals on the progress, or 2) develop and implement an action plan to, within a specified period, implement the necessary measures to remedy the identified deficiencies; and, submit documentation evidencing the results derived from the measures taken. It is worth mentioning that the plan must be approved by the Board of Directors and sent to the IVE in the applicable period; in relation to the latter, the Supervision Areas are responsible for verifying that the actions proposed by the OSs, contained in the action plan, are consistent with the identified deficiencies, in order to correct them. Otherwise the OSs are requested to reconsider or propose new good actions or send information and/or documentation to support additional measures to be taken.

362. Another means through which the IVE promoted to the OSs fulfilment of their obligations on the prevention and detection of ML/TF and understanding of the aforementioned risks, is through presentations, which are made individually or in conjunction with the SIB, to the Board of Directors of the OSs, in order for them to take steps to strengthen their controls and address identified deficiencies.

363. IVE - Areas of Supervision of ML/TF Risks I and III, respectively recorded 113 and 69 follow up audits on the implementation of the proposed action plans for financial OSs, completed and planned from 2011 to 2015; meanwhile, Area II, which is responsible for the supervision of non-financial OSs, conducted and scheduled for the years 2014 and 2015 a total of 107 audits.

364. The aforementioned actions are not enough to prove that supervisors have an impact on compliance of financial institutions, as showed in the development of the previous core issues, the effectiveness of this issue is affected by consequence of the deficiency of OSs to fully understand ML/TF risks and, mostly, in the low knowledge and implementation by some OSs of the regulations and procedures to be performed, for example, when facing situations of detection or red flags related to designated or listed persons.

*Promoting a clear understanding of the AML/CFT obligations and risks of ML/TF*

365. The IVE undertakes a series of actions aimed to promote understanding by the OSs of their AML/CFT obligations and ML/TF risks. In addition to the presentations referred to in the previous paragraph made individually or jointly with SIB, - to the board of directors of the OSs -, the IVE also provides training for the board, as well as officials and staff in general; the area responsible for these presentations is that of Prevention and Compliance which in turn has three areas of Supervision of ML/TF Risk, who carry out risk-based ML/TF supervision, evaluate systems of prevention and verify compliance with CLD/PRFT Law and at the same time have the responsibility to propose and assist in the development of guidelines and prudential regulation projects that improve control mechanisms and prevention of ML/TF.

366. Likewise, also and with attention to Art. 25 of the Regulations of the AML Law, the IVE issued Official Letter No. 1818-2012 (July, 2012), by which it informed all financial OSs registered in the Municipality, on the Instructions for Compliance Regulations Relating to Money Laundering or Other Assets and Terrorist Financing Obligations; which also provides all the OSs when registering before the IVE. Additionally, in the case of non-financial OSs, instructional reference, called IVE-INF-01, was sent through the IVE Official Letter Nos. 1107-2014 (EX-PORES) and 1484-2014 (PONF).

367. Also the IVE has issued typology reports taken note by different actors, such as:

**Table 42: Typologies reports sent by the IVE**

TYPOLOGY REPORTS 2013			
No. Official Letter	Date	Recipient	Entity
2674-2013	18/10/2013	FCLA and UED	Public ministry
2682-2013	18/10/2013	Attorney General	Public ministry

In the case of OSs, they are notified by the portal OSs, that typology reports are available in this portal.

TYPOLOGY REPORTS 2014			
No. Official Letter	Date	Recipient	Entity
3650-2014	10/10/2014	All OSs	All the OSs

3568-2014	03/10/2014	Attorney General	Public ministry
3569-2014	03/10/2014	FCLA and UED	Public ministry

368. Currently the five (5) typology reports that the IVE has issued are available on the Portal of OSs.

369. The IVE sent Official Letter No. 3955-2015, the Risk Management Guide ML/TF directed at banks, finance companies and Offshore Entities (Off-shore). This guide was updated in November 2015 considering the new recommendations and methodology and the results of the NRA ML/TF, in which it is indicated “The Regulated Entity must establish the inherent risks of ML and TF, to which each one of its products and services is exposed derived from their intrinsic characteristics. Based on its own criteria, the Regulated Entity must assess whether a particular product or service has a high risk of ML and TF activities.

370. The effort made by the IVE in training and communication with the OSs, as well as efforts to achieve greater incorporation of OSs, particularly non-financial entities, should be noticed.

371. As a result of the activities of the IVE, it was observed during the site visit, the understanding of the risks of ML/TF and obligations by financial institutions, particularly the entities that form part of banking system, those implementing preventive measures commensurate to the risk analysis developed by these institutions themselves, which even often going beyond existing rules.

372. However, steps are required for the incorporation of microfinance institutions - which are not incorporated as non-profit associations - in order for them to know their obligations and understand the risks of ML/TF to which they may be exposed.

373. DNFBPs, according to the information obtained during the on-site visit by the non-financial OSs interviewed, are perceived -as pointed out earlier- to have a low understanding of the risks and typologies associated with the prevention of ML/TF and a low understanding of the risks to which they are exposed, which represents a clear and precise indicator of the effectiveness of the actions carried out by the IVE.

*Conclusions on the Immediate Outcome 3*

374. According to the above, Guatemala has a **moderate level of effectiveness in the Immediate Outcome 3.**

## CHAPTER 7. STRUCTURES AND LEGAL PEOSONS

### *Key findings and recommended actions*

#### **Key findings**

- Pursuant to the legislation in force in Guatemala, the issuance and the circulation in the market of bearer shares are forbidden.
- The IVE has efficiently disseminated typologies regarding legal persons and arrangements.
- The information on beneficial ownership of corporations cannot be gathered reliably, since legal entities are not obliged to gather such information from their shareholders, irrespective of the fact that they may be natural persons or legal persons or arrangements.
- Access to information on legal persons or arrangements cannot be performed in a timely and effective fashion for the OSs to conduct their CDD.
- Legal entities, as demonstrated by typologies reports issued by Guatemala, are important vehicles for networks of ML.

#### **Recommended actions**

- Guatemala should approve the corresponding regulations for legal entities to identify beneficial owners of their shares.
- Develop a legal framework to publish data on beneficial ownership of legal persons and arrangements.
- Put mechanisms in place for the timely access to information of legal persons and arrangements for the regulated subjects to perform an efficient CDD.

375. The relevant Immediate Outcome considered and evaluated in this chapter is IO. 5. The relevant recommendations for the assessment of effectiveness in this section are R. 24 and 25.

### *Immediate Outcome 5 (legal persons and arrangements)*

#### *Business Legal persons*

376. As of July 2015, the REMER has registered 109,826 companies, which have been incorporated pursuant what is established by the Guatemalan Code of Commerce, with the following distribution:

**Table 43: Number of lucrative legal persons:**

Type of Company	Number	%
Corporations/ public limited company	107,455	97.84%
Limited Liability	2,022	1.84%
Limited Company	234	0.21%
Business Partnership	48	0.04%
Variable Capital Company	32	0.03%
Joint-stock limited partnership	31	0.03%
Limited Partnership	4	0.004%
<b>Total</b>	<b>109,826</b>	<b>100%</b>

377. The characteristics of corporations, are defined in the Code of Commerce of Guatemala in Art. 14 to 262; public limited and limited liability companies, which are the most representative types are briefly described:

- The corporation/public limited company: is a formal corporation, its capitalist character is identified with name, capital is represented in securities called shares, and the partners limit their liability to the total number of shares that are owned. The Notarial Code, Articles 46 ° and 47 ° establishes special requirements for Contract Corporation. The shares that are issued by the companies are forcibly nominative and are required to be monitored.
- The limited liability company: it is a corporation that is identified with social reason or denomination; which is divided into founding capital contributions, cannot be represented by securities and whose members should appear in the act of incorporation to document the contribution made. The alienation of such contribution must be made in person and by deed.
- The partnership: is a commercial company, personalist, which is identified with a company name, in which the partners for social obligations, respond subsidiary, jointly and severally.

378. In the case of complex share structures (stake-holding legal entities) there is no registration requirement of the natural person (s) who have control of the share-holding company. Therefore, this information is not accessible to the competent authorities. This limitation has additional implications in the collaboration that Guatemala can provide to requests for cooperation from other FIUs and authorities to know the beneficial owners of the Guatemalan corporations. It is also worth mentioning that Guatemala does not have a regulation requiring their companies to develop procedures to know the beneficial owners of the shares, as it only states that shares must be nominative.

### *Non-profit legal persons*

379. The regulation applicable to non-profit legal persons is reflected in the provisions of Articles 15 and 438 to 440 of the Civil Code and 102 of the Law of the RENAP. Non-profit legal persons who are in Guatemala are as follows:

- Non-profit Associations: The associations without profit purposes, consisting of at least seven persons who intend to promote, exercise and protect union, political, economic, religious, social, cultural, and professional or other nature interests of its members. The regulations creating non-profit associations is contained in Government Agreement No. 512-98
- Churches: The Constitution of Guatemala recognizes religious freedom and the legal status of the Catholic Church. As for the other churches and religious associations they obtain recognition of its legal status under the rules of their institution. The AG number 263-2006, May 24, 2006, contains provisions for obtaining recognition of the legal status of the Evangelical Churches.
- Foundations: Foundations are legal entities created by authorization of the MINGOB for charitable, cultural, social, artistic, educational or other non-profit nature which affects a foundational heritage. Its constitutive act is performed by public deed or by will. The Instrument foundation should note the heritage affected, the purpose for which it is intended and the form of administration. The respective authority shall approve the operation of the foundation if it is not contrary to law, and in the absence of sufficient provisions, will issue the necessary rules to comply with the intention of the founder.
- Civil Societies: Civil societies are created by public contract deed by which two or more people agree to share goods or services to pursue an economic activity and divide the profits. The participants in society (partners) must appear in the act of constitution and if they wish to alienate such participation its charter should be amended. This type of society is most commonly used for the provision of professional services by its partners (firms).
- NGOs: Are formed with cultural interests, educational, sports, with non-profit social service, support, charity, promotion and economic and social development purposes. Will have its

own patrimony from national or international resources, and its own legal personality distinct from its partners, when being registered as such in the corresponding Municipal Civil Registry. Its organization and functioning is governed by its statutes, the provisions of this Act and other ordinary legal provisions.

380. Guatemala has presented statistical information on non-profit legal entities registered in the REPEJU as of July 31, 2015, as follows:

**Table 44: Number of non-profit legal persons**

Type of Legal Entity	Quantity	%
Civil Association	7,947	72%
Churches	1,723	16%
Non-governmental Organizations (NGOs)	771	7%
Foundations	415	4%
Civil Societies	168	2%
<b>Total</b>	<b>11,024</b>	<b>100%</b>

\*Source: REPEJU

### *Legal structures (trusts)*

381. With regard to the trusts, in Art. 766 of the Code of Commerce of Guatemala, the figure and its characteristics are included, indicating that it is composed of the settlor transmitting certain assets and rights to the trustee, affecting them for specific purposes; as well, Art.770 ° states that it may be constituted by contract or by will. Additionally, Art.768 ° indicates that: “Only banks established in the country may be trustees. Credit institutions may also act as trustees, having been specially authorized to do so by the Monetary Board”. Fiduciary entities as part of the banking system are subject to inspection and supervision of the SIB and IVE for verification of compliance with AML/CFT obligations. As of June 2015, Guatemala reported having 249 trusts, 169 of which are private. With the SIB authorizing and controlling trusts, access to this information by the IVE is unrestricted.

### *Public availability of information on the creation and types of legal persons and arrangements*

382. The information on legal persons and arrangements in Guatemala it found in the following Registers:

383. Existing registries in Guatemala, which are managed by different entities, are:

- Public registries
  - a. REMER, registers profit-generating entities;
  - b. REPEJU; registers non-profit entities;
  - c. INACOP; registers cooperatives of all kinds, including Savings and Credit Cooperatives;
  - d. Property registry
- Other registries
  - a. Tax registry; to carry out any kind of activity, entities, either for profit or not for profit, must register before the Tax Authority
  - b. SIB; authorized and registers Trusts.

384. In Guatemala, regarding the core issue 5.1, only information provided by the Commercial Registry is available for on-line consultation, where besides information on original shareholders and increases in capital, information on the legal standing of the company is available, as well as data of directors, legal representatives, articles of incorporation, data on principal places of business and branches. This is not the case of the REPEJU and the INACOP, where information can be accessed from a formal request by note to the registry office.

385. Regardless, Guatemala has developed e-government tools to cover the lack of timely information by REPEJU and INACOP, alternate to information provided by the REMER, i.e., access to information on natural and legal persons and arrangements registered with the tax administration to carry out any economic activity or to be subject to tax benefits. This tool is the Guatecompras ([www.guatecompras.gt](http://www.guatecompras.gt)) platform, where consolidated information of a natural person or legal entity can be accessed, such as registration date, legal representatives, domicile for tax purposes and information on State procurements; however, this tool does not provide information on shareholders, partners, directors or branches identification information, if any.

386. According to the above, it is considered that the information on the incorporation and types of legal persons and other arrangements is not publicly available immediately, which limits its access and therefore affects the efforts made by the OSs to conduct an adequate CDD.

#### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal persons*

387. Guatemala has implemented actions to identify and assess to what extent legal persons may be abused to carry out ML/TF activities. These are the results.

- i. Typologies reports from 2012, 2013 and 2014, where the IVE has identified criminal patterns including legal persons. These reports have been disclosed to the OSs and PPO and that could generate alerts related to legal persons or arrangements.
- ii. Guatemala, by way of the IVE, conducted a study in 2013 on ML/TF vulnerable sectors and as a result of this report ML risk was detected in NPOs to receive and/or manage public funds and to transfer funds.  
Said study provided the foundations to amend Article 5 of the AML Law Rules in November 2013, in which it was resolved to incorporate as a regulated entity:  
*“k. Non-for profit entities, irrespective of their denomination, those which receive, manage or execute State funds and/or receive from, or send funds abroad.”*
- iii. Likewise, pursuant to Art. 15 of PFRT Law, NPOs are also OSs regarding TF.  
Part of the ML/TF NRA for Guatemala included an analysis of the risks of legal entities, specifically NPOs, to be used in ML/TF activities. Said analysis ratified the outcomes of Typologies reports carried out by the IVE and a NPO 2013 study. Hence a medium-high level was given to NPOs regarding ML/TF, and medium to legal entities and trusts. In the light of the preceding, the ML/TF NRA Action Plan was set in motion, and all financial entities were instructed to adopt enhanced KYC measures should they detect or begin operations with NPOs, legal persons and arrangements.

388. Pursuant to the abovementioned, it is considered that, in view of the studies conducted and information provided, the competent authorities identify, assess and understand the vulnerabilities of the sector and the extent of probable unlawful use of local legal entities for ML/TF activities, and they have enforced rules and taken actions to mitigate it.

#### *Specific or enhanced CDD and record-keeping requirements*

389. Guatemala has developed the following actions to prevent the unlawful use of legal persons and other arrangements for ML/TF purposes:

- Forbidden issuance and circulation of bearer shares. The Commercial Code has been amended in 2011 to exchange bearer shares for nominative shares. The conversion period ended in June 2013 and as a result, from the total 101,048 companies, 758 of them did not comply with the requirement. It is important to point out that they should have been granted an authorization issued by a Court of Civil competence.
- The instruments for the creation of trusts were limited to contracts and wills, and they must be formalized in a public deed; moreover, only banks and financial companies authorized by the monetary board may act as trustees, provided that they have received a favorable opinion by the Superintendence of Banks.
- As provided for in the AML/CFT Law, legal persons are subject to criminal prosecution (as a separate body independent from their members, shareholders, officials or legal representatives, for the commission of ML or other assets and TF). An example of this is the outcome of Case 4, where the Guatemalan Courts convicted a legal entity apart from its members, shareholders, officials or legal representatives.

390. However, Guatemala does not legally provide for the obligation of complex legal arrangements to identify beneficial ownership of shareholders which are legal persons.

#### *DDR measures implementation*

391. Relevant competent authorities access basic information on beneficial ownership of legal entities created in Guatemala as follows:

- Legal entities may carry out economic activities in Guatemala only if filed with the Company Register and Tax Authorities and obtained RTU registration.
- This having been stated, Guatemalan rules provide that the obligation of legal entities to update the information filed with the Tax Authorities once a year or 30 days after any amendments to said information. Registration data include mainly such of directors, legal representatives, accountants, domicile for tax purposes and branches. Updated information before the SAT is available for competent authorities as previously stated.
- Non-compliance with the duty to update information by taxpayers causes tax violations as per the tax code; moreover, it empowers the SAT to request the filing of legal entities shareholding registry, which must be available and updated.
- Competent authorities can access information from public records online and by request in the case of the REMER and only by request in the case of REPEJU and INACOP.
- Likewise, competent authorities can access information from the SAT.
- Tax Authorities have provided a RTU office at the PPO, where it is possible to provide tax information by request, to be added to the pertinent investigations.
- The IVE, pursuant to AML/CFT Law, is empowered to request natural or legal persons any information it deems pertinent. This power entails CDD information of obliged persons.
- In order to unify CDD gathering information methods, the IVE, pursuant to applicable legislation, has designed a form for the beginning of certain business relationships named IVE-IR-02, which financial entities are required to file. The following information must be included: main economic activity or company purpose, tax identification number, country of constitution; information from the deed of constitution (including authorizing acting notary), information from the public registry where filed, complete domicile, business and

financial references of the requesting entity, members of the Board of Administration, Board of Directors or similar body, information on partners or members with a participation larger than 10%, country of location of the main suppliers or clients, information of the legal representative, information of other subscribing parties and beneficiaries. In practice, said information has been used frequently in financial analyses and criminal prosecution and it is useful for OSs to ascertain beneficial ownership of legal entities clients.

392. Access to information on beneficial ownership has granted Guatemala the possibility to investigate cases including forfeiture measures without conviction

#### Case 7

Mr. MPR was found guilty of criminal association to distribute cocaine in the United States of America and sentenced to twenty-five years of prison and payment of a USD 8,800,000 fine by a Court of said country. Starting from that Court decision and the corresponding actions by the FCLA-UED several goods were forfeit.

It is to highlight that Gurdjiev, S.A: does not have any economic or financial profile to acquire the goods it possessed, as the company did not report significant operations to the Superintendence of Tax Administration, trade operations nor economic income, which proves its lack of purchasing power, therefore the investigations led to believe that the entity Gurdjiev, S.A was used with the sole purpose of acquiring assets, concealing their origin and giving them the appearance of legality. This entity was used by MPR, beneficial owner, mainly to carry out illicit ML activities. Likewise, this entity was commonly considered as a “cardboard” company, according to the investigation and evidence found by the PPO.

#### Case 8

On March 28, 2011, an arrest warrant with extradition purposes was issued against Mr. A, as requested by the United States of America. Mr. A was charged with conspiracy to distribute cocaine with the knowledge and understanding of it being imported into said country.

On July 13, 2015, the sentence was issued in Guatemala declaring the validity of the asset forfeiture measure on goods consisting of: 2 lands possessed by individuals, 2 lands possessed by legal entity XX, 2 companies possessed by entity YY. These persons and entities were linked and related to Mr. A who was the beneficial owner.

In the case of legal entities, it was proved that they were related to Mr. A, as they were confirmed by members of his family and were incorporated with money that was the product of illicit activities carried out by Mr. A and its related criminal structure. The related entities were incorporated with funds provided by Mr. A, through which the latter carried out the illicit ML activities. Furthermore, through the aforementioned companies, properties to which splits and consolidations were performed, were acquired and later donated to Mr. A, family members and trusted ones.

393. On the other hand, access to basic information and information on beneficial ownership has given the IVE the chance to cover requirements on legal persons incorporated in Guatemala. That is why, from a total of 1981 requirements received by persons for Guatemala, 529 referred to legal entities.

394. However, in the case of Guatemala, companies are not required to identify the beneficial ownership of complex legal persons, i.e., when a shareholder of a company is another company.

### *Reporting obligations and tipping-off*

395. Even though there is not a formal record in Guatemala for trusts, banks and financial companies (those exclusively authorized to act as trustees) are subject to oversight and inspection of the SIB and they are OSs as per ML/TF standards, therefore, they are obliged to provide information when the IVE and the SIB require them to do so.

396. In this regard, by way of IVE Official Letters No. 624-2010 and No. 4471-2014, financial companies (including those rendering trust services) have been ordered to apply CDD measures to identify trust relevant parties, as well as their beneficial ownership. Such information is required to be updated. Compliance with these obligations is under oversight of the IVE in supervision activities. Procedures are in force to this end.

### *Imminent implementation of internal controls and legal and statutory requirements*

397. Guatemala has legal provisions in force which provide for the application of sanctions (including criminal sanctions) for lack of compliance with information requirements. The IVE, as well as the SAT and the PPO have applied sanctions as mentioned below:

- For the period covering January 2009 to July 2015, the IVE applied 11 sanctions to OSs for not disclosing information required on time, as well as 10 sanctions for lack of compliance with rules related to CDD.
- Regarding sanctions applied to companies for lack of disclosure on shareholdings records, the SAT has reported applying 10,937 sanctions for the period covering January 2014 to July 2015.
- PPO reports 1713 convictions for crimes related to lack of compliance with the general obligation to disclose information to the Courts (concealment and obstruction of justice). It should be noted that not all cases comprise specific information on beneficial ownership.

### *Conclusions on Immediate Outcome 5*

398. According to the above, Guatemala has a **moderate level of effectiveness in the Immediate Outcome 5.**

## CHAPTER 8. INTERNATIONAL COOPERATION

### *Key findings and recommended actions*

#### **Key findings**

-Guatemala's International Cooperation is based on the basis of multiple mechanisms available regarding AML and Extradition, in addition to the cooperation that is provided on financial intelligence through the IVE, asset recovery and other cooperation provided by entities such as police, customs, and immigration. In addition, the information exchange agreements between financial supervisors and MOUs signed by the IVE with foreign counterparts.

- The IVE is managed through two groups of information exchange such as the Egmont Group and the Regional Network comprised of the Central American countries, Colombia and the Dominican Republic

- Through adequate international cooperation, Guatemala has worked to prosecute perpetrators of these crimes across borders and provide the assistance necessary to cooperate with those nations that need it in the fight against ML. To this is added the cooperation agreements signed by the Republic of Guatemala with other countries like the United States of America, where they have received technical and financial assistance necessary to deepen their strategies in the fight against Transnational Organized Crime

#### **Recommended actions**

-It is recommended, further efforts to increase financial resources to enable it to strengthen institutions related to ML/TF, not only prosecutors but also the rest of the competent authorities so that they can and have the opportunity to use all special investigative techniques that are normatively available.

- It is necessary to optimize the development of international cooperation through the AML and agreements signed and ratified in Guatemala treaties, in particular it must be clear what procedures are to be followed when required and to act in the most expedited manner.

399. The relevant Immediate Outcome considered and evaluated in this chapter is IO. 2. The relevant recommendations for the assessment of effectiveness in this section are R. 36-40.

### **Immediate Outcome 2 (International cooperation)**

400. Guatemala has a legal basis that allows its competent authorities to be able to provide significant assistance in International Cooperation. Through different mechanisms or international instruments, actions are developed for collaboration and exchange of information with their foreign counterparts; they have signed various memorandums or agreements, either with their counterparts and with international organizations but without conditioning that firm collaboration, since under the principle of reciprocity they have also cooperated considerably.

401. Guatemala has an interagency structure that has enabled it to expand and improve International Cooperation, as it was mentioned by the Office of International Affairs of the PPO.

402. The signing of agreements between institutions has greatly improved its communication channels.

403. In addition, according to information on international cooperation received from ten (10) countries that attended to the consultation issued by GAFILAT to the FATF Global Network, it should be mentioned that the authorities competent in cooperation attend to consultations and requirements in a timely manner, although in some cases it might be in less time. In addition, it is noteworthy that the authorities, in particular the IVE are willing to lend technical assistance to their counterparts. It is also important to mention that the IVE carries out an annual survey among the counterparts with which it shared intelligence information in

order to measure the level of satisfaction of cooperation provided by the country, with the surveys for 2013-2015 showing satisfactory rate as a result.

*Provision of mutual legal assistance (MLA) and extradition*

404. Guatemala provides Mutual Legal Assistance (MLA) and extradition in the framework of different legal instruments, in order to facilitate investigations and proceedings concerning crimes that concern us.

405. The PPO, judicial authorities and any other competent authority, may provide and request assistance from other States to carry out procedures regarding MLA and extradition.

406. Several signatures of Bilateral and Multilateral Agreements support the legal mechanisms to provide such assistance. Such as the Agreement Establishing the Specialized Unit of International Affairs – UEAI-, which is responsible for supporting the Attorney General of the Republic and Head of the PPO, in all actions necessary for the implementation of measures for international cooperation in criminal prosecution, according to Laws, Conventions, Treaties, Conventions and other international instruments governing such measures.

407. The UNILAT, among other functions is responsible for knowing and intervening in the extradition proceedings to be generated in an investigative processes of cases known (Active extraditions) and shall have jurisdiction to intervene on behalf of PPO in court proceedings by requests for extradition for crimes of Drug Trafficking and/or ML are effected to the State of Guatemala (Passive extraditions).

408. It should be mentioned that in order to prioritize and respond to requests for Legal Assistance the Law Regulating Extradition has been established in procedure, that allows a person acquiesce to the request or to surrender voluntarily, thus reducing response times.

409. Similarly, PPO-UEAI reports that according to the terms of the assistance and the treaty or convention invoked, it establishes who is the Central Authority to comply with requests for legal assistance in criminal matters. For example, in the case of applications for passive legal assistance, when Rogatory Letters enter the MINEX, who forwards them to the Secretariat of the Supreme Court of Justice, the Ministry assigned a Comptroller Judge and he forwards it to PPO for completion therefore looking for the provision of all MLA and extradition responses within reasonable timeframes.

410. It is important to point out that the UEAI, though not having any mechanism in force for the selection of legal assistance priorities since these are processed by date and time of entry, after the analysis made by the prosecutor and after establishing that diligence proceedings, hearings and videoconferences appear in some applications, priority is given to these types of applications for them to comply before due date. It is recommended to set a mechanism to answer timely or to reduce time limits for answers of international applications.

**Table 46**

PPO MLA and extradition Jan-December 2011	
No. Country applications	66
Positive answers	66
Denied applications	0
Applications in progress	0

**Table 47**

PPO MLA and extradition Jul 2012 – Dec 2014			
Passive advice	Total	Active advice	Total
Application No.	51	Application No.	18
Positive answers	20	Positive answers	3
Denied applications for lack of compliance by the office of the Inter-American Convention on Mutual Legal Assistance	5	Denied applications	0
Referred applications	0	Referred applications	0
Applications in progress	26	Applications in progress	2
		Pending answer	13

**Table 48**

Judiciary MLA Jan 2011 – Jun 2014	
Amount of cases being referred	75
Amount of positive answers	52
Amount of denied applications	5
Amount of referred applications	3
Amount of applications in progress	15

*Search for timely legal assistance to combat the national ML, associated predicate offences and TF cases with transnational elements*

411. MLA in criminal matters must be requested through the PPO as established in the constitutional mandate, for this purpose, the Specialized Unit for International Affairs, to channel such requests was created.

412. We should consider that Guatemala presented evidence of handling requests for cooperation, such as in the cases which were previously referenced in the MER; likewise it has bilateral and multilateral agreements and memorandums of cooperation with other countries; the country showed examples of cases of successful delivery of international communication; supplied to the country to which the request is directed, relevant and accurate information to enable it to understand and evaluate petitions; prosecutes its own nationals; requests seizures and forfeitures from other countries; presented evidence to share information indirectly, and was shown to have adequate resources to issue and coordinate requests for assistance on time. Therefore, it can be assured that Guatemala has sought international legal assistance to pursue internal cases of ML, associated predicate offences and TF cases with transnational elements.

*Search for other forms of international cooperation for AML/CFT purposes*

413. The IVE has implemented and directed its legislation in line with international standards in the fight against ML/TF, being so, presented samples of internationally active participation through different forums, groups and workshops, among which we can mention the CFATF, GAFILAT, the Egmont Group, at the invitation of MINEX participates in the GELAVEX and CICTE; has Multilateral Agreements such as the Memorandum of Understanding for Regional ML/TF struggle with Central America, Colombia and the Dominican Republic for the exchange of information. Additionally, it maintains forty-four (44) memorandums of understanding at the bilateral level for the exchange of information related to ML/TF:

**Table 49: Memoranda of Understanding entered into with counterpart FIUs**

#	Country	#	Country
1.	<i>Albania</i>	2.	<i>United States of America</i>
3.	<i>Anguilla</i>	4.	<i>France</i>
5.	<i>Dutch Antilles</i>	6.	<i>Haiti</i>
7.	<i>Argentina</i>	8.	<i>Honduras</i>
9.	<i>Aruba</i>	10.	<i>Cayman Islands</i>
11.	<i>Australia</i>	12.	<i>Italy</i>
13.	<i>Barbados</i>	14.	<i>Lebanon</i>
15.	<i>Belgium</i>	16.	<i>Macedonia</i>
17.	<i>Bermuda</i>	18.	<i>Mexico</i>
19.	<i>Bolivia</i>	20.	<i>Montserrat</i>
21.	<i>Brazil</i>	22.	<i>Nicaragua</i>
23.	<i>Bulgaria</i>	24.	<i>Panama</i>
25.	<i>Canada</i>	26.	<i>Paraguay</i>
27.	<i>Chile</i>	28.	<i>Peru</i>
29.	<i>Colombia</i>	30.	<i>Portugal</i>
31.	<i>Commonwealth of the Bahamas</i>	32.	<i>Dominican Republic</i>
33.	<i>Republic of Korea</i>	34.	<i>Romania</i>
35.	<i>Costa Rica</i>	36.	<i>St. Kitts and Nevis</i>
37.	<i>Cuba</i>	38.	<i>St. Vincent</i>
39.	<i>Ecuador</i>	40.	<i>Ukraine</i>
41.	<i>El Salvador</i>	42.	<i>Uruguay</i>
43.	<i>Spain</i>	44.	<i>Venezuela</i>

414. It should be noted that to maintain the confidentiality of information, such requests are worked through the Egmont Secure Web, complying with the principles established by the agency.

415. In addition, there is a secure network for the exchange of information based on the Regional Memorandum of Understanding to counter ML/TF between FIUs, which was entered into by Guatemala in 2013. Confidentiality Agreements, procedures and mechanisms (handbooks) also exist to ensure that the information exchanged is secure.

416. It should be noted that Guatemala exchanges information with countries with which it has signed Memoranda of Understanding and sometimes with countries that are not part of the Egmont Group, based on the same criteria established by the Egmont Group, which promote the broadest exchange of information. Likewise, the AML Law in Art. 35 mentions the administrative assistance where the PPO, the IVE and any other competent authority could provide and request administrative assistance to competent authorities of other countries in order to facilitate actions to be carried out to achieve the objectives of the Law. Information provided during the on-site visit proves the aforementioned exchange of information.

417. Although there is a MOU negotiation procedure it is recommended to establish strategies to expand the range of agreements signed with Egmont member countries in order to formalize the exchange of information and be sustained under a broad legal basis or, conversely to include in the current legislation the no need for the signature to exchange of information.

418. The signing of twenty (20) MOUs between Financial Supervisors, the SIB and financial counterparts is highlighted.

**Table 50: MOUs and cooperation agreements by the SIB and its supervisory foreign counterparts .**

#	Country	#	Country
1	El Salvador	2	Peru
3	Montserrat, British West Indies	4	Dominican Republic
5	Honduras	6	Costa Rica
7	Nicaragua	8	Bahamas
9	Mexico (banks and stocks)	10	Bolivia
11	Venezuela	12	Barbados
13	Puerto Rico	14	United States
15	Belize	16	Colombia
17	Mexico (insurances)	18	Panama
19	Central American Council of Superintendence of Banks, Insurance and other financial companies.	20	Insurance Supervisor Association for Latin America. Bahamas

419. As examples of information exchange cases with supervising entities within the said MOUs, we can mention cases of joint work with Panama and El Salvador, as evidenced during the on-site visit.

420. At police level, information through INTERPOL, the GAFILAT Asset Recovery Network (RRAG) and others as the Hemispheric Information Exchange Network is exchanged.

421. The PPO has also adopted a number of international instruments that allow the exchange of information and which have been of great help to the development of high-impact cases, such as those presented during the on-site visit and stated in other sections of this MER.

*Provision of other forms of international cooperation for AML/CFT purposes*

422. The SIB through the IVE provides information through various regional and sub regional forums such as:

- Caribbean Financial Action Task Force (CFATF)
- Financial Action Task Force of Latin America (GAFILAT)
- Egmont Group
- Group of Experts to Control Money Laundering (GELAVEX) of the Inter-American Commission for Drug Abuse Control (CICAD) of the Organization of American States (OAS)
- Inter-American Committee Against Terrorism (CICTE)
- Establishment of the Financial Intelligence Unit, Special Inspectorate (IVE)

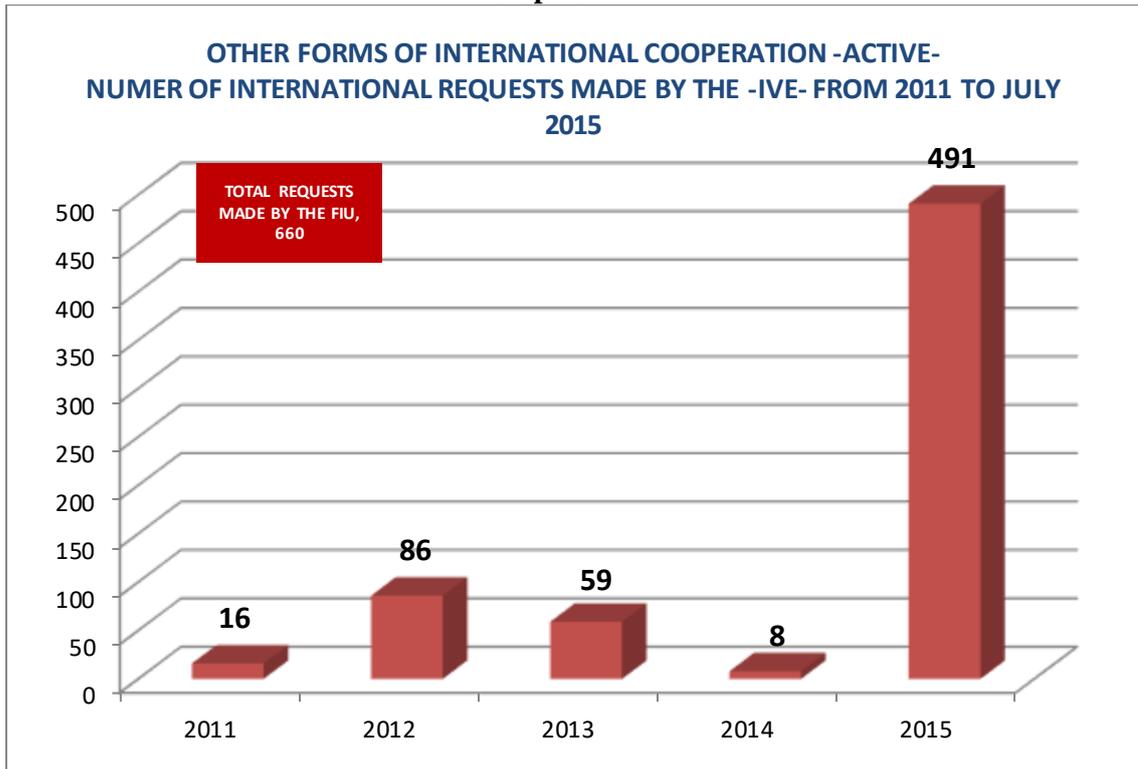
423. Based on the above, Guatemala has signed a number of agreements, MOUs on ML/TF, and sometimes for reciprocal duty or considering what is established by the regulations of the regional forum without the need of a formal legal instrument, therefore it is recommended that Guatemala works in order to officialize this measure.

424. It is important to note that, although in practice it happens otherwise, by invoking the principle of reciprocity and other criteria, the IVE has legally established, regarding the exchange of information with foreign counterparts under subparagraph d) of Section 33 of the AML Law and Sections 20 and 23 of the PRFT Law state that the functions of the IVE is the exchange with counterparts from other countries,

information for the analysis of cases related to money laundering or other assets with prior subscription of memoranda of understanding or other cooperation agreements with those entities. Similarly, this also is established in the internal procedure for the Management of the Documentation which is sent through the Egmont Secure Web.

425. Samples of successful presentation of international communications related to financial intelligence from which the IVE has the power to request, were submitted.

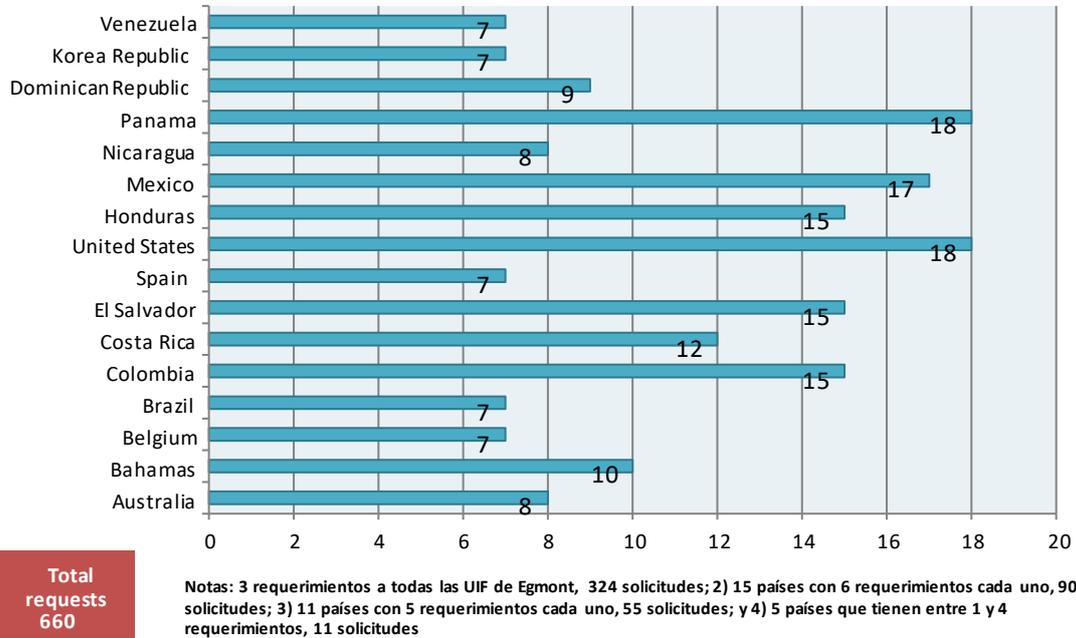
**Graph 3**



426. Among countries from which the IVE has requested more information are Panama, United States, Mexico, Honduras, El Salvador, Colombia and Costa Rica.

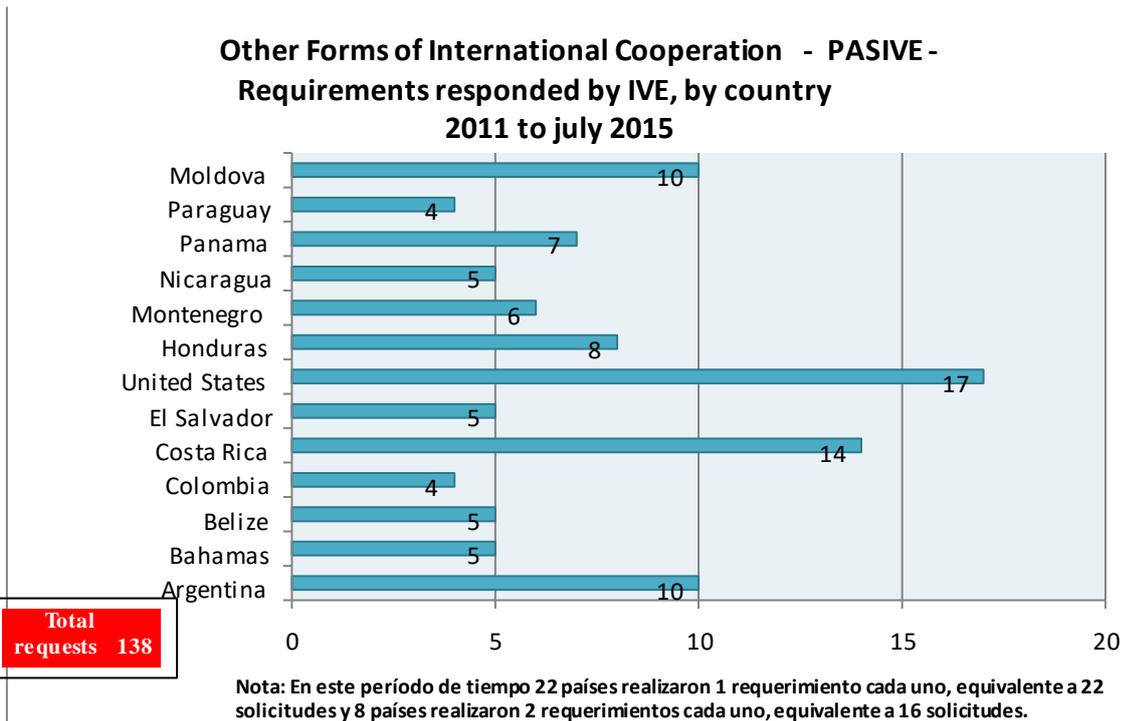
Graph 4

**Other forms of International Cooperation - ACTIVE -  
Destination of International requests sent by the IVE  
From 2011 to July 2015**



427. Of the forty-three (43) countries that have required intelligence information, IVE highlights the United States, Costa Rica, Republic of Moldova and Argentina.

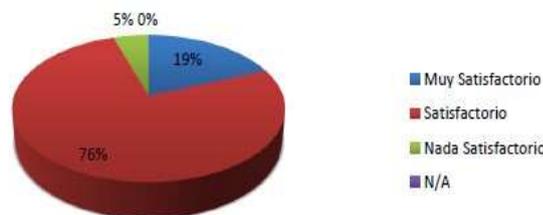
Graph 5



428. In order to strengthen the relationship of the IVE with the other institutions, they have signed a series of interinstitutional agreements which are currently being effectively implemented and aide in supporting requests for information.

429. The IVE has the adequate mechanisms to receive, assess, prioritize and respond to international requests for assistance related to ML/TF. However, variables were found on response times between the analyzed years, with them being between twenty-two (22) days in 2014, increasing to forty-seven (47) days in 2015, which is justified by the IVE as it does not only provide information it possesses, but also of financial, administrative and judicial nature. Likewise, it should be highlighted that satisfaction with information provided by IVE to its foreign counterparts has shown positive results in 2013-2015.

**Graph 6**  
**Resultados Generales**  
**Encuesta al Homólogas Extranjeras 2015**



430. Similarly, agreements between Financial Supervisors, Police Authorities and Public Prosecutor which should be noted as fundamental tools for the development of international cooperation were provided.

431. Guatemala, through its competent authorities indirectly shares information, demonstrates commitment and claims it has adequate resources to receive, manage, coordinate and respond to other forms of international cooperation.

*International exchange of basic information and information on beneficial owners and legal persons and arrangements*

432. The IVE has the power to provide cooperation and respond to foreign requests for exchange of information with counterparts in other countries for the analysis of cases related to money laundering or other assets.

433. Although cases were provided where relevant information was shared on legal persons, there was no evidence of exchange of information where it was able to detect the beneficial owner of a legal structure.

434. On the other hand, although there is an obligation to have a logbook, that obligation does not extend to the immediate updating, once changes occur in the structure which might seem difficult to obtain such accurate information. Nor can one appreciate the obligation to keep the beneficial owner updated on the legal person.

435. As it was mentioned in the analysis of Immediate Outcome 5, there are limitations in the access to information on the beneficial ownership of legal entities, especially those with complex share structures. It is recommended to establish legal mechanisms to ensure that the beneficial owner information is accurate and up to date in order to be able to share international cooperation. Nonetheless, with the resources at the disposal of the authorities, the already referenced cases prove that information on the beneficial owners was known.

*Conclusions on the Immediate Outcome 2*

436. According to the above, Guatemala has a **substantial level of effectiveness in the Immediate Outcome 2.**

## TECHNICAL COMPLIANCE ANNEX

This annex provides a detailed analysis of the level of compliance of Guatemala with the FATF 40 Recommendations in numerical order. It does not include descriptive text about the situation or risk of the country and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the MER.

The AML/CFT system of Guatemala has not been previously evaluated by GAFILAT, therefore this Annex provides a detailed analysis of all criteria according to the methodology for assessing the technical compliance with the FATF Recommendations and the effectiveness of AML/CFT systems to the fourth round of evaluations (hereinafter methodology).

### ***Recommendation 1 - Risk assessment and implementation of a risk-based approach***

CT1. *Criterion 1.1* Government Agreement (AG) 145-2014 (Art. 4. a) establishes the allocation of the Presidential Commission for the Coordination of Efforts Against Money Laundering or other Assets, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction (COPRECLAFT): “Analyzing national problems related to money laundering or other assets, financing of terrorism and the financing of proliferation of weapons of mass destruction, to identify vulnerabilities and risks to suggest actions to mitigate them.” On this basis, the COPRECLAFT, as part of the activities of the National Strategic Plan against ML/TF/FPWMD 2014-2018 (hereinafter NSP 2014-2018), scheduled the realization of the ML/TF National Risk Assessment. Deriving from this, Guatemala, carried out Money Laundering and Terrorist Financing National Assessment of Risk in Guatemala (hereinafter ML/TF NRA) during the years 2014 and 2015.

CT2. *Criterion 1.2* The AG 132-2010 created the Presidential Commission for the Coordination of efforts against Money Laundering or Other Assets and Financing of Terrorism in Guatemala, as amended by the AG to create the COPRECLAFT 145-2014, who is in charge of coordinating efforts and cooperation between state institutions to identify vulnerabilities and risks and propose actions to mitigate them (145 AG Arts. 2 and 4a). In addition, the “*Special Verification Intendant of the Superintendence of Banks (...) and, in his absence, shall act as the Director of the Special Inspectorate of the Superintendence of Banks. The Technical Secretary will be the technical and logistical support to the Coordinator of the Commission and perform its functions in an ad honor*” (AG 132 Art.7) is designated as technical secretary of the COPRECLAFT

CT3. *Criterion 1.3* Derived from the results obtained in the ML/TF NRA, the NSP 2014-2018 was updated and was established as a basis to update the NRA every two (2) years. This activity will be the responsibility of the table number 4 “statistics and technology”.

CT4. *Criterion 1.4* The NRA ML/TF was presented to the entities of public, private and research sector, which collaborated and participated in its elaboration, March 10, 2015, in a report of the NRA ML/TF previous to the workshop for preparing the Plan of Action of the NRA ML/TF. Also, through the official letters of the Special Verification Intendence (IVE) of June 2015 to various institutions involved (public and private sector) spread both the ML/TF NRA as well as the respective Plan of Action of the National Risk Assessment Money laundering and Terrorist Financing in Guatemala (hereinafter Plan of Action of the NRA ML/TF). In the case of the private sector, one corresponding each sector.

CT5. *Criterion 1.5* Derived from the results of the ML/TF NRA, the Action Plan of the ML/TF NRA in order to implement measures at national and sectoral level to mitigate the risks of ML/TF was developed, based on threats and vulnerabilities detected. activities to be developed by the OSs, whose regular monitoring is in charge of the IVE is established, and the actions to be implemented by the public sector, which were

incorporated into the NSP 2014-2018 where the respective follow-up will be performed by the COPRECLAFAT.

CT6. *Criterion 1.6.* According to the ML/TF NRA, it not determined that there are OSs financial institutions (FIs) or designated non-financial businesses and professions (DNFBPs) with a low level of vulnerability, permitting the decision to not implement any of the FATF Recommendations.

CT7. *Criterion 1.7* The ML/TF NRA concluded that the following sectors are the most vulnerable to ML/TF: funds transfer companies and credit unions, sales of motor vehicles, sales of real estate and property development, non-profit organizations and armoring services, among others. Thus, the Action Plan sets out a series of measures to be carried out by both the public and private sectors in order to manage and mitigate ML/TF risks.

CT8. Additionally, the Superintendence of Banks through the IVE, may instruct the OSs on measures to be implemented in order to prevent ML/TF (AML Law Rule Art 25 and PRFT Law, Article 14). Consequently, the IVE has issued several official letters to the OSs (FIs and DNFBPs), namely:

- Implementation of measures to make transactional analysis to each client who engages in the activity of buying and selling foreign currency y, particularly those identified as moneychangers (IVE Official Letters No. 1741-2011 and 1054-2013).
- Communication from the existence of typologies and inform the OSs technical document that contains them so that measures are implemented to prevent LD (IVE Official Letters No. 2126-2012, 2127-2012 and 3650-2014).
- Implementation of measures to identify, control and monitor the accounts of political organizations (IVE No. 366-2011 and Crafts 1307-2015).
- Implement prevention and control mechanisms for financial products or services usually called “Pre-paid Cards or Prepaid Cards” (IVE Official Letter 612-2010).
- Measures the OSs should consider when constituting a trust (IVE Official Letter 624-2010).
- Control of accounts on behalf of companies or other entities in training (IVE Official Letter 13-2009).
- Instruction on Politically Exposed Persons (PEP) (IVE Official Letters 1030 to 1034 No. 2013).
- Measures OSs should consider, to end their business relationship with customers or not start a relationship with the same individual or legal syndicated or linked to drug trafficking and/or organized crime and criminal organizations (Official Letters No. 1432-2009 and 1420-2013).

CT9. Finally, the Risk Management Guide ML/TF sent Official Letter IVE No. 3955-2015 aimed at OSs, Banks, Finance Companies and Offshore Entities (Off-shore) (hereinafter AR Guide ML/TF) provides that the above entities should identify their risks of ML/TF and determine if there is high risk and impact.

CT10. *Criterion 1.8* As mentioned above, the IVE may instruct the OSs on measures to be implemented in order to prevent ML/TF (AML Law Rules, Art. 25). Thus, the Official Letter IVE 721-2011 dated June 2, 2011, establishes requirements and simplified measures for starting relationships. In addition, the AR-ML/TF Guide provides that in case of lower risks, the OSs may only apply simplified measures permitted by national regulations.

CT11. As a result of the ML/TF NRA, the insurance sector was identified with a medium-low vulnerability, which the IVE through Official Letters 1268-2015 and 1342-2015 issued instruction on simplified measures on the information to be required in the form to start customer relationships.

CT12. *Criterion 1.9* The IVE is responsible for ensuring order and compliance with the AML Law and the PRFT Law (Art. 32 and Art. 20 respectively) and exercises the monitoring and supervision of the OSs

on compliance with the rules of ML/TF and the instructions that have been issued, based on risk (see analysis Recommendations 26-28).

CT13. *Criterion 1.10* The AR-ML/TF Guide to banks, finance companies and offshore entities, but not for the other OSs (FIs and DNFbps) directs such entities in managing the risk of ML/TF. The authorities indicate that they are working on the development of guides and/or guidelines for managing ML/TF risks from other OSs, which will be sent to all regulated entities in early 2016 according to the schedule established by the authorities.

CT14. *Criterion 1.10.a)* The AR-ML/TF Guide provides for the obligation to document risk assessments.

CT15. *Criterion 1.10.b)* The AR-ML/TF Guide states that each entity must meet and assess their risk factors derived from them and implement mitigation measures in order to minimize or control the risks to which they are exposed to the aforementioned factors. However, said Guide does not address all the OSs, but only banks, finance companies and offshore entities.

CT16. The AR-ML/TF Guide has to constantly evaluate the effectiveness of programs, policies, standards, procedures and internal controls. However, said Guide does not address all the OSs, but only banks, finance companies and offshore entities.

CT17. *Criterion 1.10.d)* The AR-ML/TF Guide states that the OSs should document the results of the implementation and updating of the methodology for risk management ML/TF and keep such records, which must be available and timely available if the IVE or other competent authority requires them. However, said Guide does not address all the OSs, but only banks, finance companies and offshore entities

CT18. *Criterion 1.11.a) - b)* The AML Law states that the OSs “*should adopt, develop and implement programs, policies, procedures and internal controls suitable to prevent misuse of their services and products in money laundering activities or other assets*” (Art. 19) must be approved by its Board of Directors, or senior management board (AML Law Regulations, Art. 9). this obligation is in the AR-ML/TF Guide and the Official Letter IVE No. 1484-2014 of DNFbps. It also states that there should be an audit mechanism to verify and assess compliance programs and standards (AML Law, Art. 19. C. For its part, the AR-ML/TF Guide also provides that as a result of risk monitoring, the OSs should conduct a risk evolution, “*the efficiency and effectiveness of programs, policies, standards, procedures and internal controls implemented; likewise, must establish weaknesses in the prevention system so that programs, policies, standards, procedures and internal controls adopted, developed and executed may be strengthened*”.

CT19. *Criterion 1.11.c)* As mentioned in criterion 1.7 IVE has instructed the OSs on measures to be taken regarding certain activities considered high risk. In addition, the AR-ML/TF Guide has to determine whether there is high risk and impact and implement enhanced measures in case of major or simplified for minor risks (where permitted by national legislation). However, said Guide is not directed at all the OSs, but only to banks, finance companies and offshore entities.

CT20. *Criterion 1.12* Except for simplified measures mentioned in criterion 1.8 any other measures of this nature have not been approved.

### *Weighting and conclusion*

CT21. Guatemala meets most of the requirements of this Recommendation, except as regards the assessment measures and risk mitigation for all entities, as the aforementioned Guide is not yet available to all OSs. **Recommendation 1 is rated as Largely Compliant.**

## ***Recommendation 2 - National cooperation and coordination***

CT22. *Criterion 2.1* The COPRECLAFI approved the NSP 2011-2014 (January 28 to 11) which developed the comprehensive strategy to combat ML/TF and precise actions to comply with the FATF Recommendations, under a total of eighty-eight (88) items. With the extension of the mandate of COPRECLAFI, the NSP 2014-2018 was approved and comprised of fifty-nine (59) activities. Also as a result of the ML/TF NRA, the Plan of Action of the NRA ML/TF was developed which proposed actions and deadlines, which were incorporated into the NSP 2014-2018 (July 17-2015).

CT23. *Criterion 2.2* As mentioned by the AG 132-2010 and as amended by AG 145-2014 COPRECLAFI<sup>11</sup>, which aims to coordinate efforts and cooperation between state institutions involved in the legal structure for the prevention, control, surveillance and punishment of crimes of ML/TF and the FPWMD, in order to contribute to the effective enforcement of approved and ratified international law and treaties (AG 145, Art. 2), was created.

CT24. *Criterion 2.3* For purposes of cooperating and coordinating actions and activities COPRECLAFI contained in the NSP are four (4) working groups<sup>12</sup>, made up of officials of the institutions that make up the committee, who meet regularly to make strategic decisions, monitor the progress of the inter-agency working and propose strategic initiatives to improve the prevention, control, surveillance and punishment of crimes of ML/TF. The Framework Agreement on Interagency Coordination and exchange of Information was signed by the entities that make up the COPRECLAFI, and invited entities that are also part of the legal framework for the prevention, control, surveillance, investigation, prosecution and punishment of such illegal activities (September 8 - 11). The agreement aims to “*strengthen a harmonized inter-agency support, improve levels of communication and coordination in order to take appropriate and homogenous actions in the fight against money laundering or other assets, and the financing of terrorism, respecting competences and legal autonomy (...)* “. (Subparagraph d).

CT25. *Criterion 2.4* Within the scope of the COPRECLAFI coordination of efforts and cooperation is included to combat the financing of proliferation of weapons of mass destruction (FPWMD). Also, the inter-institutional Agreement mentioned above, as amended in 2014 incorporated the theme of FPWMD.

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<sup>11</sup> The COPRECLAFI is composed of the following officials:

- a) Vice President, who presides and coordinates;
- b) Minister of Foreign Affairs;
- c) Minister of Interior;
- d) Minister of National Defense;
- e) Minister of Economy;
- f) Strategic Intelligence Secretary of State;
- g) Secretary General of the National Secretariat for Property Management in Forfeiture;
- h) Director General of Civil Intelligence;
- i) Superintendent of Tax Administration; Y
- j) Superintendent of Banks.

the COPRECLAFI may invite to participate the President of the Judiciary, the Supreme Court, the Attorney General of the Republic and Head of the PPO in its meetings to, as well as those deemed necessary to invite.

<sup>12</sup> Table 1: Tactics and Strengthening, Table 2: Training and Awareness, Table 3: Exchange Agreements and Coordination and Table 4: Statistics and Technology

*Weighting and conclusion*

CT26. Guatemala meets all the requirements of this Recommendation. **Recommendation 2 is rated as Compliant.**

**Recommendation 3 - Money laundering offence**

CT27. *Criterion 3.1* AML Law (Art. 2) criminalizes the ML offenses as follows:

*“Commits the offence of money laundering or other assets who by themselves, or through an intermediary:*

*a) Invest, confer, transfer or make any financial transactions with goods or money, knowing, or by reason of his office, employment, office or profession is obligated to know that they are products, derive or originate from the commission a crime;*

*b) Acquires, possesses, administers, holds or uses goods or money knowing, or by reason of his office, employment, office or profession is obligated to know, that they are the product, derive or originate from the commission of a crime;*

*c) Conceals or prevents the determination of the true nature, source, location, disposition, movement or ownership of property or money or rights to such goods or money knowing, or by reason of his office, employment, trade or profession is obligated to know, that they are the result of the commission of a crime.”*

CT28. According to the above description, the assumptions set out in the the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (Vienna Convention) and the United Nations Convention against Transnational Organized Crime 2000 (Convention Palermo) appear to be set in the definition of AML Law.

CT29. *Criterion 3.2* The criminalization of ML provides that any offence is predicate of ML. Additionally, Guatemalan law criminalizes offences included in the categories established by the FATF Glossary as follows, however the deficiencies in the criminalization of TF stated in Recommendation 5 impact compliance with these criteria:

<b>FATF Category</b>	<b>Guatemala Legislation</b>
Participation in an Organized Criminal Group and Fraud	Law Against Organized Crime (LCDO), Arts. 1- 5 Penal Code (CP), Arts. 263–271.
Terrorism, Including Terrorist Financing	CP, Art. 391 y Ley PRFT, Art. 4.
Human Trafficking and Smuggling of Migrants	CP, Art. 202 Migration Law, Arts103–105.
Sexual Exploitation, Including Sexual Exploitation of Children	CP, Arts. 188 y del 191–193 Ter.
Illicit Trafficking in Narcotic Drugs and Psychotropic Substances	CP, Art. 307 y Law Against Drug Trafficking, Arts. 35 y 38.
Illegal Arms Trafficking	Arms and Ammunition Act, Arts. 99 al 102 y 120.
Illicit Trafficking in Stolen Goods and Other Goods	Mobile Terminal Equipment Act, Art. 24.
Corruption and Bribery	CP, Arts. 439–452.
Fraud	CP, Art. 450.
Counterfeiting Money	CP, Arts. 313–320.
Counterfeiting and Piracy of Products	CP, Arts. 274, 275, 299, 300 y 321–323.

<i>FAFT Category</i>	<i>Guatemala Legislation</i>
Environmental Crimes	CP, Arts. 343–347 and Protected Areas Law, Arts. 82 y 83.
Murder, Grievous Bodily Injury	CP, Arts. 123–129, 131, 132 y 144–150.
Kidnapping, Illegal Deprivation of Liberty and Hostage-Taking	CP, Arts. 201–205.
Robbery or Theft	CP, Arts. 246–255.
Contraband (Including Taxes and Customs Charges)	Law Against Fraud and Customs Contraband, Arts. 4, 5 and 7.
Tax Crimes (Related to Direct Taxes and Indirect Taxes)	CP, Arts. 358.A - 358.D and Law Against Fraud and Customs Contraband, Arts. 1, 2 and 7
Extortion	CP Art. 261, y LCDO, Arts. 10 y 11.
Misuse of Confidential or Privileged Information and Market Manipulation	CP, Arts. 274, 275, 357 y 358

CT30. *Criterion 3.3* As mentioned above, any offence is predicate of ML, thus this criterion does not apply.

CT31. *Criterion 3.4* The criminalization of the ML of Art. 2 (AML Law) refers to 'money or goods'<sup>13</sup> that are “*product, derive or originate from the commission of an offence*” with which the offence of ML extends to any type of goods.

CT32. *Criterion 3.5* AML Law (Art. 2 A) provides that the offence of ML “*is autonomous and for its prosecution, no prosecution, ruling or conviction regarding the crime from which the property, money or other assets originate*”.

CT33. *Criterion 3.6* ML predicate offences are extended to all conducts occurring in another country as if the offence had occurred at the national level (CP, Art. 5.3 and 5.5)

CT34. *Criterion 3.7* The offence of ML seems to be applicable to all persons who commit the predicate offence and perform the actions that typify ML, since it does not appear to be limited in this regard.

CT35. *Criterion 3.8* The intent and knowledge of the offence of ML is apparent from the factual circumstances of the case (AML Law, Art. 2 A and CPP Criminal Procedure Code, Arts. 5 and 182).

CT36. *Criterion 3.9* The AML Law establishes sanctions against someone who commits the offence of ML six (6) to twenty (20) years of deprivation of liberty, and a “*fine equal to the value of goods, instruments or products object of the crime, confiscation, loss or destruction of objects from the crime or instruments used for its commission; payment of costs and expenses; and the publication of the judgment in at least two of the media in writing of largest circulation in the country*” (Art. 4). In addition, establishing aggravating to cases where the perpetrator of the criminal conduct has a “*public office, an official or employee, or an official of the IVE*” along with the additional penalty of disqualification from the corresponding charge (Art. 7).

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<sup>13</sup> PRFT Regulation Act, Art.3, defines property as “*goods of any kind, whether tangible or intangible, movable or immovable, regardless of how they have been obtained, and legal documents or instruments, whatever their form, including the form electronic or digital, evidencing title to or interest in such property.*”

CT37. *Criterion 3.10* The AML Law provides that legal persons shall be eligible for the offences established in the aforementioned law, the penalty is “*a fine of ten thousand dollars (USD 10,000.00) to six hundred twenty-five thousand US dollars (USD 625,000.00) or its equivalent in national currency, according to the gravity and circumstances in which the offence was committed, and warning that in case of recidivism the cancellation of its legal personality be ordered definitely*”.

CT38. *Criterion 3.11* Guatemalan law provides for different possibilities of ancillary offences of ML (LCLD, Art. 6, LCDO, Art. 3 and CP, Arts. 14, 17, 36 and 37).

### *Weighting and conclusion*

CT39. Guatemala meets all the requirements needed for an adequate criminalization of ML. However, the deficiencies in the criminalization of TF established under Recommendation 5 impact compliance of this Recommendation. **Recommendation 3 is rated as Largely Compliant.**

### *Recommendation 4 - Confiscation and provisional measures*

CT40. *Criterion 4.1* Guatemalan law provides for two (2) figures, 'forfeiture'<sup>14</sup> and seizure<sup>15</sup>. Forfeiture is imprescriptible, distinct and independent from the prosecution and criminal liability, so that, unlike confiscation, does not depend on criminal proceedings (LED, Art 7).

CT41. *Criterion 4.1 a-d*) Forfeiture action extends over a) laundering of goods (LED, Art 4.a.); b) assets that are the product of, instruments used or attempted to be used in ML or predicate offences (LED, Art 4c-f); c) goods that are the product, were used, were aimed or assigned to be used to finance terrorism, (which includes the financing of terrorist acts) (LED, Art. 4.cf), but not for funding individual terrorist or terrorist organizations even in the absence of a link with specific terrorist act or acts; and d) property of corresponding value (LED, Art. 35). The AML Law provides that the confiscation applies only when the ruling declares that forfeiture action is out of order (Art. 17A).

CT42. *Criterion 4.2.a*) The LED states that it aims to regulate the “*identification, location, recovery, repatriation of assets and extinction of rights relating to domain thereof, as well as profits, yields, products, returns or exchanges of illicit or criminal origin or provenance, to the State (...)*” (Art. 1. A). The valuation of assets is carried out once the sale is made at public auction, or the provisional use thereof (LED Regulation, Arts. 37-39) is authorized.

CT43. *Criterion 4.2.b*) The LED has provided for the implementation of the relevant precautionary measures: suspension of property rights or accessories, record on the asset forfeiture, seizure, intervention, and the freezing or seizure of goods, funds deposited in accounts or safe deposit boxes in the banking or financial system and those deposited at a later date (Art. 22). The latter is similarly established in the AML (Art. 11) Law, the PRFT (Art. 12) Law and the Law CDO (Art. 73)

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<sup>14</sup> The Forfeiture Act (LED), Art. 2.d defines the action of asset forfeiture as “*the loss to the State, any right to the property (...) and that are within the grounds stipulated in this Law, whatever its nature and kind, without consideration or compensation of any kind for the owner or any person holding or behave as such.*”

<sup>15</sup> CP, Art. 60 defines seizure as “*the loss to the State, objects that come from a crime or misdemeanor, and instruments that have been committed, unless they belong to a non-responsible third of the fact. When the aforementioned objects WHATSOEVER prohibited or are not legitimate commercial use, the confiscation will remember, although not reach declared the existence of the crime or the guilt of the accused*”

CT44. *Criterion 4.2 c)* The LED indicates that “*the acquisition or disposition of assets, as well as the constitution of assets of illicit or criminal origin, knowing or reasonably presuming of such quality, is contrary to public order and the explicit prohibitive laws or becomes fraud against the law. The acts and contracts dealing with such businesses do not constitute fair title and are void ab initio*” (Art. 3. A). Additionally, it also provides that the provisions of the LED are “*applied and interpreted over those contained in any other law*” (Art. 3b)

CT45. *Criterion 4.2.d)* It corresponds to the Attorney General (or prosecutor appointed) to hear of the forfeiture action and conduct the investigation to obtain the necessary evidence for such effects. (Art 16). In addition, from the point of view of the criminal proceedings, the PPO should identify the assets that may be subject to seizure under the commission of an offence (art. 5).

CT46. *Criterion 4.3* The LED, AML Law and PRFT Act protect the rights of bona fide third parties (LED, Arts., 5, 10 and 35, LED Regulations, Art. 2 and AML Law, Arts. 8, 11, 12, 15 and 16).

CT47. *Criterion 4.4* The LED created the National Board of Property in Forfeiture (CONABED), to which the National Secretariat for Property Management in Forfeiture (SENABED) is subordinated, as an executive body, with the function, among others, to ensure the proper administration of all assets under their responsibility and those which are declared in forfeiture. It is responsible for the receipt, identification, inventory, monitoring, maintenance and reasonable preservation of property. It also corresponds to it to follow up the goods subject to the action and represent an economic interest to the State; is responsible for sell, auction or donate confiscated goods (Chapter V). Moreover, it also states that legal trade of confiscated objects sold and the proceeds of the sale will go to the private funds of the Judiciary (CP, Art. 60).

### *Weighting and conclusion*

CT48. Guatemala's legal system has adequate interim, seizure and forfeiture measures. However, in relation to confiscation or termination of goods from funding individual terrorist or terrorist organization even in the absence of a link with a terrorist act or acts; there are no legal mechanism for this because such behavior is not defined. **Recommendation 4 is rated as Largely Compliant.**

### *Recommendation 5 - Terrorism financing offence*

CT49. *Criterion 5.1* Art 4a of PRFT Act establishes the offence of TF as follows:

*“The crime of financing of terrorism is committed by whom, by any means, directly or indirectly, by himself or through an intermediary, deliberately provides, collects, transfers, delivers, acquires, possesses, administers, negotiates or manages money or any kind of goods, with the intention that they be used or knowing that they will be used in whole or in part, for terrorism.*

*This offence is also committed by whoever performs any of the acts defined as FT in any approved and ratified by Guatemala international agreements.*

*The perpetrator of this crime will be imposed a non-commutable prison term of six (6) to twenty (25) years, plus a fine of ten thousand dollars (USD 10,000.00) up to six hundred twenty-five thousand dollars (USD 625,000.00) of the United States of America, or its equivalent in national currency.*

*For the offence of terrorist financing to be deemed as accomplished, it not is necessary to carry out acts of terrorism, but that the intention of committing such acts is manifested by external material signs. Nor it will require an investigation on acts of terrorism, criminal proceedings to have been initiated or to have produced a conviction. “*

CT50. Additionally, the PRFT law defines the crime of terrorism as “*whoever, in order to alter the constitutional order, public order of the State or coerce a legal person of public, national or international law, implements violence, attacks against the human life or integrity, property or infrastructure, or whoever with the same purpose executes acts aimed at causing fire or wreak havoc or rail, sea, river or air disasters*” (Art. 2).

CT51. Regarding international conventions, it is worth noticing that Guatemala still has not approved or ratified the following instruments: The Protocol of the Convention for the Repression of Illicit Acts against the security or maritime navigation, the Convention for the Repression of Nuclear Terrorism Acts and the Convention for the Repression of Illicit Acts Related to International Civil Aviation.

CT52. According to the above, the offence of TF is consistent with Art. 2 of the International Convention for the Suppression of the Financing of Terrorism, with the exception of the three conventions mentioned in the paragraph above.

CT53. *Criterion 5.2* According to the definition of Art. 4 referred above, the TF offence extends to whoever provides or collects funds deliberately and by any means, directly or indirectly, with the intention of them being used or knowing that they will be used, whole or in part, to carry out terrorist acts. However, the TF offence does not extend to funding individual terrorist or terrorist organization even in the absence of a link with a specific terrorist act or acts.

CT54. *Criterion 5.3* The criminalization of Art. 4 is open, does not distinguish whether the funds come from a lawful or unlawful source.

CT55. *Criterion 5.4* The TF offence does not require that the funds are used for a terrorist act or be linked to a specific terrorist act (Art. 4).

CT56. *Criterion 5.5* The intent and knowledge on the commission of the offence of TF are explicitly mentioned as part of their criminalization (PRFT Law, Art. 4). Additionally, it is established that the crime can be proven by any means of evidence (CPP, Art. 182, CP, and Art 5).

CT57. *Criterion 5.6* The TF offence shall be punished with deprivation of liberty between six (6) and twenty-five (25) years and a fine from USD 10,000.00 to USD 625,000.00 (PRFT Law, Article 4). In addition, aggravating circumstances are set for cases where the perpetrator of the criminal conduct is a public employee or official (PRFT Law, Art. 5).

CT58. *Criterion 5.7* The PRFT Law provides for the liability of legal persons for the offence of FT, establishing the appropriate sanctions which are independent of the responsibility of individuals (Art. 7).

CT59. *Criterion 5.8* Auxiliary TF offences are referred to in the PRFT Law (Art. 11) and the AML Law (art. 3) and the Criminal Code in its general part (Arts. 14, 17, 35, 36 and 37).

CT60. *Criterion 5.9* According to the criteria mentioned in 3.2, the definition of ML establishes that any offence is predicate of ML, including the crime of TF.

CT61. *Criterion 5.10* The TF offence is extended to any conduct occurring in another country as if the offence had occurred within the country (CP, Art. 5.3 and 5.5).

### *Weighting and conclusion*

CT62. The Law PRFT adequately criminalizes TF. However, Guatemala has yet to ratify three (3) TF conventions and has not criminalized individual or organization terrorist financing even in the absence of a link with a terrorist act or acts. **Recommendation 5 is rated as Partially Compliant.**

### ***Recommendation 6 Targeted financial sanctions related to terrorism and terrorist financing***

CT63. *Criterion 6.1* Guatemala does not have its own specific mechanism (s) to carry out the identification of recipients of a designation according to the criteria of UN Security Council Resolutions.

CT64. *Criterion 6.2 a-b)* Guatemala has no authority or specific mechanism to identify the recipients of a designation according to the criteria of UNSC Resolution 1373, nor to making such designations on grounds or a reasonable basis.

CT65. *Criterion 6.2. c)* The agreement signed between the Ministry of Foreign Affairs (Foreign Ministry), the PPO and the SIB (October 3-13) provides that the MINEX will inform the PPO and the IVE, when at a national or supranational level a country or several countries notify Guatemala that a person or entity has been designated based on UN Security Council Resolution 1373, provided that such notification is not mutual legal assistance in nature. The PPO is responsible of meeting those requests proceeding to act under the LED.

CT66. *Criterion 6.2. d-e)* Guatemala has no specific mechanisms for making designations, thus it has no means to implement these requirements.

CT67. *Criterion 6.3 a)* The IVE can request information from the OSs and public and private entities in the country (AML Law, Arts. 28, 33-34) and all public or private entities are obliged to provide the assistance requested (PRFT Law, Art. 20). However, the standard does not establish a specific or proper mechanism by which the information is used to identify persons or entities that may meet the requirements for designation.

CT68. *Criterion 6.3 b)* There is (are) no competent authority(ies) with legal and procedural powers or mechanisms to operate *ex parte* against a person or entity that has been identified and whose (proposal for) designation is being considered, unless being in the cases established under Art. 22 of the LED

CT69. *Criterion 6.4* Guatemala, through the LED, PRFT Law and AML Law, empowers the PPO to implement preventive measures by danger of delay, without prior judicial authorization. Thus, the PPO has issued detention order and requirement (Exp. LIST UN-01-2015), through Official Letter IVE 3646-2015 which mandates the immediate and ongoing review of funds or assets of persons and entities designated by the Security Council pursuant to resolutions 1267 (1999) and 1989 (2011) and its successors to the OSs, with their respective updates, as well as the immediate freezing upon finding a match. However, there is no prohibition to all natural and legal to provide, directly or indirectly, funds or other assets for the benefit of designated persons.

CT70. *Criterion 6.5 a)* As the PPO mentioned, through the IVE, all OSs were issued an order of detection and immediate freezing of funds or assets of persons or entities designated under UNSCR 1267 (Official Letter IVE 3646 -2015). There is no specific procedure for domestic designations and the procedure to respond to requests from third countries by PPO does not seem to be applied on the basis or reasonable grounds, so it cannot be concluded that the freezing applies without delay in these cases.

CT71. *Criterion 6.5 b)* According to the Official Letter IVE 3646-2015, immobilization is extended to “any property, asset, funds, value, transfer, or account that may be owned or controlled (a) directly or indirectly by the person (s) or entity (ies) designated.

CT72. *Criterion 6.5 c)* It is not clear that there is a ban on all natural and legal persons to provide, directly or indirectly, funds or other assets for the benefit of designated persons, beyond the existing prohibition under the application of Chapter VII of the UN Charter to which Guatemala is an original member, and which generally provides that ignorance, disuse, custom or contrary practice cannot be claimed against law enforcement (Judiciary Act, Art. 3).

CT73. *Criterion 6.5 d)* The Agreement between Ministry of Foreign Affairs, the PPO and the SIB (October 3-13) states that the SIB through the IVE will communicate to the OSs, the persons or entities designated under resolution 1267 (1999) and 1373 (2001) Security Council, once informed by the MINREX. Additionally, listings related to terrorism and terrorist financing are accessible to the general public including the OSs on the website of the SIB on the following link: [http://www.sib.gob.gt/web/sib/lavado\\_activos/enlaces/Listas-ONU](http://www.sib.gob.gt/web/sib/lavado_activos/enlaces/Listas-ONU)

CT74. *Criterion 6.5 e)* According to the Official Letter IVE 3646-2015, in the case of freezing by the OSs, they must inform of the freezing without delay to the Prosecution, via writing and telephone.

CT75. *Criterion 6.5 f)* LED establishes the freezing or immobilization of funds or assets, and provides for the protection of the rights of bona fide third parties (LED, Art. 5)

CT76. *Criterion 6.6 a-c)* Guatemala has no mechanism to make designations or proposed designations to UNSC Committees with which there is no way to apply this criterion.

CT77. *Criterion 6.6 d-e)* The website of the SIB, provides public access to official pages of UN where procedures and information relating to listings and designations are specified, as well as informing the general public on the availability of the UN Office of the Ombudsman, in accordance with UNSCRs 1904, 1989 and 2083 to accept requests for delisting, with a direct link to its website.

CT78. *Criterion 6.6 f)* The LED has appellate mechanism against injunction, which in case of homonyms, or false positives, resource could be used (Art. 22).

CT79. *Criterion 6.6 g)* The Agreement between Ministry of Foreign Affairs, the PPO and the SIB (October 3-13) states that the SIB through the IVE, communicated to the OSs the updates of designated persons or entities included in the removal from the lists. However, there is no direct instruction for unfreezing in case of removal from the listings.

CT80. *Criterion 6.7* Any decision regarding the freezing of assets, is adopted taking into account the adopted international treaties ratified by Guatemala, including the procedures set out in UNSCR 1452 and successor resolutions, which are mandatory in the country, under Chapter VII of the UN Charter, however there is no specific provision to consider this aspect.

### *Weighting and conclusion*

CT81. Guatemala has mechanisms to implement UNSCR 1267 and the TFS without delay. However, does not have a specific mechanism to propose designations under Resolution 1267 and needs to develop mechanisms for the implementation of UNSCR 1373, particularly with regard to domestic designations. Additionally, there is no general provision prohibiting the provision of supply, directly or indirectly, funds or other assets for the benefit of designated persons. **Recommendation 6 is rated as Partially Compliant.**

### *Recommendation 7 - Targeted financial sanctions related to proliferation*

CT82. *Criterion 7.1* Through the general provisions of the LED as well as the contents in the Official Letter IVE 3646-2015, Guatemala has mechanisms to implement the TFS on the implementation of UN Security Council Resolutions concerning FPWMD.

CT83. *Criterion 7.2 a-c* The PPO, through the IVE issued to all OSs an order of detection and immediate freezing of funds or assets of persons or entities designated under UNSCR 1718 and 1737, through the Official Letter IVE 3646-2015. The obligation extends to “*any property, asset, funds, value, transfer, or that may be owned or controlled (a) directly or indirectly by the person (s) or entity (ies) designated*”. However, there is no ban on all natural and legal persons to provide, directly or indirectly, funds or other assets for the benefit of designated persons.

CT84. *Criterion 7.2 d-f* According to the Official Letter IVE 3646-2015, the OSs have the obligation to review immediately and permanently the listings and their respective updates. If freezing is performed by the OSs, they must inform without delay to the prosecution by written and telephonic means, on the freezing action. The LED establishes that freezing or immobilization of funds or assets, provides for the protection of the rights of bona fide third parties (LED, Art. 5).

CT85. *Criterion 7.3* Official Letter IVE 3646-2015 states that the provisions are of immediate enforcement, according to the relevant regulatory provisions.

CT86. *Criterion 7.4 a-d* The website of the SIB provides public access to official pages of the UN where procedures and information relating to listings and designations are specified, as well as informing the general public on the availability of the focal point for the process of removal from the listing. The LED has provided a mechanism against the injunction, which in case of homonyms, or false positives, resource could be used (Art. 2). For its part, the Agreement between the Ministry of Foreign Affairs, the PPO and the SIB (October 3-13) states that the SIB through the IVE will communicate the OS on updates of the persons or entities designated including removal from the lists. However, there is no direct instruction for unfreezing in case of removal from the listings.

CT87. *Criterion 7.5* There seems to be no provision referring to the provisions of this criterion.

### *Weighting and conclusion*

CT88. Guatemala has mechanisms to implement the TFS on the implementation of UN Security Council Resolutions concerning FPWMD, except as regards the criteria set out in 7.4 and 7.5. **Recommendation 7 is rated as Partially Compliant.**

### ***Recommendation 8 - Non-profit organizations***

CT89. *Criterion 8.1* The IVE conducted a survey of sectors vulnerable ML/TF, which determined the vulnerability of NPOs receiving, administering or enforcing state funds and sending or receiving or sending funds abroad, in terms of ML. Consequently, from 2013 NPOs were included as OSs - Group B (AML Law, Article 18 and its regulations Art 5, and PRFT Law Article 15...). Additionally, the ML/TF NRA determined that the risk of this sector is medium high. While it was established that the ML/TF NRA will be updated every two (2) years, there is no specific provision to periodically reassess the NPO sector by reviewing the new information on possible vulnerabilities of the sector to terrorist activities (the component of the ML/TF NRA is within the specific ML sector vulnerabilities).

CT90. IVE has the legal capacity to obtain timely information NPOs (AML Law 28-33 PRFT Law and Law, Art 34). In its analysis, the IVE in typologies reports issued in 2013 and 2014, identified the typologies

in which there is evident use of NPO for activities related to launder money or other assets, this was not the case for TF where at national level there have not been any cases detected misusing them. Additionally, the PPO, in charge of the criminal prosecution and asset forfeiture, are entitled to access to information NPO (CPP, Art. 319 and LED, Art 17)

CT91. *Criterion 8.2* Since the introduction of the NPO as OSs, the IVE has sent requests for the registration of NPOs of higher Transactionality, as well as training those already registered.

CT92. *Criterion 8.3* The Law on the National Registry of Persons (Art. 102) and the Ministerial Agreement 649-2006 created the REPEJU as a Directorate General of MINGOB, responsible for registering, recording and keeping archives related to NPOs regardless of their denomination.

CT93. For the purpose of promoting transparency, integrity and public confidence in NPOs, Guatemala reports:

- a) NPOs enjoying tax exemption whose operation must be authorized by the SAT, which verifies compliance with the requirements, which are then recorded in the RTU, in accordance with the provisions of Art. 98 section “a” of the Tax Code (Law of Value Added Tax, Art. 6 Regulations Income Tax, Art. 7 and Tax Update Law, Article 11).
- b) To control NPOs the SAT has the Department of Control of Exempted Entities, within the Administration of Tax Collection and Management, which is responsible for verifying the operations of such entities and generating alerts for oversight of non-profit organizations that present irregular movements. The functions of the Directorate are defined in Resolution detailing the Second and Third Tier Organization Figures of the Unit of the SAT, as reformed through Resolution No. SAT-DSI-703-2014.
- c) NPOs receiving funds from the State or through public subscription, are subject to control and supervision by the CGC (Organic Law of the CGC, Arts. 2, 3 and 4-j), which has within its organizational structure a Directorate of Audit of Special Institutions, whose functions are defined in the respective Regulations (Article 34); and
- d) NPOs subject to the AML/CFT regime are required to register with the IVE and are subject to supervision in that area (Arts. 5-8 Regulations of the MLA Act and Regulation 16 of the Act PRFT)

CT94. *Criterion 8.4* As mentioned above, NPOs who receive, administer or enforce state funds (financial resources), as well as on international operations (send or receive funds or abroad) are OSs and must carry a record of the destination and origin of their funds according to the IVE-NF-30 form and report cash transactions greater than USD 10,000.00 and STR where appropriate.

CT95. *Criterion 8.4 a)* The Regulations on the Registration of Civil Associations states that the incorporation of associations must contain the aims and objectives of associations and be submitted to the REPEJU, under the MINGOB and for registration to the RTU (Arts. 2 and 3). A copy of this deed is in the REPEJU of the MINGOB as well as in the General Archive of Protocols of the Judiciary, public access in accordance with Art.78 of the Code of Notaries. The registration procedure for each type of NPO requires that they deliver the copy of the registration of its charter and statutes (foundations and churches) to be published. At the end of the procedure, they obtain a copy of the statutes duly processed by the Registry. The appointment of the legal representatives of non-profit organizations must also be registered with the REPEJU after assembly of the members or founders, whose date and resolutions are transcribed in the notarial deed documenting the appointment, which is recorded to the said Register. Also, no record of them at the RTU instructive to register them with the IVE as OSs, contained in the instructions IVE-INF-01 to fulfil obligations related regulations in AML/CFT.

CT96. *Criterion 8.4 b)* NPOs are required to file annually a declaration of income tax which should be submitted attaching a copy of its financial statements (Arts. 39 and 40, Law Tax Update and Arts. 93 and

94, Tax Code). Moreover, the Law on Non-Governmental Organizations (NGOs) for Development states that accounting of NGOs should have a book of financial statements which may be maintained through legally accepted electronic systems, which will be authorized by the SAT or its departmental agencies (Art. 14).

CT97. *Criterion 8.4 c)* In accordance with the Resolution of the Second and Third Tier Organization Figures of the Unit of the SAT (SAT-DSI-Resolution Number 703-2014), the Department of Control of Exempted Entities, within the Administration of Tax Collection and Management of the SAT routinely checks the operations carried out by exempted entities, including non-profit organizations, to determine whether they comply with their tax obligations and properly use the benefits granted in accordance with the purposes of NPOs, which requires the correct accounting of their income and expenses. NPOs funded by the State or by public subscription, are subject to control of the CGC, providing that is within its functions to audit the administrative, financial and operational implementation of the special entities that receive, manage and invest public funds, including infrastructure, exercising public funds directly or indirectly. Finally, IVE-NF-29 form asks NPOs registration origin and destination of the funds.

CT98. *Criterion 8.4 d)* As mentioned above the REPEJU, the SAT and the IVE carry out the registration of NPOs.

CT99. *Criterion 8.4 e)* NPOs considered OSs are required to keep track of operations or daily transactions of purchase and/or sale of products as well as the provision of services, delivery, shipping, reception, income or expenditure of funds (as applicable). The definition of customers extends to beneficiaries and associated NPOs (Art. 2 Regulation CLD).

CT100. *Criterion 8.4 f)* The obligation to keep for 5 years (limitation period) books, documents and files, or computer systems that relate to their economic and financial activities is established (Arts. 76 and 112, 120.2, Tax Code) and that information will be available to the competent authorities (AML Law, Arts. 23, 28, 33 and 34, CPP, Art. 319)

CT101. *Criterion 8.5* Administrative penalties are established as those contained in Arts. 31 and 33.g of the AML Law Art. 19 of the PRFT, and Arts and 93 and 94 paragraph 4 of the Tax Code. Just as criminal offences, self-concealment (CP, Art. 474), disobedience (CP, Art. 414), and obstruction of justice (Art. 9.c, Law Against Organized Crime)

CT102. *Criterion 8.6* The IVE has legal capacity to obtain timely information from NPOs (AML Law and Law 28-33 PRFT, Art 34). In its analysis, the IVE, in reports typologies issued in 2013 and 2014 identified the typologies in which the NPOs have been used for activities related to ML or other active operations, that was not the case for FT where cases of use thereof have not been detected nationwide. Additionally, the PPO, in charge of the criminal prosecution and asset forfeiture, is entitled to access to information on NPOs (CPP, Art. 319 and LED, Art 17).

CT103. In addition, the 'Interinstitutional Agreement' referred to in Recommendation 2 provides mechanisms for the exchange of information between the authorities of the COPRECLAF, and invited institutions that include relevant authorities in the fight against ML/TF. The SAT is empowered to require information to NPOs on their affected or exempted activities in accordance with the provisions in the Arts. 30 and 112 "A" of the Tax Code and at the same time working with the IVE and PPO in accordance with the above. NPOs funded by the State or through public collection, are subject to control by the CGC.

CT104. *Criterion 8.7* Guatemala has signed eight (8) bilateral agreements for the exchange of information on tax matters and the Convention on Mutual Administrative Assistance in Tax Matters, which are part of more than 80 jurisdictions. It is also part of the Convention on Mutual Assistance and Technical Cooperation

between the Tax and Customs Administrations of Central America. These agreements define the competent authorities and procedures to make or respond requests for information. The PPO provides legal assistance to authorities in other countries, in accordance with international legal instruments (see Recommendations 36-38).

### *Weighting and conclusion*

CT105. Guatemala has a legal framework to prevent abuse of NPOs and mostly meets the criteria set out in Recommendation 8. **Recommendation 8 is rated as largely compliant.**

### ***Recommendation 9 - Secrecy laws of financial institutions***

CT106. *Criterion 9.1* The AML Law establishes in Art. 28 that the OSs must provide the IVE information which it may request in the manner and time established in the regulations in relation to data and documentation referred to in above items, for the purposes of this law, so states that may not oppose violation of confidentiality of any nature, imposed by law or contract, information that the OSs, should provide the competent authorities in compliance with this law or of the implementing regulations.

CT107. Likewise, Arts. 33 and 34 of the AML Law establish functions of the IVE and mutual legal assistance respectively establishing capabilities to the competent authorities' access to information as well as Art. No. 63 of the Law on Banks and Financial Groups that exempts from limiting confidentiality of operations.

### *Weighting and conclusion*

CT108. Guatemala meets all the criteria of this Recommendation. **Recommendation 9 is rated as Compliant.**

### ***Recommendation 10 - Customer due diligence***

CT109. *Criterion 10.1* As established by the AML Law, the OSs may not establish anonymous accounts or accounts under fictitious or inaccurate names (Art. 20). In the case of non-registered accounts, the corresponding record of the natural or legal person with whom the relationship (Art. 21) is established must be kept.

CT110. *Criterion 10.2* Obligations on customer due diligence (CDD) are established in the AML Law (Art. 19). Regulation of the AML Law states that the OSs should design and implement measures to identify and know their customers (Art. 20). It is set as an obligation to keep records on people with whom business or trade relations are established, whether regular or occasional customers, as well as the operations with them (AML Law, Art. 21), for which the IVE designs the respective formats. The OSs will have the responsibility to keep a daily record of every transaction that takes place in cash exceeding the amount of USD 10,000 or its equivalent in national currency (AML Law, Article 24); these records should be sent monthly to the IVE (AML Law, Art. 14). While the existence of a threshold for recording operations was previously mentioned, all CDD measures are applied to all operations, regardless of the threshold mentioned above.

CT111. The AML Law provides that the OSs should reliably verify the identity, company name, marital status, address, nationality, personality, legal personality and capacity information to be included in records and should be reviewed and updated at least annually (Art. 21).

CT112. *Criterion 10.3* As previously mentioned, OSs should keep a record on the persons, both individuals and legal entities, with whom they establish occasional and regular business relations, as well as to unequivocally verify the identity and other information. In this line, format IVE-IRS-01 should include a copy of the identification document of the requesting and signing parties.

CT113. *Criterion 10.4* As stated by the Art. 22 of the AML Law, OSs shall take the necessary measures to obtain, update and verify information about the identity of third parties on whose behalf an account is opened or a transaction is carried out, where there is doubt about who may be acting on their own behalf or do so for the benefit of another third party, particularly in the case of legal persons who do not carry out commercial, financial or industrial operations in the country or country where its domicile is located. Based on the above, the forms IVE-IR-01 and IVE-IR-02 include requests for information about whether acting on their own behalf or on behalf of a third party, in which case they must provide information on the natural or legal person on whose behalf they act.

CT114. *Criterion 10.5* Laws and regulations in Guatemala provide for financial institutions to identify beneficial ownership as this criterion states, since when an account is opened for a third party, operations are being carried out, or there are suspicions of operations for the benefit of third parties, OSs must apply measures to gather, update and verify information on the identity of the beneficiary of these transactions. This is set forth in Art. 22 of the AML Law. As for legal persons, the relevant application forms include information on the members of the board of directors, management board, manager and shareholders, as well as the legal representative.

CT115. *Criterion 10.6* The IVE-IOS-01 and IVE-IOS-02 forms, set forth pursuant to Art. 21 of AML Law, Art. 12 of AML Law Rule and IVE Official Letter 2373-2013, include between information that is required for starting economic relations information on customer activity and their approximate monthly income and expenses. In addition, Annex A.I “Products and Services” establishes the requirement of information on source of funds, average monthly amount of handling products or services as well as the purpose and destination of the funds.

CT116. *Criterion 10.7* Under the terms of Art. 23 of the AML Law, the records referred Arts. 20, 21 and 22, which establish the CDD measures, should be kept up to date during the term of the business relationship and kept for at least five (5) years after the end of the relationship; Likewise, it is also important to remember that Art. 20 states that data on the registration form should be reviewed and, if appropriate, updated at least once a year. To complement this, Art. 12 of the Regulations of the AML Law provides that the OSs must ensure that the above-mentioned record is updated and may not transact with customers who do not provide the required information and documentation in a timely manner.

CT117. Regulated entities must pay attention to transactions carried out or attempted by customers, especially those considered complex, unusual, significant, regular, with no apparent economic or legal basis, as well as unusual patterns of transactions of the customer, which should be reported immediately to the IVE.

CT118. *Criterion 10.8* Pursuant to Art. 21 of AML Law and Art. 12 of AML Law regulations, IVE-IR-02 form and the instructions provided for in IVE Official Letter 2373-2013 must be used. This is regarded as required information on the main economic activity or purpose of the entity and the information of the members of the board of directors, management board or administrator, as well as data related to shareholders or partners with a 10% stock or greater, which should be kept in records when the response is positive. Other data to be entered on the form include the country location of suppliers and customers, the number of

subsidiaries, agencies or offices that have that entity, number of employees and estimated revenues and expenditures of their stated activities.

CT119. *Criterion 10.9* As established in the provisions of Art. 19 of the AML Law, regulated entities should take measures to prevent misuse of their products and services in the crime of money laundering, including the implementation of policies know and identify the customer, whether natural or legal person; additionally, the Art. 21 establishes the need to verify the identity, company name or title of the person, activity, address, nationality, personality, legal capacity and personality as well as proof of income, legal residence and immigration status if the representative of the legal person is not resident in Guatemala. For the above described effects, IVE form IR-02 states in paragraph 8 of the list of documents to be attached to the form, including the identification documents of the signatories of the account and the appointment of a duly registered legal representative. In addition, information should be provided on all shareholders with a stake of ten percent (10%) or greater, as well as members of the Board of Directors, Management Board or Sole Administrator.

CT120. *Criterion 10.10* Art. 22 of the AML Law states that the OSs will have the responsibility for taking measures to obtain information on the identity of the persons for whose benefit accounts are opened or operations are carried out. Form IVE-IR-02 should be used to identify all shareholders with a stake equal to or greater than 10% within the legal person.

CT121. On the other hand, through the IVE Official Letters No. 4471/4472-2014, OSs are instructed to implement policies and procedures for detecting and identifying the beneficial ownership of legal persons and/or legal structures. According to the trades in question, when the beneficiary cannot be identified using the majority stake in the ownership of the legal person, the regulated entity has a responsibility to implement reasonable procedures it deems necessary to identify individuals exercising control of a legal person, or directors and management officials.

CT122. *Criterion 10.11* It is important to remember that in Guatemala only banking institutions established in the country are authorized to act as trustees, this according to the Art. 768 of the Commercial Code of Guatemala; also by the Official Letter IVE. No. 4471-2014 OSs are instructed to adopt procedures to know and identify the beneficial ownership of persons and/or legal structures, which states that the OSs should adopt controls to determine the identity of the settlor, the trustee, beneficiaries and any other individual person exercising control over the trust; in the case of the trustees, these may be identified prior to the benefit claim. Said Official Letter also notes that the legal structures with similar characteristics and functions to those of the trust, the controls and procedures referred to above shall apply.

CT123. *Criterion 10.12* In addition to the general CDD measures set out in the AML Act and its Regulations, through the Official Letter IVE. No. 1268-2015 through which insurers were informed on using the IVE-ASS-01 and IVE-ASS-02 forms (for natural and legal persons, respectively), the ASR-32 IVE registration form to start relationships or addition of insurance and instructions for the use of such forms. Also, through the Official Letter IVE no. 1342-2015 Insurance Intermediaries, who were incorporated as OSs by AG No. 443-2013, were instructed to update the forms for registration of the beginning of the business relationship or addition of insurance and instructed application of the above-mentioned forms for insurance companies.

CT124. The information of the beneficiaries of the insurance policies should be required, as established in the "Procedure for Registration of Insurance Plans" which was issued through Agreement No. 33-2014 of the Superintendent of Banks.

CT125. *Criterion 10.13* The Official Letter IVE No. 1030-2013, indicates as measures that should be implemented by the OSs for the acceptance and continuity of relationships with PEPs, in paragraph 3.3, that

if the OSs state that the beneficial owner of a life insurance policy is a PEP, it should conduct a deeper analysis of the entire business relationship with the policyholder, however it seems to be the only case where the law requires greater CDD measures according to this criterion. In this regard, Annex IV. Beneficiary of the forms to start relationships IVE-ASR-32, IVE-ASS-01 and IVE-ASS-02 requires beneficiary information other than the applicant, life insurance and damage. Also, by Official Letters IVE Nos. 4471 and 4472-2014 instructed regulated institutions to implement policies and procedures to meet and identify the beneficial owner of legal persons and/or legal structures.

CT126. *Criterion 10.14 - 10.15* Art. 12 of the Regulations of the AML Law states that the OSs may not conduct any transactions with customers that do not provide timely information and documentation required as part of the CDD policy. Notwithstanding the foregoing, Official Letter No. IVE. 13-2009 instructed banks, insurance companies, Storage Installations, Brokerage Firms, Cooperatives, Credit Card issuers and managers, Financial Companies, Off-Shore Banks and the Insured Mortgage Funds to adopt necessary measures with respect to companies in formation with whom they initiate business relationship for them to, considering the risk to which they may be subject, complete the corresponding documentary collection within sixty (60) days of the registration of the company with the REMER.

CT127. *Criterion 10.16* As set out in Art. 20 of the Regulations of the AML Law, the OSs should review and update the information contained in the customer record at least once a year, thus implementing due diligence measures to relationships with existing customers.

CT128. *Criterion 10.17* As provided by Article 19 of the AML Law, the OSs must implement programs, policies, procedures, and appropriate controls to prevent misuse of their services; derived from this, the Official Letter IVE No. 434-2009, by which banks, finance companies and offshore banks were provided with SBR Guide No. 01/09 "Risk Management of laundering money or other assets and terrorist financing LD/TF" seeks that these institutions implement mechanisms to manage the risk of ML/FT of their products, services, customers, distribution channels and geographic areas, designed to identify, measure, control and monitor them.

CT129. *Criterion 10.18* Through the Official Letter IVE No. 721-2011, it instructed banks, finance companies, offshore banks, credit unions, money exchange, brokerage, warehousing and credit card issuers on the "Requirements and simplified measures for the start of relations" and "Simplified Form relationships start IVE-IRS-01" applicable to customers with low transactionality and low risk of ML/FT; for the insurance industry the relevant form it is the IVE-ASR-32 and for insurance intermediaries it is the IVE-ASR-27.

CT130. *Criterion 10.19* As established by Art.12 of the Regulations of the AML Law, the OSs cannot transact with customers that do not provide timely information and/or documentation as required by law and regulations. Also, by Official Letter IVE 1420-2013 banks and offshore banks were instructed to maintain procedures to know and identify their customers, and to monitor and regularly update and verify the information.

CT131. *Criterion 10.20* Guatemalan regulation does not provide exceptions to the CDD; however, it does include the obligation to report all transactions identified as unusual or suspicious (AML Law, Art. 26). However, for the specific case raised in the criterion, there appears to be no provision requiring the obligation referred.

### *Weighting and conclusion*

CT132. Regulation of Guatemala is fairly complete with respect to CDD obligations provided for in the Standards, noting only minor deficiencies such as the fact that there does not seem to be any standard for financial institutions to refrain from performing a CDD in case of reasonable suspicion of ML/FT and to

request a STR, and that the current legal framework does not fully address the criterion to include the beneficiary of a life insurance policy as a major risk factor for determining major CDD measures. **Recommendation 10 rates as Largely Compliant.**

### ***Recommendation 11 - Recordkeeping***

CT133. *Criterion 11.1* According to the provisions of Art. 21 of the AML Law, the OSs must keep a record of the individual or legal persons with whom they establish business or trade relations, either occasionally or regularly, as well as performing operations with them. The aforementioned Art. 21 gives special emphasis on the operations of opening accounts, fiduciary transactions, renting of safe deposit boxes or execution of transactions above the threshold of ten thousand US dollars or its equivalent in national currency. Such records shall be kept in the formats available to the IVE.

CT134. Conservation of the records is established in Art. 23 of the Act itself, which states that they must be updated for the duration of the business relationship and kept for a minimum period of five years following the completion of the transaction or closing the account. In addition, Art. 13 of the Regulations of the AML Law states that the records should be sorted based on an appropriate system file so that they could meet the requirements from the competent authorities. Also, it must inform the IVE one month in advance of the intention to bring about the destruction of records after the minimum legal deadline. The latter provision is also contained in the instructions to the OSs, through the IVE Official Letter 1818-2012, "Instructions for Compliance Regulations Relating to Money Laundering or other assets and Terrorist Financing Obligations", which states that the information to be destroyed should be described and must include a detailed inventory of it. However, the instruction itself indicates that compliance with the minimum period does not relieve the person to be required such information or notice to the IVE, nor is an authorization to carry out the destruction, which is done under the responsibility of the regulated entity.

CT135. *Criterion 11.2* As established in the aforementioned Art. 21 of the AML Law, the liable persons must verify the identity, company name or title of the person, age, occupation or social object, marital status, address, nationality, personality, legal capacity and personality of those with whom a commercial or business relationship, whether regular or occasional customer, Art. 8, registration of unusual transactions, states that for compliance with the provisions in articles 26 AML Law, 15 Regulations, 16 of the PRFT Law and 7 of its Rules of Procedure, the OSs, through the Compliance Officer, shall examine unusual transactions to determine whether they have the character of suspicious, and open a file which may consist in physical documents, magnetic media or any other electronic device, assigning an identification number for subsequent procedures. This number must be assigned consecutively, being at the discretion of the OSs how to take that control and implementation of the necessary mechanisms for better control and archiving of files that are created. All supporting documentation is kept on record, such as: form for start-up relations and required supporting documents, and copies of documents that support the transactions and reports and analysis on documentation. Additionally, the file must contain a report of the analysis carried out by the Compliance Officer, which indicates the conclusion reached on the nature of the transaction and the actions to be taken in relation to it.

CT136. *Criterion 11.3* Art. 23 of the LCD Act provides that records shall be kept up to date during the term of the commercial relationship and for a minimum of five years, including all the information that allows reconstruction of operations.

CT137. *Criterion 11.4* Art. 28 of the AML Law states that the OSs must provide the IVE the information requested in the form and within the term determined by the authority, enabling them to request an extension when there is reasonable justification about the impossibility of presenting information within the deadline, which must be requested in due time and resolved before the end of the original term. For these purposes, provisions of Art. 13 of the Regulations of the AML Law are also relevant, which state the requirement for

an appropriate system file so that the OSs can use the records efficiently and to meet the requirements of the competent authorities.

### *Weighting and conclusion*

CT138. Guatemala meets all the requirements of this Recommendation. **Recommendation 11 is rated as Compliant.**

### *Recommendation 12 - PEPs*

CT139. *Criterion 12.1* Overall, Art.19 of the UNCCD law states in item d) that the OSs should implement measures to know and identify their customers, in addition to that, the Art.20 of the Regulations states the OSs must obtain general information of its customers, same shall be updated at least once a year. Specifically in relation to politically exposed persons (PEP), not only foreign but also domestic, the IVE No. 1030 issued the IVE Official Letter No. 1034-2013, which in turn replaces other official letters issued in 2009, informing financial companies of the definition of a PEP as “those who hold or have held an important public office in Guatemala or in another country, or any person who is or has been entrusted with a prominent role in an international organization and the leaders of national political parties and other country for their profile are exposed to risks to their level or hierarchical position. “By that official letter, it is also stated that they will not conduct transactions with customers that do not provide, in a timely manner, information and documentation that is required.

CT140. Annexes to the aforementioned Official Letters establish measures that should be implemented to accept and give continuity to the commercial and business relationships with PEPs, even when they could be acting through a third party; at the beginning of the business relationship the procedures of due diligence should be followed and establish whether the person is a PEP. To start these relationships, they must have the approval of management officials designated by the Management Board or the Board of Directors, which shall be under the supervision of the Compliance Officer; this obligation also extends to the entire duration of the business relationship and identification within customers if any of them acquires the status of PEP.

CT141. Regarding measures to establish the source of funds, the instruction states that the OS may, in its judgment, request information or documentation to verify the origin of the funds. Also, the person must be based on a risk analysis to determine what amounts are considered as elevated, considering the reasonable income of a PEP. However, the regulatory framework does not refer to the requirement of the standard on the adoption of reasonable measures to establish the source of wealth.

CT142. *Criterion 12.2* As stated in the instruction issued for the OSs, the above-mentioned measures are implemented to determine commercial and business with PEP relationships even when they could have been carried out through third parties, so the PEP would be the beneficiary of operations or products.

CT143. *Criterion 12.3* In terms of IVE Official Letter 1030-2013 policies, standards, procedures and internal controls related to PEPs should also apply to persons who are close associates of PEPs. In addition, preventive measures are extended to the relatives and close associates by professional, political, commercial or business reasons.

CT144. *Criterion 12.4* The provisions identified above in relation to the identification and continuation of business relations and trade are applicable to all OSs.

### *Weighting and conclusion*

CT145. Laws and regulations require reporting subjects to implement measures to know and identify customers and to establish the measures to accept and continue to trade and business relationships with PEPs, however, this does not seem to include the requirement to take reasonable measures to establish the source of wealth as indicated by the standard criteria, 12.1 and 12.2 in cases of higher risk business relationships.

**Recommendation 12 is rated as Largely Compliant.**

### ***Recommendation 13 - Correspondent banking***

CT146. *Criterion 13.1* Through the IVE Official Letter 1116-2014 banks and offshore institutions were issued the “Basic Guide Prevention Services Correspondent Banking, National Bank branches and subsidiaries abroad”, replacing the previously applicable guidance. Based on the above-mentioned guidelines, the correspondent institution must perform a due diligence on the represented institution so that it is possible to minimize the risk of being used for AML/CFT activities and assess that the institution be located in a jurisdiction subject to regulation in the field and have an oversight body. Meanwhile, all correspondent institutions should implement programs, policies, procedures and controls to prevent the use of their correspondent banking services for ML/TF activities.

CT147. The information that the Guide expressly states that should be evaluated includes, inter alia:

- The country where the respondent institution is located;
- The ownership structure and those who are part of or direct to the institution, considering the identity of shareholders and owners, members of the management body, the presence of people defined as PEPs and AML/CFT regulation of the country where its shares are traded;
- Type of business in which it operates and its target market;
- The existence of regulatory legislation on AML/CFT and represented the institution has not been the subject of an investigation for ML/TF; Y
- The controls on AML/CFT.

CT148. *Criterion 13.2* Section 3.2.8 of the Guide on Correspondent Services, “Using payment transfer accounts in other places,” states that a correspondent financial institution has the responsibility to ensure and confirm that the respondent institution has applied due diligence measures for customers who have direct access to their accounts, as well as an expanded diligence on high risk customers; Also, it verifies that it is able to provide relevant information about the customer due diligence when required.

CT149. *Criterion 13.3* The aforementioned guide, in paragraph 3.2.6 “Prohibition of relationship with shell banks” explicitly states that correspondent institutions should refrain from providing their services to shell banks and prevent the represented institution from allowing its services to be used by such institutions.

### ***Weighting and conclusion***

CT150. Guatemala meets all the requirements of this Recommendation. **Recommendation 13 rates as Compliant.**

### ***Recommendation 14 - Money transfer services or securities***

CT151. *Criterion 14.1* Service providers of transfer of money or securities (STDV) are OSs, in terms of Art.18 of the AML Law and Art.5 of the Regulations of the Act. As such, Art. 7 of the Regulations indicates the need for any liable person, including providers of STDV to send general information through the forms established by the IVE for this purpose, and report on changes to the general data have been reported. Furthermore, the Regulations of the PRFT Act provides in Art.16 that the OSs that were created after the

entry into force of the law against ML/TF must register, using the relevant format, within fifteen days after its entry into operations.

CT152. *Criterion 14.2* Failure by the OSs to comply with their obligations can lead to sanctions like fines of USD 10,000 up to USD 50,000 or its equivalent in national currency, depending on the severity the fact, in addition to fulfilling the obligation which derived the sanction, this rule limits the range of administrative pecuniary sanctions that would not provide the possibility in all cases to have the desired characteristic of deterrence and especially proportionality. Such failure includes failure or delay in sending initial information for registration and/or enrolment referred to the Law.

CT153. *Criterion 14.3* In its capacity as OSs, as it is established by the provisions of the AML Law and PRFT Law, providers of STDV are subject to monitoring, supervision, recordkeeping, reporting and other obligations indicated for such entities and people.

CT154. *Criterion 14.4* Although in practice agencies are recorded by the Portal of Regulated Entities, legislation and regulations in force do not make explicit reference to the need for these agencies to register, except the mention of that STDV providers are regulated entities as required by the AML Law<sup>16</sup>.

CT155. *Criterion 14.5* Based on Article 19 of the AML Law, the OSs must implement programs, procedures and internal controls designed to prevent misuse of their services and products for ML/TF activities. In addition, to comply with the above, the Superintendent of Banks issued the ML/TF Risk Management Guide.

CT156. For the specific effects of those OSs that are authorized to offer their services through third parties such as agencies, Annex 4 of the Guide, which states that the Compliance Program should be known and implemented by all staff of the Regulated Entity. With regard to the compliance program that Annex states verbatim that when the liable person is allowed to use third parties to offer their products or services, the third party must comply with each and every one of the programs, policies, procedures and controls approved, although the ultimate responsibility for compliance will be the Regulated Entity.

### *Weighting and conclusion*

CT157. Compliance with the standard is not full by the fact that legislation and regulations do not explicitly refer to the obligation of the agents of STDV providers to have license or registration and establish a margin possibility of pecuniary sanctions to regulated entities that does not meet the characteristic of being proportional and dissuasive. **Recommendation 14 rates as Partially Compliant.**

### *Recommendation 15 - New technologies*

CT158. *Criterion 15.1* SBR Guide No. 01/09 "RISK MANAGEMENT LD/TF" Official Letter IVE No. 434-2009, for banks, finance companies and Off-Shore banks collects the necessary guidelines to guide entities, to implement a mechanism that allows them to manage the risk of ML/TF, and section 4.1.2 "Risk

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<sup>16</sup> As subsequent to the visit of EM we can denote that by Official Letter IVE no. 3-2016 instructed to RSs "Guidelines for Risk Management LD/TF" in Section 2.1.3 "Channels Risk Factor Distribution, they are set to implement measures when they use third parties to provide products and services (brokers, agents or sub-agents). Also, by Official Letter IVE no. 1275-2016 were instructed "Measures for the Prevention of ML or Other Assets and TF for Remittance Service." However, this information is outside the scope of the Mutual Evaluation, which scope is limited to the last day of the site visit.

of Products and Services” mentions the need for regulated entities to be aware of the risks “new and innovative products and services”, although it doesn’t make a direct reference to their offering and provision by technological means. Additionally, section 4.1.3 “Risks of Distribution Channels” refers to transactions related to technological innovation, as they are carried out with an accelerated rate. The general guidelines, established on Compliance Programs, establish the need for products and services offered for preparation of this program are considered. In addition, the “Regulations for the comprehensive risk management, approved by Resolution JM-56-2011 of May 27, 2011 JM request of the SIB, aims to regulate the minimum aspects to be observed by banks, financial companies, the offshore entities or offshore entities authorized to operate in Guatemala and companies specializing in financial services that are part of a financial group, with respect to comprehensive risk management, among which includes the obligation of the entities to have a risk Unit which among other things should analyze the risk of new products and services offered by the business units services, including businesses that are not face to face.<sup>17</sup>

CT159. Notwithstanding the above mentioned, the criterion 15.1 states that countries should identify and assess the risks of ML/TF related to new practices or new products, which is not expressed in the laws of Guatemala. In addition, regulations or guidelines issued to the OSs are not explicit in the obligation for regulated institutions to analyze the risks of ML/TF for the development of new products or practices, including delivery mechanisms and use of new technologies, or is necessary to analyze and manage or mitigate these pre-releases or offering such product or service risks.

CT160. *Criterion 15.2* In addition to what is mentioned in the previous criterion, related to this regarding the regulatory framework, the Monetary Board of Guatemala issued Resolution No. 102-2011 dated August 17th, 2011, including the rules for the technological risk management, establishing that the Risk Management Unit, which supports the technological risks management committee, must enforce technological risk management. The specific functions of this body are to take pertinent measures to handle and mitigate risks. It should be noted that regulations currently in force do not require or expressly provide for the performance of risk assessments prior to the effective use of such products, practices and technologies as demanded by this standard criterion.

### *Weighting and conclusion*

CT161. The specific requirements of the criteria are not properly considered because the aforementioned rules do not make direct reference to the use of new technologies or developing technologies for new products or existing products and the fact that the existing legal framework establishes the need to analyze the risks of ML/TF for the development of new products or practices, including delivery mechanisms and use of new technologies is either unclear, or it is necessary to analyze and manage or mitigate those risks prior to the launch or offering of such a product or service, by the country or obligated persons.  
**Recommendation 15 rates as Partially Compliant.**

### *Recommendation 16 - Wire transfers*

CT162. *Criteria 16.1 - 16.2* According to the provisions of Article 17 of the PRFT Act, for carrying out transfers, OSs should gather adequate and meaningful information regarding the person originating the

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<sup>17</sup> It is worth noting that after the on-site visit a specific section on “new technologies” was included both in the new Guidance on ML/TF Risk Management and the Guidelines for Managing ML/TF risks. Both documents were notified to RSs by means of IVE Official Letters N° 3955-2015, 4125-2015, 4284-2015, 4360-2015 y 3-2016. Nonetheless, this information falls out of the scope of the Mutual Evaluation Report, which is limited to the date of the on-site visit.

transfer which should remain with the transfer or message regarding it during the payment chain. “Adequate and meaningful information” includes, in terms of regulation, at least the personal identification data of the payer, the personal identification of the beneficiary, the amount of the transaction, the account number or an identification number for the transfer. Personally, identifiable data require “special care” in the full name, address, place and date of birth and identity card number (and beneficiary). Transactions that do not contain all the information will be regarded as suspicious and be reported to the IVE. Importantly, the Act does not distinguish the amount of the transaction for the information to accompany the payment chain. Regulation only makes reference to the account number, but does not indicate if the original, the beneficiary or both. In December 2008 Form IVE-TF-21 Registration Transfer Funds equal to or greater than USD \$ 2,000.00 or its equivalent in another currency, which applies to banks, financial institutions, Offshore banks, Remittance and Cooperatives took effect. The aforementioned threshold is not consistent with the provisions of the FATF standard<sup>18</sup>.

CT163. *Criteria 16.3 - 16.4* There are no requirements for electronic transfers set out below USD \$ 1000<sup>19</sup>.

CT164. *Criterion 16.5* As explained in the relevant response to the Criteria 16.1 - 16.3, information collected by the OSs should remain with the transfer throughout the payment chain, whether domestic or international.

CT165. *Criterion 16.6* The relevant information obtained, as required by Art.17 of the PRFT Law can be requested at any time by the IVE, and it must be provided in a timely manner, this according with Art.28 of the AML Law.

CT166. *Criterion 16.7* As mentioned in the response to Criterion 16.1, “meaningful and relevant”, which includes the personal identification of the payer, the personal identification of the beneficiary, the amount of the transaction information is collected, the account number or an identification number for the transfer. In addition, originators financial institutions are subject to the provisions of Art.21 of the AML Law, under which information regarding the nature and legal persons with whom they transact should be collected.

CT167. *Criterion 16.8* No explicit requirement that states that the financial institutions should not perform the electronic transfer if does not meet the criteria 16.1-16.7.

CT168. *Criterion 16.9* According to the provisions in response to the Criteria 16.1 - 16.2, adequate and meaningful information gathered about the person originating the transfer should remain with the transfer throughout the payment chain.

CT169. *Criterion 16.10* For these purposes, although there is no specific scenario under which information about the originator or beneficiary is not available due to technical limitations, obligations recordkeeping and conservation for the duration of the relationship business or a minimum period of five years, as well as notification of the destruction of the file, apply. Additionally, the AML Law Art. 21 indicates to maintain a

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<sup>18</sup> It is noteworthy that after the on-site visit the new "Instructions for the Preparation of the Electronic Archive for the Monthly Report Funds Transfer" was issued in which, starting June 2016 to submit the form IVE-TF-21 must refer consider remittances greater than or equal to USD300.00 or its equivalent in another currency and transfer (international, local or batch) greater than or equal to USD1,000.00 funds or its equivalent in another currency, must be referred, which are carried out in one or more transactions during a calendar month, by IVE Núm.1274-2016 Office. However, this information is outside the scope of the Mutual Evaluation Report, whose scope is limited to the last day of the site visit date.

<sup>19</sup> In 2016, after the on-site visit, Official Letter No. IVE. 1275-2016 instructed "Measures for the Prevention of Money Laundering or Other Assets and Financing of Terrorism for Remittance Service". However, this information is out the scope of the Mutual Evaluation Report, whose scope is limited to the last day of the site visit date.

special register of the persons with whom business relations are established, whether they are occasional or regular, and transactions carried out with them.

CT170. *Criterion 16.11* Legislation and regulations state that information about the originator and the recipient of the transfer must be collected and, if no such information exists, said transactions are to be considered as suspicious transactions and reported to the IVE.

CT171. *Criterion 16.12 - 16.3* The OSs, subject to the provisions of Art.17 of the PRFT Law, should pay particular attention to transfers that do not contain all required information. In addition, the Official Letter IVE 3952-2015 states that high-risk transactions should be considered, both origin and destination such as nationality of the payer or beneficiary and provides that in case of suspicious consider, they should be reported to the IVE.

CT172. *Criterion 16.14* The information from both the originator and the beneficiary are verified, based on what is established in Art.17 of the PRFT Law, regardless of the amount of the transfer.

CT173. *Criterion 16.15* Through Guide SBR No. 01/09 “Risk Management Money Laundering or Other Assets and Financing of Terrorism -LD/TF-” banks, finance companies and Off-Shore banks were informed on measures to guide the entities, to implement a mechanism that would allow them to manage the risk of ML/TF, to which their products, services, customers, distribution channels and geographic areas where they have presence are exposed; in order to identify, measure, control and monitor, such risk; however, the current rules do not refer to guidelines or guides that the entities referred above should comply for execution, rejection or suspension of transfers that lack the information specified in standard criteria.

CT174. *Criterion 16.16* STDV providers are subject to all the obligations that the AML Law, the PRFT Act and their respective regulations and other relevant laws, have established for OSs.

CT175. *Criterion 16.17* As noted above, the OSs should pay special attention to all complex, unusual, significant, periodic transactions, or those that may not have obvious economic or legal basis, in which case it must notify the IVE; providers of STDV are referred as regulated entities in the regulations against ML/TF, all the obligations under such rules apply as with all the financial regulated entities.

CT176. *Criterion 16.18* Through the IVE Official Letter 2689-2013 OSs are instructed to strengthen their policies, programs, rules, procedures and controls, with special emphasis on the resolutions of United Nations Security Council (UNSC); also by Official Letter IVE No. 3646-2015 precautionary measures ordered by the PPO for individuals and entities designated under UNSCR were notified.

### *Weighting and conclusion*

CT177. While there are legal provisions, the threshold (USD \$ 2000) is higher than the standard set by the FATF. Additionally, there seem no legal provisions to address the criteria 16.3, 16.4 and 16.18.

**Recommendation 16 is rated as Partially Compliant.**

### *Recommendation 17 - Dependence on third parties*

CT178. *Criterion 17.1* Resolution JM-65-2010 by which the “Regulations for the conduct of operations and performance of service through banking agents” was approved, establishing operations and services such entities are allowed to perform, Article 7, under which there is no delegation of opening of accounts or customer due diligence. Furthermore, Article 9 of that regulation states that banks will be directly responsible for fulfilling the obligations under the rules against ML/TF.

CT179. Additionally, Official Letter No. IVE. 3955-2015 became knowledge to banks, finance companies and banks Off-Shore, “RISK MANAGEMENT MONEY OR OTHER ASSETS AND TERRORIST FINANCING -LD/TF-” this guide determines that for products, services and distribution channels these entities must evaluate Risk of ML/TF, especially in section IV. Know Your Customer, Annex 4 “Compliance Manual Structure” indicated that if the responsible party is allowed to use the services of third parties to offer products and/or services, third party will have to comply with each and every one of the programs, policies, standards, procedures and appropriate internal controls that are approved. Notwithstanding the foregoing, it is the responsibility of the regulated entity to ensure that third parties comply with the provisions of the Compliance Program.

CT180. *Criteria 17.1 a-c* The obligations contained in these criteria are not established in the said Guide.

CT181. *Criterion 17.2* There are no legal provisions on this specific criterion.

CT182. *Criterion 17.3* Art. 19 of the AML Law provides the OSs with the mandate to adopt, develop and implement programs, policies, procedures and appropriate internal controls to prevent misuse of their services and products in money laundering activities. Therefore, the regulated entities must comply and ensure all obligations conferred by the legislation against money laundering or other assets and to prevent and suppress the financing of terrorism, regardless of the medium they use. The Official Letter IVE No. 1780-2012, notes that financial groups may use established procedures, in order to collect and update information and documentation related to the registration of their customers, who must implement Forms designed by the IVE, for the purposes of compliance with the obligations referred to in Art. 21 of the AML Law and 12 of its Rules of regulated institutions that are part of financial groups.

### *Weighting and conclusion*

CT183. While there are legal provisions that address the dependence on third parties, they do not appear to adequately address the criteria of the standard, in particular as regards the criteria a-c 17.1 and 17.2. **Recommendation 17 is rated as Partially Compliant.**

### ***Recommendation 18 - Internal controls and foreign branches and subsidiaries***

CT184. *Criterion 18.1* The OSs have the duty to implement programs, rules, procedures and appropriate internal controls to prevent misuse of their services and products in money laundering activities; for such purposes, Article 19 of the Law states as AML obligations: to have procedures to ensure a high level of integrity of personnel with knowledge of the background; to have ongoing training and instruction regarding responsibilities under the Act, detection skills operations potentially linked to ML/TF; establishment of mechanisms to verify compliance audit programs and standards; the formulation of measures of KYC and customer identification, and; the appointment of management level officials in charge of monitoring compliance programs and internal compliance procedures with the obligations of the Act and communication of transactions to be made to the IVE.

CT185. In addition to the considerations above, the Regulations of the AML Law and PRFT Law provide more details on these aspects. Article 6 of the Regulation of the PRFT Law indicates the characteristics that must be met by the official designated as compliance officer of the OSs, indicating that they must have unique functions within the entity, have a person to replace him/her in case of temporary absence and to be a person with sufficient authority and hierarchy; Art. 10 of the Regulations of the AML Law states that the OSs must keep a record of each of its employees, pursuant to Art. 19 of the Act, with the most relevant aspects, and should be updated at least once a year; Art. 22 of the Regulations of the AML Law states that one of the powers of compliance officers is organizing training on issues related to the prevention and detection of money laundering, which must report semi-annually to the IVE ; and the Arts. 11 of both

Regulations indicate internal audit programs to be included to assess the effectiveness of programs, policies and procedures for AML/CFT.

CT186. *Criterion 18.2* The Financial Supervision Act in Art. 1 states financial groups as entities under the supervision and inspection of the Superintendence of Banks, while Art. 18 of AML Law designated those entities under the monitoring and inspection of the Superintendence of Banks as OSs. Specifically, through the IVE Official Letter 1780-2012 the entities that make financial groups were informed that they may use established procedures to collect and update information and customer registration documentation, for which it establishes a series of actions to facilitate the use of the forms established by the IVE for customer registration by the OSs.

CT187. *Criterion 18.3* For the establishment of branches of foreign banks, the Art. 14 of the Law on Banks and Financial Groups states that the country where the branch is to be established must be supervised, so that it can be made a consolidated basis. The relevant provisions are contained in the Office IVE No. 837-2009, whereby the “Basic Guide Prevention Services Correspondent Banking, Branches of National Banks Abroad and Subsidiaries”, which states the responsibility of the OSs was issued with branches or subsidiaries abroad in mind so that they meet standards of prevention of money laundering or terrorist financing, so as not to endanger the entity, customers, shareholders or the financial stability of the host country. Also, the OSs should take steps to ensure that their branches and subsidiaries observe and comply with AML/CFT measures to the extent that the host country so permits; in cases where the AML/CFT of the country where the branch or subsidiary is located differ from those of the headquarters, should require branches for the highest standard to be applied, to the extent that local laws and regulations permit so, and report whether due to local laws or regulations, they are not able to comply with AML/CFT standards.

CT188. Through IVE Official Letter 2623-2013 banks and offshore entities were instructed to follow the “Basic Guide to Prevention and Detection of ML and TF in subsidiaries, branches or subsidiaries abroad” which states that the OSs must respect the principles of prevention of ML/TF and continuously ensure the type of due diligence or enhanced due diligence applied. It also instructs them for their branches, subsidiaries and affiliates to comply with the provisions of the host country AML/TF, trying to consider the implementation of programs, policies, procedures and internal controls, and the appointment of compliance officer. According to the Guide, the OSs should inform the IVE when their branches or subsidiaries may or may not have difficulties in meeting standards in this area because the laws and regulations of the host country does not permit, while it must implement additional measures to manage risk ML/TF.

CT189. In the case of leasing, brokerage firms, forex trading companies, check cashing, money transfers, factoring operators and credit card issuers and capital movements, the guidance was issued by means of the Official Letter IVE No. 2621 -2013.

### *Weighting and conclusion*

CT190. Guatemala meets all the criteria of this Recommendation. **Recommendation 18 is rated as Compliant.**

### *Recommendation 19 - Higher risk countries*

CT191. *Criteria 19.1 - 19.2* Through the IVE Official Letter 989-2014 OSs were instructed to strengthen their policies, programs, standards, procedures and related countries listed in the FATF list, with emphasis on control measures enhanced due diligence are reflected in Recommendation 19 and its Interpretative Note, in the Interpretative Note to Recommendation 10 and other measures implemented to mitigate risks. Importantly, the annex to said Official Letter includes the Public Declaration of the Caribbean Financial

Action Task Force (CFATF), FATF-style body which also includes the Republic of Guatemala. It is noteworthy that links to those lists and statements are available to the regulated entities and the general public on the website of the SIB.

CT192. Additionally, in order to guide the OSs in the development of a methodology for ML/TF risk management, the Official Letter IVE No. 434-2009, by which the “ML/TF Risk Management Guide” was issued, in point 4.1.4, “geographical risk”, says that such risk is associated with geographic locations of the client or transactions; it specifically makes a mention of the International Geographical Risk, which links with the inclusion of countries listed with regards to ML/TF as prepared by the FATF and regional FATF-style bodies, the lists of countries subject to sanctions by the United Nations and the list issued by the Office of Foreign Assets Control of the United States Department of the Treasury (known as the “OFAC List”) and identified as countries that provide or facilitate terrorist funds or with significant levels of corruption or other illegal activities.

CT193. *Criterion 19.3* Beyond the measures implemented by the Guatemalan authorities related to training and communication to the OSs on the existence of inherent risk of countries with weak prevention systems, it is important to mention that the links of the lists and statements mentioned above (FATF, CFATF, UN, OECD, UE Terrorists, Canada Terrorist, among others) are available to OSs and the general public at the SIB website.

#### *Weighting and conclusion*

CT194. Guatemala meets all the criteria of this Recommendation. **Recommendation 19 is rated as Compliant.**

#### *Recommendation 20 - Suspicious transaction reporting*

CT195. *Criteria 20.1 - 20.2* As established in Art.26 of the AML Law, the OSs should pay special attention to all transactions, regardless of whether they are carried out or not, that are “complex, unusual, significant and all patterns of unusual transactions and non-significant but periodic transactions which have no apparent economic or legal basis”, which shall be communicated immediately to the IVE. For these purposes, the Art.15 of the Regulations of the AML Law states that the OSs should analyze the operations that may be considered suspicious and open a file, which will contain and maintain the supporting documents, whether or not the IVE is informed; also, the Art.16 establishes the procedure by which they will have to report suspicious transactions, which must first be reported to the compliance officer who shall determine within fifteen (15) days if it has the character of suspicious, duly noting the open file for the transaction record, and notifying the operation to the IVE in 10 days, using the forms provided for that purpose. The OSs also have the responsibility to define red flags that allow them to identify suspicious transactions to be reported to the IVE.

CT196. All these obligations extend to suspicious transactions relating to financing of terrorism by the Art.15 of the PRFT Law, while the Art.16 of the order states that the OSs shall promptly transactions that have no obvious lawful purpose or are suspected if feasibly linked funds used to finance terrorism, but not the financing of individual terrorist or terrorist organization. If a regulated entity does not detect suspicious transactions within a given quarter of the year, it should also be reported to the IVE.

#### *Weighting and conclusion*

CT197. The reporting of suspicious transactions does not extend to reports related to financing of individual terrorist or terrorist organization, because these behaviors are not defined in the criminal law of Guatemala. **Recommendation 20 is rated as Largely Compliant.**

### ***Recommendation 21 - Revelation (tipping-off) and confidentiality***

CT198. *Criterion 21.1* The AML Law, as Art.30 expressly disclaims any liability to the OSs, its owners, directors, managers, administrators, officials, legal representatives and employees who provide information in accordance with the provisions of the law; this aspect is reinforced by the provisions of Art.19 of the LED.

CT199. *Criterion 21.2* Anyone who, due to his position, knows or has access to the information referred to in the AML Law, is required to keep it reserved even after leaving office, this in terms of Art. 36 said Act.

### ***Weighting and conclusion***

CT200. Guatemala meets all the criteria of this Recommendation. **Recommendation 21 is rated as Compliant.**

### ***Recommendation 22 - DNFBPs: Customer Due Diligence***

CT201. *Criterion 22.1* Based on relevant regulations on anti-money laundering, the OSs, regardless of whether they are financial or otherwise, are subject to the same obligations regarding customer due diligence. Within the non-financial OSs covered by Art.5 of the Regulations to the AML Law all those natural and legal persons carrying out the following activities are included:

- a. Conducting lotteries, raffles and similar activities;
- b. Property development or sale of property;
- c. Trade in jewelry, precious stones and metals;
- d. Public accountants and auditors who provide money management services, securities, bank accounts, investments or other assets;
- e. Persons providing services, instructions or on behalf of their clients or third parties such as registered shareholders, partners or founders of legal persons; and
- f. Persons acting as directors, board members or board of directors, administrators, parents or legal representatives of legal persons.

CT202. In addition, Art. 18 of the PRFT Act provides OSs with a special regime to natural and legal persons performing the activities listed above, as well as extending the scope to notaries; however, this scope is limited to information requests by the IVE. Notwithstanding the foregoing, legislation and regulation does not extend to casinos-video lotteries and lawyers acting on behalf of their customers, as well as those who provide management services of bank accounts, money or assets, and is only extended in cases where they manage legal persons.

CT203. *Criterion 22.2* Considering that non- financial businesses and professions mentioned in both the Regulations of the AML Law and the PRFT Law are called OSs, they are subject to the same provisions of Articles 21 and 23 of the AML Law and articles 12 and 13 of the Rules of the AML Law regarding the request for information and recordkeeping.

CT204. *Criterion 22.3* No legislation on this criterion<sup>20</sup>.

CT205. *Criterion 22.4* Legislation, regulations or guidelines issued to the regulated institutions do not establish the need to analyze the ML/TF risks for the development of new products or practices<sup>21</sup>.

CT206. *Criterion 22.5* No applicable legislation to this aspect, since it is not considered for OSs, especially those that carry out non-financial activities as identified by the AML Law and PRFT Law, may delegate third party compliance with CDD requirements.

### *Weighting and conclusion*

CT207. In Guatemala DNFBPs are considered OSs in accordance with Arts. 18 of the AML Law, 5 of the Regulations to the AML Law and 15 of the PRFT Law, to this regard it should be noted that despite the outcome of country risk analysis determining that DNFBPs as lawyers and notaries, and video lotteries and/or casinos have a high level of vulnerability, they have not been included as OSs, the activities of lawyers and notaries, are only regulated under the PRCFT Act with those relating to international standards, and they are not regulated in the regulations against LD. In addition, for current OSs regulations pertinent to the criteria 22.3 to 22.5 are still to be included in the. **Recommendation 22 is rated as Partially Compliant.**

### *Recommendation 23 - DNFBPs: Other measures*

CT208. *Criteria 23.1 - 23.4* The AML Law Art.26 states that the OSs, including those that carry out non-financial activities included in the AML Law and PRFT Law must pay special attention to all transactions, whether or not concluded, which are considered as complex, unusual, significant and to all patterns of unusual transactions, as well as those that although they are not significant, are regular or have no apparent economic or legal basis, in which case OSs must communicate it immediately to the IVE, in accordance with the guidelines set out in articles 15 and 16 of the Regulation and the “Instructions for Compliance-Related legislation against Money Laundering and Terrorist Financing Obligations” issued by Official Letter IVE No. 1818-2012 on the registration of unusual transactions, communication and reporting of suspicious transactions and issuing quarterly reports on the non-detection of suspicious transactions.

CT209. Similarly, measures related to internal controls, compliance with the list of high-risk countries, especially those issued by the FATF and CFATF and the obligation to maintain confidentiality and disclosure of information on ML/TF are applicable to all the OSs identified in the AML Law and the PRFT Law.

### *Weighting and conclusion*

CT210. Guatemala has a legal framework for non-financial OSs that addresses the criteria of this recommendation; however, there are not implemented in all DNFBP sectors set by the FATF. Casinos-video lotteries, lawyers and notaries are not OSs (refer to Recommendation 22), this being of special importance as they were considered as highly vulnerable in the ML/TF NRA. **Recommendation 23 is rated as Partially Compliant.**

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<sup>20</sup> According to reports by the authorities, after the on-site visit DNFBPs were issued and communicated with preventive measures that should apply in relation to PEP. However, this information is outside the scope of the Mutual Evaluation, whose scope is limited to the last day of the site visit date.

<sup>21</sup> It should be mentioned that, according to information provided by the authorities, after the on-site visits that DNFBPs should apply in relation to Recommendation 15 have been issued, set out in the Risk Management Guide ML/TF. However, this information is outside the scope of the Mutual Evaluation Report, whose scope is limited to the last day of the site visit date.

### *Recommendation 24 - Transparency and beneficial ownership of legal persons*

CT211. Criterion 24.1 Commercial companies that can be constituted in Guatemala are expressly set forth in Art.10 of the Commercial Code, which are:

- Business partnerships;
- Limited partnerships;
- Limited Liability Companies;
- Corporations; and
- Limited partnerships by shares.

CT212. The articles of incorporation as well as the copies of documents of expansion and modifications to all national and foreign corporations with operations in Guatemala must be registered with the REMER under the Ministry of Economy (MINECO), based on the provisions of art.17 of the Code. Said registry is public and may be accessed online and by notice of REMER offices. However, there is no obligation to update the information on holders of corporations in Public Registries nor the requirement for legal persons to identify the beneficial owner when their shareholders or partners are legal entities.

CT213. *Criterion 24.2* Guatemala issued in 2012, 2013 and 2014 Typologies Reports that were disseminated to the enforcement authorities and OSs. Guatemala also amended in 2011 the Commercial Code forbidding the issuance and circulation of bearer shares, granted a term for conversion of those outstanding and provided that those not entering conversion must be frozen. In 2013, NPOs were included as OSs.

CT214. The aforementioned is the precedent on which risks associated with the different legal entities that can be constituted in Guatemala and that are contained in the ML/TF NRA were assessed. The result was medium risk for legal entities and arrangements and medium-high risk for NPOs.

CT215. *Criterion 24.3* As indicated in criterion 24.1, any company established in Guatemala must be registered with the REMER and in terms of Art.223 of the Commercial Code, a company non-registered will be considered irregular and not have legal existence, while the partners will have unlimited liability for social obligations. The registration of a corporation will be based on the relevant testimony, based on the provisions of Art.337 of the aforementioned code, which will include the following information: form of organization, corporate name, registered office and branches, corporate purpose, long-term, capital, notary authorizing writing with place and date, administrative, powers of managers and monitoring bodies (if applicable). With regard to the publication of that information, REMER can be consulted, either in physical or electronic form.

CT216. *Criterion 24.4* Based on Article 125 of the Commercial Code, companies must keep a register of nominative shares or provisional certificates issued, which shall contain: the name and address of the shareholder; indication of ownership of shares expressing numbers, series, classes and other features thereof; calls made and payments, if any; transmissions; conversion of shares or certificates into bearer shares; exchange of securities; encumbrances affecting actions, and; cancellation of shares and securities. In the case of nominative shares, they are transferable by endorsement, which shall be recorded in the corresponding book. In terms of Art.338 of the Commercial Code, companies must notify the REMER on the issue of shares by mentioning their number, value and amount of action, and their interest, premiums and amortization. There is no obligation for companies to have information on the beneficial owner of its shareholder legal entities.

CT217. *Criterion 24.5* Art.94 of the Tax Code provides for penalties for failure to keep required records listed in the Commercial Code up to date, within the Register of Shareholders referred to by Article 125 of

the latter. Tax Code also mentions the obligation to update the information within thirty (30) days of the occurrence of the modification of the registration data, or ratify the registration information as a contributor to the SAT annually, in terms of Art.120.

CT218. In addition, the Commercial Code states in its art.119 considers shareholder a person who is registered as such in the register of shareholders, in the case of nominative shares.

CT219. *Criteria 24.6* As mentioned above, the Tax Code provides penalties for noncompliance in maintaining shareholder records pointing the Commercial Code. Moreover, based on Art.21 of the AML Law it states that the OSs should reliably verify the identity, address and name of the person as well as other information from natural or legal persons with whom they establish relationships. Additionally, the IVE Official Letter No.4471-2014 issued for financial OSs states that, in order to comply with the AML Law Art.22 the following definition of beneficial ownership should be considered “The individual person(s) who have possession or control of a customer (constituted as a legal person or structure). This definition also includes persons who exercise ultimate effective control over a person or legal structure”.

CT220. Also, the aforementioned communication establishes the implementation and execution of a procedure, which is provided within the document itself, to obtain customer information of a legal person or structure. The two means identified are the determination of the identity of individuals with ownership of 10% or greater shareholding or else, to run reasonable procedures deemed necessary to identify individuals with control of the legal person, or directors or senior management officials. With regard to tax information, which includes those data required for the registration of taxpayers and responsible Tax Administration shall have the powers to verify its veracity and keep it updated, based on Art.98 “A” of the Tax Code.

CT221. Guatemalan regulations oblige, with different instruments, all legal entities or arrangements to enter the financial system. The Commercial Code provides in Article 90 that minimum capital paid must equal to GTQ five thousand (5,000). Likewise, Article 92 provides that when the contribution is made in cash, this amount must be deposited in a banking account of the company and that a notary must certify this deposit in the articles of incorporation. Moreover, payment of taxes can only be made by BANCASAT. In order to be able to do so, legal entities or arrangements must enter into a contract with a Bank.

CT222. *Criterion 24.7* Company regulations in Guatemala provide for corporations to carry a record of holders of their issued shares; however, share-holding legal persons or arrangements are not obliged to disclose their beneficial ownership.

CT223. *Criterion 24.8* Based on the provisions of Articles 28 and 34 of the AML Law, the OSs have an obligation to provide information to the IVE, and all public and private entities must provide collaboration requested by the IVE for the realization its objectives, as set out in the Act and the PRFT Act. Also, according to the Art.17 of the Law on Asset Forfeiture, individuals or legal entities, both public and private, are on duty to cooperate with the information or documents requested by the Attorney General or the designated agent without previously requiring court order.

CT224. *Criterion 24.9* In accordance with the provisions of Article 376 of the Commercial Code, the books and records of the company's business should be kept for its entire duration and until the settlement of its business and family dependencies; also Art. 382 of the Code states that an organized and orderly documentation of the company must be kept for not less than a five (5) year term. The same maintenance obligation set out in Art. 112 of the Tax Code for the maintenance of books, documents and files or computer systems until the limitation period is five years has elapsed. Also, the AML Law states that the records stipulated by law, including identity information, must be kept for at least five years after completion of the transaction or account closure.

CT225. *Criterion 24.10* As mentioned in criterion 24.8, the IVE and the Public Prosecutor have the authority to request information from public and private entities, including that on the beneficial ownership. Meanwhile, the Tax Administration has the authority to request information from other state agencies based on Art. 98 of the Tax Code.

CT226. *Criterion 24.11* Based on Article 108 of the Commercial Code, which was amended after the entry into force of the Asset Forfeiture Act, states that the shares issued by corporations must be nominative; additionally, the Art. 204 states that in share-based companies a capital increase may be agreed to by issuing registered shares.

CT227. It is important to note that the Law on Asset Forfeiture has a transitory Art. 74, which gives a period of two years from the entry into force of the Law for corporations and limited partnerships by shares to convert their bearer shares into nominative shares. After the expiry of the period, bearer shares that have not been converted will be subject to a restocking process mentioned in Art. 129 of the Commercial Code. According to the provisions of the Commercial Code, in Art. 128 concerning the transfer of shares, for the new owner of the shares to be considered shareholder, must be recorded in the corresponding book.

CT228. *Criterion 24.12* In accordance with Art. 5 of the Regulations of the AML Law, those individuals or legal persons acting, either through themselves or a third party, as registered shareholders, partners, associates or founders of legal persons, shall be considered as OSs in terms of AML/CFT obligations and shall be subject to the provisions of the Law and Regulations for such persons.

CT229. *Criterion 24.13* With regard to the penalties provided by the relevant laws, derived from breaches of providing information to the competent authorities, they are contained in various legal provisions and sanctions include both administrative and criminal measures, depending on the offence. In administrative matters, Art. 31 of the AML Law and Art. 19 of the PRFT Act establishes fines of USD 10,000 up to USD 50,000 for those who fail to discharge obligations under the legal regulations, including that of providing information.

CT230. In criminal matters, the Criminal Code states “obstructing a criminal action” as a crime by those who prevent from obtaining evidence or means of proof or does not provide the Public Prosecutor, the Judicial Branch, the National Civil Police or the General Directorate of Criminal Investigation with the documents or information in its possession or is required to know, and shall be liable to a penalty of imprisonment of three to six years, with disqualification to hold public office. The Law against Organized Crime states in its Art. 9 that the crime of “obstruction of justice” is committed by the individual or official involve in an investigation that withholds information, provides false, incomplete or falsified information, alters or destroys documents or means of evidence; in this case the liable party will be subject to a penalty of six to eight years in prison. In addition to the above, the Law on Asset Forfeiture states in its Art. 17 the “duty to cooperate” in the development of an investigation or at any other stage to provide information or documentation in its possession within forty-eight (48) hours, with the express warning of penalty for obstruction of justice.

CT231. *Criterion 24.14* As established in the AML Law, Articles 33 and 34, the IVE will have the function to exchange information with its counterparts from other countries, as well as provide and request assistance from the competent authorities of other countries, in order to facilitate judicial proceedings and investigations in crimes related to money laundering; Art.21 of the PRFT Law provides the same powers to the IVE, in relation to the offence of terrorist financing. In addition, the supervisory authorities have the right to participate in organizations, associations, entities and forums of supervision and exchange of information with other supervisory bodies, as noted by the Art.3 of the Financial Supervision Act. As for the exchange of information that can be provided by the prosecution, mutual legal assistance in criminal matters are

governed by the General Instruction No. 03-2013, applicable to the Specialized Unit for International Affairs of Public Prosecutions.

CT232. *Criterion 24.15* In applying the principles of the Egmont Group qualifies IVE information received and there is no legal obstacle to provide feedback if a country requires

### *Weighting and conclusion*

CT233. Guatemala requires establishing an obligation to update the information of the owners of corporations, including shareholders that are legal entities. **Recommendation 24 is rated as Largely Compliant.**

### *Recommendation 25 - Transparency and beneficial ownership of the legal structures*

CT234. *Criterion 25.1* In accordance with established law, only banks established in Guatemala and credit institutions authorized by the Monetary Board may act as trustees, based on Art. 768 of the Commercial Code of Guatemala. In this sense, and based on the AML Law and its regulations, IVE Official Letters No. 624-2010 and 4471-2014, trustees have the following powers:

- Gather and preserve adequate, precise and updated information on the trustor, the protector (if any), the beneficiaries or classes of beneficiaries and any other natural person controlling the trust;
- keep basic information on other regulated agents of the trust and service providers, including advisors or investment managers, accountants and tax advisors; and
- Keep the relevant information for at least five years after the end of the trust relationship.

CT235. *Criterion 25.2* The AML Law Art.23 states that the records to which the Law refers, including those based on Art.22 for identifying persons acting on behalf of third parties or third parties allegedly acting in a personal capacity, they should be updated for the duration of the business relationship. On the same line, the Art.13 of Regulation of the AML Law states that any record is made based on the Act and the Regulations shall keep the information so that it can meet requirements of the authorities.

CT236. *Criterion 25.3* According to the provisions of Art.781 of the Commercial Code of Guatemala, fiduciaries must declare that act in that capacity in any act or contract granting running of the trust.

CT237. *Criteria 25.4 -25.5* All OSs, including banks, which are the only institutions in Guatemala that can act as trustee, must provide information requested by the IVE in the form and terms established by the latter in terms of Art.28 of the AML Law. Also, the Public Prosecutor may, in exercise of the powers under the Criminal Procedure Code Art.319, request information to an individual or legal entity authorized by the competent judge. In addition to the above, the trustee is obliged to provide the Tax Administration information on transactions, acts and contracts executed on behalf of the trust, as part of the obligations as taxpayers, as established in Art.85 of Law Tax Update.

CT238. *Criterion 25.6* As established in the AML Law and PRFT Law, all competent authorities have the power to request and assist the competent authorities of other countries; this is complemented by the Art.3 of the Organic Law of the Superintendence of Tax Administration; Art.3 of the Financial Supervision Act and instruction 3+2013 Head of the Public Ministry and Prosecutor General.

CT239. *Criterion 25.7* In the event of a breach by any trustee, which can only be banking institutions, the Criminal Code provides that criminal liability may be established for legal persons; the article 38 of the Code provides that, in cases where no specific penalties are taken, fines are imposed in a range between USD

10,000 to USD 60,000 or its equivalent in national currency, in case of recidivism, it may order the definitive cancellation of the legal personality.

CT240. With regard to sanctions civil, Art. 114 of the Penal Code states that whoever gets an economic benefit derived from a crime, even without participation in it, will have liability up to the amount obtained or profited. Also, liability shall include restitution, reparation for material damages and compensation for damages.

CT241. Administrative sanctions are described in Art. 31 of the AML Law and Art.19 of the PRFT Law, which set the fines from USD 10,000 to USD 60,000 or its equivalent in national currency as well as the fulfilment of the omitted obligation that led to the penalty. In addition, the Law on Banks and Financial Groups states in its Art.99 financial penalties which banking institutions or entities belonging to a financial group are subject, depending on the number of offences committed, starting with five hundred to forty thousand penalty units for first offence, which will be doubled for subsequent offences; in the event that specific laws do not indicate a sanction, the fine will be between one hundred and ten thousand penalty units.

CT242. *Criterion 25.8* The offences for which apply the sanctions mentioned above are set out in Art.98 of the Law on Banks and Financial Groups; this order indicates failure to comply with the provisions of this Act and all other applicable provisions issued by the Monetary Board and the submission of false or fraudulent information, statements or documents, as well as obstruction or limitation to supervision conducted by the SIB.

### *Weighting and conclusion*

CT243. The penalties provided for are not considered dissuasive. **Recommendation 25 is rated as Largely Compliant.**

### *Recommendation 26 - Regulation and supervision of financial institutions*

CT244. *Criterion 26.1* The Superintendence of Banks (SIB) of Guatemala will be the body exercising supervision and inspection of banks, credit institutions, financial companies, surety entities, insurance entities and others who have relevant laws, as noted in the Constitution of the Republic of Guatemala in Art. 133 and Art. 1 of the Financial Supervision Act, which further notes that the SIB will be an eminently technical body under the leadership of the Monetary Board. Monitoring will aim to institutions under the same adapt their activities and work, the laws, regulations and other applicable provisions.

CT245. On prevention of money laundering, as well as prevention and suppression of terrorist financing, supervision of the OSs is carried out by the IVE, which has within its Directorate for Prevention and Compliance three areas of risk monitoring on ML/TF thereof having among its functions to evaluate the prevention system of OSs and verify its compliance with the relevant laws on the subject. Its activities in this area also include informing the administration of the OSs on the inspection results, require an action plan to address identified deficiencies and propose and assist in the development of guidelines and projects of prudential rules on control and prevention of ML/TF.

CT246. *Criterion 26.2* Based on the provisions of Art. 7 of the Law on Banks and Financial Groups (Decree 19-2002), the Monetary Board will have the power to grant or deny authorization for the establishment of banks or establishing branches of foreign banks in Guatemalan territory, for which it requires a prior opinion issued by the SIB. In the case of branches of foreign banks, it will be taken into consideration that in the country of the parent bank conduct their supervision in accordance with international standards, consent to the establishment of the branch and the possibility of exchanging information between supervisors in both countries. In addition to the above, the regulations for the National Constitution of Private Banks and the

Establishment of Branches of Foreign Banks, approved by Resolution JM-78-2003 outlines the requirements that must cover those interested in operating a national bank or branch of a foreign bank in Guatemala, detailing the authorization process that is followed by the SIB and the Monetary Board, and is identified in annexes the characteristics of the documents to be submitted, including those of the study of economic and financial feasibility. One of the functions of the SIB under the Financial Supervision Act is keeping track of the financial institutions listed in the Act as well as a record of their directors, officers and legal representatives

CT247. In the case of insurance and reinsurance companies, or branches of foreign insurers and reinsurers, the Insurance Activity Act (Decree 25-2010) provides that these companies must be authorized by the Monetary Board, with the assent by the SIB, documents to be submitted to the REMER for the relevant registration. Once notified of the authorization issued by the Monetary Board, insurers or reinsurers must inform the SIB on their ability to start operations within six (6) months from that date. Mergers and acquisitions by other companies of the same nature must also be authorized by the Monetary Board, with the prior expert opinion of the SIB. As in the case of banks, requirements, procedures and procedures for the establishment of insurers and reinsurers they are contained in the Regulations for the Constitution of Insurance or National Reinsurance Companies and Establishment of Branches of Insurance or Foreign Reinsurers (Resolution JM -87 to 2010).

CT248. Brokerages, according to the provisions of Art. 5 of the Law on Securities Market and Commodities states that only those authorized in terms of the Act may use in its name the words “stock market”, “brokerage house”, “stockbroker” and others that refer to the stock market. For purposes of compliance with this requirement, the Art.8 of that Act creates the Registry of Securities and Commodities Market, which among the powers conferred on Art.16 is the registration of the stock exchanges, the public offerings of securities and agents regulated by Law; it also has the power to suspend or cancel those registrations. In the case of exchanges, Articles 22 and 23 of the legislation point to the procedure required for authorization to establish itself as stock trading, same which shall be issued by order of the registry. Stockbrokers will be registered with the National Stock Exchange, as noted by the Art.10 of its Rules of Procedure.

CT249. The provisions for the registration and authorization of currency exchange stated in the Law of Foreign Exchange and the Regulations for the Authorization and Operation of the Exchange. In terms of the Act, the currency exchange must be authorized by the Monetary Board and be monitored and inspected by the SIB. The regulation states the requirements to be submitted to the SIB those corporations seeking to operate as an exchange house.

CT250. Finally, since all banks must go through the authorization process of the Monetary Board and the expert opinion in favor by the SIB, shell banks are not allowed in Guatemala. That institution operating as a banking institution is responsible for the crime of financial intermediation, established in Article 96 of the Law on Banks and Financial Groups.

CT251. *Criterion 26.3* According to the above requirements for the authorization of financial institutions listed in the Law on Banks and Financial Groups, Art. 7 states that in the prior opinion to be issued by the SIB should be considered the origin and amount of capital, the honor and responsibility of the founding partners and affiliations, associations and corporate structures do not expose the institution to significant risks or hinder monitoring of its activities; the Art.13 of the Act states as impediment to organizing, shareholder or manager in a bank in training those convicted of culpable or fraudulent bankruptcy, convicted of crimes involving dishonesty and those who have been convicted for acts related to money laundering or embezzlement. These impediments to the members of the board of managers of domestic banks or branches of foreign banks extend, are based on Art. 24 of the Act.

CT252. With regard to insurance and reinsurance companies, Art. 14 states impediments to act as organizers, shareholders or managers which are on the same line as those established for banking institutions, in addition to the commission of illicit acts as criminalized in the AML Law. In terms of Art. 20, any person who has a stake of five percent (5%) or more of the capital of an insurer or reinsurer or increases their participation in such a way must be authorized by the Superintendence of Banks, who will review that no impediments have been incurred. As for banking institutions, impediments extend to the board of directors, and Art. 82 also makes them applicable to insurance intermediaries. As partners, organizers, members of the Board of Directors and officials of the currency exchanges, the requirements of Art. 5 of Resolution JM-131-2001 apply.

CT253. *Criterion 26.4* In accordance with the provisions of the Law on Banks and Financial Groups, each and every one of the companies that make a financial group shall be subject to consolidated supervision of the SIB. Also, for purposes of consolidated supervision for financial groups whose headquarters and branches are in different countries - Guatemala one of them – it indicates that only the opening of foreign branches in Guatemala or branches of a Guatemalan institution be allowed abroad if there is supervision in accordance with international standards to enable the completion of a consolidated group supervision, as based on Art. 14 of Decree 19-2002 and Art. 15 of Decree 25-2010, and the regulations issued for this purpose by Resolution JM-260-2002 and Resolution JM-90-2010, respectively. Any entity that is considered OS, as provided by the AML Law and the PRFT Law and their corresponding regulations, must be registered with the IVE and be subject to supervision it performs on AML/CFT.

CT254. *Criterion 26.5* The authorities of Guatemala reported that the Areas of ML/TF Risk Oversight define the frequency, type and intensity of supervision, based on the information they have available in the computer systems of the IVE, previous audits and risk matrices, which enable to identify what OSs should be given priority in terms of supervision. This priority is established according to the following aspects: industry materiality, materiality of the entity, relevance of the deficiencies identified in previous audits and information crosschecks with other departments of the SIB.

CT255. *Criterion 26.6* The Monitoring Manual in Chapter III “Risk Based ML/TF Supervision” describes the measures applied to define the risk profile of the financial institutions. Also in the Agreement 1-2015 of the Superintendent of Banks indicated that the activities of the Supervision Areas are: 1) Evaluate under the scheme of Risk Based Supervision and 2) Weigh the Regulated Entities.

### *Weighting and conclusion*

CT256. Guatemala meets all the criteria of this Recommendation. **Recommendation 26 is rated as Compliant.**

### *Recommendation 27 - Powers of supervisors*

CT257. *Criteria 27.1 - 27.2* As stated in the relevant section of the Criterion 26.1, in accordance with Articles 32 of the AML Law and 24 of its Regulations, as well as Art.20 of the PRFT Law, the Special Inspectorate, located within the SIB, will be responsible for ensuring compliance, by the OSs with the obligations that the AML/CFT laws establish to both. Also, the Art.25 of Regulation of the AML Law Art.14 and the Regulations of the PRFT Law indicate that the IVE may instruct the manner it deems appropriate on further measures to implement, within the scope of the applicable legislation, for the prevention of crimes subject of those laws. For this purpose, within the organizational structure of the IVE there are three areas of risk monitoring AML/CFT.

CT258. *Criterion 27.3* The AML Law in Art.28 empowers the IVE to request information from the OSs, who should provide it in the form and term established for such purposes, as established in Art.18 or

considering the extension mentioned by the Art.19 of the Regulations. Also, Art.33 provides as one of the functions of the IVE to request and receive all information regarding commercial, business or financial transactions, by the OSs, which could have link with the crime of money laundering; according to the Art.20 of the PRFT Act, such powers are also applicable to the offence of TF.

CT259. *Criterion 27.4* There are various pieces of legislation which give the Superintendence of Banks, in its capacity as supervisory authority, the sanctioning power: the Art.3 of the Financial Supervision Act states that the SIB is the entity that should impose penalties, in accordance with the law; Art.98 of the Law on Banks and Financial Groups indicates the application of sanctions by the supervisory body for violations of the provisions, and; Art. 94 of the Insurance Activities Act contains a provision virtually identical terms. The range of sanctions, which has the supervisory body, applicable to institutions subject to the laws referred to above are fines that will be doubled according to recidivism offences of the same nature. With the exception of the case of insurance and reinsurance agents, there is no case in which for breach of AML/CFT obligations an institution can be punished with the cancellation or suspension of license.

CT260. In addition, under the terms of Art. 101 of the Law on Banks and Financial Groups, individuals linked to a legal person who withhold information, among other behaviors, may be penalized, with the possibility that the Superintendent of Banks may require the immediate removal of said person if the offence so merits. Art. 98 of the Act of Insurance Activity regulates with suspension or cancellation of registration to insurance or reinsurance intermediaries, depending on the severity or repetition of the offence.

### *Weighting and conclusion*

CT261. **Weighting and Conclusion:** The powers to sanction an institution with the cancellation or suspension of its license are only established for cases of insurance and reinsurance agents. The deficiencies in Recommendation 35 regarding sanctioning powers of supervisors has an impact in compliance with this Recommendation. **Recommendation 27 is rated as Largely Compliant.**

### *Recommendation 28 - Regulation and supervision of DNFBPs*

CT262. *Criteria 28.1* The Guatemalan legal framework has not defined a scheme for authorizing the operation of casinos within the national territory. What it does consider is the authorization for entities operating as lotteries, raffles and games, according to the Regulations for Lotteries, Raffles and Games; in these cases, the departmental governors and the Ministry of Interior for the Republic, will have the power to authorize such activities, dictating measures to ensure the public interest. In view of the above, the Ministry of the Interior issued Ministerial Agreement 317-2015, to establish procedures for the authorization, supervision and surveillance of the games mentioned in the Regulation referred to above, as well as the express prohibition of casino game modalities like dice, cards or roulette. While they are not properly casinos, these entities are included as OSs in accordance with the provisions of Regulations Art.5 (AML Law). There is no procedure prescribed in the Ministerial Agreement or Regulation avoid that criminals can control a business-video lotteries casinos.

CT263. *Criteria 28.2 - 28.3* The Financial Supervision Act provides that the SIB may exercise the supervision and inspection of financial institutions, insurance companies and "... other entities under other laws". Also, the list of OSs established in Art.5 of the Regulations to the AML Law includes property development activities; sale of property; purchase of land, sea or air motor vehicles; trade in jewelry, precious stones and metals; trade of objects of art and antiques; armoring services; accountants and auditors, and; third-party management services. Taking into consideration the above, the IVE, within the SIB, is responsible for carrying out monitoring in relation to compliance with the AML/CFT requirements authority.

The whole range of activities carried out by lawyers and notaries that should be subject to monitoring or supervision is not covered.

CT264. *Criterion 28.4* In terms of Art.7 of Regulation of AML Law and Regulation 16 of the PRFT Act, the OSs of any kind must be registered with the IVE, for which they must submit information, general data and constitution, names of partners or shareholders, members of the board of directors and legal representative. For this purpose, the Superintendence has issued the “Instructions for recording information OSs” and “verification procedure” by which the technical and legal requirements are reviewed, as well as an intersection of data to determine whether persons requesting registration as OSs are linked to a STR. The whole range of activities carried out by lawyers and notaries that should be subject to monitoring or supervision is not covered.

CT265. With regard to sanctions, the IVE is entitled, in terms of Art. 33 of the AML Law, to impose administrative sanctions to OSs, including DNFBPs identified in Guatemalan law, which are the same applicable to financial OSs with a range of USD 10,000 to USD 50,000, depending on the seriousness and compliance with the omitted obligation, without prejudice to criminal liability incurred, which are identified in the AML Law and the PRFT Law. In complement to the above mentioned, the Superintendent Agreement Number 43-2002 establishes the scale of sanctions that the IVE can apply to OSs. Deficiencies in Recommendation 35 have an impact in compliance with this criterion.

CT266. *Criterion 28.5* According to the information provided by the authorities of Guatemala, supervision performed by the IVE to DNFBPs is based on the results of the implementation of the “ML/TF Risk Matrix for non-financial OSs” as well as two types of monitoring procedures, intensified and simplified, and the performance of specific audits in cases determined special situations.

### *Weighting and conclusion*

CT267. There is no procedure outlined in the Ministerial Agreement or Regulations to prevent criminals from controlling a casino-video lottery business. Casinos-video-lotteries, lawyers and notaries are not monitored or supervised (refer to Recommendation 22), this being especially important as they were considered highly vulnerably by the ML/TF NRA. **Recommendation 28 is rated Partially Compliant.**

### *Recommendation 29 - Financial Intelligence Units*

CT268. *Criterion 29.1* The IVE, which is part of the structure of the SIB, was created on the basis of Art.32 of the AML Law The functions thereof are described in Art. 33 of the Law, including to request and receive information relating to financial, commercial or business transactions allegedly connected with ML, and analyze information to confirm suspicious transactions, operations or ML patterns. As for the role of information dissemination, filing the appropriate complaint with the indicated competent authorities and provide the evidence that comes into its possession. Other functions of the IVE, in terms of Chapter V of the Regulations of AML Law communication patterns include money laundering (typologies), maintaining statistics and sign memoranda of understanding or cooperation agreements, among others.

CT269. Regarding terrorist financing, Art. 20 of the PRFT Law contains provisions, in the same terms, designating the IVE as the authority responsible for ensuring compliance with the purpose of the Act, and gives the same powers which were already assigned for AML based on the law, but specifically on preventing and combating TF.

CT270. For both criminal conducts, Art. 15 of the LED indicates that the IVE, due to its specialty in preventing money laundering and terrorist financing, should widely inform the public prosecutor when “[...]”

in the course of their activities and legal functions, it has reasonable suspicion of financial transactions that give rise to initiate an investigation by the latter and, if appropriate, start the process of asset forfeiture action [...].”

CT271. *Criterion 29.2* Based on the Art. 26 of the AML Law, the OSs should pay attention to operations or attempts thereof deemed “[...] complex, unusual, significant, and all patterns of transactions not common and non-significant but periodic transactions which have no apparent economic or legal basis, and immediately report them to the IVE.” Likewise, an unusual transaction is defined by Art. 2 of Regulations of the Law as “[...] that operation whose amount, frequency, amount or characteristics are unrelated to the customer profile” while a suspicious transaction is defined as “[...] the unusual transaction that being duly examined and documented by the OS, which by not having a clear economic or legal basis, could constitute a criminal offence.”

CT272. The specific procedure to perform communications outlined above is contained in Article 16 of the Regulation, which is summarized as follows:

- a) The officer or employee who detects the unusual transaction shall communicate it to the compliance officer;
- b) The compliance officer will determine whether or not the transaction is suspicious within fifteen (15) days;
- c) After the period, the observations of the Compliance Officer will be put on record, along with those of the employee who detected the transaction; and
- d) Within ten (10) days following entry, the compliance officer shall notify the suspicious transaction to the IVE, using the forms and adding documentation required for this purpose, adding a copy of the form to the file

CT273. With regard to other types of reports to be submitted by OSs, Art. 24 of the AML Law and Art. 14 of the Regulations of said Law state that daily records should be kept of all transactions carried out in cash, either occasional or habitual, exceeding the threshold of USD 10,000 or its equivalent in Guatemalan quetzals, also considering transactions that combined exceed that amount as a single one. In the case of transfers of funds, the OSs should gather adequate and meaningful information about the person originating the transfer, within or outside the national territory, which should remain with the transfer or related message through the chain of payment; OSs should also pay attention to transfers that do not have information about the originator and report suspicious transactions to the IVE, this in terms of Art. 17 of the PRFT Law. The form through which reports on transfers of funds are made indicates that the “appropriate and meaningful” information includes personal identification data of the payer, personal identification of the beneficiary, the amount of the transaction and the account number or, else, an identification number of the transfer.

CT274. The IVE has the power to receive other reports necessary for the performance of its functions, such as: electronic reporting of currency exchanger operations, electronic reports of account statement, electronic reporting of transactions with credit card, transaction reports with checks above the threshold, electronic reporting sales of foreign currency in cash, electronic reporting of income and expenditures of national currency, electronic reporting of cross-border transfer of cash, electronic reporting of securities mobilization, electronic reports on the reception of foreign currency, electronic reporting of sale and development of real estate, and electronic reports on the sales of motor vehicles. In addition to the aforementioned reports, the Art.17 of Regulations of the AML Law provides that the OSs that do not detect suspicious transactions must submit quarterly reports to the IVE, where that fact is communicated.

CT275. *Criterion 29.3* As mentioned among the functions of the IVE, it may request all information related to financial, commercial or business transactions that may be linked to ML/TF. Any information that is requested to OS by the IVE must be submitted within the term determined by it, with the possibility of

requesting an extension justifying the reasons for it. The provisions regarding the powers of the IVE are replicated in the PRFT Law, in its Art.20, regarding CTF.

CT276. In addition to all the information that the IVE can request the OSs, it is able to request information from any public or private entity, under the provisions of the last paragraph of Art.34 of the AML Law, in that sense, and according to the legislation, it has requested information from the following institutions, among others: National Registry of Persons, Register of Legal Persons, General Property Registry, General Commercial Register of the Republic, Registration Market and goods, Public Prosecutor, Judiciary, General Archive of Protocols, Directorate General of Immigration, Tax Authority and the Comptroller General's Office, which mostly are backed by the signing of interagency cooperation agreements between the Superintendence of Banks through the IVE, and the relevant authority, not to mention the possibility of electronic consultations from various sources of information to which there is access.

CT277. *Criterion 29.4* In terms of Agreement No. 01-2015 of the Superintendent of Banks, which establishes the organic structure of the SIB, the IVE has a Department of Analysis of Financial Transactions, whose function is the analysis of information of suspicious transaction reports issued by OSs, and the preparation of reports and related reports submitted to the competent authorities. To fulfil its duties, the department consist of Areas Analysis of Financial Transactions I and II, which analyze STRs to determine the presence or absence of evidence of the crime, through a number of activities including the analysis of STRs, the request for additional information to both OSs and their foreign counterparts and report on typologies on ML/TF, among others.

CT278. Moreover, the IVE has two units responsible for conducting analysis: the Unit of Initial Analysis, which has the functions of receiving, reviewing and analyzing information reports sent transactions, so as to submit to the STR Committee Qualification for later assignment to analysts; and Analysis Unit Information, which is responsible for conducting analysis of national and international macroeconomic environments, information in databases and obtainable from external sources, in order to identify patterns or possible financial mechanisms of ML/TF. Other functions of the Unit of Information Analysis are the generation of statistical reports and official statistics of the IVE, evaluation of the internal databases, monitoring the transactional behavior of the OSs, producing reports and analysis by request from the other departments of the IVE and the development of socio-economic and financial studies to identify trends or patterns in ML/TF vulnerable sectors or activities. The latter function seems to comprise the characteristics of strategic analysis referenced in the Recommendation.

CT279. *Criterion 29.5* In terms of Section 33 of the AML Law and 20 of the PRFT Law, the IVE must notify the competent authorities when they find evidence of the commission of an offence and provide all the assistance required in the analysis of information and assist in the investigation of acts related to ML/TF. Moreover, based on Art.15 of the Law on Asset Forfeiture, the IVE must inform the public prosecutor broadly when there is reasonable suspicion of transactions that may lead to a criminal investigation, and if appropriate start the process of forfeiture.

CT280. *Criterion 29.6* Through Agreement No. 07-2008, the Superintendent of Banks issued the "Policies for Managing Information Security in the Superintendence of Banks", which subjects the information to access controls and measures to ensure its security. Said document lists security policies oriented to information assets, personnel security, physical and environmental security; additionally, this policy covers issues related to computer operations and management, access controls, business continuity and systems maintenance and development.

CT281. Based on these policies, all employees of the Superintendence of Banks, including the IVE, are required to sign a confidentiality agreement establishing the obligation to protect the information, considered the most important asset of the SIB, even after concluding with their working relationship. With regard to

information access, Annex 5 of the document referred above makes special mention to access controls, and indicates that people who work in the Superintendence of Banks (including the IVE) will have access only to information that they need for the legitimate performance of their functions and access to the systems will be under the “minimum necessary” principle. All employees and non-employed staff who has a working relationship with the SIB should be trained on confidentiality of information. In addition to the above policies, there are provisions related to the protection and confidentiality of information in Art.14 of the Internal Rules of Labor Relations between the Superintendence of Banks and its Workers, stating the prohibition of disclosure, supply, disclose or discuss information of the SIB or any other entity that has been obtained by the work performed.

CT282. Access to facilities and information are protected based on the aforementioned policies, specifically in the “Physical and Environmental Security” policy, which specifically refers to the Computer Centre of the SIB, which should have restricted access, formal procedures for access, opening of doors and windows to prevent unauthorized access and lists of personnel and visitors with access, who must be identified properly. Policies also point out that, if access includes a portable computer, it must be documented in a log entry, according to the registration process to be established by the Director of Systems and with proper staff authorization by a person with a hierarchical level of Supervisor or above. Likewise, there are provisions related to personnel access to buildings, facilities and offices of the SIB, which houses the IVE. Relevant measures include check-in and check-out record logs, the carrying of an ID badge at all times, the request for access for visitors and supervision by SIB staff while on the premises, as well as physical inspection to avoid the entry of video or photographic recording devices, hazardous materials, weapons or mobile devices, depending on the case. Also, the exit procedure includes revision control to prevent extraction of SIB assets, including documentation and information, without proper authorization.

CT283. *Criterion 29.7* While it is true that the IVE is part of the structure of the Superintendence of Banks, their functions are specific and are set out in Articles 32 and 33 of the AML Law and Art.20 of PRFT Law. In the same vein are the provisions of Agreement No. 01-2015 of the Superintendent of Banks, which provides in Annex 3 a function of the IVE of ensuring, strictly within the administrative level, compliance with the object of the AML Law and the PRFT Law and their respective regulations and other applicable regulations. Also, the Annex to Agreement No. 09-2013 of the Superintendent of Banks indicated in its Art.6 delegates the Special Verification Intendant with the signing of the following documents:

- Official Letters to OSs with instructions and guidelines for prevention and compliance;
- Complaints to competent authorities for ML/TF;
- Official Letters with extended complaints of ML/TF;
- Official Letters in response to inquiries made by the OSs;
- Interagency cooperation agreements, memoranda of understanding and agreements with counterparts;
- Rulings to give audiences and extensions of the deadline to OSs;
- Orders for payment of fines and official letters communicating them;
- Communications related to entry and/or membership of the IVE in the Egmont Group and/or regional forums;
- Requirements and responses to requests from the PPO and the Judiciary;
- Appointment of delegates to participate in work meetings with other institutions and training; and
- Transfers of personnel within the Intendence.

CT284. Art. 34 of the AML Law grants IVE the power to exchange information with public and private entities, which are obliged to provide the requested collaboration. According to Art. 33 of the Act and Art. 27 of the relevant regulation it provides that the IVE will have the power to exchange information with counterparts in other countries in order to analyze the related cases, prior subscription memorandums of

understanding and other cooperation agreements. For this purpose, the IVE has signed memoranda with financial intelligence units of forty-four (44) countries in America, Europe, Asia and Oceania.

CT285. With regard to the budget of the IVE, it is within the budget of the SIB, which is presented to the Monetary Board for approval. The policies followed for the preparation and implementation of the budget of the SIB are in Agreement No. 27-2014, and consider for purposes of income support quotas provided by supervised entities as it is required by law; as for the expenditures, these shall be justified based on the strategic and operational plans of each agency, including only those requirements that are considered essential for the achievement of the objectives of the institution. In addition to the above, based on Art.37 of the AML Law and Art.15 of PRFT Law, fines arising from a breach on AML/CFT matters will be allocated equally to the IVE for staff training and increase of its budget.

CT286. *Criterion 29.8* The IVE is a member of the Egmont Group since July 23, 2003.

### *Weighting and conclusion*

CT287. Guatemala meets all the requirements of this Recommendation. **Recommendation 29 is rated Compliant.**

### ***Recommendation 30 - Responsibilities of law enforcement and investigative authorities***

CT288. *Criterion 30.1* Based on the provisions of the Organic Law of the Public Prosecutor, this authority is responsible for investigating crimes of public action. The Criminal Procedure Code states that the police, either on its own initiative or by order of the public prosecutor must investigate offences and gather the investigation elements relevant to the case; the Code states that the investigation always be carried out under the direction of Public Prosecutions. In addition, prosecutors may request the assistance of any administrative officer or authority to fulfil their duties, and the latter will be obliged to provide such cooperation without delay.

CT289. Based on the above, by the Agreement number 2-2002, the Council of the Public Prosecutor created the AML Prosecution Section, with competence for those crimes to which the AML (Decree 67-2001) Law; in addition to the above, by Agreement No. 65-2011 this Prosecutor's Office was assigned with the attribution to investigate and exercise forfeiture action, which led to the creation of the Asset Forfeiture Unit within the FCLA. Additionally, through Resolution No. 143-2015 of the General Prosecutor of the Republic a prosecutor's office with competence to hear of causes related to TF was created. The PPO also has a Specialized Unit (UNILAT), with competence to investigate and prosecute crimes committed by criminal organizations, as well as know and intervene in extradition proceedings related to such cases.

CT290. *Criterion 30.2* Since it is n attribution of the Prosecution Section of PPO to conduct investigations and exercise criminal action in all crimes linked to their areas of competence, they are entitled to conduct parallel financial investigations.

CT291. Additionally, based on Art. 12 of the LED, the PPO has the function of directing and carrying out investigations to establish and support the concurrence of grounds for asset forfeiture and to initiate the forfeiture action. In complement, the Law against Organized Crime states in its Art. 17 that investigations should extend to the discovery of structures, modus operandi and areas of action of organized crime, which may justify the conduction of the parallel financial investigation.

CT292. *Criterion 30.3* According to Art. 16 of the LED, it corresponds to the Prosecutor General, or the prosecutor agent appointed for this purpose, to conduct the investigation to locate, recover and repatriate the

goods on which an asset forfeiture action is initiated. Also, the Art.22 of the Law states that the PPO or designee may request the competent court application, without prior notification or hearing, of cautionary measures, including the suspension of rights on the property or accessories, annotation of the forfeiture, seizure, intervention and detention of the goods or funds. In cases of emergency measures may be ordered by the Attorney General or designated agent, informing the judge for confirmation or cancellation. Provisions in the same direction are in the AML Law and PRFT Law. The Law against Organized Crime states in Article. 73 the measures that the PPO can implement in cases of criminal prosecution of persons belonging to organized criminal groups.

CT293. *Criterion 30.4* In Guatemala the functions of investigation and prosecution correspond exclusively to the Public Prosecutor, so this criterion is not applicable.

CT294. *Criterion 30.5* The PPO of Guatemala has a Prosecution against Corruption, which must support, along with all other Section and District Prosecutors, the Prosecution Section against ML to fulfil their duties. Both prosecutors have powers to investigate and prosecute all crimes that may be linked and, therefore, can conduct parallel financial investigations.

CT295. In addition to the standards mentioned in the response of criterion 30.2, it is important to quote Art. 324 of the Criminal Procedure Code, which states that when the PPO considers that the investigation provides serious grounds for prosecution of the accused, it is appropriate to require the judge to open a trial, for the formal accusation to be made.

CT296. According to Article 332 BIS of the Code the indictment contains, among others, the clear, accurate and detailed account of the offence attributed and its legal status; the summary of the grounds of the complaint, stating the means of investigation used and determining the likelihood of the accused committing the offence for which the party is accused; as well as the legal status of the offence, the offence reasoning that each individual has committed, the form of participation, the degree of execution and the applicable aggravating or mitigating circumstances.

### *Weighting and conclusion*

CT297. Guatemala meets all the requirements of this Recommendation. **Recommendation 30 is rated as Compliant.**

### *Recommendation 31 - Powers of law enforcement and investigative Authorities*

CT298. *Criterion 31.1* In accordance with Art.46 of the Criminal Procedure Code, the Attorney General has authority to conduct investigations on crimes of public action, as well as to conduct criminal investigations; for such purposes, it may require information from any official, public employee and any individual or legal person by order of the judge, in accordance with the provisions of Art.319 of the Code. According to the Law against Organized Crime, the Superintendence of Banks, the Directorate of Land Registry and Valuation of Real Estate, the Registry of Deeds, the Commercial Register, the Register of Trademarks and Patents, the Superintendence of Tax Administration, IVE and any other public entity must collaborate whenever required in the investigation of organized crime. Also, the IVE may request information from the OSs, for referral of the request to the PPO, based on the provisions of the PRFT Law and AML Law.

CT299. The Second Section “Immediate Testing and Auxiliary Means” of the Criminal Procedure Code gives powers to the Public Prosecutor to carry out measures of break-in, inspect, search and seize evidence

on places, things or people when there are sufficient grounds to suspect that traces of the crime will be found or an accused or escapee is being concealed.

CT300. As for taking statements from witnesses, provided in the Third Section “Testimony” of the Criminal Procedure Code, which provides that any person who is in the country, except for the cases established therein, must attend a summons to file a witness statement, which involve exposing the truth about what is known and when asked, without hiding any facts or circumstances about it.

CT301. *Criterion 31.2* The Law against Organized Crime is the relevant law to regulate the application of special investigative techniques established in the standard. Three of the mentioned investigation techniques, which consist of covert operations, interception of communications and controlled deliveries, are embodied in the Act, whereas the relevant provisions for access to computer systems are found in the Criminal Procedure Code.

CT302. Covert operations are considered all those carried by police officers acting as undercover agents in order to obtain information or evidence. Also, according to Art. 22 of the relevant Law, they may temporarily assume fictional identities and roles, act secretly and omit performing the normal office procedures upon the commission of crimes, in all but exceptional cases, to optimize the investigations and prosecution of members of criminal organizations. Art. 26 states that covert operations shall be authorized by the Attorney General's Office and the Chief Public Prosecutor for a period of six months, renewable without the full operation exceeding one year.

CT303. The interception of communications is established in Art. 48 of the Law Against Organized Crime, noting that when necessary to prevent, interrupt or investigate the commission of offences under the Act, it will be possible to intercept, record and play back voice, written, telephone, radiotelephone, computer and other communications using the electromagnetic spectrum, as well as other means that are developed in the future. Only PPO agents will have the power to request authorization for the use of this technique, which will be carried out by the Special Methods Unit.

CT304. The Public Prosecutor has the power to obtain information in computer systems through court orders, in accordance with Art. 319 of the Criminal Procedure Code. For this purpose, it will have the support of the Department of Computer Technicians.

CT305. With respect to controlled deliveries, Art. 35 of the Law against Organized Crime set it as the investigative method that allows the transportation and transit of illegal and suspicious shipments, as well as other materials or prohibited items, under the strict surveillance or monitoring of the authorities. This is done in order to identify traffic routes, modes of entry and exit, distribution and marketing systems, obtaining evidence, identification and prosecution of organizers, transporters, buyers, guards and others involved in illegal activities.

CT306. *Criterion 31.3* In accordance with the provisions of Art. 319 of the Criminal Procedure Code, the PPO has the explicit power to require information from any natural or legal person, including financial institutions, with regard to persons with whom they manage accounts or other financial products through a court order. Also, Art. 15 of the AML Act provides that the IVE shall assist the competent agent or office of the PPO in the investigation corresponding to one communication based on reasonable suspicion of financial transactions allegedly linked to criminal activity.

CT307. *Criterion 31.4* The duties of the IVE include providing the Public Prosecutor with any assistance it requires in analyzing financial information and assisting in the investigation of acts and crimes related to money laundering. In terms of TF, the PRFT Act provides in Art.20 that the IVE should work with the PPO

on the subject, based on requests made by the prosecutor in charge of the unit or prosecutors designated for that purpose.

### *Weighting and conclusion*

CT308. Guatemala meets all the requirements of this Recommendation. **Recommendation 31 is rated Compliant.**

### *Recommendation 32 - Cash couriers*

CT309. *Criteria 32.1 - 32.3* Art 579 of the Regulations of the Central American Uniform Customs Code states that all travelers entering the Central American customs territory - comprised of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua - by any authorized means, shall issue a statement on the appropriate form. Furthermore, this provision is referred to in Art. 25 of the AML Law, since by means of the Interagency Cooperation Agreement between the General Directorate of Migration, the SAT and the SIB, (January 2012), it was agreed to implement a joint mechanism which led unify into one form the information contained in the Sworn Customs Declaration upon Arrival or Departure of Guatemala (customs control) and the Arrival and Departure Card (immigration control).

CT310. Art. 25 of the AML Law states that every person, whether natural or legal, national or foreign, that transport cash or documents to or from abroad with a value over USD 10,000 or its equivalent in national currency must report this fact in the port of entry or departure, through the forms designed for this purpose by the IVE. In this sense, Art. 37 of the Regulations, adds that the Tax Authority (SAT) will make them available to the public at the immigration posts. The SAT will have the function to prepare a monthly report of the declarations, including information on date of entry or exit, the name of the respondent and the amount, which will be sent to the SIB through the IVE.

CT311. *Criteria 32.4 - 32.5* Art 25 of the AML Law empowers customs agents or the National Civil Police to verify information provided in the customs declaration, either through an interview with the declarant or by the registration of luggage, containers or shipments of passengers and legal persons, as well as the passenger. Upon failure to present the declaration unjustifiably or it is false, the money and documents will be seized and made available to the Public Prosecutor to investigate and pursue appropriate forfeiture action, for which the judge must issue the resolution to proceed with the definitive loss of ownership rights, if the legal origin of the resources is not proven.

CT312. In addition to the seizure of property, the aforementioned Article indicates that that person is subject to trial on charges of falsifying a document, perjury, ML or concealment. Meanwhile, the Art. 8 of PRFT Law states that the person who fails to make the declaration will be responsible for the crime of transfer of money, which is punishable by one to three years in prison.

CT313. *Criterion 32.6* Art. 37 of the Regulations of the AML Law states that the SAT shall prepare a monthly report on the declarations of arrival or departure including the date, the passenger's name and the amount declared, to be forwarded to the IVE in the month following the reporting. In this sense, the IVE has consolidated information of such statements.

CT314. *Criterion 32.7* The agreement signed between the General Directorate of Migration, the SAT and the SIB in 2012, includes among its objectives, the coordination for the control of transportation of people and merchandises, as well as the unification of information related to migration, customs and control of cash and documents in a single form.

CT315. *Criterion 32.8* LED in its Art. 22 empowers the judges to grant an injunction on assets that may be subject to asset forfeiture action, including suspension of property rights, confiscation, intervention or seizure of property, or any others deemed relevant.

CT316. In the case of false or neglectful declaration, as noted above, money or documents in question shall be seized and made available to the Public Prosecutor for investigation and exercise of the asset forfeiture action. Consistent with this, the Art. 14 of the LED raises an exception to the normal procedure for such cases where the PPO starts the forfeiture action without further formalities and the competent judge shall issue a decision on the appropriateness or inappropriateness of the measure granting a period of eight (8) days for the person to whom the money or documents were seized to provide evidence on their lawful origin. Under no circumstances will the forfeiture action shall be an impediment to the investigation for the crime of money laundering or any other crime.

CT317. *Criterion 32.9* Under the AML Law and PRFT Law that provide faculties to the IVE to exchange information with counterparts in other countries, as well as Art. 37 of the Regulations of the AML Law, which instructs the SAT to submit an annual report to the IVE with information from the declarations received, the latter would be able to exchange such information with other entities. On the other hand, the PPO is also entitled to provide and request assistance from competent authorities in other countries for submitting court documents, conducting searches and seizures, obtaining information and evidence and any other mutual legal assistance allowed. No provision is identified in the legal framework of Guatemala that prevents the information contained in such statements to be retained in any of the assumptions established by this criterion.

CT318. *Criterion 32.10* Article 9 of the Central American Customs Code sets forth that the Customs Service is empowered to conduct analysis, supervision, fiscal oversight, verification, investigation and evaluation of the compliance and application of the provisions of said Code, its regulations and other standards for the import and export of goods and means of transportation in customs territories, as well as to control the activity of natural and legal persons acting in foreign trade operations.

CT319. *Criterion 32.11* Persons carrying cash or documents allegedly linked to the ML/TF are subject to the same penalties as those who may be linked to other crimes.

### *Weighting and conclusion*

CT320. Guatemala meets all the requirements of this Recommendation. **Recommendation 32 is rated Compliant.**

### *Recommendation 33 - Statistics*

CT321. *Criterion 33.1* Based on AG No. 145-2014, one of the powers of the COPRELAFT is to promote between institutions that are part of it “[...] to keep statistical records of events that in matters against money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction, are generated as part of their legal functions [...]”.

CT322. In the specific cases of each institution, the IVE has as one of its functions to keep records and statistics for the performance of its functions based on Art. 33 of the AML Act. The Department of Computer Control System for PPO Investigation has the function of preparing reports with statistical information and address requirements related with statistical information contained in the SICOMP, based on Article 6 of the Agreement 131-2012; the judiciary has a Centre for Judicial Information, Development and Statistics (CIDEJ), whose function is to be the only source of information on statistics, metrics and judicial indicators,

in accordance with the provisions in Agreement No. 128-013, and; the SENABED should prepare reports on the yields generated and their distribution, based on Art. 44 of the LED.

CT323. On statistical information on international cooperation, including mutual legal assistance, different authorities have such information, depending on their powers of cooperation. The Specialized International Affairs Unit of the PPO is the authority, according to the General Instruction No. 03-2013 which processes legal assistance and the one that should keep relevant statistics. Regarding extradition requests, Art. 11 of the Law Regulating Extradition Procedure indicates that the Ministry of Foreign Affairs must keep a record of any request for extradition, both active and passive.

CT324. In addition to the above, with support from the IDB an 'Inter-institutional ML/TF Statistics System' to which each institution provides relevant statistical data in the field was developed. The statistical information to be provided by the relevant authorities, including the IVE, the PPO, the OJ and MINEX includes all aspects that are identified by the Recommendation

#### *Weighting and conclusion*

CT325. Guatemala meets all the requirements of this Recommendation. **Recommendation 33 is rated Compliant.**

#### *Recommendation 34 – Guide and feedback*

CT326. *Criterion 34* In accordance with the provisions of Art.25 of the Regulations of the AML Law (Government Agreement 118-2002), the SIB through the IVE, shall inform the OSs on “internationally known standards” in relation to ML, so it must communicate to the OSs on new forms of operation related to money laundering, so that they are in a position to take appropriate preventive measures. Moreover, based on Art. 14 of the Regulations of the PRFT Law, the IVE may instruct the OSs regarding modifications to their compliance manuals considering new measures to be implemented.

CT327. As for the production of typologies, the IVE has produced annual reports since 2012. It is important to note that the report produced in 2014 was shared with all OSs and the reports for 2012 and 2013 have also been made available to the OSs through the OSs Portal maintained by the IVE. Regarding the STRs, it has provided feedback to compliance officers of the OSs in relation to the information and documentation contained in them.

#### *Weighting and conclusion*

CT328. Guatemala meets all the requirements of this Recommendation. **Recommendation 34 is rated Compliant.**

#### *Recommendation 35 - Sanctions*

CT329. *Criterion 35.1* In accordance with Arts. 31 and 33 of the AML Law, the IVE will have the power to impose administrative sanctions on OSs, which will take the form of fines of between ten thousand and fifty thousand dollars of the United States, or its equivalent in quetzals, depending on the severity of the breach, in addition to compliance with the obligation omitted. This is without prejudice to any criminal liability in which the OSs incurred. Under the regulations of the Act, the Art.32 states that, for purposes of punishing offences committed by the OSs, the SIB will define the parameters considered to determine the severity and, on that basis, impose the appropriate sanction. For purposes of TF, the PRFT Law states in Art.19 penalties identical in amounts to those established for the purposes of ML breaches obligations. For

purposes of calculating sanctions, the scale of the sanctions regime was issued through Agreement of the SIB No. 43-2002, providing penalties of USD 10,000, USD 20,000 and USD 25,000, depending on the breach detected. Guatemala has a framework that establishes criminal penalties to OSs who have obstructed the action of the courts in the investigation of crime, including money laundering and/or terrorist financing.

CT330. The sanctioning procedure is explicitly mentioned in Section 33 of the Regulations of the AML Law, indicating that upon detecting a breach, a hearing will be programmed so that the person can expose their arguments and release relevant evidence; after the hearing, whether it is carried out or not, the corresponding resolution shall be issued and notified. The Art.34 notes that an appeal may be filed to review the sanction imposed before the Monetary Board.

CT331. *Criterion 35.2* In terms of Art.101 of the Law on Banks and Financial Groups, “[...] the members of the board of directors, the general manager, assistant managers, legal representatives, agents, auditors and other executives that are responsible for infringements [...]” shall be punished, first with a written warning and subsequently with disqualification or total removal from office, or with the latter in case the seriousness of the offence so warrants. A provision is virtually identical terms stated in the Art.97 of the Law on Insurance Activity (Decree 25-2010). It should be noted that the administrative sanction scheme that reaches managers of financial institutions and insurance companies are not derived from AML/CFT standards and, therefore do not have an administrative sanction regime that reaches DNFBP managers.

#### *Weighting and conclusion*

CT332. Not all sectors established by FATF are considered OSs in Guatemala and sanctions are not applicable to directors and senior managers of all OSs. **Recommendation 35 is rated Partially Compliant.**

#### *Recommendation 36 - International instruments*

CT333. *Criterion 36.1* Guatemala has ratified the following instruments on the dates indicated: the Convention of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention 1988) on February 28, 1991, the United Nations Convention United Nations Convention against Transnational Organized Crime (Palermo Convention) on 25 September 2003, the International Convention for the Suppression of the Financing of Terrorism on 12 February 2002 and the Convention of the United Nations Convention against Corruption (Merida Convention) on 3 November 2006. In addition to the above-mentioned instruments, Guatemala is part of the Inter-American Convention on Mutual Assistance in Criminal Matters, the Inter-American Convention against Corruption and the Inter-American Convention against Terrorism.

CT334. *Criterion 36.2* The most important aspects of the above mentioned instruments have been incorporated into Guatemala's internal law by incorporating articles and provisions in the following laws: Constitution of the Republic of Guatemala; Organic Law of Public Prosecutor; Law Against Drug Trafficking; Law of the Judiciary; Law against Corruption; Law for the Protection of Procedural Subjects and Persons Linked to the Administration of Criminal Justice; Law Against Organized Crime; Asset Forfeiture Act; Regulations of the Asset Forfeiture Law; Law Regulating Extradition Proceedings; AML Law, Regulations of the AML Law; Criminal Code, and; Criminal Procedure Code, among others.

CT335. In addition, Guatemala has several instruments including agreements, memoranda of understanding or accession to organizations, which work at either bilateral or multilateral level, depending on the instrument or mechanism.

#### *Weighting and conclusion*

CT336. Guatemala meets all the requirements of this Recommendation. **Recommendation 36 is rated Compliant.**

### ***Recommendation 37 – Mutual Legal Assistance***

CT337. *Criterion 37.1* In order to facilitate actions and investigations carried out by the competent authorities relating to the offences of ML/TF, the Public Prosecutor, the IVE and any other competent authority may provide and seek legal assistance to authorities from other countries in terms of Art. 34 of the AML Law and Art. 21 of the PRFT Act. In addition to the above, the Art. 29 of the Regulations of the AML Law states that the provision of mutual legal assistance should be carried out in adherence to international agreements or treaties that have been signed or ratified by Guatemala, or according to the memorandums of understanding and cooperation agreements between the relevant authorities. However, it should be considered for this criterion that financing of the individual terrorist and terrorist organizations are not criminalized, which prevents providing MLA in these cases.

CT338. The Drug Trafficking Act has provisions in its Article 63 in the same line, which empowers the PPO and the competent judicial authorities to provide and request assistance from other states. Also, the Asset Forfeiture Act states in its Art.8 that the conventions and treaties on legal or judicial cooperation and assistance for collaboration on the location, identification, recovery, repatriation and forfeiture of property of which Guatemala is a party are fully applicable to cases covered by that law.

CT339. *Criterion 37.2* The Attorney General of the Republic and Head of the Public Prosecutor of Guatemala issued the “General Instruction to Process Mutual Legal Assistance in Criminal Matters with other States (Active and Passive Requests)” in order to give compliance with legal assistance in criminal matters. According to this General Instruction, the Specialized Unit for International Affairs will be the link between the different prosecutors' offices and the Office of the Attorney General, designated as the Central Authority in various treaties and conventions in criminal matters.

CT340. For the particular case of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in addition to the Public Prosecutor, the Judiciary will also act as the central authority; regarding the Treaty on Mutual Legal Assistance in Criminal Matters between the Republics of Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, the Supreme Court acts as the central authority, and; for purposes of the Rome Statute of the International Criminal Court, it will be the Ministry of Foreign Affairs who acts as the central authority.

CT341. *Criterion 37.3* Art. 34 of the AML Law and Art. 21 of the PRFT Law indicate that, in order to facilitate proceedings and judicial investigations that relate to offences of ML/TF, all public or private entities will be obliged to cooperate in accordance with the requirements that IVE makes to them in order to comply with the law; also, is it stated in that article that mutual legal assistance should adhere to the international instruments to which Guatemala is a party, which is also contained in Art. 29 of the Regulations of the AML Law. In this sense, are provisions imposing mutual legal assistance to restrictive conditions are not observed in the legal framework of Guatemala there.

CT342. *Criterion 37.4* Art. 1 of the AML Law states that the purpose of the Act is to prevent, monitor and punish money laundering and other assets that are proceeds of the commission of any crime, which includes tax related offences. In addition, the Principles for Information Exchange between FIUs of the Egmont Group, to IVE which is a member state that a request for assistance may not be refused on the grounds that it involves tax matters.

CT343. With regard to confidentiality or secrecy by financial institutions, Art. 63 of the Law on Banks and Financial Groups it states that confidentiality cannot be argued regarding money laundering. Also, the AML Law in Art.28 Act provides that violation of confidentiality of any kind may not be argued on the information that the OSs must provide to the authorities in compliance with the Act.

CT344. *Criterion 37.5* The Law on Access to Public Information notes in its Art.22 that confidential information will be that which is expressly defined as such in any law. Taking this as a basis, Art. 36 of the AML Law provides that persons integrating the IVE and any other person having knowledge or access to information prescribed by law, including those related to legal assistance and exchange of information, shall be required to keep it in reserve, even after leaving the position held. In addition to the latter, according to the Criminal Code, an employee or official who discloses or facilitates the disclosure of documents, facts or actions that should be confidential, will be subject to a penalty of imprisonment of between one and three years, a fine of five thousand (5,000) to twenty thousand (20,000) quetzals and disqualification.

CT345. *Criterion 37.6 - 37.7* Dual criminality is not set as a condition to provide mutual legal assistance in investigations related to money laundering, terrorist financing or associated predicate offences. Also in terms of the AML Law, mutual legal assistance shall be consistent with the provisions of the agreements or treaties, as well as memorandums of understanding or cooperation agreements.

CT346. *Criterion 37.8* All the powers of implementation of precautionary measures and prosecution practices conferred by domestic law the authorities are extended to mutual legal assistance processed by the Guatemalan authorities, due to investigations and prosecutions of money laundering, associated predicate offences and terrorist financing

### *Weighting and conclusion*

CT347. Guatemala meets the requirements of this Recommendation regarding MLA. However, the financing of the individual terrorist and terrorist organizations not being criminalized could prevent providing MLA in these cases, thus preventing full compliance with this Recommendation. **Recommendation 37 is rated Largely Compliant.**

### ***Recommendation 38 - Mutual legal assistance: freezing and confiscation***

CT348. *Criterion 38.1* The terms of mutual legal assistance for freezing and confiscation of assets linked to activities of ML/TF, the Asset Forfeiture Act states in its Art.8 that the conventions and treaties for cooperation in the location, identification, recovery, repatriation and forfeiture of property which have been ratified by Guatemala are fully applicable in accordance with the provisions and procedures established by the Conventions on the subject. Additionally, the Prosecutor General has the power to request information from the various authorities or travel and obtain them directly. The information and/or documentation obtained in Guatemala have evidentiary value.

CT349. For its part, the AML Law and PRFT Law in Articles 34 and 21, respectively, state that the Public Prosecutor, the IVE and any other competent authority will be in a position to provide and request assistance from competent authorities in other countries for various purposes, including identification and detection of proceeds and instrumentalities of crime for evidentiary purposes, executing searches and seizures and other forms of legal assistance that are permitted based on domestic law. The financing of the individual terrorist and terrorist organizations, even in the absence of a terrorist act, not being criminalized prevents full compliance with this criterion.

CT350. *Criterion 38.2* Based on the Asset Forfeiture Act, specifically in its Art.7, the asset forfeiture action is imprescriptible, distinct and independent in nature to the prosecution and criminal liability. In addition, the death of the rights holder does not terminate, suspend or discontinue the exercise of the action.

CT351. *Criterion 38.3* In terms of the provisions of Art.8 of the Asset Forfeiture Law, the provisions of the Act shall apply to international conventions and treaties relating to legal or judicial cooperation and assistance that relate to the location, identification, recovery, repatriation and forfeiture of goods. In addition, the Regulations of the AML Law, in Art.29, points out that mutual legal assistance should be made in accordance with agreements or treaties on the subject, as well as other instruments or agreements signed between the Public Prosecutor and its counterparts in other countries.

CT352. The mechanisms for asset management are embodied in the Chapter V “Managing assets and resources” of the Asset Forfeiture Law, which provides for the creation of CONABED, subordinate to the SENABED; the former will be the lead agency for the administration of property subject to forfeiture, with features such as knowing, approving, adjudicating and deciding on investments in the fund of funds seized and hiring, leasing, management, trust, sale, auction, or donation forfeit goods.

CT353. The property on which cautionary measures are imposed, which represent an economic interest will be available to the Secretariat, which shall constitute management trusts or contract them in leasing, bailment or administration, so that the productivity and value are maintained. When these assets are considered evidence in any proceedings, relevant tests will be conducted before proceeding as stated above, and they may not be retained for more than two (2) years. Procurement processes will be awarded at a public hearing on at least three (3) proposals, unless there is no more than one offeror with an eligible proposal, in which case it may be awarded. Also, temporary use may be approved for the relevant goods for, which will be reserved for the SENABED and bodies or institutions involved in investigation and asset forfeiture process. With respect to cash, it has the right to open accounts in banks to establish a fund, in which the seized cash and monetary resources derived from the sale of perishable goods, animals and the anticipated disposal of property shall be included. Also, it has the power to establish a fund for the deposit of cash and money from the sale of goods which have been declared forfeit.

CT354. *Criterion 38.4* Regarding the sharing of goods with other States, Art. 53 of the LED indicates that the Council may authorize sharing of goods and resources with other States in the case of joint operations, based on the principles of cooperation and relevant international agreements.

### *Weighting and conclusion*

CT355. The lack of criminalization of financing to the individual terrorist and terrorist organization, even in the absence of a terrorist act, prevents full compliance with this Recommendation. **Recommendation 38 is rated Largely Compliant.**

### ***Recommendation 39 - Extradition***

CT356. *Criterion 39.1* Extradition is mentioned in Article 27 of the Constitution, which states that it is governed by the provisions of international treaties; likewise, it established that Guatemalans will only be released in accordance with the provisions of treaties and conventions related to international law and crimes against humanity. In the same matter, the Criminal Code states in its Art. 8 that extradition is granted for common crimes, but in no case for political crimes or criminal offences related with them, and for the cases provided for in international treaties, it will be granted in the case of reciprocity. The lack of criminalization of financing to the individual terrorist and terrorist organization, even in the absence of a terrorist act, limits the capacity of Guatemala to respond to requests for extradition related to these conducts.

CT357. The extradition process will be regulated based on the international instruments signed for this purpose, and based on the Law Regulating the Extradition Procedure. The Chapter I establishes that the process to be followed upon receiving requests for passive extradition, which should be made based on the provisions of international treaties and conventions and will be transmitted to the Prosecutor General of the Republic within a period not exceeding two (2) days upon receipt. Applications must meet the requirements of the relevant international instrument, and generally with the following documentation:

- Authenticated copy of the conviction or the arrest warrant issued by a competent judge;
- An account of the alleged act with a copy of the applicable criminal law and those concerning the statute of limitations or penalty;
- The affiliation and personal data that enable to identify the person claimed, and;
- Real coercion measures required to be enforced.

CT358. The requesting State may request, through diplomatic channels, the provisional arrest of a person, reporting on the arrest warrant and ensuring that the formal extradition request will be presented. This requirement shall be resolved immediately by the competent court in cases of emergency, or in no more than three (3) days upon receipt of the application in the other cases. The process of provisional arrest of a person sought for extradition purposes is outlined in General Instruction No. 04-2013, issued by the General Prosecutor of the Republic. Following the arrest of the person, within a period not exceeding two (2) days a hearing will be set to decide on extradition, which will be held within ten (10) and fifteen (15) days afterwards; even before the start of the hearing, the requesting State may amend or supplement the application and Guatemala may request the clarifications deemed necessary, in which case the requesting State shall have thirty (30) days to submit the requested information.

CT359. Art. 26 makes the assumption that there are several States formulating requirements for extradition, in which case the decision to surrender the subject will be resolved based on the instrument, or otherwise, the first State to have formalized the request extradition or the State requesting extradition for the most serious offence, according to Guatemalan law shall prevail.

CT360. In the specific case of money laundering, Art. 3 of the AML Law provides that offences under the Act will result in passive or active extradition, while for the offence of terrorist financing Art. 13 of the PRFT Law states a provision in virtually the same terms.

CT361. *Criterion 39.2* Relevant extradition laws do not establish any limitation on the extradition of Guatemalan citizens to other States making such requests. Also, in terms of Art. 10 of the Law Regulating the Extradition Procedure, if passive extradition is denied, the State of Guatemala is obliged to exercise the prosecution and criminal action in appropriate cases, in accordance with the relevant international instrument or internal law. This is reinforced by the Art.5 of the Criminal Code, which states that it shall apply in the commission of crimes by Guatemalans abroad in cases where extradition has been refused.

CT362. *Criterion 39.3* The Guatemalan legal framework does not establish dual criminality as a condition for extradition in cases linked to money laundering, terrorist financing or predicate offences.

CT363. *Criterion 39.4* The person against whom an extradition procedure is directed may accept or voluntarily surrender to the requesting State at any time during the proceedings, even before the formal presentation of the extradition request, in which case the person will be presented to the Ministry of Foreign Affairs to coordinate immediate extradition, this based on the Art.3 of the Law Regulating the Extradition Procedure. The Art.69 of the Law against Drug Trafficking states that a claimed person may be surrendered without formal extradition proceedings person when that person consents so.

### *Weighting and conclusion*

CT364. The lack of criminalization of financing to the individual terrorist and terrorist organization, even in the absence of a terrorist act, limits the capacity of Guatemala to respond to requests for extradition related to these conducts. **Recommendation 39 is rated Largely Compliant.**

### ***Recommendation 40 - Other forms of international cooperation***

CT365. *Criterion 40.1* The powers by the competent authorities to provide international cooperation are contained in a wide range of provisions of the Guatemalan legal framework, including the Constitution, the AML Law and its Regulations, the PRFT Law and its Regulations, LED and Regulations, the Criminal Code and the Criminal Procedure Code, among other instruments including laws, agreements and memoranda of understanding. However, the deficiency related to the lack of criminalization of the financing of an individual terrorist and terrorist organization, even in the absence of a link to a terrorist act, prevents full compliance with this criterion.

CT366. *Criterion 40.2* The functions that Art. 33 provides to the IVE include exchange with foreign counterparts of information for the analysis of causes related to money laundering, with the signing of memoranda of understanding. This latter aspect is noted in Art. 27 of the Regulations of the AML Law and Art. 25 of the PRFT Act, which empowers the Superintendence of Banks to sign the memorandums of understanding or cooperation agreements with other countries. However, the deficiency related to the lack of criminalization of the financing of an individual terrorist and terrorist organization, even in the absence of a link to a terrorist act, is a limitation of the legal basis to provide cooperation.

CT367. The PRFT Act provides in Art. 22, as a means for collaboration with other countries, the possibility that those detained or serving a sentence may be transferred to another State to provide a statement or to assist in obtaining the necessary evidence for the investigation or prosecution provided by judicial authorization and always complying with the conditions, such as consent and agreement between the two States. Likewise, it establishes the possibility for the IVE to provide administrative assistance and exchange of information on TF. By the National Civil Police, it will have among its responsibilities directing all international matters relating to the institution.

CT368. With regard to secure channels for the execution of requests for information, being members of the Egmont Group of FIUs, the IVE uses the Secure Web for receiving, sending and responding to requests for information; Also as part of the Memorandum of Understanding for Regional Anti-ML and TF, the platform of the Regional Secure Network is used for the exchange of information with Central American countries, Dominican Republic and Colombia.

CT369. The IVE has procedures for executing requests for information exchanged with their foreign counterparts, which are contained in documents for internal use, where workflows and relevant forms are described for such purposes in cases of receiving and sending requests through the Egmont Secure Web as well as international requirements. While some prioritization criteria for sending or response to requests was identified, in these processes, the IVE adheres to the obligations of the FIU for receiving the request as set out in Egmont's Principles for the exchange of information between Financial Intelligence Units, which among others include to provide partial or temporary negative responses in a timely fashion. The safeguard in relation to information received as part of international cooperation is included in the Agreement No.22-2004, where the provisions concerning the Administration of documents and files in SIB; in the agreement Superintendent of Banks No. 8-2007 with the Policies for Managing Information Security in the SIB; and Agreement Superintendent of Banks No. 13-2011, containing internal policies for Reception, Processing and Disclosure.

CT370. *Criterion 40.3* Art. 33 of the AML Law and Art. 27 of the Regulations of the AML Law establish that the SIB, through the IVE, may sign memoranda of understanding or cooperation agreements with foreign counterpart entities of the IVE. For this purpose, the IVE has a procedure for negotiating memoranda of understanding or cooperation agreements to exchange information on ML and TF as well as a strategy to negotiate Memoranda of Understanding or Cooperation Agreements.

CT371. The Attorney General also has powers to carry out cooperation agreements with foreign public institutions for conducting investigations, as set out in Art. 88 of the Organic Law of PPO.

CT372. *Criterion 40.4* The Guatemalan legal framework lacks provisions that forbid providing feedback to the authorities of the countries that have provided assistance regarding the usefulness of the information obtained. Additionally, by sending memos it has requested feedback to the IVE counterpart institutions in four countries in 2015.

CT373. *Criterion 40.5* As noted in the criteria of Recommendation 37, assistance being requested on tax issues is not a basis for refusing assistance. Also, as provided by the AML Law, the OSs providing the competent authorities with information in compliance with the Act and Regulations may not be considered as violation of confidentiality.

CT374. However, according to the information provided, in some memoranda it is possible not to provide information in cases where judicial proceedings have been initiated concerning the same facts relating to the requested information or documentation. On the other hand, according to the principles of the Egmont Group, to which the IVE is a member, a request for information where there is inquiry, investigation or proceeding in the country receiving the request should not be refused; also, the Principles also state that a request for information may not be refused based on the nature of the requested FIU being different from that which receives the request. It is worth mentioning that to date no request has been rejected based on the aforementioned reasons.

CT375. *Criterion 40.6* In compliance with the Egmont Group's Principles for Exchange of Information between FIUs, the IVE follows the application form proposed by that body, which requires indicating the purpose for which the required information will be used. If necessary, requests should clearly state with what authorities would the information be shared, with the understanding that it is only for intelligence purposes and should evidential value be required, it should be required by formal means of cooperation.

CT376. *Criterion 40.7* The confidentiality with which the information received is treated is subject to the privacy policies of the SIB, which were mentioned above. With regard to the Civil National Police, Art. 12 of the Act directs that body imposes strict secrecy provisions regarding any information known or obtained due to the performance of their duties.

CT377. *Criterion 40.8* The PPO, IVE and any other competent authority may provide and request assistance from the competent authorities of other countries based on the AML Law and Regulations, and the PRFT Act and Art. 10 PNC Act, which allows the police to collaborate and assist the civil security forces from other countries.

CT378. *Criterion 40.9* Among the functions that AML Law, Article 33, provides to the IVE, is that of exchanging information with counterparts to analyze cases related to ML; concerning TF, Art. 23 of the PRFT Law provides that administrative assistance and exchange of information shall operate under the terms established by the AML Law. The law does not indicate any restriction on any specific nature counterparts.

CT379. *Criterion 40.10* As mentioned above, the Guatemalan legal framework does not establish restrictions for the IVE to provide feedback to the counterparts with whom they exchanged information. It is worth mentioning that, to date no foreign counterpart to the IVE has requested feedback; on the contrary, the IVE, through memoranda sent to their counterparts requested feedback, to which it has received some answers.

CT380. *Criterion 40.11* According to the provisions of criterion 40.9, Article 33 of the AML Law empowers the IVE to exchange information for the analysis of cases of ML and the PRFT Law empowers it regarding TF, it is also important to remember the power that the laws provide the IVE to request additional information from the OSs and other authorities, in terms of Art. 31 of the Regulations of the AML Law, who should provide it in the terms established for such purposes. In addition, memorandums of understanding signed by the SIB on the exchange of financial intelligence information state that cooperation will be based on reciprocity and include "...any information that might be of interest in investigations...".

CT381. *Criterion 40.12* Art. 3 of the Financial Supervision Act empowers the SIB to "(...) to participate and be part of organizations, associations, entities and international forums on supervision and exchange of information with other national or foreign supervision entities, for supervision purposes". The SIB participates in the Liaison Committee of the Central American Council of Superintendents of Banks, Insurance and Other Financial Institutions -CCSBSO-, according to an agreement signed since 2007. In addition to the latter, the Handbook of Risk Based Supervision, approved by Agreement 10-2012 section VII contains provisions on consolidated supervision.

CT382. *Criterion 40.13* For these purposes, Article 3 of the Financial Supervision Act sets out as a faculty of the SIB to share information with other supervision entities to carry out such purposes; also, one of the requirements of both the Law on Banks and Financial Groups and the Law on Insurance Activity for establishing overseas branches or branches of foreign institutions in Guatemala, is precisely the possibility of exchanging information with the supervisor the relevant country.

CT383. The AML Law states that you can share information on ML without a judicial order and without the possibility of claiming confidentiality of any kind (Arts 28, 33.df, 34 of the AML Law; 20 and 21 of the PRFT Law).

CT384. *Criterion 40.14* With regard to information on legislation, prudential regulation, supervised entities, information of the financial system, financial profile, balance sheets, statements of income, financial position, position of engagement and interest rates, among other data, it is information available to the public through the website of the Superintendence of Banks. Additionally, in terms of the Law on Banks and Financial Groups and the Law on Insurance Activity, for the opening of a branch of a Guatemalan entity abroad or a branch of a foreign entity in Guatemala, it is required that supervisors can exchange information for supervisory purposes. Information on programs, policies, procedures and internal controls must be sent by the OSs to the IVE for them to be modified or expanded, based on the provisions of Art. 19 of the AML Law. By having this information, the IVE should be able to exchange with other supervisors who have memorandums of understanding.

CT385. *Criterion 40.15* According to the provisions of the agreements to exchange information with foreign supervisors, the SIB has the power to provide assistance to foreign banking supervisors to conduct investigations regarding persons subject to inspection. Additionally, depending on the agreements support can be provided to foreign counterparts to facilitate their own inquiries

CT386. *Criterion 40.16* One of the provisions of the MOU signed by Guatemala regarding supervision notes that in the event that the information obtained based on such instruments should be disclosed to another authority, both authorities must be notified and cooperate to preserve the confidentiality of information. Also,

the instruments point out that the information should not be used for administrative, prosecutorial, police or court purposes without the consent of the authority communicating that information, and the use for purposes other than those indicated in the memorandum are not allowed without consent stated above.

CT387. *Criterion 40.17* Under the terms of the AML Law, its Regulations and the PRFT Law, any competent authority in matters over related to the ordinances may provide and request assistance from competent authorities in other countries to carry out inspections and seizures, examining objects and sites, as well as provide information and evidence that are relevant. The authorities may also provide and request assistance from authorities in other countries to determine the identity, whereabouts and activities of persons suspected of participating in terrorist financing offences. The Directorate of Investigation and Information is empowered to cooperate through agreements promoted among international authorities, by the Art.19 of the Regulations of the General Law of Criminal Investigation. For his part, PPO, according to Art. 88 of its Organic Law, states that the Prosecutor General may sign agreements with foreign public institutions to perform investigations or for transient personnel involvement with international organizations. With regard to the Civil National Police, Article 19 of its Rules of Organization notes that the Division of Counternarcotic Information Analysis has as one of its functions to establish and maintain information exchange and cooperation with national and international partner organizations; Art. 52c, gives the power to exchange information with other national and international agencies, with the prior approval of the Director General, to the Task Force Division of Air Interdiction, Counternarcotic and Counterterrorism.

CT388. *Criterion 40.18* General Instruction 14-2009 of the Attorney General's Office regarding wiretapping establishes the scenario of a request for interception by a foreign authority, in which case it must be reviewed and evaluated by the Special Investigation Methods Unit to determine whether it adheres to international conventions and treaties; in turn, the prosecutor in charge of the Unit shall verify compliance with the requirements of origin. The possibility of Guatemala requesting the interception of communications in another country is also provided therein.

CT389. With regard to other special investigative techniques, there are no formally issued instructions, procedures and mechanisms governing its use to obtain information for foreign counterparts, although it should be noted that the legislation of Guatemala does not establish any prohibition or restriction on the matter.

CT390. *Criterion 40.19* The Law of the DIGICRI, in its Art.7, states that the Directorate shall have as one of its functions to collaborate with the security forces of other countries for the purposes of investigation and enforcement of arrest warrants; based on the above, and in terms of the Organic Internal Regulation of the DIGICRI, the Directorate General will have possibility of promoting cooperation agreements with various international institutions to promote such functions. With regard to the Public Prosecutor, the Organic Law of that institution empowers the Prosecutor General to establish cooperation agreements with foreign institutions to conduct investigations on matters deemed necessary.

CT391. *Criterion 40.20* Both the legal and institutional framework of the country, the powers and procedures of the competent authorities do not impose restrictions on the indirect exchange of information with non-counterpart authorities.

### *Weighting and conclusion*

CT392. Guatemala meets most of the requirements of this Recommendation. However, the deficiency related to the lack of criminalization of the financing of an individual terrorist and terrorist organization, even in the absence of a link to a terrorist act, prevents full compliance with this Recommendation.

**Recommendation 40 is rated Largely Compliant.**



The Financial Action Task Force of Latin America (GAFILAT for its Spanish acronym) is regional inter-governmental organization that groups 1 countries of Central, North and South America to counter money laundering and terrorist financing, through the commitment to continuously improve national policies in both matters and by deepening the different cooperation mechanisms among member countries.

The Caribbean Financial Action Task Force (CFATF) is an organization of Caribbean States and territories which have agreed to implement common countermeasures against money laundering and terrorist financing.

**Reference for citation:**

GAFILAT, CFATF (2016) – Mutual Evaluation Report of the Republic of Guatemala.  
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