GRUPO DE ACCION
FINANCIERA DEL CARIBE

Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)

EL SALVADOR

September 6, 2010

El Salvador is a member of the Caribbean Financial Action Task Force (CFATF). This report was prepared by CFATF, discussed by Plenary on June 4th and adopted by the Council of Ministers on September 6th, 2010, as part of the third round of mutual evaluations.

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Preface – Information and methodology used for the evaluation of El Salvador

1. This evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of El Salvador was based on the 2003 Forty Recommendations and the 2001 Nine Special Recommendations on the Financing of Terrorism of the Financial Action Task Force (FATF), and was drafted using the 2004 AML/CFT Methodology[1]. The evaluation took account of the laws, regulations and other material furnished by El Salvador, as well as the information obtained by the evaluators during and after the in situ visit held from August 17 to August 28, 2009. The evaluation team held meetings with officials and representatives of all the relevant government and private sector entities. Annex 2 of this report contains a list of the bodies with which meetings were held.

2. The evaluation was carried out by the following team of evaluators comprising one member of the Secretariat and experts from the CFATF member and cooperating countries: Ernesto López Villegas, Executive Assistant Director of CFATF (team coordinator); Susan Paola Rojas, Director of Special Verification Administrative Division -Banking Superintendence of Guatemala- (financial evaluator); Manuel Montenegro Flores, International Connections Director of Banking, Securities and Savings Unit -Treasury Secretariat of Mexico- (financial evaluator); Juan Carlos Astúa Jaime, Legal Director of Costa Rican Institute on Drugs (enforcement authorities evaluator); and Gonzalo Gómez de Liaño Polo, Studies' Director of the Fiscal Studies Institute -Spain's Ministry of Economy- (legal evaluator). The team gratefully thanks the government of El Salvador.

3. The evaluators reviewed the institutional framework, AML/CFT laws, regulations, guidelines and other related requirements, as well as the regulation systems and other system types established to prevent Money laundering (ML) and financing of terrorism (FT) through the financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), and studied the capacity, implementation and effectiveness of all these systems.

4. This report offers a summary of the AML/CFT measures established in El Salvador on the date of the on site visit or immediately thereafter. It describes and analyses its characteristics, reflecting the levels of compliance of GAFI with the 40+9 FATF Recommendations (Table I) and formulates recommendations on how to overcome the deficiencies identified (Table II).

[1] In accordance with version updated on February 2008

EXECUTIVE SUMMARY

1. The mutual evaluation report provides a summary of the AML/CFT system in place in El Salvador at the time of the site visit (August 17 to 28, 2009) and immediately thereafter. It describes and analyzes its main features, indicating compliance levels in the country with regard to the FATF 40+9 Recommendations and puts forward recommendations to overcome identified deficiencies.

1. Key Findings

2. Salvadoran criminal law on money laundering and financing of terrorism formally meets international requirements and has allowed the country to cooperate internationally and successfully prosecute several cases, including one for financing of terrorism. However, convictions are still relatively few in proportion to the number of crimes that generate illicit/unlawful profits, and are mainly originated in cases of cash smuggling in rather complex patterns of ML or high impact. The effectiveness of protective measures is limited given that less than half of ML investigations ordered a seizure of assets

3. Unlike AML/CFT criminal law, preventive regime which has ruled for ten years requires a significant revision to accommodate FATF standards, reduce the possibility of conflicting interpretations and allow monitoring and appropriate sanctions. This regulatory weakness was partially offset by a strong compliance culture inculcated by foreign multinational banks that control a high volume of the financial market in El Salvador. Some financial activities, including non-banking money remittance service are subject to the requirements of the AML/CFT Laws but are not under the control of any regulatory authority and supervision. In the field of DNFBPs basic law obligations still have not been regulated or implemented in practice.

4. The distribution of functions among government institutions in AML/CFT seems inappropriate, as well as resources and priorities assigned. The AML/CFT supervision team of the Financial Superintendence, for example, is very small and does not have sufficient training in this field. The Securities and Financial Superintendence do not have legal authority to issue mandatory AML/CFT regulations, because the law assigns that function solely to one unit of the General Attorney´s Office which lacks expertise and necessary resources to regulate all obliged subjects, especially financial sector entities. The same unit is responsible for the work pertaining to the Prosecutor´s Office to investigate and adjudicate ML cases, which it gives priority to, and which is also the Financial Intelligence Unit (FIU) of the country. Besides not having the necessary human resources for all these functions (criminal investigation, regulatory and financial intelligence), its operational autonomy is limited to implement effectively essential functions of a financial intelligence unit.

5. El Salvador has not recently conducted a nationwide review and under a methodological criteria objective about ML/FT risks. Nor are there references on risk management legislation and regulations relating to ML-FT that allow regulated entities to rate the severity of their risk-based controls. However, authorities indicate that they have identified as major risk sources those that arise from drug trafficking, tax evasion, trade in persons and smuggling, and extortion activities associated with criminal gangs called "maras" and other organized crime activities have increased throughout Central America. The risk of FT is still not considered as a major threat within the financial sector as it has not identified any case or potential problem in the country which can be considered as a risk indicator

2. Legal Systems and Related Institutional Measures

<u>Legal Criminal Framework</u>

6. El Salvador counts since June 1999 with a special criminal legislation to combat money laundering (ML), which, although it could be improved on some technical issues, it already incorporates international standards on the subject. Since October 2006, also has a modern and adequate criminal legislation to combat financing of terrorism (FT).

7. The effective implementation of the AML/CFT criminal system, however, is low due mainly to insufficient financial and human resources, and lack of expertise of its media research operations. In practice, money laundering investigations are few in proportion to the number of previous offenses, and there is a low number of convictions for complex cases of ML. Many of the sentences classified as ML are actually based on behavior of irregular cash flow, in which the burden of proof is less demanding for the State and in the generic version of ML. As for the financing of terrorism, there is at least one conviction with which demonstrated the application of legislation against this crime.

8. The Salvadoran system applies the principle of Law Integration. Based on this principle international treaties entered into under its legal system with other states or international organizations are laws in the Republic of El Salvador. Justice operators also frequently use this principle to fill legal gaps caused by apparent legislative drafting error or lack of clarity of certain provisions.

9. Money laundering is criminalized in El Salvador on the basis of the Convention against Illicit Traffic of Narcotic and Psychotropic Substances of the UN 1988 (Vienna Convention) and the Convention against Transnational Organized Crime of the UN 2000 (Palermo Convention). It collects the physical items and typical materials pursuant to these conventions, formally, the requirement of knowing the criminal origin of assets.

10. The laundering crime is an autonomous offense and it does not require prior conviction of underlying offense. It may be condemned to prison terms ranging from 4-15 years and a fine of fifty to 2500 monthly salaries, which are proportional in the Salvadoran context and demonstrate the relevance with the legislature assigned to this crime. There is even a form of guilty ML crime, punishable to 2-4 years.

11. Any criminal activity may be underlying criminal activity of laundering, including tax evasion, for which the regime is, in this respect, even wider than that required by FATF at the time of the evaluation.

12. Direct authors, co-authors, accomplices, instigators and conspirators are responsible for punishable acts. Instigation and conspiracy are punished. Imperfect forms also face criminal complaint; both, the attempt or attempts as the support, cooperation or facilitation, advice and cover-up even without prior agreement. It applies to both separate launderer and the persons who commit the predicate offense (self-wash).

13. ML offense extends to all types of property regardless of its value, regardless of representing, directly or indirectly, assets or financial results of predicated criminal activities.

14. The principles of extraterritorial and universal justice of predicated offenses for money laundering extend to conduct committed in third countries.

15. It admits that the intentional element of ML crime be inferred from objective factual circumstances (indirect proof).

16. The offense of financing of terrorism as criminal activity is regulated in the Salvadoran system. CFT Law serves all manifestations of terrorism, individual or organizations, including its financing and related activities. It is a more systematic regulation, with better legal technique used in the AML law, and

includes complementary aspects necessary to implement with more certainty related elements to this type of crime.

17. It is necessary to establish procedures to implement more appropriately United Nations Security Control resolutions and FATF Special Recommendations III provisions, together with rapid freezing before possible discovery of terrorist assets.

18. At the time of the evaluation visit the Legislative Assembly of El Salvador was discussing a proposed amendment of the Law Against Acts of Terrorism, which, among other improvements, would expand the FIU powers to investigate crimes of this nature and to avoid losing Egmont Group membership. This summary should clarify that the legislative reform could not be taken into account in the evaluation report but it was issued shortly before the report submitted before the House of CFATF.

Financial Intelligence Unit

19. The function of receiving reports of suspicious transactions, analyze and disseminate cases for possible criminal investigation, will correspond to the Financial Investigation Unit is an office ascribed to the General Attorney´s Office, under functional dependence of the Attorney General. This same unit is responsible for investigating ML criminal cases and to bring them before competent judges, work to which is prioritized by the Prosecutor´s Office. It is also responsible for issuing instructions or regulations necessary to develop AML Law measures, which were only made once in 2002.

20. In addition to the excessive concentration of functions in the FIU of the General Attorney´s Office (criminal investigation, regulatory and financial intelligence), one of the main shortcomings of AML/CFT in El Salvador is the lack of personnel and training which it has to carry out intelligence function that international standards expected from an FIU. For example, the RTS analysis section and information exchange with only two analysts. This is reflected in that this unit cannot optimally meet all its obligations, lack of feedback to obligated parties, and that between the same obligated parties there is different criteria on the correct interpretation of UIF Instruction to address similar situations.

21. The team also found a harmful doubling of RTS sending. While the law provides that the FIU is the national authority in charge of analysis and investigation of ROS, it also requires reporting entities to report suspicious activity detected on both the UIF and the respective Superintendence. This dual form of reporting, and generate a double effort for the obligated entities, undermines the exclusive nature of ROS received that characterizes FIUs. These reports are submitted on a form to the UIF and another form for the Superintendence. The Superintendence is not limited to facilitating rapid transmission of the report to the FIU, but it checks and verifies completeness and, when necessary, requires the obliged subject additional information.

3. Preventive Measures – Financial Institutions

Scope

22. All financial activities listed by the FATF are obliged to have AML/CFT controls in El Salvador. However, the scope of control widely varies and not all are overseen by a government entity, and not all are subject to detailed regulation. Such is the case of remittance companies, which lack a specific supervision entity and are subject only to AML Law regulation that forces them to notify the FIU on operations conducted by their clients or users repeatedly and in cash if they exceed the established threshold. El Salvador is the Central American country with the highest remittances received from abroad, so the risk that the service of funds transfers used to send or receive funds from criminal activities is potentially higher. Fortunately a large percentage of remittances is paid through the

supervised financial system, but the absence of specific regulations and lack of oversight of remittance companies and their service agents are a risk factor for urgent attention.

23. AML Law establishes that "Any other institution, association, corporation group or financial conglomerate ..." are also required to establish anti-money laundering controls which potentially covers most business according to the FATF and should be subject to preventive measures. However, this seemingly broad scope of the law is not enforced in practice.

24. Financial leasing (leasing), factoring companies, bonded warehouses and other businesses to support bank draft, are supervised only if they are part of a Financial Conglomerate. Its operations volume is apparently low, and the AML Law considers them formally obligated, but we need to incorporate them into practice in the prevention scheme, which is necessary to know risks of each type of institution.

25. Control measures in the financial system are based on the obligations under the AML Law and its Regulations as well as on the FIU Instructions, which do not include enhanced due diligence activities, professions or distribution channels at high risk. The control environment has been strengthened partly by the arrival of foreign banks, which has bought several of the largest national banks and self-management has implemented standards that exceed the requirements of domestic law.

26. A major shortcoming of the AML legal framework is that some of the obligations that the FATF hopes to see enshrined in Laws or Regulations with certain continuity, in El Salvador they are only found in the FIU Rules, which is of lower rank. Such is the case of the obligation to retain data for customer identification. It is important to note that to date this has not been an obstacle for authorities to verify compliance with these obligations; however, as monitoring becomes more strict and penalties are more severe, the FIs may oppose them successfully.

27. In general the country's regulations do not include several requirements on customer due diligence (CDD) detailed in FATF assessment methodology. Supervisors also have guidelines that assist FIs to set the level of risk in relationships and customer transactions. The FIU has issued guidelines on the submission of unusual/suspicious transaction reports but they are not appropriate for ML/FT risk management. Therefore, voluntary best practices of banks do not guarantee the protection of the financial system, since the powers of supervising authorities are limited to verify and sanction only provisions set in the Act.

28. In the practice, Regulated Subjects stated severe difficulties in verifying information provided by customers, since there are no testing services documents and formal mechanisms for data validation. The high volume of customers does not allow them to call references or visit all clients to confirm their data. The FIU Instruction do not establish an obligation to explore DDC measures regarding validation of information related with the risks associated with accounts, customers or users. With regard to information on originators of transfers, the law applicable to the FIs does not include the obligation for FIs to obtain information on the originators of such transfers and maintained through the payment chain.

29. There is no regulation in El Salvador on neither Politically Exposed Persons, nor definitions or guidelines on this regard. However, institutions interviewed reported that in practice they do have controls to PEPs, under criteria that vary according to each institution's internal policies.

30. Provisions regarding the report of suspicious transactions should be clarified to avoid confusion with mandatory objective reports over a certain threshold. As for monitoring of operations and report of suspicious transactions, IFs and other obliged subjects are subject to adequate and wide standards regarding special attention to unusual transactions, background analysis and purpose of such operations, and maintain its findings and records available for competent authorities. There is still no specific

provision requiring special attention to transactions with countries that insufficiently apply the FATF Recommendations. FI are not properly informed about prevention weaknesses of other countries, nor do they have the capacity to implement appropriate countermeasures.

Supervision

31. The main Financial System Supervising entities are the FSS and SS which cover in its management most of the FI identified by FATF. However, in El Salvador there are some financial activities under the scope of the Recommendations that are not under supervision of these entities regarding AML/CFT aspects, such as in the case of remittances, and financial companies that do not make part of a Financial Conglomerate (leasing, factoring, credit companies that do not make financial intermediation, etc.).

32. As stated above, the SSF and SV do not have a clear legal authority to issue rules on the ML/CF aimed to their supervision. This ability is headed by the General Attorney´s FIU. The SSF have only issued circulars containing reminders about the obligation to comply with the AML Act and FIU Instructions.

33. The Financial System Superintendence and the Securities Superintendence, have sufficient authority to make appropriate revisions and instruct on administrative proceedings against those financial institutions that do not comply with applicable laws, authority which is established in Article 3 of the Organic Law. The General Attorney´s FIU of the Republic, given its investigative role does not have the power to impose administrative sanctions, but may request inspections and make relevant decisions, as a result of reports due to the inspection.

34. A point of vital importance for El Salvador will be to strengthen the monitoring of preventive AML/CFT compliance, review AML/CFT regulation competencies, and prevent the FSS to have to analyze RTS referred to it by regulated entities. Another important recommendation is to develop supervision methods or manuals based on risks appropriate to the specific conditions of different types of regulated entities.

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

35. AML legislation contemplates obliged subjects: casinos and gambling houses, estate agents, precious stones and gemstones dealers, and any other institution, association, corporation or financial conglomerate group. However, despite being required to submit certain reports to the FIU, none of the existing APNFDs has established controls on AML/CFT. Nor are designated authorities responsible for their regulation and supervision, nor are there any provisions that allow high compliance with the obligations under the AML Law.

36. Particularly, there is knowledge that casinos are subject to local regulations that establish opening business requirements and monthly fees for its operation; however, once licensed to operate there is no kind of control over their operations. It should be noted that there are very few casinos in operation, these are relatively small and not very sophisticated services, and in several municipalities in the country is forbidden to establish new businesses of this type.

5. Legal persons and arrangements and Non-profit organizations

37. By law, companies are subject to particular surveillance system of audits and there are some steps to prevent legal persons to be unduly used for money laundering.

38. The National Registration Center, CNR, contains entries, files and documents on companies, which are public and any person has the right to search and obtain a certification. In practice there are some operational deficiencies, especially telematics access by the public or by the financial sector, and updating of the information contained in the CNR.

39. The "Law on Non-Profit Associations and Foundations" also creates a record that serves as an instrument of formal advertising, its creation, organization and management.

40. Without prejudice to other minor problems, especially actual implementation of the regulation, bearer shares may generate the greatest risk of opacity with respect to the actual owner or real beneficiary of companies, as there are no mechanisms to compensate for the inherent characteristic of bearer shares. However, the use of bearer shares is minimal in El Salvador. It is also worth noting that in this country there is no industry dedicated to offshore corporate services.

6. National and International Cooperation

41. Internally, there are some coordination mechanisms or instruments, development and implementation of policies and activities to combat money laundering and financing of terrorism.

42. Agencies and State institutions, including the Ministry of Finance, Central Bank, the Registry of Property and Mortgages, public oversight agencies and the Attorney General of the Republic, have broad powers to exchange information with other national and international institutions.

43. The public policy makers, the FIU, law enforcement branches, supervisors and other authorities, have different kinds of legal mechanisms enabling them to cooperate. The law also requires various agencies to provide FIU access to their databases and work with it in research and ML related crimes. It also empowers the Attorney General's Office to obtain the information required for any public or private entity, as well as individuals. However, these are not taken in advantage for the cooperation mechanisms for the discussion and definition of State policies, beyond the simple point interaction in punctual operational aspects.

44. In the international cooperation of El Salvador is solid, and the country has signed and ratified different global and regional treaties that constitute the laws of the Republic. In practice, mutual aid has worked well, but it should be noted that there is no clear internal procedures for execution of requests for mutual legal assistance, to ensure timely effectiveness and without undue delay.

45. It should be noted that bank secrecy provisions do not prevent implementation of FATF recommendations, as authorities have unrestricted access to information necessary for the investigation of any crime and to supervise financial institutions and other obliged subjects. In practice, moreover, there is an adequate response from FIs to authority requirements.

7. Resources and Statistics

46. The scarcity of statistical data to estimate the AML/CFT risks and measure the success of State strategies in this area shall be priority gaps to be addressed by competent authorities. On the other hand, the distribution of functions among government institutions of the AML/CFT system shall correspond to criteria that allow a more updates and effective regulation of obliged subjects and allocate resources consistent with such responsibilities. Finally, regardless of the amount of resources, more importance shall be given to control functions of AML/CFT monitoring by the Financial Superintendence and the production of financial intelligence by the FIU.

1. GENERAL

1.1. General Information on El Salvador

Government System

1. El Salvador is a democratic, constitutional, independent and unitary (non-federal) Republic. It has three independent public branches: Executive Branch, Legislative Branch, and Judicial Branch. The President, elected through universal vote for a single term of five years, is the Chief of State and Government and autonomously appoints his Counsel of Ministers. In comparison to other CFATF parliamentarian regime member states, the Ministers accomplish their position with exclusivity, which means that they may not be members of the Parliament simultaneously.

2. Legislative power is accomplished by a legislative Assembly elected through direct vote every three years. The Legislative Assembly selects the Supreme Court, the Attorney General of the Republic, General Public Prosecutor of the Republic and Human Rights Attorney General.

3. The maximum jurisdictional organ is the Supreme Court of Justice, the members of which are elected through the Assembly for nine years and renewed by three every three years.

4. El Salvador is a country located in Central America, with 21, 040.79 square kilometers and limits with the North Pacific Ocean, between Guatemala and Honduras. It is also the smallest country of Central America (estimated population in 2006 was 6, 990,658 inhabitants) and is the only country without Caribbean coasts.

Legal System and Related Institution Measures:

5. The legal system is based in continental law (or "civil law") and the Supreme Court of Justice is empowered to review the legality and constitutionality of the administrative acts issued by the Executive. The criminal system is mixed, in which a prosecutor conducts the investigation and further backs the accusation before the judge. The precautionary measures required throughout the investigation stage must be previously authorized by a Judge of guarantees except if ordered by the Prosecutor for urgency reasons, case in which it shall be further validated by the judge.

6. The regulatory hierarchy and the names used in each case are, in their order: 1.- Political Constitution (supreme regulation to which all other regulations must be subject to), 2.- Treaties ratified and adopted by the country, 3.- Laws, 4.- Regulations issued by the Executive or other authority delegated by the legislator (such as FIU Instructions), 5.- Other acts issued by the executive or by

entities with regulatory powers such as the Financial System Superintendence (SSF by its Spanish initials): Circular letters and Guidelines.

7. The regulations that exceed the framework foreseen in the relevant laws are revocable by the competent Court and administrative acts issued may be annulled whenever the issuing organ exceeds it's authority in the exercise of regulatory powers specified in the laws and/or regulations.

8. AML/CFT regulations are mainly made up by the following elements:

- **Laws**: 1) Legislative Decree Number 498 issued on December 1998 or "Anti-Money Laundering Law" (hereinafter "AML Law"); 2) Legislative Decree Number 108 issued on September 2006 or "Special Law Combating the Financing of Terrorism" (hereinafter "CFT Law"). These laws are complemented with some of the provisions of other laws: a) in criminal matters mainly the Criminal Code, Criminal Procedural Code and Organic Law of the Republic's Attorney General's Office; from the financial viewpoint, mainly the Organic Law of the Superintendence of the Financial System, Securities Superintendence Organic Law, Code of Commerce, and special laws that rule the different financial brokers.

- **Regulations**: "Regulation of Anti-money Laundering Law". Decree of the President of the Republic No. 2 dated January 31, 2000 (hereinafter AML Decree)

- **Other enforceable means**

    - "FIU Instructions" (Agreement 356 dated 2001, of the Attorney General´s Office of the Republic). This regulating entity contains details of AML/CFT obligation to which financial institutions were enforced. It is necessary to indicate that the legal empowerment to issue such Instruction according to its own preamble arises from Article 11 of AML Regulation which seems to only refer to the power of issuing punctual instructions to financial institutions, and issue mandatory application forms. However authorities consider sufficient the legal base of the Instructions and that is a fact that there it has been applied since 2001 and penalties have been issued from its noncompliance, without until now placing legality of the Instruction in doubt.

    - Circular letters issued by the Financial System Superintendence (SSF) do not have the nature of enforceable means. Their objective is to remind and clarify the reporting entities about the scope of obligations foreseen in the Law and FIU Instructions**,** and non-compliance thereof does not imply a penalty (what is sanctioned is the violation of the FIU Instructions or the Law). The SSF is capable of accomplishing the supervision but not the regulation---- AML/CFT matters. Such regulatory competence is entrusted to the FIU.

Recent history and Economic Information

9. El Salvador gained independence from Spain in 1821 and from the Central American Federation in 1839. There was a civil war which lasted 12 years and in which approx. 75, 000 died among civil and military population, and which ended at the end of 1992 when the Government and the leftist guerrilla executed a peace agreement on January 1992, which provided military and political reforms.

10. As summarized by the World Bank in its profile of El Salvador, "*High crime and violence rates have had a negative impact in the country´s image and the investment environment. These phenomena also diminish human capital and income and property of lower income individuals, thus preventing safe access to education and reducing employment opportunities*".

11. Due to the military events of the past, thousands of Salvadorians decided to migrate to North America and Europe, most of them illegally and others as refugees. This emigration currently exceeds one million individuals, which is approximately 15 percent of its nationals. Immigrants contribute a huge economic boost through remittances to family members, mainly from the United States.

12. The current depression of the world's economy and international financial crisis have difficulted the country´s economic performance, and current deficit of exports is not compensated with the remittances sent nor with the aid that the country receives from donors and international entities. This remittance drop has a particularly dramatic effect in economies such as that of El Salvador, taking into account that the remittance represent 17% of the GNI and are mainly addressed (34%) to the lowest income population.

13. El Salvador adopted the North American dollar as its official currency on January 2002 (Financial Integration Law of 2001). The Government of El Salvador currently concentrates the largest part of its financial policy in the maintenance of a disciplined fiscal policy and an active commercial exchange.

14. The following statistics offer a summarized idea of the economic and human development level of El Salvador:

DEVELOPMENT STATISTICS	2008*
Population, total (millions)	6.1
Population growth (annual %)	0
Surface area (sq. km) (thousands)	21.04
Life expectancy at birth, total (years)	71
Mortality rate, infant (per 1,000 live births)	21
GNI (current US$) (billions)	21.7
GNI per capita, Atlas method (current US$)	3480
Unemployment, total (% of total labor force)	7
External debt stocks (% of GNI)	45
Literacy rate, adult female (% of females ages 15 and above)	80
Literacy rate, adult male (% of males ages 15 and above)	85
CO2 emissions (metric tons per capita)	1

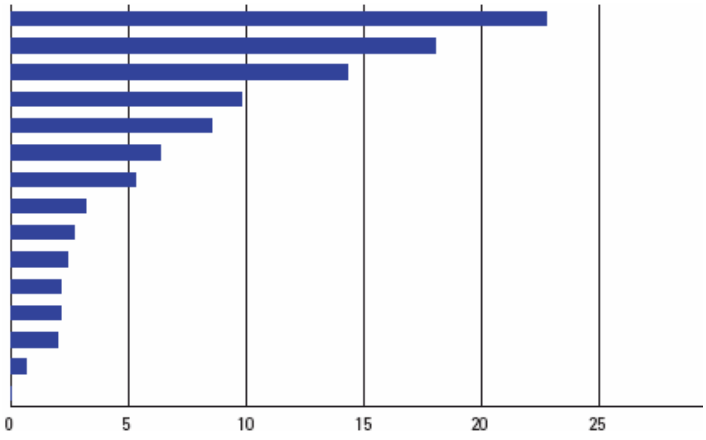
* Source: World Bank (www.worldbank.org)

15. El Salvador's economy holds the third place in Central America in terms of size despite being the country with the shortest territory of the region. However, available resources are still low in order to attain AML/CFT objectives.

Transparency, governance and combating corruption

16. In accordance with public information available to the evaluation team, corruption in El Salvador is a minor concern compared with organized crime, which is catalogued as the most problematic factor for the accomplishment of business at El Salvador according to 2009-2010 Global Competitiveness Report, published by the World Economic Forum (based on opinion surveys):

The most problematic factors for doing business*



Crime and theft 22.7
Access to financing.....18.0
Policy instability.....14.3
Inefficient government bureaucracy.....9.8
Corruption.....8.5
Inadequately educated workforce.....6.3
Inflation.....5.3
Poor work ethic in national labor force 3.2
Tax regulations 2.7
Poor public health.....2.4
Inadequate supply of infrastructure 2.1
Tax rates 2.1
Restrictive labor regulations.....1.9
Government instability/coups 0.6
Foreign currency regulations.....0.0

* Global Competitiveness Report 2009-2010, World Economic Forum.

17. The above seems to coincide with the Corruption Perception Index published by Transparency International organization, according to which El Salvador is in position 67 among 134 countries, which reflects a degree of corruption perceived lower than that of 25 of the 30 FATF member states.

18. The following is a selection of indicators used by the World Economic Forum in topics that constitute THE basis of any solid AML/CFT system. Observe that corruption problems do not seem to have as much incidence in El Salvador as organized crime and violence.

INDICATOR*	**Position of El Salvador among 133 countries**
Organized Crime	133
Costs of crime and violence for business	131
Cost of terrorism for business	100
Judicial Independence	99
Public trust in politicians	87
Deviation of public funds	71
Transparency in the design of public policies	55
Sophistication of financial markets	38

[Source: Global Competitiveness Report 2009-2010, World Economic Forum]]*

1.2. General Situation about Money Laundering and Financing of Terrorism

19. Authorities informed that the most sophisticated mechanism used by the organized crime to launder unlawful money in El Salvador are facade business, parking lots, travel agencies, transfer remittance, businesses for import and export of goods, cargo transportation and use of strawmen in smurfing operations.

20. Authorities did not provide studies tending to determine the amount of money generated by organized crime, but mentioned that the amount involved in cases already before judicial courts for drug trafficking, tax evasion, human trafficking, extortion and cash smuggling is approximately US$85 million. As for incidence of such crimes, authorities considered a decreasing stage trend but do not have statistics that support such statement.

21. To date no individual or corporation has been prosecuted for participating in these acts which are categorized by the Law for Combating Financing of Terrorism. Likewise, the Financial Investigation Unit has not found situations or acts of individuals that may be categorized as terrorism acts or the existence of operation funds or banking transfers the origin of which is related with terrorism.

22. Concerning foreign crimes, authorities state that profits are being channelized through cash smuggling which is detected mainly in air terminals and different borders of El Salvador, through the application of Articles 5, 7 and 19 of the Anti-Money Laundering Act.

23. In the opinion of authorities the Money Laundering offense causes socio-economical damages, alters the economy of the country and places in risk the financial system. Authorities considered that the Money Laundering offense annually causes millionaire losses to the country but there is not an approximate estimate.

24. Authorities also acknowledge that the geographical location of El Salvador makes it vulnerable to the transit of illegal drugs and the corresponding money, product of the sale thereof. In addition, El Salvador does not escape from a phenomenon that arises in all Central America in recent years consisting in a higher activity of drug dealing activities in all environments of the economy due to an effect of displacement caused by the strong pressure that Colombia and Mexico, in both ends, are accomplishing against huge drug dealing organizations. Among the groups involved in Money Laundering we highlight the organized crime made up by Gangs, Hired Assassins, Drug Dealers and Kidnappers.

1.3. Overview of the Financial System

25. In El Salvador, there are financial conglomerates and commercial private Banks (Banco Agrícola, América Central, CitiBank, GyT Continental, HSBC, Procredit, Promèrica and Scotiabank) as well as state Banks s (*Banco Hipotecario* and *Banco de Fomento Agropecuario*), in addition to Non-Banking Financial Institutions (FEDECREDITO and FEDECACES), which are defined in the Law of Banks and Law on Non-Banking Financial Institutions, concerning business that they may undergo. There is also the Central Reserve Bank of El Salvador (BCR) and the Multisectorial Investment Bank (MIB) with their own organization Laws.

26. Compliance culture in the financial system has been strengthened with the arrival of the foreign Banks, for which several local banks have been absorbed by foreign banks such as HSBC, CitiBank, Scotiabank and Bancolombia.

27. The table herein below summarizes the main characteristics of the financial system, the relative size of each type of institution and indicates which are reporting entities under AML/CFT regime

Financial Activity (In accordance with FATF Glossary)	Type of institution	Number of institutions	Assets ($millions)	Bound by AML /CFT legislation (yes or no)	Authorized / Supervised
1. Acceptance of deposits	1. Banks 2.Banks, Cooperatives 3. Saving and credit Corporations	1. 13 2. 5 3. 2	1. $12.717.96 2. $510.58 3. $77.21	1. YES 2.YES 3- YES	1. SSF 2 SSF 3. SSF
2. Loans	1. Banks 2. Banks and Cooperatives 3. Savings and Credit Corporations 4. Factoring and Forfeiting	1. 13 2. 5 3. 3 4. 2	1.$12.717.96 2. $510.58 3.$77.21 4. $7.87	1. YES 2. YES 3. YES 4. YES	1. SSF 2. SSF 3.SSF 4FSS (in operates within conglomerate)
3. Financial leasing	1. Banks 2. Leasing	1. 13 2. 3	1.$12.717.96 2. $23.73	1. YES 2. YES	1. SSF 2. SSF (if operates within a conglomerate)
4. Money or securities transfer	1. Banks 2. Banks, cooperatives 3. Savings and credit corporations	1. 13 2. 5 3. 2	1.$12.717.96 2. $510.58 3. $77.21	1. YES 2. YES 3. YES	1. SSF 2.SSF 3. SSF
5. Issuing and administering means of payment (eg. credit or debit cards, checks, traveller's checks, money orders and bank drafts, electronic money).	1. Banks 2. Credit card issuers	1. 13 2. 5	1$12.717.96 2. $142.4	1. YES 2. YES	1. SSF 2. SSF
6. Guaranties and financial commitments	SGR				
7. Negotiation of: a) Monetary Instruments (checks, promissory notes, cds, etc.); b) Foreign exchange c) Instruments of exchange rate, interest rates and indices d) transferable securities e) Negotiation of products and futures.	1. Banks 2. Credit and savings corporations	1. 13 2. 2	1.$12.717.96 2. $77.21	1. YES 2. YES	1. SSF 2. SSF
8. Participation in the emission of titles and provision of linked to such emissions.	1. Banks	1. 13	1$12.717.96	1. YES	1. SSF
9. Managing portfolios of individual and collective	1. Stock Brokerage Firms	1. 12	1 $21.20	1. YES	1. SS
10.Custody and administration of cash or securities on behalf of others.	1. Securities Custody and Deposit Corporation	1. 1			
11. Other forms of investment, administration or funds management on behalf of others.	1. Stock Brokerage Firms 2. Pension Fund Managers	1. 12 2. 2	1 $21.20 2. $5.157.41 (includes administrative funds)	1. YES	1. SV

12. Insurance	1. Insurers	1. 20	1$566.99	1.YES	1. SS
13.Money/Currency Exchange	1. Exchange agencies	1. 4	1.$2.54	1. YES	1. SS

28. A very relevant characteristic of the financial environment at El Salvador is the really high volume of remittances or workers abroad, in proportion to the size of its economy. In accordance with studies of the Central Bank (Work Document 2008-01) the highest market quota of remittance transfers as of the end of 2007 was controlled by money transmitters with a total of 74.8% or $2,763.7 million. "For the liquidation or delivery of the remittance to the beneficiary the remittance companies have to form alliances with local banks, FEDECACES, FEDECREDITO, couriers, micro-financing companies or liquidate them directly to the beneficiary, as the case of Western Union. Due to the great amount of alliances with local banks, these latter have the strongest participation in the liquidation (delivery of money to beneficiary) of remittances with a 77.7% of the total in 2007, equivalent to $2.870.4 million".

29. According to the same study, the cash transfers were very common in the past. At the beginning of the decade they represented more than 33% of the total remittance. Currently such percentage has been reduced until (according to 2008 report) until reaching 8.9% and from it 6% is directly accomplished by sender o through a relative or friend and the remaining 2.9% through entrusted individuals who are given instructions to transfer money and property from one country to another periodically, in exchange of a commission; such individuals pick up the package in the United States and deliver it personally to the beneficiary in its domicile.

1.4. Overview of Designated Non-Financial Business and Professions

30. Concerning DNFBP it is necessary to warn that many of them are not regulated by the Current Anti-Money Laundering Law and for those of which that are there is still no specific regulation, a form to report FIU, a classification of according to risks and authority that that regulates and supervises them or a specific policy on different DNFBP categories. The exception are trust companies given that this service may only be provided by credit institutions regulated and supervised by the Financial System Superintendence (SSF)

31. Authorities do not have information or estimates about these businesses and interviews accomplished during the on site visit allowed the team to obtain minimum data to that respect. The unawareness on the characteristics of such sectors potentially represents a high vulnerability for El Salvador in terms of ML/FT risks.

32. At El Salvador there are no attorney firms dedicated to the provision of corporate off-shore services such as organization of "shell companies" for further sale, act as nominees or serve as registered agents for companies abroad. Commercial and tax legislation neither seem favourable for the development of this type of industry.

DNFBP according to GAFI R.12	Description	Enforced subject ALD/CFT	Competent Authorites:
Casinos (operations exceeding US$3,000)	- Unknown number of recorded casinos. These only need authorization from the municipality to operate, which may be granted at its full discretion; there is no specialized authority for gambling/games of chance and the supervision is limited to trade issues. There is no information about owners or estimated amounts of operation accomplished by them.	**yes**	None

Real Estate Agents	Enforced subject in terms of AML/CFT; however there is no supervising authority or specific provisions that allow compliance with Recommendations. Number of agents and volume of the business is not known.	**yes**	None
Merchants of metals of precious stones (exceeding US$10,000)	Enforced subject in terms of AML/CFT; however there is no supervising authority, no specific provisions that allow compliance with Recommendations. The number of merchants and the volume of the business is unknown	**YES**	None
Notary Publics (in situations of R.12)	Not reporting entities. It was not possible to obtain statistic information	**NO**	None
Attorneys (in situations of R.12)	Not reporting entities. It was not possible to obtain statistic information	**NO**	None
Independent Legal Professionals (R.12)	Not reporting entities. It was not possible to obtain statistic information	**NO**	None
Accountants (in situations of R.12)	Not reporting entities. It was not possible to obtain statistic information	**NO**	None
Corporate Services Suppliers (CSP)	In case of legal persons, would be reporting entities in terms of AML/CFT; however there is no supervising authority	**YES**	None
Trust Management Suppliers (TSP)	Only Banks and credit institutions authorized therefore may act as trustees in accordance with the special law on the matter	**SI**	Financial System Superintendence -SSF

1.5. Overview of commercial laws and mechanisms governing legal arrangements

33. In El Salvador, legal persons are organized through public deed or through status (Cooperatives, NGOs). The legal life arises on first instance through the inscription in the Trade Registry, and secondly through publication in the official journal. Concerning corporations the Registrer's official defines legal requirements or aspects that the company must comply in accordance with its nature, purpose and existence. On the other hand there are international agreements executed with certain countries in order for legal entities or companies recorded abroad to develop a legal process in order to be awarded legal existence in our country. This is accomplished before the official letters of a notary public duly recorded before the Supreme Court of Justice; concerning legal persons in the specific case of NGOs and Cooperatives the first ones are recorded before the Ministry of Government just like in the case of Corporations, valuing legal aspects in form and content, in accordance with the nature of the legal person.

34. Concerning basic characteristics of a corporation these are mainly constituted by individuals or companies with individuals, which subscribe shares and (the) control is given to the individual with the

higher percentage of shares in the corporation. On the other hand (the) control may be accomplished by a board of directors or a single administrator.

35. On the other hand the corporation is obliged to establish a domicile or an office place. And as provided it is an obligation that such corporation be duly recorded before the Trade Registry in accordance with Articles 18 and 19 of the Code of Commerce.

36. The task of the Trade Registry officer at El Salvador is to approve the organization deed of the corporation in the sense of evidencing that all the legal requirements have been met, both in form and content, and depending on the nature of the corporation comply with control provisions thereof and as already indicated these are already provided in the public deed of the companies organization.

37. The above indicated information whenever provided by the Trade Registration according to petition of the parties is public. The same may be consulted by any individual in the registration.

1.6. Overview: strategy against Money laundering and financing of terrorism

a. AML/CFT Strategies and priorities

38. Since the creation of the Anti-Money Laundering Law and its relevant Regulations, the Instructions of the Financial Investigation Unit and Law for Combating the Financing of Terrorism, the previous Governments and the current government have fought this crime with means available**.** Recently ad-hoc inter-institutional groups have been made up by different representatives of government entities and entities of the financial sector in order to strengthen Anti-Money Laundering and Terrorism Financing activities. Authorities perceive that throughout the past four or five years there has been a reduction of money laundering cases thanks to prevention actions of the financial systems and the work of authorities.

39. Despite the above, the team encountered that there is no written nor tactic strategy at a local level on this matter. However, it is useful to mention that the weaknesses that according to the questionnaire answered by authorities must be urgently solved: a) Lack of an objective training plan -constant and updated- at a local level in the financial system. The evaluating team was informed that currently financial institutions train key personnel at least annually. b) Continuous changes of compliance officers in the Financial System. It was informed that the actual average of permanence has rose to 4.3 years. c) Inadequate preparation and lack of information in the Reporting of Suspicious Operations. New report procedures of STR intend to improve this situation. d) Lack of application of Anti-Money Laundering Law by the Judicial System of the country.

40. In 2008, the General Attorney´s Office of the Republic sent to the Ministry of Government an amendment proposal to the Law for Combating the Financing of Terrorism to be submitted before the Legislative Assembly. Notwithstanding, as of today, the offer -of critical relevance for the FIU not to lose membership of the Egmont group- has not been considered by the Assembly.

b. Institutional framework for Anti-Money laundering and combating the financing of terrorism

41. The evaluating team encountered that there is no institutional scheme that allows El Salvador to have coordination among the different competent agencies, establish actions plans and make follow-up thereof. Certain coordination is achieved at an operative level among FIU and Superintendence thanks to the good will of officers that work thereat.

42. The following is a description of the roll of different State entities involved in anti-money laundering and combating the financing of terrorism in the country.

Ministries

43. **Ministry of Treasury** has the responsibility FOR of detecting through the General Direction of Customs the smuggling and fiscal evasion crime which are constituted as crimes that generate money laundering.

44. **Ministry of Justice**. Its task is to generate criminal policies, through the Direction of Criminal Centres in the control of rehabilitation for individuals who have committed money laundering offense.

- Ministry of Internal Affairs
- Ministry of Foreign Affairs
- Committees or other entities to coordinate AML/CFT actions.

Criminal Justice and operation agencies

45. **The Financial Investigation Unit** (FIU) is judicial. It analyzes and values suspicions transaction reports and other information through its financial analysis area. It accomplishes criminal investigation of money laundering cases directed by own fiscal assistant agents, and finally criminalizes cases through accusation resolution directly submitted before the judicial authorities. FIU is part of the Attorney General's Office of the Republic of El Salvador, of which depends from the administrative and budget viewpoints.

46. The task accomplished by the **Civil National Police**, in Anti-Money Laundering through its financial intelligence unit located in the antinarcotics division, is to accomplish Money Laundering investigations under the functional direction of the Financial Investigation Unit of the Attorney General's Office of the Republic.

47. There are no specialized agencies for the seizure of goods. When there are procedures such as seizures or attachments, these are ordered by a peace judge and executed by the National Civil Police and Fiscal Agents.

48. In the case of **Customs,** this governmental office is responsible of controlling the passing through the country of individuals and goods, in order to detect situations or actions that infringe the country´s Laws, including Anti- Money Laundering Law, since there are individuals that pretend **to** introduce or take out high amounts of money.

49. The specialized task in terms of drugs which corresponds to the **Drug Trafficking Unit** of the National Police. In terms of crime related with taxes or duties the Ministry of Treasury shall lead preliminary actions.

Special action commissions or groups

50. Financial Investigation Unit is a member of Inter-institutional Group to Combat the Financing of Terrorism (CRICTE), and likewise it is part of the Anti-Money Laundering Inter-institutional Group formed by; *ABANSA, Banco Central de Reserva, Bolsa de Valores,* Securities and Financial System Superintendence.

Financial Sector Entities

51. The **Financial System Superintendence (SSF)**, based on its Organic Law is responsible to grant licenses and registration to Banks, Insurance Companies, Non-Banking Financial Institutions, Cooperative Banks, Insurance Intermediary Brokers and other established by Law. Likewise, it has the task of supervising compliance with AML/CFT measures by the mentioned financial institutions. This Superintendence is not empowered to issue regulations in terms of AML/CFT -such power is entrusted to FIU- but it may issue guidance to that respect.

52. There is a similar regime concerning licenses and supervision for the Stock Exchange market and for the pension funds which are controlled by the **Security Superintendence** and **Pensions Superintendence** respectively.

- Supervisors or authorities responsible for monitoring and ensuring compliance with AML/CFT by other type of financial institutions, in particular money exchange and money remittance offices.

53. Financial System Superintendence, Securities Superintendence, Pension Superintendence, and concerning companies dealing with sending or receiving Money, the Financial Investigation Unit (FIU).

- Change of securities, futures and other traded instruments.

54. Securities Exchange, controlled by the Securities Superintendence.

- Central Bank

55. Institution that promotes stability and development of the financial system. Consolidate monetary integration and generate and spread economic information.

56. Among its main responsibilities the Central Bank shall contribute for the country to have a transparent financial system in the management of funds of all Salvadorians, thus supporting the economy growth. There is a fundamental task in the economic and financial areas and the commitment to be a technical, apolitical, transparent institution, maintaining a vision of the country on the long term, focused in contributing to the economic stability of El Salvador.

57. As of the Monetary Integration Law, which entered into effectiveness on January 1st, 2001, the Central Bank of the Reserve of El Salvador shall concentrate in the management of the following strategic areas for the local economy:

- Regulation and Monitoring of the Financial System
- International Reserves Management
- Financial Services and Payment System
- Financial Agent of the State
- Exporter Services
- Statistics, Projections and Economic and Financial Surveys

<u>Non-Financial Businesses and Professions and Other Affairs</u>

- Supervision Body for Casinos

58. There is no institution that controls or supervises this type of business. Except in municipalities which grant operating licenses and establish operative capacity thereof; therefore it is responsible to monitor this type of businesses.

- Supervisor or other competent authority, or Self-Regulation Organization for Non Financial Businesses and Professions (DNFBP).

59. There is no institution or organization in the country which regulates or controls this type of business.

- Self-regulatory Organizations (SRO) for professions such as lawyers, notaries and accountants.

60. There is no regulation for such type of business or independent professions, in the context of the Money Laundering prevention.

- Registration of Companies and other legal entities.

61. Registry National Centre, hereinafter CNR, is an autonomous institution ascribed the Ministry of Economy. The Mercantile Registry is part of the CNR, and its purpose is to provide legal security and publicity to the acts and contracts that must be registered in accordance to the law.

- Mechanisms related with non-profit organizations**.**

62. Concerning this type of organizations there is no institution in the country that supervises them, notwithstanding the government ministry is before which these types of businesses are recorded.

c. Approach to risk

63. El Salvador laws and regulations do not foresee graduation of controls based on ML /FT risk. The SSF has not issued guidelines to that respect, but it has foreseen to advance towards regulation and supervision allowing focusing with higher emphasis in higher risk areas. Representatives of the bank commented that facing such trend -which they consider positive and necessary- they have started to study experiences of countries such as Colombia, that for many years has implemented a focus on risks, and Guatemala, which is starting such process.

64. El Salvador has not undertaken a comprehensive study of the different risk areas and vulnerabilities in terms of AML/CFT. Likewise, it lacks of a local strategy and the structure for the coordination in order to facilitate effort coordination of the different competent entities on the matter.

d. Progress since the last mutual evaluation

65. It is necessary to clarify that the above evaluation of CFATF to El Salvador was made on September 2004, and the report was prepared based on the methodology that was in effect prior to being amended in 2004. Therefore this report is the first one undertaken fully under the new evaluation criteria of the methodology adopted by FATF and CFATF in 2004, with the relevant updates.

66. El Salvador has acquired higher expertise in the detection, investigation and judging of Money laundering crime as of the last evaluation. However, advances made by the country with respect to main deficiencies identified in 2004 are few but may be summarized as follows:

67. In 2006, two years after the visit of evaluation of CFATF, the Law for Combating the Financing of Terrorism was approved, whereby the Terrorism Financing crime was criminalized. Both, AML Law and FUI Instruction, the drafting of which is frequently ambiguous and has generated confusion among reporting entities have not been reviewed since its issuance in years 1998 and 2000, respectively. SSF has issued circular letters tending to achieve higher uniformity on interpretation among financial institutions concerning AML/CFT obligations, but such circular letters are not enforceable since regulatory empowerment -even with respect to financial institutions under control of SSF- is under FIU of the Attorney General's Office.

68. On the other hand, there have been efforts to strengthen funds of the Financial Investigation Unit, through the establishment of specific profiles in the personnel staff to ensure that the attorneys and financial analysts have knowledge on the topic of Money Laundering. The FIU was provided with additional material such as new automobiles, computing equipment with state-of-the-art software, photocopy machine and scanning equipment. Further, the two specialized attorneys in Money laundering received frequent training in Money Laundering and Terrorism Financing topics. However, in terms of human resources, the same deficiencies identified in the previous report remain and the number of analysts has been significantly reduced (from four to two).

69. SSF also made efforts to strengthen supervision capacity of AML/CFT, through the creation of a small unit exclusively responsible for the compliance supervision on this matter. However, officers have not received specialized training, and the number is insufficient to accomplish an effective audit on all institutions under control; this is reflected in the low number of visits and calls of attention as a result of the inspection visits.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

2.1. Criminalization of Money Laundering (R.1 and 2)

2.1.1. Description and Analysis

Introduction

70. El Salvador has ratified the 88 Vienna's Convention and 2000 Palermo´s Convention, the Inter-American Convention against Financing of Terrorism, and Inter-American Agreement for the prevention and repression of Money Laundering crimes related with the illegal drug trafficking and connected crimes.

71. Within the internal environment, the Criminal regulation on this matter was introduced through Anti-Money Laundering Law (hereinafter "AML Law") approved on December 2, 1998 entering into effectiveness on June 10, 1999.

72. The Money laundering crime is regulated and penalized in Chapter II, Articles 4 to 8 of the above mentioned AML Law. Article 26 of AML Law provides that regulations and procedures of the Criminal Code, Procedural Law and other legal provisions which are not contradictory shall be applicable to this Law. This rule is complemented with Article 6 of the Criminal Code which provides "*General regulation of this Code shall be applicable to punishable acts foreseen in special laws, except if these contain different provisions*".

73. Money laundering is formally and criminally classified in El Salvador in accordance with Central American Agreement for the Prevention of Repression of Money Laundering Crimes Related with Illegal Drug Trafficking and Similar Offenses. Absolutely its regulation is quite similar to that of the 2000 Palermo Convention.

74. Money Laundering is an autonomous crime. Although it is not formally defined as autonomous, in its legislation it is treated as such, and interviewed judges and prosecutors understand it as such, and received such treatment in the country´s rulings that were analyzed by evaluators.

75. Within the Salvadorian legislation the Law Integration Principle is applied, highly important to understand its legal reality. Based on this principle, international treaties entered into with other countries or international agencies in accordance with its legal regulations constitute laws of the Republic of El Salvador. This principle seems to be peaceful in its judicial practice and is profusely applied to fill apparent legal gaps.

76. The financing of terrorism crime is regulated as a criminal activity in Salvadorian regulation in Article 29 of the Special Law to Combat Acts of Terrorism, DL 108.

77. Evaluators consider that despite the existing legislation of the country being adequate for the country´s technique, it has not been adequately implemented, taking into account the following:

A) Insufficient attention to laundering upon investigating crimes that generate unlawful earnings: deduction obtained upon comparing the low number of judicial files and convictions for Money laundering with the high number of cases for other crimes typically underlying or linked with laundering such as drug trafficking, frequent in the country.

B) Absence of convictions for complex ML cases. Upon examining the formal legal content of the judicial decisions it is concluded that most of the rulings are based on "special Money laundering crimes" (Article 5 of ML Law), which in reality are cash irregular circulation crimes, in which the evidence burden is not as demanding for the State as in the generic ML version. Given the regulatory and practical situation of the country, in a certain case there was confiscation of the principal of money seized simultaneously releasing the subject against any criminal liability with a dissident vote of the ruling court (Anabel Navarro Zelaya case)

C) Insufficient investigation task to demonstrate the subjective element of crime, that is, awareness of the criminal origin of funds.

Recommendation 1

78. (1.1) Money laundering is criminalized in El Salvador over the basis of the UN 1988 Convention to Fight Illegal Traffic of Narcotics and Psychotropic Substances (Vienna Convention), and the 2000 UN Convention Against Transnational Organized Crime (Palermo Convention). Gathers physical and material elements typically demanded in these Conventions.

79. Article 4 of the ML Law, classifies Money laundering crime as follows:

> *" That who deposits, withdraws, converts or transfers funds, property or related rights arising directly or indirectly from criminal activities to hide or cover-up unlawful origin or to aid evasion of legal consequences of his/its acts or whoever has participated in the Commission of such unlawful activities, shall be imprisoned from five to fifteen years and shall pay a penalty equivalent to fifty two thousand five hundred effective legal monthly wages for the trade, industry and services at the time of issue of the corresponding ruling.*
>
> *Any operation, transaction, action or omission aimed to hide the unlawful origin and legalize property and securities arising from criminal activities committed within or beyond the country shall also be understood as money laundering.*
>
> *In the case of legal persons, penalties shall be applied to individuals over 18 years old, who agreed or executed the fact constituting money laundering.*
>
> *Individuals that through themselves or in capacity as legal representatives timely inform on activities and crimes regulated by this Law, shall not incur in any type of liability."*

80. Article 5 of the mentioned AML regulation provides special Money Laundering cases as follows:

> "*For criminal purposes the following facts are also considered as money laundering and shall be punished with imprisonment from eight to twelve years and a fine amounting to fifty two thousand five hundred monthly legal wages in force, calculated in accordance with the provision of the above article:*
>
> *a) Hide or cover in any manner the nature, origin, location, destination, movement or apparent legal ownership of funds, goods or related rights which directly or indirectly arise from criminal activities; and*
>
> *b) Acquire, hold and use funds, goods or related rights thereof, being aware that these are derived from unlawful activities in order to legitimize them"*

81. All elements required by the Conventions on the matter are implicitly or explicitly incorporated in the Salvadorian typifying text (AML) at evaluator´s judgment. Formally the definition of kind does not

explicitly demand the awareness of the criminal origin (being aware or should have knowing). Notwithstanding, since dealing with fraudulent crimes, this knowledge is required which does not represent any problems in applying it to the practice according to declaration of legal operators interviewed throughout the evaluation (verified by evaluators in rulings against Anabel Navarro Zelaya, or Máximo Bernardo Soza).

82. (1.2) ML crime extends to all type of property, regardless of its value; indistinctly of what it represents, directly or indirectly, the assets or economic results of criminal activities used for money laundering.

83. For the above the application of the Criminal Code (CC) is applied, (remember Article 6 of the mentioned text) which reads as follows in its Article 126:

> *"Regardless of devolutions and repairs due for damages derived from the fact, the judge or court shall order the loss of the product, of the gains and advantages obtained by the accused based on the fact in favour of the State.*
> *This loss shall include securities, rights and other things obtained at any title, from or as a result of the fact by the accused party or another person whether individual or company for which the accused would have acted. The laws of securities, rights and other things shall also be suffered by third parties that would have acquired even freely and being acknowledged that the origin is unlawful activity, with the purpose of covering unlawful origin of such securities, rights or things or to aid the parties implied in such activity."*

84. (1.2.1) In order to prove that property is a criminal asset it should not be necessary that the person be accused of a predicate crime. The criminal type is an autonomous crime and law enforcement operators and analyzed rulings of the country treat it as such.

85. (1.3 and 1.4) In the regulation of the country any unlawful activity may be an underlying money laundering. Underlying crimes cover all unlawful activities of criminal order, through a mixed system:

- Firstly every criminal activity that generated money laundering is defined as an underlying activity,
- Herein below 15 different types are indicated and further specifically summarized,
- The regulation is closed with the classification of money laundering as all acts of cover-up and money or property legalization arising from criminal activities. Article 4 and subsequent of the Money Laundering Law.

86. This is deducted from Article 6 of AML law, which provides literally:

> *"Every criminal activity that generates Money laundering shall be subject to this Law, and especially concerning applicability of the following crimes:*
> *a) Those foreseen in Chapter IV of Law that Regulates Activities Related with Drugs;*
> *b) Trade of individuals;*
> *c) Fraudulent management;*
> *d) Vehicle theft and robbery;*
> *e) Kidnapping;*
> *f) Extortion;*
> *g) Unlawful enrichment;*
> *h)Unlawful negotiations;*
> *i) Embezzlement;*
> *j) Bribery;*
> *k) Weapon deposit and illegal trade;*

l) Tax evasion;
m) Merchandize contraband;
n) Corrupt Practice;
o) Fraud; and,
p) all acts to cover up and legalize money or property the origin of which is criminal activities"

87. (1.5) Universal justice and extraterritorial principles of the crimes defined for Money laundering extend to conducts committed in third countries, in which a crime is constituted and which would have constituted a predicate crime if it had occurred at El Salvador. Although this rule is only literally reflected in Article 4.2 of AML Law, it is advocated and deducted by the legal operators of the country in application of the law integration principle.

88. Article 10 of the Criminal Code in connection with the remaining part of the legal regulations and especially for application of the law integration principle, assumes that in practice money laundering falls into the category of internationally protected property, consequently applying the extension of universal justice principles to all money laundering and financing of terrorism assumptions. In the judicial practice of the country, this situation has been reflected among other in the ruling for financing of terrorism against Alberto Bertolazzi; also the written documents at the specialized prosecutor's office frequently mention international treaties as inspirers of internal legal system.

89. Mentioned Article 10 states:

> "*Salvadorian criminal law shall also be applied to crimes committed by any individual in a place not submitted to Salvadorian jurisdiction, provided it affects property protected internationally through specific agreements or international law regulations or imply a serious affection of the universally acknowledged human rights".*

90. In the proceeding against Leonardo Bertolazzi, alias Lino Estefano, in his capacity as logistic head of Rojas Brigades, in practice the above mentioned principle is reflected in the freezing of banking accounts of an individual linked with the above.

91. Notwithstanding, the application of the universal justice principle, in such an open manner may generate doubt and other interpretations towards the future.

92. (1.6) If applicable, money laundering crime, also applies to the persons that commit the predicated crime. "Self-launder" figure has been reflected in two rulings issued as a consequence of proceedings filed against Rilcy Serrano. Rulings that condemn for the underlying activity and another about consequent money laundering.

93. As indication, point that at Riley Serrano Case is condemned for the crimes of Kidnapping and Money Laundering.

94. (1.7) Salvadorian Criminal Code provides different participation degrees in the crime commission and ancillary crimes adequate for the fight against money laundering.

95. In addition of authors, (Article 32) direct authors or co-authors (Article 33) and mediate authors (Article 34) instigators or conspirators to commit crimes (Article 35), and accomplices (Article 36) are liable for punishable acts.

96. Proposition and conspiration is ruled in Article 23, although it requires specifically to be expressed in the corresponding type. The intention of attempt is deducted from Article 24. The aid, involvement,

cooperation or facilitation and advice are regulated in Article 36. Inciting or Instigation is penalized in Article 32.

97. Cover-up without prior agreement is punished as autonomous crime in Article 308 of the mentioned CC, provided knowing that the crime has been committed some of the following facts take place:

1. Help to elude investigations of the authority or to avoid its action

2. Procure el help someone to obtain the disappearance, hiding or alteration of traces or evidence of the crime

98. Article 345 of the CC penalizes the grouping, association or unlawful organization as autonomous crime.

99. On the other hand Article 7 of the AML Law provides special assumptions of the cover up crime, or specific cover up related with money laundering; understanding it has the following consideration:

> *"a) Those that without prior agreement with authors or participants of the money laundering crime, hide, acquire or receive money, securities or other property and do not inform the relevant authority immediately after being aware of the origin thereof or prevent the confiscation of money or other property the origin of which is criminal activity;*
>
> *b) Those that without prior agreement with authors or participants, aid to elude investigation of the authority or avoid its action;*
>
> *c) Superintendents and other officers or employees of the entities entrusted with the control or supervision, that do not immediately communicate thus hindering knowledge to Republic´s Attorney General of information remitted to entities under its control;*
>
> *d) Those who knowingly have participated as grantors in any type of simulated agreement for the sale, tenancy or investment, whereby the nature, origin, location, destination or circulation of the gains, values or other property arising from criminal acts are covered up as specified in Article 4 of this Law, or that have obtained at any manner economic benefits from crime; and*
>
> *e) Whoever purchases, guards, hides or receives such gains, goods, or benefits, insurance or assets in knowledge of their criminal origin.*
>
> *In cases of paragraphs **a)** and **b)** the penalty shall be ten years of imprisonment and in cases under paragraphs c), d) and e) shall be four to eight years of imprisonment"*

100. (1.8) Additional elements. Concerning the possibility to penalize a conduct, whenever the crime assets derive a conduct that took place in a another country, which is not a crime in this third country, but it would have constituted a predicate crime should it had taken place internally at El Salvador, and, there not being any practical background, seems to be reasonable to think as of the application of Articles 10 and 11 of the CC that such activity committed in a third country crime is not applicable as a punishable background for the criminal regulations of El Salvador.

101. The ordering admits the offense or imprudent form in the money laundering criminal type. Although restricted to officers or employees of enforced entities or officer of supervision or control entities, in which cover up of Article 7 takes place for inexcusable ignorance or negligence there is this possibility under Article 8 of AML Law.

102. Article 8 literally provides:

> ."In cases of the previous Article, should cover-up be produced for negligence or inexcusable ignorance in the attribution of officers or employees of the institutions referred to in Article 2 of this Law, or control or supervision entities in which it takes place, the penalty shall be from two to four years"

103. It shall be indicated that Article 4.4 of the AML Law, provides that "individuals that acting on their own behalf or as legal representatives and who timely report activities and crimes regulated under this Law shall not incur in any type of liability whatsoever".

104. Although currently this precept is peaceful for legal operators of the country, most of the interviewed individuals have agreed that the drafting and location is neither the best nor the most suitable even in opinion of evaluators; its construal in the future could result in an absolutory excuse non-seek by legislator.

Table: Crime Designated Categories

20 CATEGORIES OF APPLICABLE PRECEDING CRIMES ACCORDING TO FATF	**EQUIVALENT LAWS IN THE COUNTRY**
Participation in an organized criminal group and extortion	CC Article 345. Special Law to Fight Terrorist Acts, DL 108 Article 13.
Terrorism, including Financing of Terrorism	Special Law to Fight Terrorist Acts, DL 108 Article 5 subsequent (terrorism acts) Article 29 (financing)
Traffic of human beings and traffic of migrants	AML Law, Article 6, b. CC 367 and subsequent
Sexual exploitation, including sexual exploitation of minors	CC Article 170 and 170 A CC Article 169 (minors)
Unlawful Traffic of Narcotics and Psychotropic Substances	AML Law, Article 6, a.
Unlawful weapon traffic	AML Law, Article 6, k. CC Article 346, and subsequent.
Illegal Traffic of Stolen Good and Other Type	CC Article 214.
Corruption and Bribery	AML Law, Article 6, i (embezzlement) AML Law, Article 6, j. (bribery) AML Law, Article 6, n. (corrupt practice) CC Article 325 and subsequent (embezzlement …) CC Article 307 (bribery) CC Article 310 (corrupt practice)
Fraud	AML law, Article 6, c. (Fraudulent management law) AML, Article 6, l. (Tax evasion) CC Article 249 and subsequent (treasury/tax)
Currency forgery	CC Article 279
Product piracy and counter feature	CC Article 226 (dº copyrights) CC Article 228 (dº industrial rights
Environmental crime	CC Article 255 ad subsequent
Homicide, serious corporal injury	CC Article 128, and subsequent CP Article 143, 144, 145.
Kidnapping, ilegal retention and hostage taking	AML Law, Article 6, e. (kidnapping) CC Article 149 Special Law Against Terrorism Acts, DL 108, Article 16. Hostage taking.

	Question? Illegal Retention?
Theft or robbery	AML law, Article 6, d. (vehicles) CC Article 212 and subsequent. CC Article 209 and subsequent.
Smuggling	AML Law, Article 6, m.
Extortion	AML Law, Article 6, f. CC Article 214. CC Article 153
Counter feature	CC Article 279 and ss
Piracy	CC Article 368 and ss
Use of Exclusive Information, Market manipulation	CC Article 336 traffic of influences CC Article 233 SS
	AML Law, Article 6, g. Unlawful enrichment. AML Law, Article 6, h Unlawful negotiations. AML Law, Article 6, o. Fraud
	AML Law, Article 6, p Every cover-up and act related with cover-up and legalization of Money and/or property arising from criminal activities

Recommendation 2

105. (2.1) AML crime is applied to any person, whether an individual or legal person, even if this latter is not legally constituted all in accordance with Article 2 of AML.

106. Paragraph of this precept provides: *"This law shall be applicable to any individual or legal person even when this latter is not legally organized."*

107. (2.2) Salvadorian procedural Law admits that the intentional element of ML crime be inferred as of fact objective circumstances.

108. Formally such precept is deducted from Article 162 of its Criminal Procedural Code, which provides the following paragraph concerning the extension, relevance and valuation of the evidence:

> "*Facts and circumstances related with crime may be evidenced by any evidence legal means, respecting the main guarantees of persons, contained in the Constitution of the Republic, and other laws, provided it directly or indirectly refers to the investigation purpose and be useful for discovering the proof.*
> *Judges shall give special importance to the scientific evidence means being able to be advised by specialists, should they are not, in order to decide on the investigation diligence that they must entrust to the prosecutor or about the practice of final or non-reproducible evidence acts, practice of evidence for a better provision and to adequately acknowledge evidence elements derived from such means. (8)*
> *In order for evidence to be valid they shall be included within the proceeding in accordance with the provision of this Code and in absence thereof, the manner in which the inclusion of similar evidence is foreseen. In case of noncompliance with the above requirement, provisions of final paragraph of Article 15 of this Code shall apply.*
> *Judges shall value evidence in the relevant resolutions in accordance with the healthy critic rules"*

109. In practice, according to interviewed judicial authorities or those belonging to the attorney general´s office nothing opposes to use such probatory techniques in the criminal proceeding.

110. (2.3) Criminal liability for ML also extends to legal persons. (see drafting of paragraph 2.1of this recommendation)

111. It is worthwhile indicating that Article 349 of the Code of Commerce provides as follows:

> *"The corporation that is duly organized and executes unlawful acts shall be declared dissolved and shall be immediately liquidated.*
> *The dissolution action is applicable to any interested party or the Public Ministry. The judge must decree it officially upon acknowledging the unlawful activity"*

112. This drafting does not provide proportionality or graduation of the penalty or measure provided in Article 349 of the Code of Commerce in relation with the possible sanctions to legal persons.

113. There is a practical absence of application in the legal ordering of the legal precept that provides liability of legal persons, perhaps because the Code of Commerce is not the most adequate instrument to regulate such matter from a criminal approach.

114. (2.4) Subjecting legal persons to criminal liability due to ML, does not prevent possibility of simultaneous criminal, civil or administrative proceedings except if the "*ne bis in iden*" principle is applied.

115. (2.5 Individuals) In the ordering of the country, individuals are subject to criminal sanctions or effective proportional and dissuasive liabilities for ML.

116. In case of legal persons sanctions shall apply to individuals exceeding 18 years old who agreed or executed the penalty crime.

117. Since general regulations of the Criminal Code are applicable to punishable facts in special law, according to Article 6 of such text, penalty to be applied for ML shall be graduated or proportioned in accordance with the regulation provided in Articles 29, 30, and 31 on circumstance that amend the criminal liability.

118. Penalties have a wide bandwidth adequate to those provided for in other countries of the region or including higher.

Penalty Catalogue:

119. ML, (Article 4 AML Law) depending on the subtype may be condemned with imprisonment penalties that go from 5 to 15 years of imprisonment and fifty two thousand monthly wages. Special cases (Article of AML Law) are punished with 8 to 12 years of imprisonment and the same fine. Special cover-up cases (Article 7 of AML law) are condemned with 4 to 8 years of imprisonment. Concerning fraudulent crime imprisonment from 2 to 4 years is provided.

120. Accessory penalties and civil liability. Given the supplementary nature of the general regulations of the CC, if applicable, the following shall be applied or declared: a) accessory penalties (Article 46 of the Criminal Code) concerning:

.- disqualification: absolute, special.

.- expulsion of territory.

.- fine (indicated in text of AML Law)

b) civil liability and consequences thereof, Articles 114 and subsequent of the CC.

121. Civil liability. Although it is regulated and would be applicable to ML assumptions, in practice and given concrete background of the case, it shall not be habitual that its application operates or proceeds and given the more specific natures of figures regulated in Article 126 and 127 on loses of products, gains and advantages arising from the fact, these figures shall apply and be analyzed at the adequate time. (Concerning loss and seizure see recommendation 3)

122. Article 115 states that civil consequences that shall be declared in the ruling shall be, among other, the return of things obtained as a consequence of the accomplishment of the punishable act, or in absence thereof, the payment of the equivalent value.

123. Salvadorian CC provides the following principles with respect to interrelation of the execution of principal or accessory penalties:

> *a) imprisonment must be substituted by a fine or may be substituted by fine, but never when the imprisonment penalty exceed one or three years, respectively (Articles 74 and 77 CC)*
>
> *b) Whenever the main crime is jointly imprisonment and fine, imprisonment may not be substituted by fine (Article 76 CC)*

124. Consequently and given the amount of the above analyzed amount of possible penalties, except in the case of imprudence, it shall always be beyond the three years threshold; it may be stated that for ML nothing opposes formally to effective application of penalties.

Conviction to legal persons

125. (2.5 Legal Persons) Concerning legal persons, although according to the mentioned Article 349 of the Code of Commerce, shall be declared dissolved and immediately liquidated whenever executing unlawful acts; in practice, possibly for absence of proportionality and graduation circumstances this precept is not applied.

126. Penalties catalogue: a) the commission of a ML crime by a legal person shall formally have the immediate liquidation and dissolution "penalty" of the legal person.

127. In Salvadorian regulations an additional mechanism for liability of legal persons (Article 4 of AML Law) is provided whereby sanctions to legal persons shall be applied to individuals exceeding 18 years old, who have agreed and executed the fact constituting money laundering. At the opinion of evaluators this is not an adequate mechanism, since "individuals of age" agreed or executed the "fact of money laundering" they are directly participants in such activity; in addition, there is possible concurrence of the direct execution principle of criminal liabilities.

2.1.2. Recommendations and Comments

Recommendation 1:

128. More specifically regulate the universal justice principle in relation with money laundering, regulating this principle in a very specific manner, relating it to the applicable criminal types, as well as to define scope and contents.

129. Redefine Article 4.4 of AML Law, both in its considerable content and formally, as well as systematically located in a Chapter that does not generate any doubt whatsoever concerning its scope and application; although in current forensic practice this precept does not assume application of any

absolutory excuse for the confession, for applying Article 21 of Criminal Procedural Code, according to the opinion of several individuals interviewed we are in the presence of a complex drafting.

130. Improve Implementation of the anti-money laundering specially in: A) number of arrested and laundering sentences; B) extension of judicial processes to different underlying activities, specially drug trafficking in a first phase; C) extension and improvement of investigation of judicial files for laundering, deepening among other issues knowledge of accused and their backgrounds or relation with the subject element for the type, or knowledge of the criminal origin of the property, whether fully or indirectly, even through the application of judicial technique of deliberate ignorance.

131. Redefine Article 4 of AML Law: a) make reference to the commission beyond the country also in the first paragraph; b) Incorporate third paragraph of the Article; c) redefine and relocate fourth paragraph.

Rec.2:
132. Redefine the penalty or measure established in Article 349 of the Code of Commerce in relation with the possible criminal penalty to legal persons, establishing a proportionality or graduation thereof. Alternatively, establish in the CC a graduated system of criminal and civil liabilities of legal persons.

133. Use sanctions foreseen for legal persons.

2.1.3. Compliance with recommendations 1 and 2

	Grading	Summary of factors that support the Grading [63]
R.1	**LC**	Its implementation is not enough because there is no adequate number of convictions; few are due to complex or serious money laundering cases (only cash smuggling) and upon investigating precedent crimes there is no adequate pursue of money laundering derived there from.
R.2	**LC**	The only penalty for legal persons that incur in criminal actions is dissolution, which is neither gradual nor proportional. Not applied in practice

2.2. Criminalization of the Financing of Terrorism (RE.II)

2.2.1. Description and Analysis

134. The Special Law Against Terrorism Acts is approved in legislative Decree Nº 108 dated 21/9/06, text which is published in the Official Gazette Nº 193 on 17/ 10/ 2006.

135. Master lines of the purpose of this law is to prevent sanction and eradicate crimes described thereof (terrorism), as well as all of its demonstration (whether individual or organized) including financing and related activities.

136. We are dealing with a more systematized text, with a better legal technique than that used in AML Law and other application regulations, gathering complementary issues necessary to apply with higher legal security elements related with this type of crimes with a more debugged legal technique.

137. The application environment is regulated, establishing that the law shall apply for punishable acts totally or partially committed in its territory and subject to jurisdiction. It shall also be applied to any individual even in a place not submitted to jurisdiction for crimes that affect legal property of the State or

[63] These factors are only requested whenever the Grading is below compliance.

its inhabitants or legal property protected internationally by specific agreements or international law regulations. (Article 2 of the Law)

138. For such purposes it must be indicated that El Salvador on 21/01/ 2003 adhered to International Agreement for the Repression of Financing of Terrorism, ratifying such adhesion in 12/2/2003, and publishing it at Official Gazette Nº 47 dated 3/11/2003.

139. Such text entered into effectiveness eight days after publication in the Official Gazette that is 11/11/2003.

140. Consequently, for application of the integration principle of the law and other previously indicated arguments legal property included in this treaty and in other related elements is fully integrated in the country´s regulation regardless additionally to the double integration since these have the nature of "internationally protected legal property"

141. The concept of funds is provided in a extremely ample manner, understanding as such:

> "property of any type whether movable or immovable, real estate or chattels, regardless of how it has been obtained and legal instruments or documents, in whichever form, including electronically digital form that accredit property or other rights over such property, including, without limitation, banking credits, travellers' checks, banking checks, drafts, shares, securities, obligations, bills of exchange and letters of credit".

142. The Terrorism Acts Law analysis a series of actions typified as individual terrorism acts habitually using the expression "that who…. To regulate in Article 13 the figure or organization or belonging to any of them with the purpose of committing any of the conducts typified thereof.

143. In this law, Article and subsequent directly regulate a series of special interest related elements to have higher legal security among which it is worth pointing out: a) cover-up, b) punishment of preparatory acts, c) attempt, d) complicity, e) confiscation and seizure, f) freezing of funds, g) seizure of goods, products or instruments for crimes committed abroad, and h) specific sanction regime for legal persons among other measures.

144. It had to be indicated that interviewed authorities understand that terrorism is not a currently problem, within internal environment of El Salvador.

Special Recommendation II

145. Terrorism acts regulated and criminalized by the Special Law Against Terrorism Acts, coincide in their master lines with those gathered in environments of the reference annex of Article 2, International Agreement for the Repression of Terrorism Financing.

146. Should there be any doubt of interpretation in the internal regulation, the International Agreement for the Repression of Terrorism Financing, constitutes "law of the country", in accordance with the provisions of the treaty since its effectiveness; given the integration principle of the law which operates in the country, and application of Article 144 of its Constitution for which it has to be undoubtedly ensured that international standards are complied with.

147. Since dealing with a criminal conduct, the criminal reproach application in Article 6 of the AML Law would be applied indicating as predicated activity that of laundering crime all activity generating money laundering and in paragraph p of such Article. All that regardless of applying, if applicable, the timely contest and special regulation nature to the specific type related with the financing of terrorism.

148. (II, 1) Financing of terrorism is typified as an autonomous crime in Article 29 of the Law Against Terrorism Acts. Likewise, the following are provided as complementary crimes: cover-up, preparatory acts, proposal and conspiracy, attempt, complicity is penalized and likewise, special aggravating circumstances are provided.

149. The text of Article 29 is as follows: *"That who to any means, whether directly or indirectly, provides, collect, transports, supplies, holds funds or tries to provide or collect, offer or attempt to offer financial services or other services in order to be used partially or totally to commit any of the criminal conducts included in this Law, shall be penalized with imprisonment of twenty to thirty years, and a fine amounting from one hundred thousand to five hundred thousand dollars.*

> *Same situation shall be inferred for that who directly or indirectly, places funds, financial resources, or materials or financial services or related services of any other nature, at the disposal of the person or entity that destines them to the commission of any of the crimes foreseen in this Law".*

150. (II, 1, a, i) Commissive verbs of mentioned Article 29 respond to the spirit of Article 2 of the Convention for the Financing of Terrorism, since extend to any individual that intentionally offers or gathers funds, through any means, whether directly or indirectly, with the unlawful intention to be used totally or partially to commit terrorist acts of the Salvadorian regulations

151. (II, 1, a, ii) Commissive verbs of the mentioned Article 29 respond to the spirit of Article 2 of the Convention for the Financing of Terrorism, since they extend to any individual that intentionally offers or gathers funds, through any means whether directly or indirectly with the unlawful intention that will be used, partially or totally by a terrorist organization.

152. (II, 1, a, iii) Commissive verbs of the mentioned Article 29 in its second paragraph respond to the spirit of Article 2 of the Convention for the Financing of Terrorism, since they extend to any individual that intentionally raise funds, through any means whether directly or indirectly with the unlawful intention to use them, partially or totally by a terrorist individual in the commission of any of the terrorist crimes typified by Salvadorian regulations

153. (II, 1, b) Article 4 of Special Law Against Terrorist Acts, defined funds concept in relation to this matter as follows:

> ***"Funds:*** *These shall be understood as property of any type, tangible or intangible, real estate or chattels, regardless of how these have been obtained, and the documents or legal instruments, whichever be their form, included in the electronic or digital form, that accredit the property or other rights over such goods, including, without limitation, banking credits, travellers checks, banking checks, drafts, shares, securities, obligations, bills of exchange and letters of credit".*

154. Respecting the spirit and literality of the international text and extending consequently to any type of fund regardless of its legal or illegal "origin".

155. Some Salvadorian legal operator has transferred to the evaluators doubt with respect to the fact that the use of "unlawful" origin money is criminalized in internal order. However, for evaluators it is clear that the reference in the type of ***"Funds: ……****., regardless of how they have been obtained.....".* implies that in its legislation there is no differentiation of this origin of funds for purposes of criminal liability

156. (II, 1, c) The above mentioned Article 29 does not require that "funds be actually used" in the commission of terrorist acts nor linked to specific terrorist act, *"That who..... with the intention to be used totally or partially to commit any of the criminal conducts included within this Law,……".*

157. Some legal operator has stated doubts to evaluators, with respect to the delivery of funds to terrorist organizations, "neutral deliveries", would not be included or typified as crimes.

158. Mentioned Article 29, could have a double construal, for which the application of "*indubio pro reo*" principle, these conducts could be without reproach regardless that for the application of the integration principle of international texts, contrary interpretation would apply.

159. (II, 1, d) Article 29 specifically sanctions attempt to commit the financing of terrorism crime, upon determining: "*That …. or try to provide or collect, give or try to give....*"

160. Article 31 condemns preparatory acts, proposition and conspiracy to commit crimes included in the law, obviously including financing.

161. Article 32 condemns attempt upon determining penalty for this participation degree.

162. All regardless of Article 51 which provides complementary nature of CC in what has not been foreseen in this law.

163. Concluding, undoubtedly in the Salvadorian regulation it is a criminal offense to attempt to commit financing of terrorism crimes.

164. (II, 2) As it has been reflected in the analysis of compliance with first recommendation, and in the third previous paragraph to this recommendation, the financing of terrorism crime is a source or precedent activity of the money laundering crime.

165. (II, 3) Terrorism financing crimes are applied in El Salvador regardless of the fact where the crime has been committed or the terrorist act took place. Specific backup regulations are deducted from Article 2 of the law through the following paragraph:

> "***APPLICATION ENVIRONMENT*** *This Law shall be applied to punishable acts committed totally or partially in the territory of the Republic or in places submitted to its jurisdiction. It shall also apply to any person even in a place not subject to Salvadorian jurisdiction, for crimes that affect legal property of the State or of the inhabitants of the Republic of El Salvador, or legal property protected internationally through specific agreements or international law regulations."*

166. All regardless of the complementary application of the mentioned integration principle of the law.

167. Again to that respect we have to mention the ruling on Bertolazzi's case, issued to Alberto Bertolazzi, as "Italian terrorist domiciled in El Salvador"

168. It has to be indicated that criteria 2.2, 2.3, 2.4 and 2.5 are also complied with and applicable with respect to the terrorism financing crime, for which remits to readers such comments, in procedural matters; even as indicated in considerations previous to the analysis of this recommendation, these are improved upon having an improved and modern criminal regulation, improvements or specifics indicated in the following paragraphs.

169. Salvadorian procedural code admits the intentional element of the financing of terrorism crime to be inferred as of objective fact circumstances (indication elements); regardless of the fact that Article 42 of the law for terrorism acts extends evidence means and regulates those coming from abroad.

170. The paragraph of this Article 42 provides:

Article 42. The following shall be considered evidence means, in addition to those provided in the Criminal Procedural Code,:
a) Information contained in filming, recordings, photocopies, video tapes, compact discs, digital discs and other storage devices, telefax, written, telegraphic and electronic communications, under the terms referred to in Article 302,paragraph second of Criminal Code, when dealing with crimes foreseen by this Law;
b) Confiscation, inspection and destruction minutes and other similar procedures; and,
c) Evidence coming from abroad. Concerning formality of reception, shall be ruled by the Law of the place where they are obtained; concerning their valuation, shall be ruled according to the Criminal Procedural Code, this law and the provisions of international treaties, covenants or agreements ratified by El Salvador

171. Criminal liability for financing of terrorism also extends to legal persons being regulated in Article 41 of the Law the paragraph of which provides:

LEGAL PERSONS REGIME
Article 41.- When it is evidenced that individuals that integrate administration or direction entities of a legal person or private entity, permit, collaborate, support or participate on representation on behalf thereof, in the commission of any of the crimes foreseen in this Law; the judge that acknowledged the case shall order any of the following sanctions or measures against the legal person or private entity dealing with:
a) Imposition of a fine amounting from fifty thousand to five hundred thousand dollars.
b) Dissolution of the legal person or applicable private entity, issuing official letter to the competent authority in order to proceed.
Firm resolution or decision shall be published in any communication means

172. According to the opinion of legal operators nothing opposes to the internal regulation of the country for legal persons submitted to liability for the crime related with the financing of terrorism, have the in turn the possibility of parallel criminal, civil or administrative proceeding except the "*ne bis in idem"* principle is applicable. In all events it has to be indicated that there is no practical background to that respect.

173. In the ordering of the country, **individuals** subject to criminal sanctions or effective proportional and dissuasive are subject to civil liabilities for the crime related with the financing of terrorism.

174. Penalty catalogue:

A) FINANCING OF TERRORISM ACTS
Imprisonment from twenty to thirty years, and penalty from one thousand to five hundred thousand dollars

B) COVER-UP
Imprisonment from fifteen to twenty years

C) PREPARATORY ACTS, PROPOSITION AND CONSPIRACY
Imprisonment from ten to fifteen years

D) CRIME ATTEMPT
Three fourth of the minimum and three fourths of the maximum of the indicated penalty of the corresponding crime

C) COMPLICITY TO COMMIT CRIMES
Fixed between the three fourth of the minimum and the three fourths of the maximum and in case paragraph 2) of the same article, shall be fixed in the minimum legal corresponding to the crime and two thirds of the maximum of such penalty.

D) SPECIAL AGGRAVATING CIRCUMSTANCES
Finally it has to be indicated that Article 34 provides a series of important penalties in special cases.

175. Concerning **legal persons**, Article 41 provides the following penalty regime:

a) Fifty thousand to five hundred thousand dollars imposition penalty.
b) Dissolution of the legal person or relevant private entity, issuing official latter to the competent authority to proceed.
Final decision shall be published through any communication means.

176. Financing of terrorism crimes extend to: "property of any type, tangible or intangible, real estate or chattels, regardless of how these have been obtained, and legal documents or instruments, in whichever form, included in electronic or digital format, that accredit property or other rights over such property, included without limitation, banking credits, travellers' checks, banking checks, drafts, shares, securities, obligations, bills of exchange, letters of credit".

2.2.2. Recommendations and Comments

177. The normative regulation is adequate and although there is few practical implementation on the matter, a successful case is evidenced in which international cooperation with Italy which gave rise to an investigation that lead to a judicial decision in the matter known as Bertolazzi.

178. We suggest improvement of the definition of Article 29, regulating without doubt the delivery of funds to terrorist Organizations or individual terrorist, regardless of the intentionality of such delivery.

179. Need to form legal operators on the scope of this criminal type and internal regulations.

2.2.3. Compliance with Special Recommendation II

	Rating	Summary of the factors that support the Rating
RE.II	**C**	

2.3. Confiscation, freezing and seizure of crime assets (R.3)

2.3.1. Description and Analysis

Prior considerations to R.3:

180. In the Salvadorian regulations, the confiscation, freezing or seizure related with activities linked to money laundering are regulated in an unlike manner in different regulative texts.

181. A) The CC, which as previously indicated has supplementary nature to the Laundering Law, regulates in its Articles 126 and 127 the following aspects:

182. Article 126.- Loss of the products of gains and advantages from the criminal fact obtained by the condemned party because of the fact, in favour of the State

183. This loss shall include securities, rights, and things obtained at any title, with motive or as a result of the fact by the accused or by another person whether an individual or a legal person for which the accused would have acted even those obtained by third parties that would have even then acquired

without cost, knowingly that their origin was a criminal activity, in order to cover-up an illegal crime of such security, rights or things or to support whoever is implied in such activity.

184. Article 127 regulates the Confiscation, regardless of the rights of good faith buyers of objects or instruments that the accused has to prepare or facilitate the fact. The confiscation shall not apply in case of faulty facts.

185. Confiscation may only be applicable whenever the objectives or instruments are the property of the accused or held by it without third party claims.

186. Whenever the loss is not proportional with the seriousness of the fact, it may be left without effect restricted to a part of the or order reasonable substitute payment to the State

187. The following Articles are defined in the Anti-laundering Law as specific precepts:

188. Article 20 of AML provides that the evidence of the veracity of declarations is at prudent judgment of the Attorney General´s Office in accordance with the relevant regulation. Falseness, omission or inexactness of the statement shall cause the retention of securities and the promotion of criminal actions applicable in accordance with this law.

189. According to Article 21.- should within thirty days following the confiscation, the legality of the origin is not absolutely demonstrated the money and securities retained shall be confiscated.

Recommendation 3

190. E) The Criminal Procedural Code of the Republic provides in its Article 180 and 184 principles that regulate the seizure of objects related with the crime and in Article 184 of the return of seized objects not subject to seizure, replacement or confiscation.

191. On the other part Article 160 of the mentioned Code provides that " parties request shall be solved within three following days except…."

192. Article 161 of the same texts provides that "upon expiration of the term in which a resolution shall issued, the interested party may request prompt delivery and if within three days it is not obtained it may denounce the delay to the Chamber …."

193. (3.1.a) Salvadorian normative regulation allows the confiscation of assets or results of money laundering crime, concretely providing in Article 126 of the CC that the Judge or Court shall order the loss of the product, of the profit and advantages obtained through money laundering, FT, and predicated crimes thereof.

194. (3.1.b and c) Also, in relation with Article 127 of the CC, the confiscation of means used in the crimes of money laundering, FT, and other predicated crimes thereof, upon establishing confiscation of objects of instruments that the accused used to prepare or facilitate the fact.

195. With respect to the seizure or confiscation of property of equivalent value, it is regulated in Article 127 of the CC and in Article 35. 2º of FT Law.

196. This confiscation, according to the previously indicated resolution, applies regardless of the fact that the property or goods as a direct or indirect consequence of the crime commission, and also may be agreed if these are in possession or owned by a third party, that hold them without good faith.

197. Practically some of these principles have been applied in decision dated July 25, Orellana case

198. (3.2) In the Salvadorian ordering there are provisional measures, of different nature, in order to prevent management transfer and other provisions for property subject to the confiscation procedure, as a consequence of the money laundering, being able to extend these measures even to the freezing and provisional confiscation of the property. These are regulated in Article 25 of the Anti-Laundering law, and Article 180 (or 182 .2) of the Criminal Code.

199. Article 25 of the law against money laundering provides that in urgent need cases the Attorney General´s Office of the Republic may order the immobilization of banking account of the accused as well as of funds, rights or property subject matter of the investigation, in crimes to which this law makes reference; such immobilization may not exceed ten days within which the competent judge must be informed, and who shall reasonably decide on the basis for the applicability or non-applicability of such measures in accordance with the law.

200. According to some interviewed legal operators and specially reporting entities of the financial sector, some practical problems in relation with this 10 day term are applied, given the absence of a procedural precept that obliges the judge to pronounce in this 10 day limit, backed with the judicial practice on non-pronouncement in the maximum established immobilization term.

201. This situation is notoriously irregular when the ten days have elapsed without judicial resolution the immobilization Order of maintained by the Attorney General´s Office; evidencing different legal security problems, both for the holder of the immobilized property as for the obliged to mobilization, normally financial entities.

202. Notwithstanding it is relevant to indicate that the interested parties, both the depositing entity of the seized or blocked goods and the affected client, holder of the property, have availability of instruments to correct such irregularity such as Article 161 of the Criminal Procedural Code.

203. (3.3) According to Article 25 of AML Law and 182 of the Criminal Procedural Code, it is permitted that the initial request to freeze or confiscate property – of which ever nature – be made *ex parte*, without prior notification to the holder thereof.

204. (3.4) FIU, other competent authorities and public order enforcement agencies have ample and adequate powers to identify and track property and the holders of the property subject or that may become subject to confiscation or freezing, or with respect to which there is suspicion that constitute criminal activities assets. Regulation is deducted from Article 193. 3 of the Constitution; Article 238 of the Criminal Procedural Code; Article 16, 17, and 24 of AML; Article 84 of the organic law of the Attorney General´s Office and Article 232 of the Banks Law.

205. (3.5) The country´s ordering provides warnings, concretely reflected in Article 127 of the CC and Article 23 of AML for the protection of the rights of good faith third parties.

206. (3.6) Notwithstanding, Salvadorian regulation does not contain a specific regulation for expropriation proceedings, some measures are adopted to avoid the fraudulent use of contracts and other type of agreements that prevent competent authorities to have access to property submitted to confiscation as follows:

207. The seizure order of Article 180 of the Criminal Procedural Code, whereby it is provided that the judge shall decide that objects related with the crime and subject to confiscation, etc, shall be collected.

208. The already analyzed second paragraph of Article 126 of the CC on laws of the products gains, acquired by third parties in order to cover-up unlawful origin of goods as well as the also previously analyzed Article 127 of the CP.

209. Article 7.d of law against money laundering, provides a specific seizure of simulated sale agreements, as well as those related with mere holding or investment or property coming from criminal facts giving them treatment of cover-up for special cases of money laundering. Such criminal treatment shall be applied for that who purchases, keep, hides or receives profit, property of benefits being aware of the criminal origin (Article 7.e)

210. (3.7. a, additional element) Participation in organized criminal groups or extortion, Articles 435 of the PP, or terrorist, Article 13 of law for acts of terrorism, constitutes crime and in both assumptions also preceded activity of the money laundering crime for which taking into account the argumentation indicated in the analysis of this recommendation and in special provisions of the 3.1 criteria, confiscation of the property of such organizations or groups shall be undoubtedly applicable, whether for understand that such property are instruments to commit crimes or the result of delinquency. It is to be indicated that there is no practice for this respect.

211. (3.7. b, additional element) Regulations of the country do not rule civil confiscation; notwithstanding there is decision Anabel Navarro Celaya case which has already been mentioned, in which a process takes place with this result, that is, there is a confiscation of an important amount of money irregularly introduced to El Salvador, in a criminal proceeding without criminal conviction.

212. (3.7. c, additional element), according to the interviewed parties, the country admits evidence for presumptions or indications but not the investment of the evidence burden.

213. Statistics: As evidenced in the following chart, seizure measures are applied but their effectiveness is still limited. The number of seizures is lower than those of initiated cases (less than half) and the total amount is not too high.

YEAR	2009	2008	2007
New files/dockets	50	32	33
Seizures	11	20	16
Amount	$141,860	$1,433,810	$934,540

2.3.2. Recommendations and Comments

214. Control official letter for the compliance with terms established in Article 161 of the Criminal Procedural Code. Operative differences detected show possibility of the premature release of frozen funds.

215. Study the convenience of establishing a regulation of expropriation proceedings

216. Increase resources for the practice effective investigation of criminal organizations, the Money laundering processing, and the confiscations of the property or goods.

217. Regulate civil confiscation within the internal ordering, given the receptiveness of the system to the figure.

2.3.3. Compliance of Recommendation 3

	Rating	Summary of the factors that support the rating
R.3	**C**	No seizures are ordered in more than half of the Money laundering cases

		investigated

2.4. Freezing of funds used for the financing of terrorism (RE.III)

Preliminary Considerations to RIII

218. With respect to FT crimes regardless of the implication of the mentioned paragraphs in the above recommendation, given the nature of the adjacent activity of FT in relation with BC, concerning confiscation and seizure there is a specific regulation in Articles 35, 36 and 38 of Law on the matter, complying this regulation with standards required by this recommendation.

219. The Law against terrorism acts provides the following specifics which are applicable to the offense related with financing of terrorism:

220. Article 25, regulates the forfeiture, confiscation of funds and assets used or for which there was been an intention of use to commit terrorism acts including financing thereof, likewise, the forfeiture of goods which are object of the crime or the product or effects thereof.

221. Whenever be possible to identify or locate the property to be seized the forfeiture of its equivalent value may be ordered.

222. Whenever funds or other signs thereof are not property of the implied parties they shall be returned to the legitimate owner whenever there is no liability.

223. The forfeiture may also be ordered by the Attorney General´s Office of the Republic and ratified by the Court that acknowledges the proceeding within the following forty eight hours.

224. Article 36 provides that all instruments and corresponding registration inscription granted without charge among live or due to death, the purpose of which it to place goods beyond the scope of the measures concerning seizure and confiscation provided in this Law shall be null regardless of respecting good faith third party rights.

225. Competent court shall provide the return to the regal claim third party of the goods, products or instruments whenever it is accredited that a) who claims has legitimate right with respect to the property, products or instruments; without being able to impose any participation, collusion or implication with respect to offenses foreseen in this law object of the proceeding. b) that who claimed made every reasonable effort to prevent the illegal use of the goods, products or instruments.

226. In case of the annulment of a contract free of charge the price shall only be returned to purchaser whenever it is provided that it has effectively paid for it.

227. FREEZING OF FUNDS. Article 37 of the Law of terrorism acts, provides that in urgent need case the competent Judge or the Attorney General of the Republic may order immobilization of banking accounts to accused parties, as well as funds, rights and goods subject matter of the investigation.

228. Likewise, it may order the freezing of fund capitals, financial transactions and other assets of individuals and organizations previously established by the Security Council of the United Nations, acting by virtue of provisions contained in Chapter VII of the Organization Chart of United Nations.

229. In cases in which the Attorney General´s Office of the Republic orders such immobilization, the competent authority must be informed within fifteen working days and who through grounded

resolutions shall decide on the applicability of such measure within a ten working day term. The responsible institution must maintain the immobilization until the judge orders something different.

230. According to the above purposes the financial institution shall inform without any delay whatsoever to the Attorney General´s Office of the Republic about the existence of goods or services related with individuals included in terrorist organization lists, individuals or entities associated or which belong thereto, prepared by the security Council of the Organization of the United Nations or by any other international organization of which the country is a member.

231. On the other hand, the Ministry of Foreign Affairs shall directly and without delay inform the Attorney General´s Office of the Republic, on resolutions issued by the Security Council of the Organization of United Nations referring to lists mentioned in the above paragraph and the Attorney General´s Office of the Republic shall be the entity responsible to remit such lists to entities and subjects enforced by this law.

232. Likewise, financial institutions shall inform on the existence of goods or services related with a person that has been included in the list of individuals or entities associated or which belong to terrorist organizations prepared by a national or foreign authority, or whoever has been subject to the proceedings or conviction for committing acts of terrorism.

233. For such purposes the Attorney General´s Office of the Republic must previously inform on the appointment or inclusion of such persons.

234. Financial institutions upon detecting any of the circumstances above mentioned and after informing the Attorney General´s Office of the Republic shall not accomplish operations that involve goods or services until receiving instructions from such authority, such instructions may not exceed three working days.

235. Within the three day term, the Attorney General´s Office of the Republic shall adopt measures necessary to immediately block goods or services of the persons mentioned in the relevant report and shall issue instructions to retain, if applicable, allow the flow of goods and services of such persons.

236. The above measures shall be applied regardless of the right that the person included in the list has to the exclusion thereof.

237. Any person with legitimate interest over the seized or immobilized goods may request the competent court to release them, if it is accredited that it has no relation whatsoever with the persons indicated in this article.

238. Article 38 of Law against terrorism acts provides that the Attorney General ´s Office of the Republic in cases of urgent need or the competent court may order the confiscation of preventive seizure of goods, products or instruments located in its territorial jurisdiction which are related with offenses of terrorism and financing thereof, even in cases of terrorism committed abroad.

239. Finally indicate that Article 39 of Law against terrorism regulates the right to challenge the inclusion in the lists or funds freezing, non backed or adequate to law.

2.4.1. Description and Analysis

240. (III.1 and III.2) as indicated in prior consideration to R 3 and RIII, Laws and procedures existing in the country are adequate to freeze terrorist funds or other type of terrorism related assets, without

delay; such procedures do not need the prior notice requirement to persons involved in, both in relation with S/RS/1267 (1999) as in S/RS/1376 (2001),

241. The competent Judge or even the Attorney General´s Office of the Republic facing urgent need situations, may order the immobilization of banking accounts, principle provided in Article 37.1 of the law against terrorist acts. This is an efficient process that does not require prior notice to involved suspicious parties.

242. (III.3) In the internal ordering there are effective procedures to examine and give effect to freezing actions started in procedures of other jurisdictions. In addition to the mentioned Article 37, in Article 38 of the Law against terrorism acts regulates the confiscation of property, instruments of products or crimes committed abroad providing between both Articles an adequate body for the indicated end.

243. (III.4) Freezing actions referred to in criteria (III.1 to III.3) are applied both to: funds or assets belonging or controlled by individuals pointed out as terrorists, terrorism financers, or terrorist organizations, as well as funds, rights or property subject matter of the investigation.

244. In function of arguments already given about integration with internal law of international agreements, nothing opposes to the fact the freezing of funds without belonging to such subjects indicated as terrorist, financers or terrorist organizations, be directly or indirectly controlled by them, or may be extended to funds or assets derived from or generated as of funds mentioned in the above paragraph. Notwithstanding, it would be convenient to include such specifics in mentioned Article 37.

245. (III.5) The country has systems to communicate the financial sectors on actions initiated in freezing procedures referred to in criteria (III.1 to III.3) immediately as of the time in which the action is adopted.

246. With respect to concrete orders related with freezing, interviewed authorities indicated that there is a considerable procedure which consists to anticipate the communication immediately through fax the corresponding agreement or resolution the original of which is also urgently remitted.

247. (III.6) Formally there are procedures and instruments to offer guides or clear lists to financial institutions and other persons or entities that may be retaining or be beneficiaries of funds or other "freezable" assets

248. Among then indicate that Article 37 of the special law against terrorism acts provides: "The Ministry of Foreign Affairs shall directly and without delay inform to the Attorney General´s Office of the Republic on the resolutions issued by the Security Council of the United Nations Organization concerning the list mentioned in the previous paragraph".

249. On the other hand, according to the same Article 37, the Attorney General´s Office of the Republic shall be the entity responsible to remit such lists to the reporting entities and entities according to the law.

250. Although some interviewed authorities indicated that there were clear guides on the lists of terrorists and other persons subject to these measures, it is certain that most of the responsible parties of the financial sector interviewed indicated to the evaluators that such communication procedures did not operate adequately.

251. (III.7) There are effective and publically known procedures for the elimination of the inclusion in the lists, the basic fundamentals of which is gathered in the penultimate paragraph of Article 37, already seen, in which it is literarily provided:

> "*Above measures are applied regardless of the right to the person included in the list to request exclusion thereof in accordance with corresponding legal procedures."*

252. (III.8) Last paragraph of the mentioned Article 37 provides "*any person with legitimate interest on property retained or immobilized in accordance with provision of this Article may request to the competent court to decide on the release thereof, if accredits that there is no relation whatsoever with persons referred in this Article*", consequently there being publically known and effective procedures for the timely unfreezing of funds and other assets of individuals and other assets involuntarily affected by the freezing procedures.

253. (III.9) In relation to the existence of appropriate procedures to authorize Access to funds of other assets frozen by virtue of S/RS 1267, considered necessary to cover basis costs, the payment of certain types of fees, expenses and payment for services or extraordinary expenses, it is worthwhile indicating:

a) That there is no specific regulation on the matter in the internal ordering

b) Notwithstanding, first Article of the country´s constitution may be construed to provide coverage thereof.

c) There has been no practice or background in this sense.

254. (III.10) Individuals or entities the funds or other assets of which – whom- have been frozen may obtain the applicability or non-applicability of measure in accordance with Criminal Procedural Law related with provisions contained in Article 39 of the law against terrorism acts.

255. (III11) Criteria 3.1, 3.4 and 3.6, as within the analysis of the third Recommendation has indicated also applied with respect to freezing confiscation and seizure of funds related with the financing of terrorism.

256. (III.12) Salvadorian regulations provide warnings for the protection of good faith third party rights specific of the crimes related with terrorism and financing thereof, in accordance with the standards of the Convention for the financing of terrorism, being the main specific regulating text the law of terrorism acts in Article 36. 3. a, 37. 9, 37.10, and, 39, all regardless of the application of this benefit regulated in CC in its Articles 126.2 and 127.1.

257. (III.13) According to the majority opinion of the interviewed parties throughout the evaluation, there are no or are there are insufficient measures to effectively monitor compliance with legislation and other regulations or rules in accordance with the obligations of RE III. And no administrative or criminal penalties are applied for such noncompliance.

258. (III.14 additional element) In the country no document about better practices for compliance with this R III have been implemented.

259. (III.15 additional element) Procedures for the authorization of the disposal of expenses necessary to cover basic costs, payment of certain type of fees, expenses and payment of some services or extraordinary expenses have not been implemented and there is no practical experience to that respect.

2.4.2. Recommendations and Comments

260. Clarify that in Article 37 of the law against terrorist acts, that frozen funds be directly or indirectly controlled by persons indicated as terrorists, terrorist financers or terrorist organizations, or

maybe extended to funds or assets derived or generated as the funds or assets belonging to or controlled by persons indicated as terrorist, terrorism financing agents, or terrorist organizations.

261. To review procedures and instruments to offer clear lists or guides to financial institutions and other obliged entities or persons.

262. To regulate or provide appropriate procedures to authorize access to funds or other frozen assets by virtue of S/RS 1267, considered necessary to cover basic costs, payment of certain fees, expenses and payment of services or extraordinary expenses.

263. To regulate measures to efficiently monitor compliance with legislation of obligations contained in accordance with RE III.

264. Recommendation: implement in the internal ordering best practices for the compliance of RIII. According to suggestions of additional criteria 14 of R III.

2.4.3. Compliance with Special Recommendation III

	Rating	Summary of the factors that support the rating
RE.III	**LC**	• Criteria III.6, operation or inadequate implementation of the availability of guides or lists of terrorists. • Criteria III.9, no Access or regulation of subjects the funds or assets of which have been frozen to quantities necessary to cover certain basic purposes.

Authorities

2.5. Financial Intelligence Unit and its tasks (R.26)

2.5.1. Description and Analysis

265. (C.26.1) Article 9 of Law against Money Laundering in concordance with provisions contained in paragraph 70 of Organic Law of the Attorney General´s Office of the Republic provide for the creation of the Financial Investigation Unit (FIU), as an office ascribed to the Attorney General´s Office of the Republic and with functional dependency of the Fiscal Attorney General.

266. (C.26.1) Articles 8 and 9 of Decree Nº 2, named Regulation of AML law refers to the obligations that the reporting entities have to report FIU all transactions catalogued as irregular or suspicious. Even when the above mentioned articles determine FIU as national dependency that receives and attends reports of irregular or suspicious transactions, FIU instructions (Agreement Nº 356 issued by the General Prosecutor of the Republic and effective as of February 2002) provides in imprecise manner and in a confusing manner, a report mechanisms whereby it is demanded that is simultaneously remitted to FIU and the relevant Superintendence. This manner of reporting in two ways, makes each of the receiving dependencies to accomplish an analysis process of the remitted transactions and further allows that the Superintendence may , the same as FIU , require additional information of the reported case, with which they are granting the supervision and control entities, powers for the analysis and own investigation of a FIU. It was observed that in practice the Superintendence of the Financial System (SSF) accomplishes its own analysis of STR received, even requesting additional information to the reporting institute before transferring the case to FUI.

267. FIU is a structure by a legal area, which gathers two prosecutors in charge of criminalizing investigations related with their competition environment; in addition, it has an analysis area, made by

two financial analysts and a technology area, formed by an informatics professional. At a hierarchy level, FIU has a boss, who in addition to take care of administrative matters of the Unit, supports judicial service in investigation cases.

268. Investigation powers that legal ordering grants to the FIU allow an adequate treatment that this type of dependency must give to the suspicious activity report. Notwithstanding, its scope of action is strongly limited by operative and human resource issues. The tasks developed by two officers that integrate analysis area of FIU, its commendable but the high level of STR received reduces analysis effectiveness and limits detailed studies only to reports that through subjective decisions of the head of FIU, are considered vitally important or that the scope of action itself allows to consider them as a clearly unlawful activity.

269. (C.26.2) Concerning the orientation that FIU must accomplish on the manner of reporting suspicious transactions, Article 11 of ML Regulation expressly refers to the fact that the Attorney General´s Office of the Republic is empowered to issue forms it deems convenient. Such rule also indicates mandatory compliance by reporting entities, with all instructions issued by FIU. FIU on July 16th, 2001 approved Agreement 356 whereby it established the formal report that reporting entities must comply with. Notwithstanding the above, SSF issued regulation NPB4-41, dated May 6th, 2009, whereby collection and remission procedures of the reports of suspicious operations were established with which other diverse requirements on the report issue are established.

270. In addition to the provisions included in the above mentioned regulation, Attorney General through Agreement Nº 356 tries to establish orientation mechanisms on the manner and content of STR. However, as indicated in previous paragraphs, provisions contained in the mentioned Agreement lack clarity concerning form and content, originating operative doubt by the reporting entities. An example of the above is the three day term provided for in Article 9 of AML Law for obliged institutions to report any operations or multiple transactions to FIU. The moment in which the mentioned term starts has been grounds for doubt by obliged institutions, fact which has originated its interpretations as of different criteria issued by the same reporting entities.

271. On its part FIU, is limited to establish orientation and feedback mechanisms towards obliged subjects, since its short personnel prioritizes actions to proceed in judicial way STR that have been analyzed.

272. (C.26.3) Chapter IV of ML Law is titled “Inter-institutional Cooperation” and develops provisions related with direct access that FIU may have to data bases of entities and institutions of the Estado or private companies. The regulation determines an action parameter, whereby FIU may obtain analysis or investigation information in a quick manner or at least more efficiently.

273. Notwithstanding, FIU does not have technological tools that allow direct informatics access to such data bases. Absence of this type of tools obliges officer of the FIU, to have to consult each of the corresponding institutions whenever determined input is needed for analysis, with which the results of the investigations depend on the timeliness with which requirements be attended by the required institution. Calls the attention that investigation auxiliary entities such as the National Civil Police do have data bases to obtain a great variety of information arising from the different public institution, not FIU.

274. (C.26.4) In relation with possibilities that FIU may have to obtain from the reporting parties, additional information necessary for the effective and analysis of STR, Articles 16 and 17 of AML law and 11 of its Regulation define such provision. Hence, requirements made by FIU required institutions must act with the necessary timeliness and confidentiality. In practice no deficiencies were found in this sense, and in cases in which certain institution delay response without obtaining a FIU extension, it may

be transferred to SSF to impose the correct sanction or even be subject to a criminal sanction for the guilty cover-up crime typified in Article 8 of ML Law.

275. (C.26.5) One of the particulars of FIU is its location within the Attorney General´s Office of the republic structure which turns the same to be established under the characteristics of a Judicial FIU. Therefore, Article 72, mainly paragraphs 4 and 6, authorizes FIU to establish information Exchange mechanisms with internal authorities in order to accomplish analysis and investigations for money laundering crimes. When dealing with a FIU of judicial characteristics, the provisions of the forensic analysis may be subsumed within the judicial investigations. This, because the judicial investigation concentrates priority actions of this FIU. The higher abandonment, it may be cited that the fact that upon entering STR to the FIU these are previously analyzed by the head of this Unit, who shall determine which reports must be simply entered to the data base and which analyzed by the financial analysis. In practice, the Head only recommends to analyze those reports that constitute, determining Money laundering suspicion according to his/her criteria. In this case, after the analysis area compiles the routine information, the cases pass to two auxiliary agents (prosecutors), who start the corresponding criminal investigations.

276. (C.26.6) In relation with operative autonomy and independence, situation currently faced FIU, calls our attention, concretely in disposal of personnel that integrates it. An operative independence may not be comprehended whenever attorneys that form this Unit (that is of judicial nature), may be transferred to another dependency of the Attorney General´s Office, whenever decided by the General Attorney of the Republic. This makes that before multiple needs of the criminal repression that the country is undergoing the Criminal Prosecution Policy decided by the General Attorney, obliges FIU to have to facilitate personnel to other dependencies reducing its human resource and force of action in the investigation and analysis it accomplishes for money laundering crimes. Notwithstanding the above, it is necessary to mention that in practice FIU has clear criteria independence, at least in the STR analysis. This has been evidenced with the adequate and timeliness management that that the head office and other officers of FIU, have when in presence of persons of STR that involve personalities of the national political environment. However, this technical autonomy has taken place thanks to the respect of the Attorney General that have had towards FIU job, and not because the law so orders. In fact, by virtue of the action unity principle foreseen in Article 12 of the Organic Law of the Attorney General´s Office, the Attorney General could issue instructions to to FIU about the cases considered prioritized and on which to undergo an investigations or not.

277. (C.26.7) In accordance with the provisions contained in Article 76 of the Organic Law of the Attorney General´s Office of the Republic, in concordance with Articles 22 of ML Law and 10 of its Regulation, every information in the investigation of the money laundering crime is considered confidential and, may only be shared with judicial authorities or foreign homologous authorities. The protection of the information or confidentiality, guarantees that in the previous analysis stage, that FIU must accomplish inputs necessary for such analysis to allow corresponding judicial authorities, to start a judicial investigation tending to the uncovering of subjects and organizations entrusted in the money laundering crime and others be obtained. Likewise, through confidentiality protection of subjects obliged to report unusual or suspicious activities is protected since only until the judicial investigation stage, the reported subject acknowledges the status as accused or investigated in the criminal procedure.

278. As indicated in previous lines, STR must be sent to FIU. However, according to Article 10 of AML Law also enforces financial institutions to send reports to relevant Superintendence. Agreement Nº 356 of the Attorney General (FIU Instructions), also provides that financial institutions are obliged subjects must formulate and submit before the fiscalization and supervision corresponding entity (Superintendence) and FIU, information related with STR and reports of cash transactions. That is, a reporting mechanism is provided whereby not only FIU is going to be aware of the activity reports that are suspicious but also the relevance of their intendance shall get to know such report. Although Superintendencies as supervision and fiscalization entities, may contribute with the competent authorities in the investigation of money laundering crimes, it is certain that such contribution should not extent to

the analysis of every STR and that official requirement, of all additional information, situations that do take place with authorities of El Salvador. Further, FIU and the Financial System Superintendence have different report forms, which makes subjects obliged to report to fill out one FIU form and another different for the mentioned Superintendence.

279. (C.26.8) In accordance with the provisions contained in previous paragraphs, the number of officers that currently integrate FIU is insufficient to accomplish the tasks satisfactorily according to all obligations assigned in the Law. The actions of such officers is centered in the analysis and investigation of Money laundering activities, thus reducing the possibility of establishing action that allow feedback with reporting entities and other actors involved in the prevention and repression of money laundering. Therefore, FIU has not attained implementation of information mechanisms that provide obliged subjects periodical reports on statistics, typologies and criminal trends.

280. (C.26.9) Egmont Group of Financial Intelligence Units, provided that FIU be currently suspended as member of such organization. This way authorities of El Salvador need to adjust the legal provisions to eliminate identified inconsistencies by Egmont Group. To that end 2010 has been fixed as the maximum term for FIU to submit before the plenary meeting of this organization its corrections in order to avoid being expelled from Egmont Group. Facing such situation, FIU together with other government dependencies is promoting in the legislation current a bill that solves such deficiencies. Notwithstanding, such bill still pending approval.

281. TF Law provides in Article 29 the figure of the crime financing act of terrorism and in Article 36 mentioned freezing of funds. This last article has generated deficiencies within the Egmont Group guidelines, since from its Reading there is an investigation and freezing limitation of TF crimes for those individuals or organizations that are previously included in lists designed by the Security Council of the United Nations.

282. (C.26.10) Although since the suspension of Egmont Group makes FIU not to have access to Egmont Secure Network for Exchange of information among homologous authorities, it is worth to mention that FIU considering provisions of Article 72 paragraph 6) of Organic Law of the Attorney General´s Office of the Republic, has been establishing mechanisms that allow information exchange with FIUs of other Countries. Currently it has agreement with the following foreign FIUs: However, authorities did not provide evaluators a list of UIS with whom memorandums have been executed.

283. (C.30.1-3) In addition to an adequate normative regulation, the combat of money laundering, must have a permanent personnel training that integrate FIU. Such training shall allow the update of knowledge about approach and investigation of activities related with actions. Notwithstanding, FUI lacks an adequate training program addressed to officers.

2.5.2. Recommendations

284. Amend Agreement Nº 356 issued by the Attorney General´s Office of the Republic in order for report procedure of STR to be made only before FIU.

285. >>>Establish a feedback mechanism that allows orientation to obliged subjects on the adequate manner to submit STR.

286. >>>Implement technological tools that allow rapid informatic Access to data bases to State entities and institutions or private companies.

287. >>> Establish procedural manuals that reach a division between STR analysis and criminal investigation.

288. >>>Assign more provisional personnel for both analysis and investigation area.

289. >>>Strengthen FIU´s autonomy and provide higher labour stability to officers that integrate FIU, thus avoiding transfers to other specialized Prosecutors' Offices.

290. >>> To provide periodical reports to obliged subjects on cases reported criminal statistics typologies, and trends, that shall be considered as suspicious operations.

291. >>> To resolve all the legal limitations that grounded the suspension of the membership of Egmont Group of Financial Intelligence Units.

292. >>> To establish a permanent training program for FIU officers.

2.5.3. Compliance with Recommendation 26

	Rating	Summary of factors shared with s.2.5 that support General Rating
R.26	**PC**	• Simultaneous sending of STR, both to FIU as to SSF, which affects confidentiality of reports and creates parallel functions FIU in other entities. The number of officers that form FIU and their capacity to analyze the information is quite reduced in comparison with the amount of reports they receive. • FIU does not have sufficient autonomy to accomplish the task. The Attorney General´s Office of the Republic frequently removes FIU prosecutors in order to assign them to other tasks of the Prosecutor´s Office and has the power to issue instruction to FIU concerning which cases are considered priority and which not. • There are no adequate accesses to public entity data bases and private subjects that ML Law authorizes. • There is no operative separation between the analysis and criminal investigation, being the judicial stage of higher priority, situation which reflects lack of technical autonomy in the essential work of producing financial intelligence. • No public information on typology and statistics are developed. • FIU is suspended from the Egmont Group. • There is no permanent training program for FIU officers.

2.6. Order Authorities, Public Ministry and other competent authorities – framework for investigation and processing of crimes and for the confiscation and freezing (R.27 and 28)

2.6.1. Description and Analysis

Recommendation 27

293. (C.27.1) Preventive and repressive AML scheme which provides Salvadorian legal ordering, is made up by administrative, judicial and police authorities that allow the analysis and investigation of activities related with money laundering activities. Within such authorities we find FIU supervision and control entities (Superintendencies) and Civil national Police.

294. (C.27.1) The legal backup that regulates the above mentioned authorities, is established in the following regulations: Article 3,9,12,13,16-25,37 and 38 of ML law; Articles 4 paragraphs f) e i), 6,9,10,11,18-22 of ML Law Regulations; Articles 1,4 and 5 of the organic law of the Civil national

Police; Articles 2,18 paragraphs d) and e), 70 and 72 paragraphs 4) of Organic law of the Attorney General´s Office of the Republic and Articles 19,54,55,83-85 of the Criminal Procedural code.

295. FIU as a dependency ascribed to the Attorney General´s Office of the Republic is constituted in the judicial dependency entrusted with analysis and investigation tasks for money laundering crimes, with the aid of the Civil National Police. Such authorities may accomplish all investigation diligence necessary to identify involved subjects, seize property and obtain necessary proof elements.

296. According to the Organic Law of the Attorney General´s Office, FIU is made up by:

a) Head of the Unit. Such officer, due to its condition of prosecutor, in addition of accomplishing hierarchy administrative tasks, participates in the development of judicial investigations accomplished by this Unit.

b) Auxiliary Agents appointed by the Attorney General´s Office: Currently there are only two officers that shall take care of all national investigations that are criminalized for Ml and TF crimes.

c) Accountants, financial experts and intelligence analysts: Same as above position, there is currently two officers who in addition of taking care of the reports of four operations that submit the obliged subjects, have to accomplish the development of training and statistic preparation. Because of the limited number of personnel, it is logic to understand there are clearly functional limitations to which these officers are exposed.

d) Administrative Personnel: these officers (2) offer administrative support to all FIU areas.

297. In accordance with the fundamental provisions indicated in Article 3 of the above mentioned Organic Law, the Attorney General shall establish the institutional organic structure, responding to the national criminal politics needs. That is why a series of Specialized Attorney General Chambers have been created that shall attend specific matters related with issues such as drug trafficking, organized crime, extortion, among other. A great majority of the matters investigated by such Attorney General Chambers are crimes arising from ML, and the Institution has had the criteria that the Specialized Attorney General Chamber also manages ML matters. Concerning interviews accomplished with the different heads of the Specialized Attorney General Chambers it could be evidenced a clear coordination on the topics of their competence in reason with matters that FIU shall deal with.

298. The resources of the Attorney General´s Office and the Police to investigate ML and FT crimes are really limited. Scope of action is highly limited for operative order aspects as well as human resources. The task developed by the two officers that integrate the analysis area of FIU, is laudable but the high volume of STR received reduced effectiveness of the analysis that on the matter can be made and limits the study detailing only reports that through subjective decisions of the FIU head are considered really important or those the scope of action of which on its own permits to consider them as clearly unlawful activity. Further, there are strong limitations of human resources destined to judicial approach to investigations, since as it has been in a reiterated manner indicated FIU only has two assistants and a prosecutor boss.

299. Article 172 of the Political Constitution indicates that the judicial entity shall annually receive 6% of current income from the Government/State´s budget, which guarantees important resources for effectiveness of its tasks.

300. Likewise, in accordance with the provisions stated in Article 28 of the SSF Organic Law, it provides that this Institution´s budget may be up to one and a half per thousand, calculated over the total

of bank assets and complemented by Article 238 of the Banks Law which provides that banks must contribute to cover costs due to inspection services of the Superintendence.

301. Concerning the possibility to postpone arrest or confiscation (c.27.2), the Salvadorian system foresees that the Attorney General´s Office shall have on its task the functional direction of investigations, being able to order to the Police and security organisms orders or instructions on such means or evidence elements.

302. Additional elements: (C.27.3-5) Article 162 of the Criminal Procedural Code regulates the probatory freedom principle, indicating as follows:

> *"Facts or circumstances related with the crime may be proved by any evidence legal means respecting fundamental guarantees of the individuals, contained in the Constitution of the Republic and other laws, provided it refers directly and indirectly to the purpose of the investigation and se useful for the discovery of proof (…)"*

303. Such principle makes it possible to apply a wide set of investigation techniques, whereby text elements are obtained to be included in the relevant criminal process. Unfortunately, telephonic interventions are not currently regulated as valid evidence elements. These techniques are constituted in a necessary contribution for the adequate investigation and uncovering of criminal organizations, such as those dedicated to money laundering. Notwithstanding, there shall be a reference to the fact that currently at the legislative branch there is a bill that seeks regulation in this investigation method.

Recommendation 28

304. (C.28.1-2) In criminal matters, for the development of judicial investigations related with money laundering, the Criminal Procedural Code regulates all powers that rely over competent authorities for the adequate approach of criminal activities. This is how for example, the Criminal Procedural Code in its Title V, regulates all evidence means that many be used by the competent judicial authorities to investigate and sanction all activities typified as crime in substantive or special laws. Among these we find the following: Inspections (Article 163), place search (Article 173), confiscation and judicial deposit (Articles 180 and 182), extrajudicial declarations (Articles 222), Interrogatories (Article 242), detentions (Article 243).

2.6.2. Recommendations and Comments

305. To incorporate within the legal ordering the figure of telephone interventions as an investigation method for money laundering crimes.

2.6.3. Compliance with Recommendations 27 and 28

	Rating	Summary of factors related to s.2.6 that support the General Rating
R.27	**C**	
R.28	**C**	

2.7. Cross-border Declaration (RE. IX)

2.7.1. Description and Analysis

306. (C. IX.1) Article 19 of the ML Law in its final paragraph provides:

"(…) Individuals that enter the territory of the Republic through any way regardless of their nationality must declare if they bring with them bills, drafts, checks –own or of third parties- in local or foreign

exchange or securities in the amount of one thousand Colones or more or the equivalent in foreign currency in accordance with the fluctuations of the national currency; if not the relevant amount shall be determined; contrary case shall be complied with expressing such circumstance through declaration under oath."

307. (C.IX.1) Although paragraph of the above numeral, makes a regulation of cross-border Money, it has clear regulation limitations for the report of output of this type of products. That is the final paragraph of Article 19 of ML Law only regulates cross-border income of Money, securities or valuables for an amount equivalent to US$10.000; however, there is a regulatory absence for the entry of such products.

308. (C.IX.1) Competent authorities encounter a clear legal limitation in order to establish declaration and report mechanisms that allow to guarantee adequate control for the output of money, securities and valuables, therefore causing that the subjects or criminal organizations find an easy way to transport these type of products without declaring them and without being penalized for the declaration omission.

309. (C.IX.2) Within its competition environment, the corresponding migratory authorities maintain a clear coordination with the Civil National Police and the Attorney General´s Office of the Republic to identify and obtain more information of those subjects to which the preparation of frontier declaration with false data have been detected. Even when there is a clear inter-institutional cooperation, the detection of subjects with false declarations is pretty weak, since currently the migratory posts there is a random system for the revision of passengers, which is accomplished under subjective criteria and the experience of the officer at this time at the migratory posts. This random procedure may cause the entrance of money, securities or valuables without being reported.

310. (C.IX.3-4) Under the functional direction of the Attorney General´s Office of the Republic, the corresponding police authorities (PNC) establish mechanisms for the confiscation of cross-border money, in order to establish grounds for related links that establish objective liability of the detained or investigated subject.

311. (C.IX.5,13) Another of the detected deficiencies is the management of cross-border declarations of money, securities and valuables, is the absence of analysis mechanisms by police authorities and FIU, of those declaration forms of travellers remitted by migratory authorities. Currently, this information is not analyzed, mainly due to the high volume of forms remitted and the reduced number of personnel of FIU and PNC to accomplish all of the tasks.

312. (C.IX.6,14) Migratory authorities have been growing from constant training towards the topic related with attention to activities related with ML and FT. This way, random control mechanisms above mentioned, tend to weak even more and there is a risk of violation in the cross-border entrance in relation with money, securities and valuables.

313. (C.IX.7-15) Corresponding authorities have been entering into agreements with homologous foreign companies in order to establish cooperation mechanisms for the detection of cross-border criminal operation, investigation and detection.

314. (C.IX.8-11) At a jurisdictional level, competent authorities have been standardizing procedures for investigation, confiscation and sanction of ML and detections of migratory declarations the content of which establishes false information. The above, since such criminal procedure supposes cover-up of funds arising from or destined to criminal activities.

315. (C.IX.12) As indicated before the lack of an updated and permanent training program makes migratory authorities to lack knowledge on instruments or mechanisms most employed for ML and FT.

Therefore, its control of these matters is mainly focused in money and cash or securities and values, reducing importance required for the control of cross-border movements of gold, metals or precious stones.

2.7.2. Recommendations and Comments

316. Make legally binding the cross-border report of the output of money in cash and bearers negotiable instruments.

317. Adjust revision procedures for passengers in order to avoid establishment of random and subjective mechanisms accomplished by the shift officer or official.

318. Establish analysis, compilation and storage procedures of all those declaration forms for travelers that migratory remit to PNC and FIU.

319. Immediately and permanently accomplish training activities to migratory authorities about criminal typologies and trends in terms of ML and FT.

2.7.3. Compliance with RE IX

	Rating	Summary of factors related with s.2.7 that support general Rating
RE.IX	**PC**	• There is no output report system for cross-border transportation of cash or bearers negotiable instruments. • There is no adequate system for revision of passengers. • PNC and FIU do not accomplish an analysis of the relevant traveller forms. • Customs authorities do not have adequate training and feedback of typologies by FIU. • No sanctions of any type whatsoever are foreseen for noncompliance with obligation to declarer (except the infringer is condemned for ML crime).

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Due Diligence of the Client and Record Maintenance

3.1. Risk of money laundering and financing of terrorism

320. Throughout the evaluation El Salvador did not demonstrate to have recently reviewed systematically at a Country level and under objective methodological criteria ML/FT risks that affect financial institutions and other entities subject to legal control. Likewise we did not find any other study that could serve as basis for the application of increased and/or reduced measures in its financial system. Authorities indicate that they have identified as main risk sources that affect the financial system those that arise from traffic of narcotics, fiscal evasion, trade of individuals and money smuggling, as well as extortion activities related with criminal groups named "maras" and organized crime activities. FT risk is not considered a relevant threat within the financial sector since no potential problem or case has been identified in the country that could be considered as risk indicator.

321. At El Salvador relevant financial activities subject to Recommendation of GAFI must comply with AML/CFT requirements; however the application scope may vary given that not all of such recommendations are supervised by a regulating entity, being this the case of remittance companies that lack of a specific supervision entity that are subject to provisions contained in Article 19 of the Anti-Money Laundering Law regulation, in the sense of communicating FIU operations accomplished by their clients or users in a reiterated manner and in cash whenever exceeding a threshold provided by the Law. In case of financial lease companies, factoring companies, warehouse stores and other companies that support banking draft, these are supervised only if they form part of a Financial Conglomerate; however in terms of ML-CFT paragraph r) Article Second of Anti-Money Laundering Law indicated that "Any other Institution, Association, Trade Corporation of Financial conglomerate or Group …" is also subject to the control of said Law.

322. Given that El Salvador is the Centro American country with the highest remittance index received from abroad, the risk that the transfer service of funds be used to send or receive funds coming from illegal activities is potentially higher, in addition to the lack of a specific regulation and the lack of supervision to remittance companies and other service agents fact which considerably increases the sector´s risk. Fact that partially mitigates this risk is that a high percentage of remittance is paid through the supervised financial system. According to the study of the Central Bank published in 2008 (Working Document 2008-01) "*Bank are main liquidators of remittance in the country"*

323. After the evaluation visit banks that receive such operations have received instructions to create a data base (IRC-RR-18749 dated December 2, 2009). Notwithstanding, the evaluating team did not have access to the verification that this has been implemented and did not have on site the terms under which such resolution was issued further understanding that only refers to risk related with funds remittance/transfer that pass through financial institutions. Therefore the risk related with remittance entities is unattended.

324. Geographic and economic conditions, added to the potential increase of criminal activities as the ones mentioned, the type of products and local and regional financial services as well as the lack of regulation of the funds remittance/transfer sector related to the use of financial entities as transfer payment channels imply a risk above moderate levels for Salvadorian financial entities.

325. Notwithstanding the fact that AML Law includes in very ample manner "any Institution, Trade Association or financial conglomerate" as entities subject to the control thereof there is no documented study with respect to weighed risks of financial and non-financial entities susceptible of being used for

ML-FT purposes in order to establish controls and in such case of more strict supervision for those that are more susceptible.

326. With respect to the laws and regulations related with ML-FT there is no specific reference about risk management or clear parameters for the related entities to apply criteria in order to graduate strictness of controls in function of risks, for which control standards are based on the compliance with obligations established in AML Law and the relevant Regulation as well as the FIU Instructions that do not include reinforced diligence for high risk activities, professions or distribution channels.

3.2. Due diligence on client including extended or reduced measures (R.5 to 8)

3.2.1. Description and Analysis

Legal and Institutional Framework

Financial Institutions within the provisions of the Legal Framework of El Salvador

327. In El Salvador, there are financial conglomerates and commercial private Banks (Banco Agrícola, América Central, CitiBank, GyT Continental, HSBC, Procredit, Promèrica, Banco Azteca El Salvador and Scotiabank) as well as two State Banks (Banco Hipotecario and Banco de Fomento Agropecuario), two branches of foreign Banks, 6 Cooperative Banks and 6 Savings and Credit Companies, one reciprocal guarantee entity, nine public credit entities, four money exchange agencies recorded before the SSF or which only one is currently active and eight Financial Conglomerates which include financial lease companies, factoring, credit cards and other. In case of financial lease companies, factoring companies, wholesale stores and other companies that support banking draft, these are supervised only if they form part of a Financial Conglomerate; however, in terms of ML-CFT paragraph r) of Article Second of the Anti-Money Laundering Law indicates that "Any other Institution, Association, Trade Corporation Group, or financial conglomerate …" is also subject to the control of such Law. There was no information about the universe of such non supervised entities or the approximate volume of their operations and service markets.

328. In addition there are Non-Banking Financial Institutions which are defined in the Banking Law and in the Non-Banking Financial Institutions Law, the action framework of which concerning businesses that may be accomplished is established in Articles 51 and 70 of the Banks Law. There is also the *Banco Central de Reserva* of El Salvador (BCR) and the *Banco Multisectorial de Inversiones* (BMI), both of which have their own organization Laws.

329. Concerning the financial system, it is worth mentioning that El Salvador has been strengthened with the arrival of the foreign bank which has accomplished the purchase of several national banks with which self-control standards has improved for foreign banks such as HSBC, CitiBank, Scotiabank, Bancolombia through the implementation of sound practices for normative compliance.

330. Likewise SSF has twenty recorded entities authorized to operate as Insurance and Guarantee Corporations, being as well intermediaries of such Subject to the Anti-Money Laundering Law.

331. With respect to the Market of Securities in El Salvador, we find one Exchange, twelve Brokerage Firms, of which only three manage receivables and four Risk Rating Companies, all of which are supervised by the Securities Superintendence ruled by the Securities Market Law and subject to the Anti-Money Laundering Law.

Institutional Framework

332. The Financial Investigation Unit of El Salvador was created within the Anti-Money Laundering Law, as a primary office attached to the Attorney General´s Office of the Republic, taking the preeminence in the control and repression of money laundering and financing of terrorism in the country. In accordance with the provisions contained in Article 11 of the AML Law Regulation, all State Institutions and entities the activities of which are subject to the control of the Law, must comply with instructions issued by the Financial Investigation Unit, same that in 2001 issued the Instructions of the Financial Investigation Unit for the prevention of Money Laundering in the Financial Intermediation Institutions, that shall be hereinafter referred to as FIU Instructions, which has not been updated and requires a profound revision.

333. The Financial System Superintendence, in accordance with Article 2 of its Organic Law, has the main purpose of controlling compliance with provisions applicable to Institutions subject to control and shall be entrusted with the supervision of Central bank, Commercial Banks, Savings and Loan Associations, Insurance Institutions, National Financing Companies for Household, Social Fund for Household, National Institutions for Public Employee Pension of the Armed Forces Social Welfare Institute, Agrarian Promotion National Bank, Mortgage Bank of El Salvador, Loan Banks Federation, Financing Fund and Guarantee for Small Companies, Salvadorian Institution of the Social security and in general, other entities indicated in future laws.

334. Likewise in accordance with Article 3 of the above mentioned Law, the SSF is responsible for Complying and ensuring compliance with Laws, Regulations and other legal provisions applicable to the Central Bank and other entities subject to its control; b) Dictate regulations within the powers expressly conferred by the laws for the Operation of Institutions under its control; c) Authorize constitution, operation and closing of Banks, Savings and Loan Associations, Insurance Institutions and other entities indicated by laws; ch) Control and supervise operations of mentioned Institutions in the preceding Article; d) Other inspection and supervision tasks indicated in the law.

335. Securities Superintendence in accordance with Article 3 of its Organic Law has within its main objective controlling compliance with legal provisions applicable to entities subject to control that shall be entrusted with the control of : a) security exchanges; b) security Exchange brokerage firms; c) general warehouse stores; d) companies specialized in the deposit and custody of securities, e) risk rating corporations, f) institutions that provide ancillary services to the exchange market and, in general, other entities as indicated in future laws. In addition, it inspects and supervises issuers of the Exchange Public Registry only with respect to obligations imposed in this Securities market Law and shall supervise the task of external auditors recorded in the Exchange Public Registry, in accordance with the provisions dictated by its Council.

336. SSF and Securities Superintendence (SS) are not duly empowered to dictate regulations related with ML-CFT addressed to supervised parties; SSF has only issued circular letters that contain reminders about the obligation to comply with AML Law and provisions contained in FIU Instructions, during the visit the mission was informed on the regulation project of SSF named “Compliance Regulation and Best Practices for the Prevention of Risk related with Money Laundering and Financing of Terrorism”. Developed since 2008 but it has not been approved for implementation. This regulation is only in project, due to which there is still a perception that the limitation or difficulty to issue a prudent regulation on matters of ML and FT preventing both supervising entities to accomplish an adequate supervision based on the risks since it has neither issued guides or instructions to be supervised whenever the parameters to be developed by adequate management risk systems related with AML-CFT, thus affecting the sanction capacity.

337. *Banco Central de Reserva* is the institution that promotes stability and development of the financial system among its main responsibilities is to contribute for the country to have a transparent financial system in the management of funds of all Salvadorians, supporting the growth of the economy. As of the Monetary Integration Law, which entered into effectiveness on January 1, 2001, the *Banco Central de Reserva* of El Salvador is concentrated in the management of the following strategic areas for the national economy:

- Regulation and Monitoring of the Financial System
- International Reserve Management
- Financial Services and Payment Services
- State Financial Agent
- Exporter Services
- Statistics, Projections and Financial and Economic Studies

Legal Framework

338. Through Legislative Decree No. 498 dated December 2, 1998, and published in the Official Gazette No. 240, Book No. 341, dated December 23, 1998, the Anti-Money Laundering Law was approved, the purpose of which to prevent, detect, sanction and eradicate money laundering offense as well as cover-up thereof.

339. Through Executive Decree Number 2 dated January 21, 2000, the President of the Republic, through the Ministry of Public Security and Justice, approved the Regulation of Anti-Money Laundering Law published in Official Gazette Number 21, Book Number 346 dated January 31, 2000, whereby the Financial Investigation Unit is empowered – recorded before the Attorney General´s Office of the Republic, is empowered to issue instructions for the adequate compliance with obligations imposed to institutions subject to the control of Anti-Money Laundering Law within its framework and that of its Regulation.

340. Preventive measures which are contained in the Law enforce financial system companies to appoint a compliance officer, determine policies for knowing clients and informing competent authorities on the acts that have signs of money laundering and financing of terrorism. Articles 9 to 15 of Anti-Money Laundering Law and Article 28 of the Law Fight Terrorism Acts.

341. On July 16, 2001 the Attorney General of the Republic issued "Instructions for the Financial Investigation Unit for the prevention of money laundering in Financial Intermediation Institutions"; the purpose of which is to issue specific prevention, detection and report regulations related with money laundering related operations for Financial Intermediation Institutions, in compliance with provisions contained in the Anti-Money Laundering Law issued by Legislative Decree Number 498 dated December 2, 1998, and Regulations of Anti-Money Laundering Law, approved through Executive decree Number 2, issued on January 21, 2000.

342. The scope of these instruction includes national banks, foreign banks, their branches, agencies and subsidiaries, financial companies, foreign exchange agencies, securities exchanges, security exchange brokerage firms, companies that issue credit cards and related groups, Financial Conglomerates or groups and non banking financial intermediaries, are obliged to comply with the Provisions of the Financial Investigation Unit, recorded before the Attorney General´s Office of the Republic to prevent and detect operations with legal origin funds. The remittance companies and the Guarantee and Insurance Companies as well as other companies included in the Law are excluded from such group.

343. On its part SSF issues "Official Circular Letters", which are administrative documents that only remind or reiterate obligations contained in AML Law and in its relevant regulations and FIU Instructions. Notwithstanding, that the Law organizes FFS it empowers it to dictate regulations within powers that are expressly conferred in the laws for the operations of institutions under its control, and it could not be determined that the anti-money laundering Law expressly empowers it on the matter and in addition it could not be determined that official circular letters be enforceable to the supervised parties since we did not find sanctions applied for the specific noncompliance with provisions of any of the official letters indicated and they mainly limit to reiterate or clarify provisions issued in FIU Instructions.

344. With respect to the Securities market, over the base of Anti-Money Laundering Law, the Superintendence has issued the following resolutions, related with due diligence compliance by clients for Exchange Brokerage Firms:

- RSTG 1/2006, Registration of Clients and Intermediation Agreements used in the securities market by Exchange Brokerage Firms. That determines the manner in which such Brokerage Firms must establish controls for each Client, documenting data and operations accomplished on their account; as well as the client registration form models that the Securities Superintendence must mandatorily comply with.
- RS.CB-22/2002, Registration of Securities Purchase-Sale Orders, which provides the identity of the individual or corporation issuing the purchase-sale order. In this case the Brokerage Exchange Firm must create mechanisms that allow a certain verification of the identity of whoever drafts an negotiation order confirming necessary documents and relevant legal powers.
- RSTG-2/2006 Approval of Agreement Models used by Brokerage Exchange Firms for Receivable Management operations

345. Issues related with Due Diligence are provided in Articles 10, 11, 12 of the Anti-Money Laundering Law, which read as follows:

> Article 10.- Institutions, in addition to obligations indicated in the above mentioned Article, shall have the following:
>
> a) In a reliable manner identify and with the necessary diligence all users that require services, as well as the identity of any other individual or company, on behalf of which/whom actions are being accomplished
>
> b) File and keep documentation of operations for a five year term, counted as of the finalization date of each operation;
>
> c) Train personnel on money laundering processes or techniques in order to identify abnormal or suspicious situations;
>
> d) Establish an internal auditing mechanism to verify compliance with provision in this Law;
>
> e) Under the terms foreseen in Article 4 paragraph four of this Law, Banks and Financial Institutions, Exchange Brokerage Firms and Exchange Agencies shall adopt policies, rules and conduct mechanisms that shall be complied by managers, officers and employees consisting in:
>
> I) Adequately know the economic activity developed by clients, its magnitude, frequency, basic characteristics of the transactions ordinarily involved, and, in particular, those of who accomplish any type of site deposit, term deposit, savings accounts, delivery of trust goods or those who deposit in safe boxes;

II) Establish that the volume, value and movement of funds of client keep relation with the economic activity thereof;

III) Report in an inexcusable, immediate and sufficient manner to the Attorney General´s Office of the Republic, through FIU and the relevant Superintendence, any relevant information about funds management, the amount or characteristics of which do not keep relation with the economic activity of clients or on transactions or users that due to involved amounts, for their number, complexity, characteristics or special circumstances, differ from habitual or conventional patterns of transactions of the same type; and that therefore it could be reasonably concluded that the financial entity is or could be being used to transfer, manage, take advantage or invest monies or funds arising from criminal activities.

Article 11.- Institutions must maintain nominative registration of users. There shall not maintain anonymous accounts or accounts in which there are incorrect or fictitious names.

Article 12.- Institutions must maintain for a term not exceeding five years registrations necessary for transactions accomplished, both locally and internationally, that allow to timely respond information requests of the applicable control or supervision Entities of the Attorney General´s Office of the Republic and competent Courts, in relation with the money laundering offenses. Such registrations shall serve to reconstruct each transaction in order to provide criminal conduct evidence if necessary.

Prohibition of Anonymous Accounts (c.5.1)

346. In accordance with the Anti-Money Laundering Law in El Salvador there are no anonymous accounts in order to ensure transparency of Passive operations within the Financial System. Each financial institution must identify its client under policies and forms developed by each institution. Notwithstanding, Banks may have coded accounts provided the client is appropriately identified and the relevant due diligence is accomplished. Notwithstanding, that the Law allows coded accounts, during the evaluation there was no evidence that banks really offer this type of account in their financial product portfolio.

347. The insurance practice at El Salvador does not allow anonymous or coded agreements, since it is necessary to identify the contracting party, ensured and beneficiaries in accordance with Article 10, 11, 12 and 13 of the Anti-Money Laundering Law and 16 of the law´s Regulation.

348. In the Securities Market Sector we were informed that the Securities Superintendence verifies compliance with regulations related with CDD, through On Site inspections, at Exchange Brokerage Firms through a simple of clients that have accomplished operations for the term under revision, verifying that there is adequate identification of such clients through duly documented files; however, in several inspections there has been identification of deficiency thereof, due to lack of file of identity documents of client or because data are not timely updated, which is observed and communicated to institutions through a limited compliance date note. No specific sanctions related with this issue could be observed.

Cases in which Due Diligence is required (c.5.2)

349. FIU Instructions indicate cases and specific circumstances in which CDD must be accomplished by subjects included in such instrument, since Chapter III third section provides as follows:

Third.- For purposes of this Instructions, Institutions shall have the obligation of identifying their clients or users, or whenever accomplishing individual delivery or receipt operations for funds in cash, the value of which exceeds five thousand colones or its equivalent in foreign currency, in accordance with national or legal currency fluctuation, evidencing in the document that covers the type of transaction, official identity document of who physically accomplishes the transaction. The above shall not apply for operations accomplished through collectors, domicile services, remittance boxes and ATMs or systems

with validation electronic devices equivalent or analogue to the latter. (1) For operations or transactions in cash exceeding five hundred thousand colones or its equivalent in foreign Exchange, in accordance with legal or local currency fluctuations, institutions shall have a form referred to in paragraph second of Article 13 of Anti-Money Laundering Law and 13 of Centro American Agreement for the Prevention and Repression of Anti-Money Laundering Crime, Related with Illegal Drug Trafficking and Related Crimes, the content of which shall be determined by the Financial Investigation Unit, which shall remit in all case to FIU and Relevant Control and Supervision Entity in the manner and term foreseen in Article 9 of Anti-Money Laundering Law."

(a) Commercial Relations Establishment

350. In practice Insurance and Guarantee Companies, applied CDD obtaining additional information of client, in order to evaluate the own risks of the applied insurance, in each renewal or amendment of the risks accepted upon subscription of the account, likewise, the policy renewal updates client data at least once per year.

351. With respect to Private and National Banks as well as non-banking financial entities subject to FFS supervision, CDD is included in opening of accounts, is required that this process is applied to existing accounts throughout any commercial relation, mainly when the transaction behaviour is not concordant with the previous profile defined by the client .

352. For Stock Brokerage Firms, in all events, the due diligence is applied to any type of opening operation, whether occasional operation or not, requiring the presentation of all documents demanded by effective policies in each entity. The stock brokerage firm does not receive money in cash from clients, since deposits or payments made by clients are channelized through local system banks, which are also institutions ruled by the Anti-Money Laundering Law. Such brokerage firms do not provide cable-graphic transfers.

(b) Execution of Occasional Transfers for an Amounting to 15 000 dollars US/Euros that include Related Transactions

353. Instructions only provide the obligation of identifying clients and users the operations of whom/which exceed five thousand Colones, equivalent approximately $500.00 US but does not mention the possibility of accumulating funds in operations that seem to be related in such a way that minor but recurrent operations may stay beyond control.

354. Although in practice, banks indicated that they identify all clients that open accounts regardless of the opening amount, this instruction may be interpreted in the sense of only identifying a client or users the initial operation of which/whom exceed the indicated amount. The instruction must be clearer in the sense of identifying all regular clients regardless of the amount.

(c) Occasional Money Remittance

355. The instructions do not make reference to cable-graphic transfers services in circumstance covered by the interpretative note of RE. VII, nor other possible risk conditions in of transactions regardless of the amount hereof.

356. Likewise in the case of remittance of funds, considered when they are not supervised entities and not included within the Instructions scope they would lack legal obligation of identifying clients, the operation of which do not exceed US$57,142.86 leaving only under compliance operations contained in Article 19 of Law in the sense to inform FIU operations that with respect to the indicated amount are

accomplished by their clients. The Instructions must be reviewed in the sense of including the scope thereof of fund remittance entities, developing special chapters with punctual identification obligations of clients whenever making operations as of reasonable transaction thresholds.

(d) ML-FT Suspicions

357. In Chapter IV of the FIU Instructions, title named "Other Criteria", "Special Provision" title, indicates that institutions must inform as Suspicious or Irregular Operation or Transactions to the Financial Investigation Unit (FIU) of the Attorney General´s Office of the Republic and the relevant Superintendence, regardless of the amount, any operation, transaction or account accomplished or opened by clients or users of whom there is signs or knowledge by any means that they are linked or related whether directly or indirectly with any of the criminal activities referred to in Article 6 of the Anti-Money Laundering Law, and specially Acts of Terrorisms at a local or international level. Likewise, they must previously inform FIU on any decision of closing or cancelling accounts of clients for whom there is presumption that they are linked or related directly or indirectly in the crimes indicated in the above paragraph, in order for FIU to timely participate and avoid loss of evidence and impossibility to order preventive measures and/or exercise of any criminal action by the Public Ministry.

(e) Doubts with Respect to Veracity or Certainty of the Previously Obtained Identification

358. FIU Instructions chapter IV, title "Other Criteria" paragraph 2, indicates that whenever the client submits data that further result false or may not be evidenced, or whenever Compliance Officer receives for analysis a report concerning possible suspicious operations and detects that Client has not complied with the obligation of submitting a copy of the inscription of the organization deed, the operation may be reported as suspicious. In case the account is cancelled before the delivery of the Registration inscription, the operation is reported as suspicious, for which the movement amount, type of transactions and the information of Client shall be taken into account. Paragraph 3) provides that in case Client does not accept to be identified, the operation shall not take place and, consequently, there shall not be material for a suspicious operation report

Identification Measures and Evidence Means (c. 5.3)

359. Anti-Money Laundering Law and its Regulation provide in general, the obligation of guaranteeing knowledge of clients, only the Instructions in Chapter III, titled "Particular Regulations", develops the topic related with Identification of Clients, addressing to entities that define their scope under the following terms:

a) Open.

1) A close relation must be kept with Clients allowing awareness of their activities in order to guarantee healthy financial and banking practices, thus complying with the effective and applicable legal framework.

2) Opening of accounts or contracts with Clients that do not provide information and documentation necessary for their identification may not take place.

3) The Institution must identify the applicant or prospect with official identification that contains photograph, signature and domicile.

4) The Institution must verify that signatures and names indicated in the registration and the contract correspond to the signature and names of the identifications provided by the contract holder.

5) A file must be kept for the opening, integrating all the Client documentation and habitual activity, being the Institution responsible for the file sufficiency, keeping it under the terms and conditions provided in Chapter related with File and Preservation of Documents of this Instructions.

6) The Institution must ensure compliance with all requirements for the opening of accounts and contracts.

7) No file for identification shall be opened dealing with banking deposits of money in savings accounts in all the modalities, provided the opening of such accounts takes place at the petition of one company or established institution, with account in the Institution, that the accounts are open in favour of registered workers in such company, making the relevant charge in the company´s account.

8) In justified cases, given the Client´s situation, a term of sixty working days may be granted for new accounts or contracts, counted as of the opening or entering into for the integration of the identification file. Should the file is not integrated within such term, the account must be cancelled and in accordance with the amount, frequency, nature of the operation and specific condition of the Client, it may be reported as suspicious.

9) Dealing with trust operations, or commission or mandate, the trust institution in the organization of such operations, must identify the parties that appeared upon the entering into the relevant agreement.

10) Whenever in such operations there are increases or withdraws made by persons different to the initial trustees, principals or trustors the trust company shall also identify them upon accomplishing operations.

11) Omit identification in the following cases: · To Trustees, dealing with trusts constituted to comply with labour obligations, general nature social prevision, whenever receiving contributions of companies, syndicates or integrating persons of both, including, without limitation, the following: trusts based on pension funds with seniority premium plans, to establish multiple severance and benefits, for mortgage loans to employees for savings cashier and funds and mutual aid provisions among other. Dealing with Pension Trusts, beneficiary shall be identified.

b).- Transactions:

1) Must ensure that in each transaction for an amount exceeding ¢500,000.oo or its equivalent in foreign Exchange currency, in cash, the person has been identified in the manner established by these Provisions.

2) In operations for an amount exceeding ¢500,000.oo or its equivalent in foreign Exchange, in cash, or whenever any of the circumstances foreseen in Articles 15 and 17 of the Anti-Money Laundering Law Regulations, no transactions may take place if Client: ·Rejects the provision of identification or additional information required to know the type of its business and the nature of the operation. · The identification of obtained is not of the characteristics obtained in such Provisions.

3) The Institution must maintain documentation accrediting sufficient compliance with such identification requirements, in the transactions that so require.

4) With respect to the custody of documents terms and conditions for security must be applied as established in the Chapter relative to File and Preservation of Documents of these Instructions.

5) In case of operations for an amount exceeding ¢500,000.oo or its equivalent in foreign Exchange, in cash, on behalf of a legal person without account, only shall be received if an organization deed of the corporation power or identification of the legal representative is attached..

6) In transactions accomplished by Clients with accounts established in the Institution for an amount exceeding ¢500,000.oo or its equivalent in foreign Exchange, in cash, shall only evidence identification without the delivering or keeping photocopy thereof, provided there is a file fully identifying the Client in accordance with the requirements established in this Instructions.

360. In accordance with Article 17 of the regulation of Law, the entities under regulation collect copies of identification of clients in documents issued by an official entity, for example DUI, TIN, Passport, Organization Deed, among others. Original identification documents are required for each new business relation, which shall be photocopied and added to the Client´s file. Additional information is required whenever dealing high risk or legal clients. Required documents are issued by government entities.

361. In practice Regulated Subjects stated serious difficulties to verify information provided by Clients since there are no document verification services or official validation mechanisms for data, likewise the volume of clients does not allow to call references or visit all of the clients in order to confirm data provided.

362. Instructions do not establish obligation to analyze CDD measures with respect to the information validation in function of risks related to account, clients or users.

363. With respect to specific data that Regulated Subjects must request, Instructions refers in its Chapter III, title "Procedure throughout opening of accounts or entering into agreements" as follows:

a).- Scope. Procedures that are described herein below are applicable to the opening accomplished in all Institutions, branches, agencies, and subsidiaries, and for all operations that imply reception, delivery, transfer of funds of any type of deposit, savings, investment, trust, mandate, commissions, safety boxes and credit granting under any modality.

b).- Interview. The purpose of to know Clients with respect to the moral capacity, manner of operation and economic relevance, in accordance with the use, customs of the place and customs of the market and business corporate purpose. Clients, in order to establish their profile, upon perfecting the operation or agreement shall inform the Institution through a declaration under oath the origin or precedence of the funds, as well as the economic activity and the monthly projected movement of funds, and must sign such declaration in presence of the Institution´s employee or officer.

c).- Identification Documentation. Requirements shall be requested per type of person.

OFFICIAL IDENTIFICATION (WITH SIGNATURE, PHOTOGRAPH, AND DOMICILE) X X (Of the representative) X X DOMICILE EVIDENCE (*) X (*) X X X FISCAL REGISTRATION NUMBER (VAT) AND TAX IDENTIFICATION NUMBER (TIN). (In its case)X (In its case)X X (In its case)X NOTARIAL POWER OF ATTORNEY FORT HE REPRESENTATIVES (In its case)X (In its case)X X X EVIDENCE OF THE ORGANIZATION DEED (**) X PASSPORT / MIGRATORY CAPACITY X EVIDENCE ACCREDITING LEGAL EXISTENCE X

(*) Te domicile evidence is only required whenever identification obtained of the Client has no domicile or does not coincide with that indicated in the contract.

(**) Dealing with recently organized corporations notary public's certification must be received in the sense that the first statement of the organization deed is under registration process. Once the Client has the statement with inscription data at the Commercial Registration, it must submit a copy thereof to the Institution.

d).- Salvadorian individuals or companies.

d.a).- Identification

1) Require applicant, holder or representative, official identification with photo, signature of the interested party and if applicable domicile.

2) Should applicant is a legal person, shall require representatives or attorneys, an official identification with photo, signature and if applicable, domicile.

3) The omission of the domicile in the identification means may be corrected through the promissory voucher.

4) As examples of valid identification we have the following among other: · Drivers License. · Electoral Identification. · Passport. · Citizenship Id card.

d.b).- Domicile Voucher.

1) Dealing with physical or individuals, the domicile voucher must be required only when personal identification does not describe domicile or does not coincide with that indicated in the contract.

2) For companies, regardless of the identification submitted, applicant must be requested a domicile voucher of the company.

3) As example of domicile voucher we have the following, among others: · Energy. · Telephone or Water bill. NOTE: Evidence documents must not exceed 6 months of issue.

d.c).- Fiscal Registration (VAT).

1) This registration applies for companies of individuals that due to their nature is required such as entrepreneurial, professional or other.

2) Applicant must submit the Tax Registration or Tax Identification Number.

d.d).- Statement of Organization Public Deed and Notary Public Powers.

1) This requirement always applies for legal persons. For individuals, powers of attorney shall only apply whenever represented by agents or representatives.

2) The following information shall be gathered from applicant or Client in accordance with the type of corporation: i) Trade Corporations: Organization Deed duly recorded in the Public Trade Registry. Appointments and powers granted to the director members of the company.
ii) Unions and associations: Bylaws duly recorded before the Ministry of Internal Affairs and/or minutes of assemblies stating appointment of attorneys.

3) Dealing with recently organized corporations, these must be requested notary public certificate that the testimony of the organization deed is under inscription procedure in the Commerce Registration, being the Client obliged to submit to the Institution a copy of the inscription in the mentioned Registration, once it has the testimony with the inscription date. No opening of accounts or agreements may take place in case the Client does not submit the mentioned notary public certificate.
In relation to Unions, these will be requested the registration evidence before the Ministry of Labour.
e).- Foreign Individuals or Companies.

In addition to complying with the above mentioned requirements and as applicable the following must be considered:
1) Dealing with individuals request Passport and verify that the name, photograph and signature, and nationality correspond to the applicant´s data, as well as requesting, in the relevant case, migratory capacity.
2) Dealing with companies, request original document accrediting legal existence, as well as that accredit it as representative the individuals occupying such position and in case of being foreign, original passport.
3) Dealing with documents issued abroad, these shall be analog to those foreseen in the civil and trade law. As valid identification examples we have, among other, the following: · Passport. · Migratory Forms. · Social Security. · Resident Document

Identification of Moral Persons and Other Provisions (c. 5.4)
(a)Authorization verification to act on behalf of the client

364. Requirements for the opening of Companies were mentioned previously. Although not expressly defined in practice entities indicated to have policies on identification on any persons that acts on behalf of another, however, there is no demands with respect to include punctual information about commercial businesses, banking and commercial reference, information, contacts (clients and suppliers), name of main shareholders, managers, general manager or legal representative if they are not signatories of the account.

365. Identification requirements indicated in the case of creation of trust accounts are not indicated in the Instructions or in the against specific anti ML-FT regulations; likewise there is no reference about the identification of adjusters, beneficiaries, attorneys or agents of the legal or moral persons that act on behalf of others.

(b) Verification of the legal status of legal persons

366. Legal regulations and specific Instructions are very limited concerning the information verification demand of legal status of foreign companies. Likewise, it does not make reference to mechanisms to verify legality of the documents in the creation of State entities accounts, management trusts, special attorneys, civil associations and other type of legal persons, in accordance with the associated risks thereof.

Identification of Beneficiary (Real Owner) (c. 5.5; 5.5.1 & 5.5.2)

367. In the visit to banking entities we were informed that usually actually beneficiaries are required identification in products and services offered by Banks, including life insurance, insurance related with investment, etc., likewise, identification of majority shareholders of the corporation is established and it

is evidenced if the client is acting on behalf of another person and the identity of such other person is verified; however, there is no regulation that demands regulated parties to ask clients if they are acting on their own behalf or for the benefit of a third party or to identify a real beneficiary that is not a signatory of the account.

368. About the ownership or control structures of legal persons or legal agreements as well as identification of individuals that at the end of the day are who own or control the client, we were informed that IF has implemented overall cards and declarations under oath to comply with this requirements. Whenever the operations are accomplished through a third party, identifications of the representative are required comparing the information with original client documents. Identification of shareholders, individuals or end owners is required for those who have an interest exceeding 25% of the corporate capital, in such a way that the actual beneficiary is identified. Notwithstanding, there were no legal grounds to consider that this practice arises from a regulatory demand.

369. Specially Exchange Brokerage Firms, in accordance with the provisions contained in RSTG 1/2006 "Registration of Clients and Intermediation Agreements used in the securities market by Brokerage Exchange Firms" in which individual authorized to accomplish operations of behalf of client must be detailed; likewise, the Securities Superintendence verifies at the Stock Exchange that the registration of the Brokerage Firms and Exchange Broker Agents that operate on behalf of their clients are made, sometimes observing that some entities do not leave attached the identity documents thereof, are data are not timely updated, which is observed and communicated to the institutions through a note with a compliance limit date. Application of sanctions for this noncompliance was not evidenced.

370. Measures applied by the Non-Banking Financial Institutions include the following measures according to the type of persons dealing with. Information required to remittance companies is the Organization Deed, photocopy of the Legal Representation document, photocopy of the operating permit or registration to operate in each State, legal Organization Deed of the company, Anti-Money Laundering or Compliance program manual, appointment of Compliance Officer, contacts in the related areas, memory of tasks, declaration under oath, list of shareholders and Financial Statements. The responsible party for compliance with anti-money laundering obligations in the country of origin is the remitter. Credit Corporations and Workers banks are Limited Liability Cooperative Corporations, the Management and Control of the which is accomplished by a Board of Directors, elected by the General Assembly Board and the General Manager, who is appointed by the Board of Directors, respectively. Likewise, the General Assembly Board appoints the External Auditor of the Corporation, and in case Compliance Officer is appointed by the Board of Directors. Election of directors is not subject to the amount of represented shares. At Credit Corporations there is a delegation of all Shareholders in 28 Representatives of Shares, regardless of the number of shares that each of them posses and the representation concerning shares is unlimited as well as to accomplish tasks in a General Board with right to only one vote. At Workers Banks there is no Share Representative figure before mentioned and a single shareholder may represent maximum three partners. None of the scenarios have preferred stock. Before the Special Law provided the requirements that Directors should comply; but upon elimination of such Law, the Bylaws of each of the Entities retook requirements, both for Directors as for General Managers in order for the persons to manage them to be more suitable concerning honesty and capacity in the positions.

371. Notwithstanding, the described practices, the country regulations do not consider demands included in indicated criteria, for which the sanction possibility is only reduced to the noncompliance of the points indicated in the legal regulations which are basic and really limited.

Information Concerning the Purpose and Objective of the Business Relation (c. 5.6)

372. Instructions Chapter III paragraph b) of title "Procedures for the Opening of Accounts and Contracts", refers to an initial interview with the client that purpose of which must be to acknowledge clients with respect to moral capacity, economic relevance and, form of operation in accordance with the use, customs of the market and direction of the business. Clients, in order to establish a profile, upon entering into an operation or agreement must inform the Institution through declaration under oath the origin or precedence of funds, as well as economic activity and fund movement projected monthly, and must sign such statement in presence of an officer or employee of the Institution.

373. In practice we find that FI effectively considered as habitual procedure the inclusion of this declaration under oath and initial interview report in the opening of accounts, notwithstanding questions related with purpose of the business relation are not comprehensive concerning real economic activities of clients.

Own Effective Diligence with Respect to Business Relation (c. 5.7; 5.7.1 & 5.7.2)

374. Legal Regulations and FIU Instructions contain a certain number of provisions, sometimes hints related with requirements of own effective diligence of c.5.7 in relation with monitoring of client transactions in order to detect irregular or suspicious operations; however, there is no reference with respect to the update of client information, which in turn includes weakening of effective monitoring of operations of clients in accordance with economic activities and with ever changing risk levels.

375. In practice entities refer that there is an automated monitoring system that generates alerts to control transaction behaviour of clients. Further business units have been provided with daily management reports that allow client behaviour control under certain parameters warning any unusually situation. Also there are list of high risk clients who are under process for document updates.

376. Notwithstanding the above, regulations demands to FI to file and keep client information for a five year terms but the norms makes special emphasis on monitoring of cash operations in threshold of US$ 57,142.86 established as parameter being pretty limited with respect to the preparation of transaction profile based on risk for money laundering and financing of terrorism. Effectiveness of the threshold and normative development about risk management shall be reviewed.

Own Higher Risk Diligence for Higher Risk Clients (c. 5.8)

377. There are no demands, guidance or instructions for an adequate management of risk at regulated entities. Superintendencies have not issued to date punctual regulation to that respect for which there is no obligation of more profound diligence for different highest risk client categories. Several financial institutions informed that they applied additional controls to higher risk countries as a self-regulation.

Application of risk to Simplified/Reduced CDD Measures, according to the case (c. 5.9)

378. There are no regulations, instructions or guides that demand the implementation of risk management mechanisms to identify simplified measures application opportunities.

379. Chapter III of the FIU Instructions makes reference to certain type of simplified measures in the sense of consider possible list of exempt parties, under the following terms:

LIST OF EXEMPT PARTIES. Every "Know Your Client" policy must establish a clear and verifiable identification mechanism for clients and financial products and services applicants, gather implementation of the profile of each Client in order to establish account operations patterns with the purpose of detecting the needs of the service by the Client and discover changes in the patterns which do not necessary indicate that is caused by an illegal activity, since it may be motivated by an extension of the Clients business, and therefore may be prospect for other financial services or to be included in the

*List of Exempted parties that each Institution may keep to exempt the Client from completion of the Effective Transactions Form (F-FIUF01) that for such purpose FIU shall issue. The inclusion of a Client into the Exempt party List may be reasoned and documented, keeping for such purpose a file indicating the following: 1) Name of the banking official that proposes the inclusion. 2) Arguments for the decision taken. 3) Duly documented motivation of the inclusion decision. Inclusion of a Client in an Exempted Party List does not mean that if there is an non-justified abrupt change of patterns it should not be reported to the competent authorities. Whenever ordinary course of business of a determined Client implies the current accomplishment of several transactions in cash having reasonable established that activities are lawful, the Institution may exclude it from the filling out of Cash Transactions Forms (F-FIU 01). Criteria for Determination of Exempted Clients from Cash Transactions Form (F-FIU 01): must be complied with each of the following points for a Client in order to a Client to be exempted from the submittal of the Cash Transactions Form (F-FIU01): - Client must be linked to the entity for at least six (6) months or as decided by the higher level administrator. – There shall be full knowledge of Client and its activities have all documentation required and have accomplished the corresponding visit in order to verify Client´s profile. – The volume and amount of transactions implied by the management of considerable cash amounts. – The business must be figured within the following concepts: * Cooperatives and legal persons * Supermarkets * Stores * Movies * Transportation companies * Special agreements. Example: third party account collections * Utility collections * Restaurants*

380. Notwithstanding entities prefer that facing absence of clear risk management mechanisms the exempt list figure is not used, thus reporting all operations that according to legal obligations must be submitted to FIU and the Superintendence.

Simplification of Risk/Reduction of Measures of CDD Measures (c. 5.10, c.5.11, c.5.12)

381. Legal regulations of El Salvador, do not consider the application of simplified or improved measures, since it does not demand implementation of risk management systems that would permit the determination of such figures in ad adequate manner in accordance with the risk sensitivity conditions for each type of client, products, distribution channels and geographic location.

382. Supervisors have not issued guidelines that aid FI to determine the risk level in client transactions and relations, that is, clients' economic sector, products, services, geographic locations, etc. FIU has issued guidelines with unusual/suspicious transactions presentation purposes but these are not adequate for such purpose.

Term for Identity Verification – General Rule (c. 5.13)

383. All FI, in accordance with the legal provisions must establish an identification file of clients prior opening of an account or execution of a transaction. There are some exceptions in relation with the presentation of documents for verification of such identification which have been previously indicated. Anonymous or fictitious accounts are prohibited and total compliance of the client identification is demanded prior account opening or execution of transactions whenever operations exceed five thousand colones, approximately USD$500.00.

Term for Identity Verification – Exceptional Circumstances (c.5.14 & 5.14.1)

384. In accordance with FIU Instructions, Chapter III, Particular Regulations, paragraph 8) it is indicated that in justified cases given the Client situation, in accounts or new agreements a new 60 working day term may be granted counted as of the opening of the account or entering into the agreement for the integration of the identification file. There are no demands for the adoption of risk management procedures during the waiting term expected to complete client documentation of clients in these special cases.

Omission to Complete CDD Prior Start of a Business Relation (c. 5.15)

385. AML Law in its Article 10 paragraph a) provides obligation of identifying clients that require services of regulated entities. FIU Instructions Chapter III, Particular Regulations paragraph a) subparagraph 2), includes the prohibition of opening accounts to individuals that do not provide relevant information.

Omission to Complete CDD further the Start of a Business Relation (c. 5.16)

386. FIU Instructions indicate that should the file is not integrated within the 60 days term granted in special cases, the account must be cancelled and in accordance with the amount, frequency, nature of the operation and specific Client condition, its report may be classified as suspicious.

Existing Clients – Requirements CDD (c. 5.17)

387. When FIU Instructions is issued on 2002, FI were required to harmonize identification records of clients, concerning accounts that were open o transactions accomplished prior the issuance of such AML/CFT provisions; however, measures shall be adopted to update information and documentation that contain clients identification risk in a periodic manner and especially when detecting relevant changes in transactions. There is no demand to renew or update existing client files.

Account Clients – Effective and Anonymous – CDD Requirements (c. 5.18)

388. Despite the fact that in El Salvador anonymous accounts are prohibited, c.5.18 requirements also apply for number and coded accounts in relevant assumptions, in the banking sector, for which special regulations must be issued for coded accounts in case FI effectively offer such service.

Foreign PEP – (c. 6.1, c.6.2, c.6.3,c .6.4)

389. There is no regulation in El Salvador about Politically Exposed Individuals, nor for definitions or scope to that respect. Notwithstanding in practice the interviewed entities indicated that according to own policies they keep their own internal controls under very varied criteria according to internal policies of each entity.

390. Financial Institutions do not have access to an extended data base that allows to obtain sufficient information; also tools necessary that contribute this purpose are required such as: High training of the Financial System in general, including Non-Banking Financial Intermediaries, obtaining higher feedback from Attorney General´s Office of the Republic, concerning the preparation of a cautious list allowing Financial Entities to identify individuals with whom/which there shall be more control for the access of banking services.

391. The SSF issued Circular Letter No. IS-55072 dated December 9, 2004 in which instructs Banks on the application of 40 + 8 recommendations of FATF, in order to implement controls, policies and monitoring, making emphasis on fund transfer operations and pretending to include issues related with PEPS, considered insufficient and lacking regulatory force.

Foreign Corresponding Accounts and Similar Relations (c.7.1, c.7.2, c7.3, c.7.4, c7.5)

392. El Salvador legislation does not prohibit Cross-border Correspondent Banking and other similar relations; however, currently it is indicated that no banking entity offers this type of service. Notwithstanding, SSF issued Circular Letter No. IS-12237 dated August 22, 2005, in order to reiterate the instructions issued in Circular Letters IJ-18628, IS-48246 and IS- 55072 to financial entities, extending the scope of controls to other type of organizations without profit and include within the transfer data base those related with Family Remittance operations, establishing as control margin remittance amounts received or sent equal or exceeding $1,000.00.

393. The regulation of potential relation of correspondent bank or similar relations must be considered.

Undue use of New Technologies for ML/FT (c. 8.1)

394. Considering that the banking access level and internationalization of the financial sector at El Salvador is increasing, it should also be taken into account the increase of the complexity and sophistication level of financial products and services as well as the technology applied. However, there is no regulation or certain or direct requirements in the provisions that indicate that FI must have policies and measures in order to prevent the undue use of technological development of ML and FT schemes. SSF issued Circular Letter No. IS-12237 dated August 22, 2005 the purpose of which was to reiterate instructions issued in Circular Letters IJ-18628, IS-48246 and IS- 55072 to financial entities, making emphasis on the implementation and control of policies and monitoring of operations with entities without profit, cybernetic terrorism, and funds transfer operations.

395. Entities and authorities indicate that in practice, special controls are accomplished for technological operations also based on operative risk control of financial entities, and likewise FFS includes revision of informatics systems in its evaluation; however there are no guides, references or technological risk matrix related with ML-FT that may be considered as contribution for authorities to that respect.

Risks of Business Relations that are not Accomplished in Person (c. 8.2 & 8.2.1)

396. In practice entities indicate they have policies and procedures in order for relations or transactions which are not face to face and in which CDD is not applied. Banks have a monitoring systems for transactions accomplished through ATMs, Internet, credit cards, fax applications, etc. SSF prohibited opening of deposit accounts of clients domiciled abroad through Circular Letter IS-049109 dated August 24, 2004.

397. Development of set of rules to regulate minimum control mechanisms for business with clients which are not in face to face basis must be considered.

3.2.2. Recommendations

Rec. 5

398. To accomplish a Country Risk Study in relation with ML-FT in order to determine the risk areas that require more attention as well as the regulatory needs and control needs in accordance with vulnerabilities encountered per each type of regulated entity.

399. To review US$57,142.86 threshold contained in the Law for the control of cash operations.

400. To review FIU Instructions in order to extend its scope, simplify structuring, increase clarity and congruence of thereof.

401. To issue regulations related with adequate management of risks making special emphasis in specific needs for each sector.

402. To review application environment for AML/CFT requirements for remittance companies to guarantee they include concrete obligations consisting in environment with AML/CFT provisions.

403. CE 5.1 Determine the real existence of coded accounts and in such case consider it as risk products that require higher control limiting the use of such numbered and coded accounts to certain institutions and circumstances.

404. CE 5.2 Extend clarity and increase consistency of instructions that are indicated by the five thousand colones or USD$500.00 threshold for the identification of a client.

405. Money exchange businesses transmission and remittance centres, who fixed business relations that are identified and accomplish CDD, must be demanded regardless of the amount of operations of clients and extend the control threshold from US$57,142.86 to present FIU reports.

406. In FIU Instructions and issued provisions related with ML-FT, indicate clear requirements that differentiate CDD for the establishment of business relations and occasional client conduct taking into account the need to have reasonable indicators for occasional transactions in all sectors.

407. Consider CDD concrete provisions that demands the amount of related transactions below US$57,142.86 indicator (15 000 US dollars in accordance with FATF)

408. c5.2 (b)) Require CDD for all transactions and activities provided it is worth it and there is suspicion with respect to the veracity of client information or whenever it differs from its profile. (See c5.15 and c5.16)

409. CE5.3 (and CE5.14) Review all regulations to clarity/guarantee that provisions for the alternative identifications and verification measures do not reduce CDD in assumptions that the identification documents show modifications, amendments and/or are false according to and likewise determine rules to limit operations of the accounts, concerning clients that have not completed documentation thereof.

410. CE 5.4 and CE 5.5 Concretely demand from FI to establish/require that applicants of businesses indicate in the documents, the capacity with which they act and not only in the cases in which there are "indicators" that they are acting in representation of third parties.

411. Require specific requirements for the opening of trust accounts, Civil Associations, and State entities and other legal structures.

412. Review identification exception of clients in accordance with the risk establishing volume limits of operations and other control measures

413. CE 5.6 Require that all FI obtain information with respect to the purpose and object of the business relation and actual economic activity regardless of the client risk level and financial institution size.

414. EC 5.8 Demand KYC implementation based on risk in all provisions beyond risks related with clients and users transactions in order to include all elements necessary for establishment of client´s profile; additional client categories; economic activity; geography, etc. See CE 5.9 and CE 5.12

415. EC 5.9 Review adaptation of the exempt client list and request a minor risk classification before applying simplified CDD.

416. EC 5.12 Provide adequate guidelines to assist FI in the development of risk management system.

417. EC 5.14 Review reasonable term to complete verification of identification of recently organized moral persons, including strict requirements for risk reduction such as financial transaction prohibition of certain amounts or special characteristics such as transfers, regional check books, etc.

418. Request from all regulated entities to reject to open an account or accomplish a transaction provided the required identification documents may not be obtained or verified adequately, always that there is thought that they have been altered and/or are false.

419. 5.17 Demand update of client files that already exist in appropriate times.

Rec. 6

420. Develop and issue specific regulations related with the control of PEPs taking into consideration all criteria indicated by FATF, as well as reference guides to determined standardized control mechanisms in all the regulated system.

Rec 7

421. Develop and issue prudent regulations about potential activities of Correspondent Bank in El Salvador taking into account all criteria indicated by FATF.

Rec.8

422. The development of the regulation must be considered to regulate minimum control mechanisms for operations made through modern technologies.

3.2.3. Compliance with Recommendations 5 to 8

	Rating	Summary of factors that support Rating
R.5	**PC**	• Lack of clarity, scope and clear and differentiated requirements in instructions related with compliance of regulations for the prevention and control of ML and FT • Legal deficiencies and of relevant capacities in the implementation of CDD requirements for remittance of money transfers senders. • Inappropriate CDD indicator of US$57,142.86 for the report of operations in cash and monitoring of transactions. • Absence of concrete requirements to accomplish CDD in all cases, in which there is suspicious of M /FT or doubt with respect to the adequation of the client information and/or certainty about veracity, modifications or alterations in the identification documents. • Deficient identity verification requirements for owners of final beneficiaries. • Lack of general requirement for the obtention of information about real nature and objective of the business relation. • Absence of regulations and insufficient guidelines for CDD based on risk. • Absence of risk reduction controls for the postponement of the identification verification, including recently organized companies.
R.6	**NC**	• Absence of provisions related to PEPs
R.7	**NC**	• Absence of provisions related to Correspondent Banking and cross-border businesses

R.8	**PC**	• Absence of specific requirements for the implementation of measures for the prevention of the inadequate use of technological developments.

3.3. Third parties and Inter-mediated businesses (R.9)

3.3.1. Description and Analysis

Legal Framework

423. FI are responsible for implementing their own policies and procedures CDD in compliance with FIU Instructions, and must consider personal interview with each client in the account opening procedure. To this end, financial laws and regulations or the FIU Instructions do not expressly prohibit, nor regulate the possibility for such interview to take place by a third party through specific circumstances, such as those of a "sub agent" for the placement of products and services, Free-lance employees, affiliates of a financial group, OIT Sourcing companies, or among suppliers and agents of mortgages or other means.

424. The insurance sector allows the accomplishment of certain activities through intermediaries including insurance agents and traders according that according to the Law are considered as direct enforced parties and are controlled by SSF. There are also massive insurance traders, which go through an inscription procedure which is proposed for approval to SSF. This means that no intermediary may accomplish insurance commercialization without having being authorized by SSF.

425. Insurers are supported by the task of insurance intermediaries to accomplish their commercial activity, who collect client identification, accomplish interview and fill out a comprehensive card and request a declaration under oath, which is analyzed under the responsibility of each insurance company. Insurance companies have according to the criteria, the possibility to accept or reject clients proposed by the intermediary.

426. Sector of money transfer business and insurers/guarantee companies are the most important for purposes of this recommendation and are explained with higher level of detail futher.

Requirements to obtain Certain CDD Elements from Third Parties (c. 9.1-c.9.2)

427. There is no direct requirement for FI in case of establishing any agreement with third parties to accomplish any CDD management to immediately obtain client identification information.

428. **Money Transfer**: In general terms, the Law demands identification of clients and users including as enforced parties those transmitters of money that pay transmissions to benefitted client (payer money transmitters) and particularly demand higher attention to operation that exceed 3 000 North America US. However, there are no concrete requirements providing that the entity that sends must obtain immediately such information from the paying agents.

429. **Insurers:** the practice demands that always that insurers and guarantee companies delegate in their agents CDD activities the agents gather all information and documentation of the client necessary according to the law and provided to the companies in order to be included in client files. There is no concrete requirement for such information to be "immediately" provided by the agents or requested by the insurance company as demanded by criteria 9.2.

Regulation and Supervision of Third Parties (c.9.3) (applying R. 23, 24 & 29, c. 9.3)

430. In case of money transmitters, the payer money transmitter is not subject to the complete environment of the AML/CFT by virtue of the fact that it is not included in the FIU Instructions application environment; however, by virtue of Law it is obliged to comply with the identification of

users and clients. Transmitters are not encountered under the supervision environment of SSF nor any other control entity in terms of ML and FT, for which only FIU is empowered to request information with respect to legal obligation, notwithstanding when a bank operates as payer of funds transfer company of SSF includes this point in inspections. Even then, this is not what the recommendations demands; Authorities may consider the implementation of a system that requires money transmitters and dispersers to implement supervision mechanism for agents (payers) to guarantee that they are efficiently complying with effective CDD requirement.

431. Insurance intermediaries are regulated by SSF, that provides recording and authorization criteria so they can sell insurance in name of third parties. Insurance companies depend on their agents for an important part of business and CDD, however, agents and insurance companies are not expressly referred in the Instructions of FIU which is the regulation that in detail described the scope, definition and details of obligations contained in the Law.

Adaptation of FATF Recommendations application (c. 9.4)

432. It is not applicable, since only national Insurance agents are allowed and no norm makes reference to the possibility of contracting support companies beyond Salvadorian territory.

Final Liability for CDD (c. 9.5)

433. All FI with respect to the above are the final responsible parties of accomplishing their own Identification and verification of clients as indicated in the relevant Law and Regulations. Although there is use of agents to commercialize insurance products, the criteria to accept risk, is single and exclusively of insurers and therefore identification and verification procedures are essential part of the AML/CTF prevention program. Notwithstanding the principal lack in this sense of absence of specific measures to regulate risks corresponding the use of intermediaries in remittance or funds transmission companies and insurers

3.3.2. Recommendations

434. Issue specific rules that prohibit or regulate the use of third parties by FI to accomplish some CDD procedures.

435. Include Money Transmitters and Insurers in the FIU Instructions, since is not the possibility to fully comply with Instructions related with obligations derived from the Law and its relevant regulation concerning client knowledge is weakened.

436. Establish concrete requirements in the provision, (especially for money transmitters and Insurers) for FI to immediately obtain information of third parties that accomplish CDD on their behalf.

437. Establish adequate control mechanisms to verify that the obligation of insurance companies to monitor compliance of their agents for obligations related with AML/CFT is complied with.

438. Consider the possibility of implementing a system that demands remittance senders or money transmitters to monitor operations and compliance with provisions of the paying agents (over whom must comply with some CDD elements).

3.3.3. Compliance with Recommendation 9

	Rating	Summary of the factors that support the Rating
R.9	**PC**	• Lack specific regulation concerning the use of agents that may accomplish some CDD diligences on behalf of FI • Lack of requirements in order for FI (Insurance and Money Transfer Companies) may o "immediately" obtain CDD information from third parties since such entities are not expressly included in FIU Instructions • Inadequate supervision/monitoring of Money Transmitters and payment

		agents (to whom compliance of conferred) by transmitter institutions for the compliance with AML/CFT obligations.

3.4. Secrecy or Confidentiality of the Financial Institution (R.4)

3.4.1. Description and Analysis

439. Provisions in terms of confidentiality of FIs do not prevent implementation of FATF Recommendations. FIU and the General Attorney´s Office in general have direct access to information necessary for investigation of ML and FT. On the other hand, it was observed that in practice there is an adequate response by FIs to Attorney General´s Office requirement. Legislation also allows different authorities to provide Access to data base of the Financial Intelligence Unit.

440. (C. 4.1) Exception of the banking secret or confidentiality of Fis is contained in Chapter V "Exceptions of Banking Secret and Preventive Measures", Article 24 of AML Law which provides as follows:

> *"Article 24.-Banking secret as well as the reserve in terms of tax matters do not operate in the investigation of the Money laundering crime; information received shall be exclusively used for purposes of evidence in such investigation and may only be ordered by the Attorney General of the Republic of the Judge of the cause at the tight procedural time."*

441. In addition, Article 17 of the same law provides that *"The Attorney General of the Republic may request information to any state entity, whether autonomous, private or individuals for the investigation of the money laundering crime, being enforced to provide the requested information"*.

442. Then it is clear that both the Attorney General´s Office of the Republic, through the Attorney General and the prosecutors allocated to the different cases are empowered to require information resulting necessary for the ML investigation. The above with the condition that information shall be exclusively used as evidence means in the investigation, with which it is considered that confidential information of users of financial services is protected.

443. FIU being part of the Attorney General´s Office and being managed by an Assistant Attorney (delegate of the Attorney General) has the same access to information that Law grants to the Attorney General in relation with money laundering investigation.

444. With respect to information exchange among authorities, AML Law, in its Chapter IV "Inter-institutional cooperation", Articles 16 to 18, provides a legal framework that enforces State institutions or entities, Central Bank of the Reserve, Registration of Real Estate and Mortgages, as well as public control entities to provide access to FIU to data bases and cooperate within investigations and crimes related with ML. Likewise such Law empowers the Attorney General of the Republic to request information to any entity whether public or private as well to individuals, enforcing these to provide required information. On its part above mentioned Article 18, provides the basis for the creation of a data bank related with ML crime, including information both locally and internationally. In addition to the above mentioned Article 18, enforces institutions to exchange, whether with other institutions or internationally information obtained in ML investigations.

445. In relation with FT prevention, Article 49 of AT Law enforces of all state institutions to provide information about individuals linked with terrorism and financing thereof to institutions entrusted in the combat against such crime. To that respect, it is worth indicating that the mentioned article provides an exception to information exchange, in cases in which state entities consider that it could be of damage for adequate follow-up of investigation tasks, and consequently, for the effectiveness thereof.

446. On its part, it is important to highlight that AT Law does not expressly contemplate that the banking secrets is not applicable for investigations related with financing of terrorism as provided by one exception of the AML Law. However, Article 232 of the Law of Banks states that the banking secrete shall not be an obstacle to clarify crimes, for the control, determination of taxes or collection of tax obligations nor for preventing confiscations of goods. In accordance with what has been stated to evaluating team by the different interviewed FI authorities, in practice the banking secrete does not represent any impediment whatsoever for such FI to offer access to authorities to the relevant data bases, and therefore cooperate in investigation of activities related with financing of terrorism.

447. It is important to indicate that the team of evaluators observed that in practice, the purpose of the Recommendation is adequately complied with both by the different authorities involved as by particulars, especially FIs.

3.4.2. Recommendations and Comments

448.

3.4.3. Compliance with Recommendation 4

	Rating	Summary of the factors that support the Rating
R.4	**C**	•

3.5. Maintenance of Records and Cable-graphic Transfers (R.10 and RE.VII)

3.5.1. Description and Analysis

449. FIs are enforced to keep at least during five years all of the documents related with accomplished operations in order to be able to reconstruct the mentioned operations and comply with request of authorities. However, there is no regulation of supervision for financial activity or institutions that do not abide by FIU Instructions. These are: insurance companies, savings cooperatives, remittance suppliers, credit cards, leasing and factoring companies that do not belong to financial conglomerates.

Information about Transactions

450. (C. 10.1) Several regulation entities provide the obligation of demanding financial institutions the preservation during five years of the registration of transactions, whether locally or internationally, regardless if the commercial relation or account is effective or has terminated.

451. Articles 10 and 12 of the AML Law, (which is worth mentioning, is applicable both to FIs as casinos, merchants of metals, precious stones and real estate, as well as any other institution, association, trade corporation, group of financial conglomerate) provide that:

> *"Article 10.- Institutions, besides obligations indicated in the previous article shall have the following:*
>
> *a) Identify (…).*
>
> *b) File and keep documentation of operations for a five year term, counted as of the finalization date of each operation;*
> *…"*

> *"Article 12.- Institutions must maintain for a term of at least five years records necessary about transactions accomplished, both local and international, that allow to timely respond information requests of applicable prosecution or supervision entities corresponding of the Attorney General´s Office and competent courts, in relation with money laundering crime. Such registrations shall serve to [re]construct each transaction, in order to provide criminal conduct evidence of necessary."*

452. Of the above expressed, it is concluded that legislation enforces institutions to keep documentation of operations for the term demanded by FATF. National and international operations are considered as included and it is also mandatory after the termination of the relation.

453. Article 12 of AML Law, even refers to the objective of such obligation, that is, that FIs have the possibility to "timely" respond to authority request.

454. On its part, the Instructions of the Financial Investigation Unit, for Money Laundering prevention in Financial Intermediation Institution (FIU Instructions), provided in Chapter VI, in relation with File and Preservation, as follows:

> *"Eighth.- Copies of forms and reports as well as documents related with identification referred to in Chapter III, shall be kept for a term of at least five years under the terms foreseen in Article s10, paragraph first, subparagraph b) and 12 of the Anti-Money Laundering Law."*

455. These instructions are only applicable to FIs under the supervision of the Banking Superintendence. AML Law refers to multiple reporting entities among which individuals or legal persons that accomplish fund transfer operations are included. Such persons are not subject to any regulation by the financial authorities except if they form part of a financial conglomeration. The only requirement to develop remittance activity is to comply with administrative and trade procedures, due to which there is no possibility to accomplish an adequate supervision of these type of activities.

456. However, largest participants in these type of business stated to evaluation team that that the internal policies include a strict preservation of files, and authorities of investigation concluded that they have not encountered difficulties in obtaining the necessary information of such participants.

457. In accordance with the provisions contained in Article 12 of AML Law, transcribed above, FIs are enforced to have their registrations of transactions accomplished sufficient to allow reconstruction of individual transactions, in order for this to be used as evidence in criminal activities derived proceedings.

458. To that respect, the evaluator team obtained information from FIU personnel allowing to conclude that in all cases, information provided FIs contains sufficient information as to reconstruct related operations with any ML unsworn statement, which derives in high effectiveness level in the compliance with the pertinent Recommendation.

Documentation about Identification and Correspondence

459. (C. 10.2) With respect to the obligations of FIs to keep identification files, commercial correspondence and account files related with clients, at least for a five year term counted as of the termination of the commercial relation, it is worth to indicate that the Eight Provision of FIU Instructions, provide that the obligation to keep documents, related with the identification of clients of FIs under the terms foreseen in Article 10 and 12 of the AML Law. In addition the Code of Commerce (article 451) obliges all traders to "keep records of their wires in general for ten years and up to five years after the liquidation of all their trade businesses".

460. There is a deficiency that repeats in multiple occasions in AML regulations of El Salvador, consisting in the fact that there is lower hierarchy regulations to the Law (mainly FIU instructions but also Circular letters and other documents), which provide obligations that do not derive from the mentioned Law. Such is the case of the obligation to preserve identification data of clients, which was not contained in the Law, but in the FIU Instructions. Until now this has not been an obstacle for supervision authorities to verify compliance with the obligation, and there have been no objections by enforced FIs. However, to the extent the supervision turns more strict by authorities and more severe sanctions start to be applied financial institutions may resort them successfully.

461. Salvadorian authorities must analyze and reinforce different obligation in terms of ML prevention, establishing minimum indispensable principles in normative entities with range of Law. In all cases, regulations or instructions must have the purpose of establishing elements that allow an adequate compliance with obligations contained in set of regulations of higher hierarchic level, without creating new obligations that may result legally vulnerable.

Availability of records and files

462. (C.10.3) With respect to obligations of FIs to guarantee that the registration and files of clients be available in case of application of competent authorities, in addition to the provisions of Article 12 of AML Law, Article 17 of such Law, provides that *"The Attorney General of the Republic may request information to any state entity, whether autonomous, private or individuals for the investigation of a money laundering crime, being enforced to provide information requested."*

463. Therefore, there is a clear obligation for FIs to have available the information and registrations about clients to be in the possibility of providing it to the competent authorities. To that respect, the evaluating team obtained information that allows to acknowledge that FIs are complying strictly with the financial authorities requests, which means and adequate implementation of the obligation.

Information on transfer originators

464. (C. VII.1) Different regulation entities that rule FIs contemplate the obligation that in terms of cable-graphic transfers FIs, obtain and maintain information on the originator of the mentioned transfers. However, companies that provide fund transmission services different from FIs are not subject to supervision and registration by financial authorities.

465. (C. VII.2, C.VII.3, C.VII.4, C.VII.5, C.VII.6 and C.VII.7) as mentioned in the above paragraph, and in the case of entities different from FIs, transfers are not subject to regulation and supervision by financial authorities. Not demanded that transfers -cross-border or internal- include incomplete information on the originator thereof, and consequently, there is no obligation to adopt procedures based on risk to identify and manage transfers which are not accompanied by complete information or originator.

466. Notwithstanding the above, the evaluator team was informed that the above mentioned entities apply voluntarily this type of controls, mainly derived from internal policies, which in practice results in compliance with respect to obligations contained in Special Rec. VII

467. Likewise, in interviews with the main companies that offer these type of services it could be appreciated the application of strict controls over the identification of persons involved in the transfer of funds.

3.5.2. Recommendations and Comments

468. .

469. (**RE.VII**) Expressly enforce remittance entities/companies to gather adequate and significant information with respect to transfer orderors, as well as to accomplish a detailed examination and control of funds transfers related with suspicious activities regarding RE.VII, and to amend SSF instruction on cablegraphic transfers in order to cover all RE requirements.

3.5.3. Compliance Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors that support the Rating
R.10	**LC**	• In the case of companies not subject to financial legislation, there is no clarity on the obligation to keep correspondence related with the company
RE.VII	**PC**	• Remittance entities are not subject to supervision and record by financial authorities which prevents authorities to notice adequate compliance with the applicable recommendation.

Unusual and Suspicious Transactions

3.6. Monitoring of transactions and relations (R.11 and 21)

3.6.1. Description and Analysis

Recommendation 11 and 21

470. In accordance with the provisions contained in Regulation of AML Law, FIs and other enforced subject in terms of ML, are obliged pursuant the provisions contained in Regulation of such Law, "to give special attention" to all those irregular and suspicious transactions that are beyond he habitual transaction patters, without evidence legal or economic grounds, as well as all others that result inconsistent or that do not keep relation with the type of economic activity of clients. Likewise, the mentioned regulation provides the obligation to analyze backgrounds and purpose of the mentioned operation, which may be at disposal of competent authorities on the matter.

471.

Complex and large unusual operations

472. (R. 11.1 and 11.2) Article 13 of the AML Law provides that in order to detect irregular or suspicious transactions, FIs and enforced subject by AML Law:

> *"…must give special attention to with respect to those that have the characteristics indicated in the above article, particularly operations that clients accomplish through:*
>
> *a) Execution of multiple transfers accomplished from one day to another or in nonworking hours from one account to another, through telephone communication, or direct electronic communication to the institution´s computing system;*
>
> *b) Loan anticipated payments or payment exceeding agreed quotas, made suddenly to problem loans without reasonable explanation for the money origin;*
>
> *c) The use of monetary instruments of international use, provided there is no proportionality with the economic activity of the client.*

473. To that end, Article 12 of the mentioned Regulation provides parameters for FIs and reporting entities to consider an operation as irregular or suspicious upon indicating as follows:

> *"Article 12.- Irregular or suspicious activities are considered all unusual operations beyond habitual transactions patterns, which are not significant but periodical, without economic or legal evident grounds, and all inconsistent operations or that do not keep relation with the type of economic activity of the client."*

474. In this sense, Articles 14 to 18 of the mentioned Regulation provide, as an example, determined circumstances that may be considered as very unusual characteristics; cases in which the conduct of clients must be considered as suspicious; types of fund transfer operations that must be examined; cases in which it must be considered that the client information is insufficient or suspicious, as well as different transactions that must be catalogued as changes in patterns which are not usual conduct of clients.

475. From the above, the obligation that FIs examine information related with background and purposes of the transaction is derived, which in accordance with the provisions of Section in Title "PROCEDURE" of Chapter IV of FIU instructions, must be shaped in the form for such purposes is prepared and delivered by the officer dealt with immediate superior in order for this latter to deliver it to the compliance officer.

476. (R. 11.3) In terms of provisions of the Eighth Provisions of FIU Instructions, FIs are enforced to maintain copies of forms and reports, as well as documents related with the identification of clients for term of maximum of five years, under the terms established in Articles 10 and 12 of AML Law.

477. To that respect mentioned Article 12 of AML Law, provides the obligation that FIs maintain registrations of accomplished transactions in terms that *"…allow them to respond timely to application of control or supervision relevant entities of the Attorney General of the Republic and competent Courts… in order to provide if necessary criminal conduct evidence"*.

478. In relation with the above, the different interviewed authorities declared to the evaluating team that the above mentioned obligations are complied with adequately by FIs, which translates in a measure that besides being contained in legal orders is effectively applied in practice.

Relation with persons at countries with insufficient anti-ML systems application

479. (C.21.1, 21.1.1, 21.2, 21.3) As indicated in the this paragraph 3.6, FIs are enforced "to pay special attention" to all those irregular and suspicious transactions beyond habitual transaction patterns, without evident or legal or economic grounds, as well as those that result inconsistent or that do not keep relation with the type of economic activity of clients. Likewise, they are enforced to analyze background and purpose of the mentioned operations which must be available to competent authorities.

480. However, there is not express provision to accomplish the above mentioned obligation in case of commercial relations or transactions with individuals from or in countries that do not apply FATF Recommendations or do so in an insufficient manner.

481. Likewise, there was no evidence of effective measures that ensure that FIs receive information on weaknesses of systems in terms of ML/FT prevention in other countries, nor that there is capacity to apply appropriate countermeasures in the case of the mentioned countries.

482. Notwithstanding the above, it is important to highlight that financial authorities stated to the evaluating team that currently FIs established in El Salvador do not maintain commercial relation with the above mentioned persons.

3.6.2. Recommendations and Comments

483. (Rec. 21) Expressly establish the obligation that FIs pay special attention to commercial relations and transactions with individuals of other countries that do not apply FATF Recommendations -or if applied, do so insufficiently- and consequently, the obligation that in case the operations do not have an apparent economic purpose, examine background and purpose of such transactions, including conclusions in writing and available for authorities. Likewise, they shall leave evidence to apply appropriate countermeasures in case of the above mentioned persons.

3.6.3. Compliance with Recommendation 11 and 21

	Rating	Summary of factors that support the Rating
R.11	**C**	•
R.21	**PC**	• There are no obligations for FIs to pay special attention to commercial relations and transactions within individuals of other countries that do not apply FATF Recommendations or apply them insufficiently.

3.7. Reports on suspicious transactions and other reports (R.13-14, 19, 25 and RE.IV)

3.7.1. Description and Analysis [2]

Recommendation 13

What to report

484. (C.13.1) Article 9 of ML Law enforces report of transaction which are "irregular" (term defined in Article 12 of AML Regulation) and limits this obligation to cases in which the transaction exceeds the US$50,000 threshold.

> Article 9*: "Institutions are obliged to inform in writing or through any other electronic means within three working days to FIU, any operation or multiple transaction accomplished by each user that in the same day or that in a one day term exceeds five hundred thousand colones or its equivalent in foreign currency [approximately US$52,000], in accordance with fluctuations of the local currency, provided there are sufficient judging elements to consider them irregular or whenever required by FIU …"*

485. On its part, Article 10 refers to sufficiently ample terms of all unusual transactions (without threshold) that may be in addition related with any criminal activity (legally precise term). However, instead of establishing an explicit obligation to report, the preamble of Article 10 only read that policies, rules and mechanisms shall be adopted in order to report operations:

> Article 10*: "… adopt policies, rules and conduct mechanisms … consisting in: …III) [Report to] Attorney General´s Office of the Republic through FIU and relevant Superintendence, any information relevant on the management of funds, the amount or characteristic of which do not keep relation with the economic activity of its clients or over transactions of users for amounts for the number, complexity, characteristics or special circumstances, get away from habitual patterns or conventional patterns of the same gender transaction; and therefore it could be included in (sic) concluded reasonably that the financial entity could be used or is pretended to*

[2] The description of the system for the report of suspicious transactions is in s.3.7 which is integrally linked with the FIU description in s.2.5, and the two texts have to complement each other not duplicate.

be used for transfer, manage take advantage or invest monies or funds coming from criminal activities.

486. Finally, FIU Instructions explicitly enforce report, and refers to the suspicious of possible terrorist acts. However in its drafting refers only to report clients (not transactions) "*of whom there are signs or knowledge by any means that they are linked or related directly or indirectly with nay of the criminal activities referred to in Article 6 of the Anti-Money Laundering Law [precedent crimes], and specially Terrorism Acts at a local or international level".*

487. As in many other areas of the AML/CFT regulations in El Salvador, it is convenient to update and clarify many provisions. However, in practice, no institution questioned the obligation of reporting every suspicious, regardless of the operation´s amount.

Term and Competent Authority

488. (C.13.1)Normative integration in terms of AML allows to establish that the report of suspicious operations has its basis in Article 10 paragraph III of AML Law, with which such reports are not conditioned to a determined threshold of operations

489. (C.13.1) Although legal ordering provides that FIU is the national authority in charge of the analysis and investigation of STR, as of Article 10 of ML Law, a series of provisions are introduced enforcing fiscalized subjects to report detected suspicious activities both to FIU and the relevant Superintendence.

STR for FT attempt and tax matters

490. (C.13.2) In accordance with agreements established with Egmont Group, currently FIU is currently under the capacity of suspended member of such international organization. Such decision is mainly is due to the fact that FT Law provides a limited obligation to report all those STR related with financing of terrorism. In opinion of the evaluating team, the regulation that rules FT contains reporting limitations, since expressly indicates that Article 37 provides the need to link subjects that must be reported with lists of organizations or individuals established by national and international entities towards FT. Therefore, the possibility of report of certain activities must be extended whether these are accomplished by subject included in the lists or not. In order to have a better comprehension fifth paragraph of mentioned Article 37, is cited and provides as follows:

> *"Financial institutions shall also inform on the existence of goods or services related with a person that has been included in the list of individuals or entities related or belonging to terrorist organizations, prepared by a national or foreign authority or whoever has been subject to proceeding or conviction for committing acts of terrorism. For such purposes the Attorney General Office of the Republic shall previously inform on the appointment and including of such persons."*

(C.13.3) The law does not demand to report simply intended operations and according to the comments of several financial institutions, in practice there is no report generation in case a client desists from an operation that seems suspicious. Even in Chapter IV of FIU Instructions, upon referring to the client identification process, is it said that "*In case Client denies to be identified the operation shall not be executed and, consequently, there shall not be material for a suspicious operation report"*

491. As previously explained, Article 9 of AML Law seemed to exempt from the report operations below a determined amount of money (approximately US$52,000), which is contrary to FATF requirement and the logics for the prevention of laundering and financing of terrorism, according to

which every suspicious operation should be reported to the authorities regardless of its amount. Article 10 of such Law and FIU Instructions partially correct such error and in practice financial institutions do not abide by any threshold. However, the lack of clarity of such provisions could limit the possibility of imposing penalties for not reporting suspicious operations below the threshold foreseen in Article 9 of the Law.

492. (c.13.4) Tax evasion is an offense foreseen in the Criminal Code (Article 249) and as such constitutes Money laundering crime in El Salvador, since the criminal type of ML refers to any offense. Therefore, obligation to report laundering suspicious operations or precedent offenses satisfactorily covers FATF requirement to report any suspicious operations although apparently tax matters are involved.

Recommendation 14: Protection to whoever reports and Prohibition of Alert.

493. (C.14.1) Concerning the legal protection of the members or employees of financial institutions, to reveal information of clients through STR to competent authorities, Article 4 of AML Law foresees that "*Individuals that under own or as legal representatives, timely inform on activities and crimes regulated in this Law, shall not incur in any type of liability*". Up to now such protection seems to adequate operate in practice, since there is not awareness of judicial proceedings initiated by individuals who have been reported against any reporting institution, and this did not stated to feel constrained to report any operation or client.

494. (C.14.2) On the other hand, paragraph j of Article 4 of Regulation of ML Law provides the confidentiality regime that covers the report, by the reporting entities of all information related with ML remitted or required by FIU. Complementarily, FIU Instructions make reference to the duty that financial institutions have of informing to the client on operations that are being reported as suspicious.

495. (C.14.3) Even when there is a regulation on the above mentioned confidentiality topic, it is important to emphasize that in practice, some situations have arose in which STR are of knowledge of the communication media and consequently, dissemination is public. Some reporting entities, showed concern facing such facts, since logically, despite of violating the confidentiality regime that the same AML Law grants to STR, an investigation that may have personal insecurity consequences for subjects or institutions that reported is placed in evidence.

Recommendation 19: Cash transactions report

496. The ML Law provides in its Article 9: "Financial Institutions are obliged to report through any electronic means within a three working day term to the FIU, on any multiple operation or transaction accomplished by each user on one same day o during the term of one month, which exceed five hundred thousand colones or its equivalent in foreign currency, in accordance with the fluctuations of local currency provided there are enough judgement elements to consider them irregular or whenever FUI requires.

497. In accordance with the above, it is concluded that in El Salvador there is a report system of all those currency transactions that exceed the fixed limit. It would be timely that Salvadorean authorities eliminate the above mentioned article due to irregular/suspicious conditions mentioned in the text.

498. On the other hand, the team did not receive any information to suppose that any authority whatsoever is keeping a computerized registration of cash transactions.

Special Recommendation IV: STR for suspicious of FT

499. (RE IV) The regulations that rule FT contain report limitations, since in Article 37 indicated the need of relating subjects that must report with the lists of organizations or individuals that establish national and international entities, related with FT. Therefore, it is urgent to extend the possibility to report to activities, whether there are accomplished by subjects included in the lists or not. For purposes of having a better comprehension paragraph fifth of Article 37 already cited indicating:

> *"Financial institutions shall also inform on the existence of goods or services related with a person that has been included in the list of individuals or entities associated or belonging to terrorist organizations, prepared by a national or foreign authority, or whoever has been subject to the conviction proceeding for committing terrorism acts. For such purposes the Attorney General Office of the Republic must previously on the appointment or inclusion of such individuals."*

500. Likewise, paragraph eighth of numeral of the cited part reiterates obligation of financial institutions to establish priority and exclusive attention mechanisms for transactions of activities accomplished by subjects included in lists issued by the Attorney General´s Office. These provisions limit preventive report actions to which financial institutions are subject since the attention, verification and report of suspicious activities must take place without subjects to the fact the investigated subject is encountered or not within a determined list of suspicious for FT.

Feedback (R.25)

501. (C.25.1) In terms of AML, the Attorney General of the Republic issued Agreement No. 356, whereby the objective is to standardize mechanisms to prevent and detect ML activities. Although such agreement contributes considerable inputs to enforce subjects, a re-adaptation shall be considered concerning its structure since its current drafting turns complex the identification of determined obligations therein contained and as could be evidenced in the interviews, generates confusions among reporting entities.

502. (C.25.2) As indicated in the relevant chapter, one of the clear deficiencies of FIU is the personnel shortage, which brings forth the fact that such Unit cannot optimally attend all of its obligations as competent national authority in ML and FT. The above is evidenced even more facing the absence of feedback accomplished by FIU with IF reporting entities. This situation further generates enforced subject, mainly financial institutions, to establish their own interpretation and analysis criteria of matters related with ML and FT, even among the same enforced subject to have different criteria to take care of a similar situation.

Statistics

503. The total number of STR received not completely clear in the information delivered by the authorities. Here was neither sufficient information from FIU as to analyze general characteristics of STR, main reporting sectors or where there may be deficiencies of compliance by reporting entities

3.7.2. Recommendations and Comments

504. Extend the reporting obligation to clearly cover suspicions of terrorism financing with legal origin funds.

505. Reinforce reporting entities about report to improve quality, usefulness and timeliness of STR.

506. We suggest to review, update and clarify FIU Instructions, not been modified since 2002, in order to incorporate recent international developments in terms AML/CFT and to eliminate ambiguities existing in several of its provisions.

507. Consider feasibility and usefulness of implementing a cash transaction report.

3.7.3. Compliance with Rec. 13, 14, 19 and 25 (criteria 25.2), and RE.IV

	Rating	Summary of factors that support the rating
R.13	**LC**	• Law provides limited obligation of reporting suspicious operations for financing of terrorism without it being considered a precedent crime of the capital legitimation.
R.14	**C**	
R.19	**C**	
R.25	**NC**	• FIU and other competent authorities do not accomplish information proceedings to reporting entities.
RE.IV	**PC**	• The obligation to report limits to operations of mentioned individuals in the list of the Prosecutor´s Office or international entities. • Law provides a limited obligation to report operations suspicious of financing of terrorism without it being considered a precedent crime of capital legitimation. • None concluded (intended) suspicious operations are not demanded nor reported.

Internal controls and other measures

3.8. Internal controls, compliance, audits and foreign branches (R.15 and 22)

3.8.1. Description and Analysis

Legal Framework

508. Both the AML Law in its Articles 10 to 15 as well as the FIU Instructions demand FI to have client identification policies and Internal Control Policies. These include the following basic elements: (Article 10 of AML Law)

a) Clearly identify and with the necessary diligence all users that require services, as well as the identity of any individual or company, on behalf of whom they are acting.

b) File and keep documentation of operations for a five year terms, counted as of the finalization date of each operation;

c) Train personnel on techniques or processes for money laundering in order to identify abnormal or suspicious situations;

d) Establish intern auditing mechanisms in order to verify compliance with the provision of this Law;

e) Under the terms foreseen in Article 4 paragraph four of this Law, Banks and Financial Institutions, Money Exchange Offices and Trading Offices, shall adopt policies, rules and mechanisms of conduct that shall be complied with by managers, officers, and employees consisting of:

I) Magnitude, frequency, characteristics, basics of transactions currently involved and in particular, those who carry out any type of site deposit, term deposit, savings account, deliver goods in trust or fiduciary trust; or leave in safe deposit:

II) Establish the volume, value and movement of funds of clients keep relation with the economic activity thereof.

III) Inexcusably, immediately and sufficiently report to the Attorney General of the Republic through the FIU and the relevant Superintendence, any information relevant on the funds management, the amount or characteristic of which do not keep relation with the economic activity of clients or over transactions of users that due to amount involved, for the

number, complexity, characteristics or special circumstances, do not meet habitual or conventional patterns of the same type of transactions; and that therefore may be reasonably deducted that the financial entity could be being used or pretended to be used as to transfer, manage, take use, invest monies of funds coming from criminal activities.

509. FIU Instructions develop with a higher detail level topics related with Identification of clients, Suspicious Operations, Institutions Procedures,, file and preservation of documents, training and dissemination, Compliance Officer, Reserve and Confidentiality, collaboration with authorities for the provision of information, knowledge of employees and Code of Ethics and Penalties.

510. Particularly the Chapter of Procedures in the Instructions describes in detail the contents of the compliance programs and the obligation to prepare Manuals that shall be approved by the Directory of the entity or equivalent body in order to be informed all personnel of the institutions.

511. Considering that the scope of the Instructions leaves out remittance companies and insurers these entities are subject to the provisions of AML Law, only since the extension of procedures and the appointment of a Compliance Officer is at the discretion of entities.

To Establish and Maintain Internal Controls for Prevention of Money Laundering and Financing of Terrorism
(c. 15.1, 15.1.1 & 15.1.2)

512. FI in El Salvador have developed Compliance Manuals that in addition of considering guidelines of CDD, registration withholding, detection of unusual and suspicious transactions and obligation to report at certain times, include procedures beyond the provisions contained in effective regulations considering adopt measures established in home offices, these Manuals are remitted to Supervisors and FIU for revision and control in order to accomplish compliance revisions with respect to policies indicated by each Institution.

513. The Law does not expressly contemplates the Compliance Officer figure since only makes a brief reference in its Article 14 to the obligation of appoint officers in charge of over sight for compliance and update of registration and forms. In turn the regulation in Article 4 paragraph g) makes reference to the obligation of reporting to FIU and supervision entities on the appointment or change of officer in charge of executing programs, internal procedures and communications related with suspicious transactions as well as in those entrusted with supervision of such parties in charge of the execution who shall serve as liaison with FIU. However, in the Instructions the OC figure is developed in detail including the demand that it must be at a management level, be approved by the Board of Directors, special competencies and exclusive tasks. There is doubt about enforceability of such demands that surpass provisions of AML Law and its Regulation.

Independent Audit from Internal Controls to prevent Money Laundering and Financing of Terrorism
(c. 15.2)

514. AML Law in its Article 10, paragraph d) provides that the obligation to have internal audit to verify compliance with the regulations. FIU Instructions does not make a wider development of the scope of internal audit programs and makes no reference to work means or sample evidence that must be made or to the possibility of sending to the Supervisor results of accomplished audits.

515. In evaluations made by the Superintendence to entities subject to supervision the training programs are verified and the internal audit work concerning results of examining practices to the compliance Unit and the acknowledgment of employees with respect to role in accordance with the Law.

516. In relation to FT, we did not find differentiated controls procedures given the different characteristics of this type of offense for which the results could be deficient.

Continuous Training for Employees Regarding AML/CFT Matters (c. 15.3)
517. Article 10 of AML Law paragraph c) provides the obligation to train personnel of the regulated entities. FIU Instructions in its training and dissemination statements indicates:

> *Ninth.- Institutions shall be obliged to develop training and dissemination programs for personnel responsible for the application of provisions, issuing the relevant evidence for which they shall: a).- Accomplish once a year regardless of the provisions contained in paragraphs e) and f), information meetings or courses, specially whenever the contents of the provisions of formats related with Cash Transactions and Suspicious Operation reports take place; b).- Prepare instructions to facilitate its personnel in the fill out of cash Transaction Forms and Suspicious Operation Reports; c).- Disseminate these Provisions among employees and officers responsible for the application, as well is these Instructions and the internal regulations issued by the Compliance Officer, for the due compliance of such provisions. d).- Identify and disseminate among personnel, practice of Clients or users of the Institutions that have been considered as suspicious by the Compliance Officer; e).- Inform new employees and officers on areas related with the public and resource management on the contents of these Provisions and the practices of Institutions to that respect; f).- Include in the Training and Dissemination Program observations and recommendations of the competent authority; g).- Employees and officers must indicate in writing the knowledge of the Provisions of this Instructions and the practice of the Institutions on the matter, as well as the obligation that this may represent; and y h).-Institutions shall orient and provide support required by employees for this to comply with obligations derived from these Instructions.*

Procedures for the Revision of Employees (c. 15.4)
518. AML Law Regulation provides in Article 4 paragraph d), the obligation to establish procedures to ensure a high integrity level of personnel of enforced entities, on its part FIU Instruction in Chapter IX develops in detail obligations on knowledge of employees and Code of Ethics.

519. In practice, many FI accomplish, "socio-economic" studies of employees to guarantee that they are people with honesty and integrity values and likewise, include in the procedures manuals selection and verification requirements for employees. However, demand are not included with respect to the constant monitoring of unjustified growth of shareholders or uncontrolled indebtedness of employees through annual statements of goods and debts which could help in the management of risks in relation with employees.

Additional Element – Autonomy of Officers in Charge (c. 15.5)
520. FIU Instructions punctually develop the figure and management of the Compliance Officer which includes management levels, adequate knowledge and access to information to accomplish management. However, it does not make reference to autonomy and punctual hierarchy within the organization in such a way that it does not depend on a business areas or position that limit is acts. Separately the Law and its Regulation does not consider these characteristics.

Application of AML/CFT Measures to branches and Foreign Affiliates (c. 22)
521. In accordance with the provisions of Article 23 of Law of Banks, banks may carryout financial operation in other countries through offices and subsidiary banking entities, provided there is regulation and product supervision in accordance with international use on this matter and in accordance with the provisions contained in the laws of the country in which they install and with previous authority of the Superintendence. In this sense, subsidiaries shall be subject to control of the Superintendence and the examination of external auditors of the relevant banks, regardless of that corresponding to foreign

authorities, Notwithstanding, there is no specific mention with respect to ML-CF Laws of the obligation to pay special attention whenever offices are in countries that not apply Ft Recommendations o do so insufficiently.

522. Entities are not requested to inform Supervisor when subsidiaries may not comply with AML-CFT measures because laws or other measures in such countries prohibit it.

523. Law of Banks establishes in Title Fifth provisions related with the consolidated supervision of financial institutions. In this sense it indicates that that regardless of the fact that vigilance is accomplished by authorities of the receiving country of an investment made by controlling companies of financial entities of El Salvador and with the purpose of backing the consolidated supervision of the Salvadorian financial conglomerate, the Financial System Superintendence must accomplish control and require information to banks and other foreign entities in which the controlling entity or the company members have invested, provided these are owners of more than fifty percent of the shares entitled to vote in the relevant corporation. For such purpose, the control of the banks or corporations subject matter of investment, shall take place with cooperation memorandum entered into with the supervision entity of the country in which the investment is made. These memorandums may authorize control institutions to share reciprocally information of corporations that operate in both countries.

524. In accordance with Article 10 of the Insurance Company Law, the affiliates and other corporation in which an insurance company has investments abroad, shall be under the control and supervision of the Financial System Superintendence and shall be applicable to the provisions of the Insurance Company Laws. The Superintendence may only authorize the constitution of affiliates abroad, should there be prudent supervision in accordance with the international use on the matter and in accordance with provisions contained in the laws of the country where it is installed.

525. There was no specific regulation demanding financial institutions that in matter of ML and FT ensure their branch and foreign subsidiaries to comply with measures in accordance with the requirements of the Origin Country and FATF recommendations to the extent the local laws and regulations so permit.

3.8.2. Recommendations

R. 15

526. Review congruence of the description, attributions and responsibilities of Compliance Officer described in FIU Instructions within the framework of indications contained in AML Law and its Regulation.

527. Develop regulations referring to characteristics and scope of Internal and External Audit Programs as well as the obligation to communicate findings to FIU and supervising entities.

Rec. 22

528. Develop regulations referring to AML-CFT measures to Foreign Branch and Affiliates of FI.

3.8.3. Compliance with Recommendations 15 and 22

	Rating	Summary of the factors that support the Rating
R.15	**LC**	• Insufficiently of legal backup for the Compliance Officer figure, functional independence and authority in FI. • No specific requirements evidenced with respect to the scope and internal auditing procedure to verify adequate compliance with AML-CFT recommendations (despite the fact that financial institutions informed that they are including it in the audits)

R.22	**PC**	• There has not been a development of the specific regulations referring to AML-CFT measures for Foreign Branches and Affiliates.

3.9. Fictitious Banks (R.18)

3.9.1. Description and Analysis

529. El Salvador legislation does not allow the installation and therefore the operative continuity of screen banks, since there are several requirements that shall be complied with for the establishment and operation of a bank, which consequently make it impossible the existence of the mentioned screen banks. On its part, relations with the correspondent that are entered into with Banks established in El Salvador are subject to identification requirements of clients contained in different normative entities related to the ML prevention matter. To that respect, it is important to highlight that the evaluating team was informed that to date there are no correspondent relations with banks located beyond Salvadorian territory.

530. (C. 18.1 y 18.2) In terms established in the Law of Banks for the constitution and organization of these type of institutions multiple requirements must be complied with, among which the obligation of being organized as corporation have at least ten partners and with paid corporate capital at of at least one hundred million colones are highlighted.

531. To that effect, the mentioned Law states the following:

> *"The Superintendence shall grant authorization to organize a corporation whenever at its judgment, the projected financial basis, as well as honesty and personal responsibility of shareholders of more than one percent directors and managers of the corporation offer protection for the interest of the public.*
> *The Superintendence must pronounce on the relevant request within one hundred and twenty days term counted as of date in which the founder shareholders have submitted all information necessary taking into account the at least the following:*
>
> *a) Evidence good financial and solvency situations of shareholders of more than one percent, including consolidated analysis for each of them, the joints of companies, business, goods and debts that affect them. In all events, the shareholder´s equity of each of them as minimum must be equivalent to the capital that they commit to contribute in the new institution. Interested parties must evidence legitimate origin of the funds to be invested. Further, they shall not encounter of the circumstances mentioned in Article 11 of this Law; and*
>
> *b) That financial projections and business plans submitted satisfactorily backup feasibility of the new bank."*

532. Taking into consideration the above, the establishments of screen banks is improbable since the legislation provides different controls not only in the constitution but as well throughout the existence of the applicable institution.

533. Likewise, the evaluating team was informed by the financial authorities that in case there are correspondent relations with Banks established by beyond Salvadorian territory, Banks established within its territory must apply the provisions in terms of ML prevention, particularly corresponding to the identification of their clients, since the mentioned correspondents are treated as such.

534. To that respect financial authorities stated that to date, Banks established in El Salvador do not maintain correspondent relations with banks located beyond its territory.

535. (C. 18.3) Concerning the demands of FIs in term of ensuring that respondent institutions in other countries do not allow accounts to be used by fictitious Banks, the evaluating team did not find evidence in this sense in El Salvador´s legislation.

3.9.2. Recommendations and Comments

536. Expressly establish the prohibition that FIs or continue correspondent banking relations with fictitious banks.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of the factors that support the Rating
R.18	**LC**	• There is no obligation for FIs to ensure that respondent FIs in other countries do not allow that the accounts be used by fictitious banks.

Regulation, supervision, monitoring and penalties

3.10. Supervision and vigilance –Authorities and Self-Regulators (R. 23, 29, 17& 25).

3.10.1. Description and Analysis

Authority supervision in Terms of AML-CFT

537. Financial System Superintendence. Its main purpose it to control compliance with provisions applicable to Central Bank, Banks, insurance companies, non-banking financial intermediaries, reciprocal guarantee corporations, money exchange agencies or Credit Public Institutions; being furthermore entrusted with the control thereof.

538. Securities Superintendence. It main purpose is to control compliance with the provisions applicable to exchanges, exchange brokerage firms, warehouse stores, corporations specialized in the securities deposit and custody, risk rating companies, etc., being entrusted in addition with the control thereof. It also controls issuers and external auditors recorded in the Trade Public Registry.

539. Trade Obligations Superintendence. Liable for the control of corporations in relation with trade conditions necessary for their operation.

Control Financial Entities on AML-CFT Matters

540. **Banks.** Organized as corporations, with a minimum capital of US$14.2 million. Need previous authorization of the Financial System Superintendence to start operations.

541. **Exchange:** These are divided into**:**

a) Stock Exchanges
Corporations the purpose of which is to provide the members necessary means to effectively accomplish securities transactions in order to carry out securities intermediation activities. In the country there is one Securities Exchange.
b) Securities Exchange Brokerage Firms
Corporations the purpose of which is intermediation in securities' trading. Such corporations may also carry out receivables management operations, prior authorization from the Securities Superintendence.
c) Corporations specialized in the deposit and custody of securities
Corporations that receive securities in custody from financial brokers and the public in general, offering, in addition, amortization collection services. Currently there is only one depositary.

542. **Cooperative Sector**

a) Cooperative Banks: Entities constituted to offer credit financial services but may not offer to its client international operations. They may constitute themselves in form of corporations or cooperative associations. Currently there are six, and subject to the vigilance and control of the Financial System Superintendence.

b) Loan and Savings Corporations are corporations that may receive or place credits. They are organized with a minimum capital of US$3.11 million (3)/, may not capture deposits in current accounts and must comply with the requirement indicated for such purpose in the Law of Banks and the Non-Banking Financial Brokers.

c) There is also another cooperative modality named "savings and credit cooperative", which are not subject to any regulation or supervision, both in AML matters and in prudent procedures. They are only requested to belong to a cooperative federation, which is regulated by the Financial System Superintendence.

d) Federations. Organizations in which financial cooperatives are grouped into; their purpose is to provide financial advice and technical assistance services associated cooperatives.

543. **Public Credit Institutions**

a) Multi-sector Investment Bank (BMI)

Is a public credit institution, created to promote the development of private sector investment projects, whereby the issuance of loans under market conditions, is granted through the system´s financial institutions.

b) Agricultural Promotion Bank (BFA)

Official credit institution the objective of which is to create, promote and maintain financial facilities and related services necessary to contribute with agricultural promotion.

c) Popular Housing National Fund (FONAVIPO)

Autonomous institution the purpose of which is to facilitate to Salvadorian families of lowest income, Access to credit allowing them to solve household problem and seek most favourable conditions for the social interest household financing.

d) Social Household Fund (FSV)

Its purpose is the provision of financial services to solve housing problem of the population employed in the public and private sectors.

e) Salvadorian Corporation of Investments (CORSAIN)

Its purpose is to promote and develop corporations and companies entrusted with the accomplishment of industrial activities, specially: manufacturing, agro-industrial, mining extraction, fishing and industrialization of sea products, as well as those the purpose of which is the promotion of tourism.

f) Solidarity Fund for Micro-entrepreneur Families (FOSOFAMILIA)

Its purpose is to grant credits, preferably attending the credit needs of women, in commercial, industrial and agricultural, hand craft, agro-industrial, cultural services sectors and all type of productive activities at a national level.

g) Financial Strengthening and Restructuring Fund (FOSAFFI)

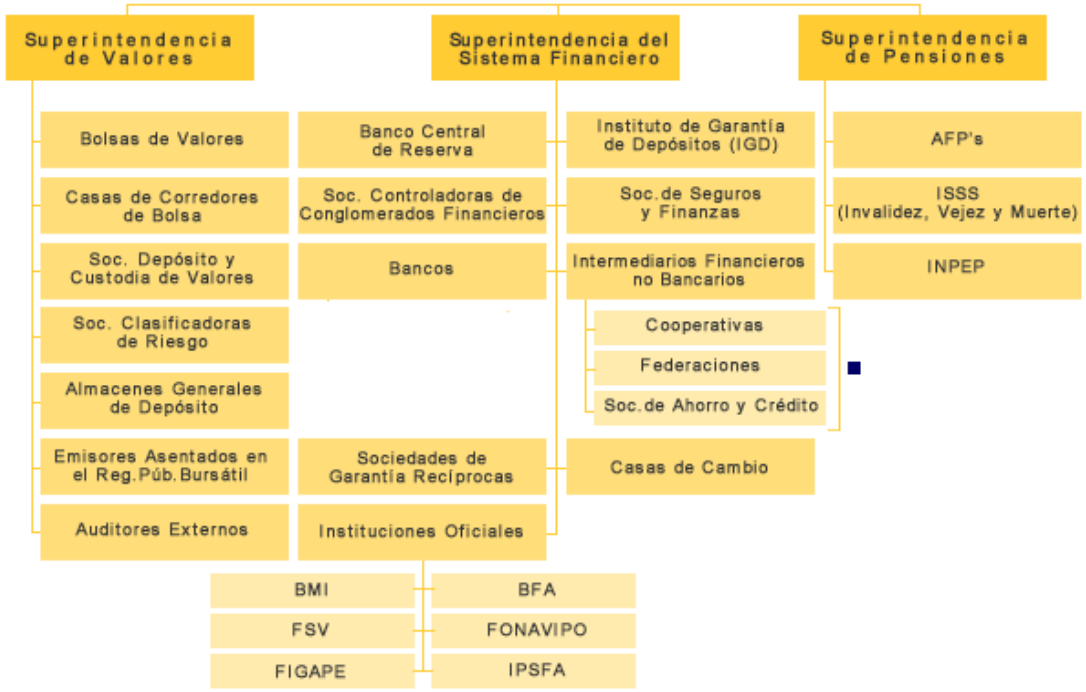
Essential purpose: proceed to restructure and strengthen Commercial Banks and Savings and Loan Associations that for such purposes are selected by the Reserve Central Bank of El Salvador, from financial institutions the actions of which were expropriated through the nationalization Law of Credit Institutions and Savings and Loan Associations

544. **Reciprocal Guarantee Corporations.** Corporations the exclusive purpose of which is to grant in favour of participant partners, guarantees, bonds and other financial guarantees approved by the Financial System Superintendence. They shall be controlled by such Superintendence.

545. **Insurance Companies.** Corporations that operate in insurance, reinsurance, bonds and new-bails. In the insurance agreement (in accordance with the Code of Commerce), the insurance company through a premium agrees to compensate damage or pay an amount of money upon verifying the loss foreseen in the contract. On its part in the bond contract, one or more individuals respond to third party obligations, agreeing with creditor to comply fully or partially, if main debtor does not comply.

546. **Foreign Exchange and Exchange Agencies.** Corporations the habitual activity of which is the purchase-sale of foreign money currency in bills, banking drafts, and traveller checks and other payment instruments expressed in currencies, at the prices determined by the market supply and demand.

STRUCTURE OF THE SUPERVISION SYSTEM OF EL SALVADOR



Regulation and control of financial institutions (c. 23.1)

547. El Salvador has applicable Laws in relation with the ML-CFT supervision: Organic Law of the Financial System Superintendence, Law of Banks, Insurance Law, Law of Cooperative Banks and Savings and Credit Corporations, Organic Law of the Securities Superintendence, Anti-Money Laundering Law and its Regulation and Special Law Against Terrorism acts.

548. The main Supervising entities of the Financial System are the FAA and the SS covering the management of most FI indicated by FATF, Notwithstanding, in El Salvador there are some financial activities ruled by the Recommendations that in fact are not under the supervision of these entities en terms of AML/CFT, which may post a risk for the remaining part of the financial system. Such is the case of remittance companies, and financial companies that do not form part of a financial conglomerate (leasing, factoring, credit companies that do not make financial intermediation, etc), which due to the trade nature must be controlled by the Trade Obligation Superintendence, but during the evaluation it was evidenced that the entity does not control verification of compliance with AML-CFT recommendations.

549. Organic Law of the Financial System Superintendence of El Salvador provides in Article 2 that SSF has as main purpose, control of compliance with provisions applicable to institutions subject to its control and shall also be entrusted with the control of the Central Bank, Commercial Banks, Savings and Loan Associations, Insurance Institutions, Stock Exchange and Goods Exchange, Household National Financing Company, Social Fund for Housing, National Pensions Institute for Public Employees, Social Prevention Institute of the Armed Forces, Agrarian Promotion Bank, National Bank for the Industrial Promotion, Mortgage Bank of El Salvador, of the Credit Cashier Federation, Financing Fund and Guarantee for the small enterprises, of the Salvadorian social security institute and in general all other entities indicated by the laws in the future.

550. SSF has the following attributions:

a) Comply and make comply the Laws, Regulations and other legal provision applicable to the Central Banks and other entities subject to its control;
b) Dictate regulations within powers expressly conferred by the laws for the operation of institutions under its control;
c) Authorize the constitution, operations and closing of Banks, Savings and Loan Associations, Insurance Institutions and other entities indicated by laws;
ch) Control and supervise operations of institutions mentioned in the preceding Article;
d) Other inspection and control tasks applicable in accordance with the laws.

551. Securities market of El Salvador is controlled by the "Securities Superintendence", and such entity has sufficient enforceable legal powers and sanctions to monitor effectively the undue use of financial services offered by the enforced parties with purposes of committing ML-FT offenses.

552. In accordance with the Organic Law of the Securities Superintendence and within the framework of Anti-Money Laundering Law, the SS has among its tasks to see for the interests of the investor public, seeing that assets that enter through exchange are of a legal origin. In this sense they have developed preventive tools that seek orientation of market components and officers and employees on aspects for the prevention of money laundering.

553. In general there are many black holes with respect to specific regulatory powers in matters of ML_FT for SSF and SS. Due to which it is believed that only FIU has issued regulations within the framework of AML Law and its regulation

Appointment of the Competent Authority (c. 23.2)

554. As indicted in c.23.1, El Salvador has two main entities responsible for the supervision of FI in terms of AML/CFT. Financial laws and AML Law as well as the Regulations empower control and control authorities to supervise and impose penalties for noncompliance.

555. Regulations demand that supervisors examine the compliance with applicable regulations with respect to branches, affiliates, subsidiaries and national offices, as well as with activities in other countries.

556. Supervision programs in these entities reach both external and on site activities including AML and CFT elements. As it is logical to assume, the main approach of these supervision activities has been the fight against Money laundering facing the relative importance of ML risk in the Salvadorian system, specially offenses related with drug trafficking and organized crime.

557. SSF accomplishes revision of the procedures that institutions have on money laundering, and in applicable cases give instructions on changes to authorities of such Institutions concerning improvements, evaluates performance of the compliance officer within the organization, accomplishes

revision to companies entrusted with the remittance transfer from United States of America to El Salvador, which integrate the conglomerate of financial institutions subject to supervision. Currently they are developing evaluation questionnaires for entities under control.

558. SSF has organized in the latest year Seminars about Money laundering addresses both to supervised entities as to technical personnel of these Superintendences, as well as other sectors of the country. On the SSF webpage there is Access to FATF Recommendations, KYC Regulations, and sites related with money laundering matters.

559. The Financial System Superintendence has disseminated the FATF Recommendations through a webpage of the Institution, in order for the public in general to consult them and be informed.

560. SSF has a areas in charge of verifying compliance with legal provisions related with the Anti-money laundering and financing of terrorism, which is named Reputation Risk, which depends on the organizational structure of the Risk Direction and this depends on the Intendancy of Risk and Conglomerates.

561. The Reputation Risk Unit is made up by four officers: One Boss and three Auditors. Technological resources are essentially data bases on Risk Centrals (placed receivables), Shareholders, (Bank Owners), Related Persons (related with collections, interest and administrative matters), STR system, among others, this latter applicative serves for Banks of the System to report electronically through Site Sending irregular or suspicious operations

562. In addition this Superintendence is receiving through electronic means PDF format file the cash form for amounts equal or exceeding $ 57,142.87 completed by the business areas and which shall be remitted in the three working days as provided in Article 9 of Anti-Money Laundering Law and its Regulations.

563. SSF is under process of improving the system for the sending of Irregular or Suspicious Operations as well as cash and likewise a Ficher Laser System which allows to speed-up information search related with notes and circular letters issued by the SSF, audit reports made, as well as information received by financial system entities subject of supervision.

564. Notwithstanding, the lack of human resource appointed for such topic, the Reputation Risk Unit of the SSF accomplishes “analysis” of the irregular or suspicious operations reports received electronically requiring additional information from financial entities to extend its evaluation or correct errors in the information and in the case of encountering relevant information proceeds to remit report to FIU of Attorney General´s Office, this by virtue of the fact that the regulations enforce that regulated entities must simultaneously send their irregular or suspicious operations report both to FIU and to SSF, likewise indicating the law that SSF must analyze and report suspicious as if it was an enforced subject, this fact in addition of introducing analysis tasks to a totally supervising entity, reduced time and resources for prevention and control tasks.

565. SSF also has a GPA System, which is currently used to accomplish audit, and allows to prepare working documents digitally keeping images of the information which serve support in audits.

566. In relation with the Financing of Terrorism issues there is no revision to affiliates of banks of the financial conglomerate. It is indicated that there are no background on verification to that respect.

567. As statistics of the evaluation mission, it was indicated that audits have taken place in terms of ML and FT as of 2006 on the following entities: - Banco G&T Continental, S.A., - HSBC Salvadoreño, S.A., - Banco Promérica, S.A.(On Site evaluations) and off site evaluation in Banco de América Central,

S.A. and Banco Hipotecario, S.A.. Determined findings in the revision on site are communicated to the Bank through an inspection visit report.

568. There are audit and follow-up programs for findings at Banks and Insurance, but there is no supervision methodology based on risks and with insufficient resources to take care of the universe of entities enforced to control in matter of ML-CFT. SSF indicates that it has started an evaluation of the entities based on "Risk Matrix" which contains 11 components related with the organization structure, the management of the Compliance Officer, risk analysis, reports, infomatic tools, client knowledge/awareness, among other. However, for its recent development, it was not possible to adequately validate the methodology, nor the effective implementation thereof.

569. Notwithstanding, the noted efforts of the Reputation Risk Unit of SSF, the statistics information provided is insufficient to consider the implementation degree of recommendation 23.

570. On its part SS (Securities Superintendence) throughout the retroactively evaluated four year term, has always has a short budget in relation with technical resources, of personnel and training in terms of money laundering prevention and combating of financing of terrorism. For the case, the Securities Superintendence does not have a working team that periodically monitors or prepares updates on the matter although it has independence and operative autonomy free from undue interference or influences.

Feasibility and aptitude criteria to prevent control of institutions by offenders (c. 23.3 & 23.3.1)

571. In accordance with the provisions contained in Law of Banks, Article 11, no individual or company, whether directly or through another person, may be the holder of shares of a bank that represent more than 1% of the capital of the institution, without having been previously authorized by the Financial System Superintendence. The Superintendence shall deny authorization whenever acquirer is in any of the circumstances indicated in such Article, among which it is observed that the person that has been condemned for having committed or fraudulently participated in the commission of any offense, to whom it has been judicially proven participation in activities related with drug trafficking and auxiliary offenses and with money laundering, that may not demonstrate the lawful origin of funds to acquire the shares or that its financial or equity situation is not economically proportional to the value of the shares it pretend to acquire.

572. Shareholders of a bank must submit to the Superintendence, through a relevant bank, within the first 90 days of each year, a declaration under oath evidencing that there are no circumstances indicated in mentioned Article 11.

573. The Financial System Superintendence has issued Regulations on the transfer of bank shares, exclusive purpose controlling entities and savings and credit corporations (NPBA-23), in order to regulate such transactions.

574. Chapter III of the Law of Banks refers to the management, requirements and incapacity of directors, providing obligations and liabilities of directors and requirements and inabilities of directors, among which we find those who have been condemned for having committed or fraudulently participated in the commission of any offense, persons (or spouses) with respect to whom there has been judicial evidence of the participation in activities related with drug dealing and auxiliary offenses and with money laundering, who have been administratively or judicially sanctioned by their participation in serious violation to the financial laws and regulations.

575. Non-banking financial intermediaries Law provides in Article 15, provisions related with management, requirements and incapacities of directors, among the incapacities to occupy such position those who have been condemned or for having committed or having participated in the commission of any fraudulent crime, individuals (or spouses) with respect to whom there has been judicial evidence of the participation in activities related with drug dealing and related offenses and those typified in the Anti-Money laundering Law, and those who have been administratively or judicially sanctioned by their participation in serious violation of the laws and financial regulations, among other.

576. The Insurance Law in Article 11 indicates that directors of the Board of Directors of insurance corporations must be persons with recognized honesty and proven capacity in the areas of finance, banking, insurance or guarantees. Article 12 indicates incapacities to be director, among which condemned parties through issued ruling for offense against public equity or public treasury and those who have participated in directly or indirectly in serious violation of the laws and other regulations that rule the financial system are included.

577. The Reciprocal Guarantees System Law for the micro, small and medium size corporation provides in Article 46 that all the members of the Board of Directors of a Guarantee Corporation must be partners with acknowledged honesty, having knowledge and expertise in financial and administrative and administrative issues. Article 47 refers to the Incapacity directors, among which includes parties accused and condemned for having committed or participated in the commission of any fraudulent offense, individuals (or spouses) with respect to whom there has been judicial evidence of the participation in activities related with drug trafficking, related crimes and those typified in the Anti-Money Laundering Law and those who have had administrative or judicial sanctions for their participation in serious violation of the financial laws and regulations.

578. In accordance with the Securities Market Law, directors and administrators of Security Exchanges and directors of brokerage firms must be persons of recognized honesty and financial competence, and among the inabilities in order to be able to occupy such position they should have not been condemned for crimes against public treasury.

579. In accordance with the Trade Obligation Superintendence Law, this entity is entrusted the vigilance of trade obligations related with the operation, modification, transformation, merger, dissolution and liquidation of corporations, except those subject to vigilance of the Financial System Superintendence, Securities Superintendence and Pensions Superintendence; operation of foreign companies or branches that operate in the country; operation, modification, dissolution, and liquidation of individual limited liability companies and trade activities, subject to the competence through express provision of the Code of Commerce. This Law provides that whenever from the investigation accomplished by the Superintendence arises the possible commission of a criminal fact, Superintendence must immediately notify the Attorney General´s Office of the Republic and remit relevant certificates.

580. There difficulties to be taken into account, such as supervision and control of remittance. Trade Obligation Superintendence is in charge of supervising this sector, through which millions of US dollars operate as well as it happens with financial companies beyond the SSF.

581. Legal controls that considerably reduce the criminal possibilities of offenders or their associates through ownership of regulated FI are considered reasonable.

Application of prudent regulations in terms of AML/LFT (c. 23.4)

582. SSF has entered into Memorandum of Understanding with foreign supervising entities in order to accomplish a consolidated supervision of financial institutions and its economic groups. Among them we can mention Agreements with Canada, United States, Panama, Guatemala, Costa Rica, Nicaragua,

Honduras, Dominican Republic, Taiwan, Peru, further of executing information Exchange Agreement among the members of the Central American Council of Banking Superintendents, of Insurance and other Financial Institutions.

583. Through the consolidated supervision compliance with the regulation issued by El Salvador may be verified, provided it does not contravene the regulation of the receptor country; however, if "Memorandums of Understanding" have been entered into in order to adequately accomplish this supervision, in practice there are limitation contemplated in foreign legislations, as for example, not having access to certain type of information.

584. No risk management processes have been implemented to identify, measure, monitor and control main risks, however, the mission was informed that these are being developed and soon will be used with FI.

Authorization or registrations of transfer services or securities exchange (c. 23.5 and 23.6)

585. With respect to Foreign Exchange Agencies, they must obtain authorization from the *Banco Central de Reserva de El Salvador*, according to indications contained in the Foreign Exchange – Money Exchange Agencies, and subject to vigilance and control of SSF.

586. Funds transfer companies or remittance companies must be recorded as trade entities only.

587. Notwithstanding, important remittance companies of El Salvador have showed interest for self-regulation in accordance with international standards and maintaining a close relation with Banks as paying agents, regulation and control is not sufficient, not appropriate and inefficient to guarantee an efficient fights against ML-FT.

Authorization and supervision in terms of AML/CFT of other financial institutions (c. 23.7)
588. See c.23.3 above.

Guidelines for financial institutions (c. 25.1 and c.25.2)
589. None of the regulations or supervision authorities have issued specific guidelines in terms of AML/CFT dealing with techniques and methods for the prevention and control of ML/FT, risk management guidelines, or updated typologies to the Salvadorian system.

590. One FIU has prepared Instructions to aid financial intermediary entities to comply with AML-CFT requirements, but after several years of the issuance it needs a profound revision and update taking into account all of the involved sectors.

591. Notwithstanding the fact that apparently control authorities seemed not be empowered in to issue regulations within the AML Law framework, this does not prevent them to be developed as guides, technical documents or guidelines to guarantee that the measures adopted by the regulated subjects be as most standardized as possible and overall effective.

592. FIU has not accomplished activities for an adequate and appropriate feedback on the quality and efficiency of STR presentation, addressed to regulated entities subject to obligation of submitting suspicious operation reports.

Empowerment of supervisors to control compliance with AML/CFT obligations. (c. 29.1)
593. Supervision entities in charge of the control and compliance with AML/CFT regime have sufficient powers by virtue of different financial regulations and laws related with supervision.

594. Organic Law of the Financial System Superintendence provides among the institutional attributions, to comply and see for the compliance with laws, regulations and other legal provisions applicable to the Central Bank and other entities subject of supervision. In this sense, Chapter VII of the Law refers to violations and penalties, indicating that entities subject to control of the Superintendence which incur in violations of the Laws, Regulations, Bylaws and other applicable norms of noncompliance with instructions or orders issued by it within legal powers shall be subject to the imposition of penalties for up to two percent over the capital and capital reserve regardless of penalties specifically provided in other regulatory or legal provisions.

595. In accordance with the Organic Law of the Securities Superintendence, this institution has the core objective of supervising compliance with the legal provisions applicable to controlled entities and among its powers that of imposing the relevant penalties, in accordance with the procedures established in such Law is included. Notwithstanding, a penalty regime has not been developed for money laundering effects.

596. The Financial System and Securities Superintendences have sufficient authority to accomplish the applicable revisions and instruct administrative proceedings against such financial entities which do not comply with the applicable legal provisions, power which is provided in Article 3 of its Organic Law. FIU of the Attorney General´s Office of the Republic, given its judicial investigative tasks is not empowered to impose administrative penalties, but it may request inspections and make decisions understood as relevant, as a result of a inspection report.

Competence of supervisors to accomplish AML/CFT inspections(c. 29.2,c29.3,c29.3.1)

597. Organic law of the Financial System Superintendence in Articles 21 paragraph g) indicates that the Superintendence shall: on its own behalf or through another person appointed whenever considered convenient, and without the prior notice need accomplish inspections in the controlled entities without altering the normal performance of activities of a controlled entity; likewise it may practice revisions and any other diligences necessary for the compliance with the Law.

598. Article 31 of the Organic Law of SSF "To accomplish the power control of the Superintendence it may examine through means it deems convenient, all business, goods, books, accounts, files, documents and correspondence of Institutions subject to its control; likewise, it may require from Administrators and Personnel thereof, all background and explanations necessary to clarify any point of interest."

599. On its part Article 4 of Organic Law of the SS, indicates: Article 4.- For the compliance with its objective, the Superintendence shall have the following tasks and attributions: a) Fiscalization, supervision, and control of entities subject to fiscalization as indicated in Article 3 of this Law and for such purpose it may require and examine all related documentation deemed necessary; accomplish counts and any other type of accounting evidence, system audit and other nature verifications and require from individuals, corporations or entities, opinions or information it considers necessary providing pertinent matters within the exercise of legal powers; except for exceptions authorized by the Superintendence, all books, files, and documents of the controlled entities or persons must be permanently available for examination on the main offices of businesses;

600. Under no circumstance shall SS require previous judicial authorization to accomplish control tasks by SSF.

Empowerment to comply and sanction (c. 29.4)

601. The already mentioned financial regulations provide sufficient penalty powers for each of the supervision authorities for violation of the legal and regulatory obligations related with AML/CFT not

this way for compliance with instructions that have been issued by competent authorities, in this case FIU, within the AML Law framework.

602. In accordance with the Organic Law of the SSF in Article 21 Superintendent must: i) communicate to the Institutions under its control, irregularities or violations it becomes aware of in his/her operations; Whenever adequate measures are not adopted in order to show false procedures, shall take place in accordance with the pertinent legal provisions in force; j) Apply applicable penalties in accordance with the laws;

603. Notwithstanding, there is no penalty regime due to specific violations against AML-CFT regulations in accordance with the type of violation committed for which those that provide in general the supervision laws are applied.

Existence of efficient, proportional and dissuasive penalties (c. 17.1, c.17.2, c.17.3 and c.17.4)

604. In accordance with Article 15 of AML Law and Organic Laws of the SSF and SS, control and supervision entities are empowered to apply penalties for the noncompliance with anti-money regulations. For these purposes evaluations are accomplished in order to verify compliance with effective provisions and in the case of noncompliance start penalty proceedings.

605. However, those none supervised entities by the indicated corps in the above paragraphs, despite of having penalty power of FIU in accordance with the Law, such power ends up diminished since it lacks control and has no capacity to directly impose adequate penalties.

606. Regulations related with supervised and regulations related with financial institutions under the control and supervision of SSF and SS, provide the application of administrative sanctions for the noncompliance thereof. However, with respect to other reporting entities the application of sanctions with respect to the non-compliance with this obligation was not detected.

607. There was no evidence of existing reasonable and flexible sanctions regime proportional to the seriousness of the committed violations.

608.

3.10.2. Recommendations and Comments

Rec. 17.

609. CE 17.1 Develop effective, proportional and dissuasive penalty schemes in accordance with the type of offenses committed, criteria for the increase of the sanction in the penalty and in case of relapsing clear and timely application mechanisms.

610. Establish a statistic system of applied sanctions according to the type of entity, type of seriousness and lack and amount of applied sanctions.

611. CE17.2 Define sanctions mechanisms for entities which are not subject to the supervision of specific entities such is the case of remittance companies and trade entities.

612. CE17.3 Regulate sanction schemes for officers, directors, and high level management regulated entities that through their negligence does not comply with requirements to combat ML and FT.

613. CE 17.4 Consider the application or inclusion of non monetary penalties for the noncompliance with AML/LFT requirements for entities not subject to authorization requirements by SSF or SV which includes a process to delete from the registry in cases of reincidence or serious offense of the Law.

R23

614. Reinforce compliance supervision of AML-CFT of preventive nature and review the obligation of SSF to analyze information submitted by regulated entities and in turn submitted to FIU whenever there is warning that in reported operations are irregular or suspicious in accordance with the provisions contained in Article 8 of the Regulation of Anti-Money Laundering Law, being this an essence a tasks of FIU in addition to imply large operative burden given the lack of available resources.

615. Reinforce AML-CFT compliance supervision from the preventive view point and review the supposed duty of SSF to analyze irregular or suspicious operations, since this is the essential tasks of FIU.

616. Develop supervision methods and manuals based on risks adequate to specific conditions of the different types of regulated entities.

617. C23.1. Reconsider the convenience and efficacy of having granted in Law of FIU regulatory powers in terms of ML-FT concerning financial institutions and evaluate the possibility to assign them to the relevant supervision entities, specialized in financial matters.

618. C 23.1 and C 23.2 Place all non-banking financial entities which are not part of financial conglomerates and are not subject to control entities, under the regulation and supervision of an entity with the sufficient capacity and resources to do so.

619. C23.5 and 23.6 Remittance entities for their importance must have a special registration, receive license permit, and be ruled by a supervision entity in order to guarantee compliance with legal AML/ CFT requirements.

620. Intensify the supervision of national FI with activities abroad and increase the use of memorandums of understanding in matters supervision to facilitate consolidated cross-border supervision.

621. Ensure in inspection that insurance and guarantee companies comply with the training obligation in AML/LFT topics for their agents and brokers, prioritizing those who accept cash from clients and the detection and notice of irregular or suspicious activities.

R. 25

622. C 25.1 Supervision authorities together with FIU and other necessary authorities must indicate guidelines, guides and technical documents in order for the regulated parties to increase AML/CFT obligations, particularly with respect to new ML and FT risks, ML/FT techniques and methods in the stages of organization and preparation of money laundering. This would help to implement CDD requirement in function of risk according to the type of regulated entity.

623. C 25.2 FIU should develop training meeting or workshops to reinstruct regulated parties on the quality, timeliness, and exactness of the suspicious or irregular operations reports, taking into account best practices of FATF on information mechanisms.

R. 29

624. C29.1 Extend powers of the existing supervising entities in order to be able to make inspection and compliance supervision visits to remittance entities and non-banking financial entities that do not form part of financial conglomerates.

625. Establish a sanction regime specific for the noncompliance with the obligation of attending requirements of the supervision entities.

3.10.3. Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of the factors related with s.3.10 that support the General Rating
R.17	**PC**	• With respect to remittance entities and non banking financial entities that are not supervised by the SSF and SS there is no sanction regime ample and proportional to the seriousness of the offenses committed concerning noncompliance of AML-CFT • There is no possibility of monetary sanctions or the closing of violating entities as well as sanctions of officers thereof due to specific noncompliance in the prevention of ML and FT when dealing with remittance entities and non banking financial entities that are not supervised by the SSF and SS
R.23	**PC**	• Insufficient resources (personnel, equipment, training) by supervision entities to accomplish control management. • Lack of control and supervision of remittance entities and other non-banking financial entities that do not form part of a Financial Conglomerate
R.25	**NC**	• No updated guides or guidelines have been issued to support regulated entities in the compliance with AML-CFT regulations • FIU has not provided feedback to entities on the quality and timeliness of suspicious or irregular operations reports.
R.29	**PC**	• Remittance entities and non banking financial entities which are beyond the SSF and SS supervision (leasing companies, credit cards, general warehouse stores, etc) are not subject of on-site supervisions o are demanded documentation in order to verify compliance with AML-CFT • With respect to remittance entities and non banking financial entities which are not supervised by the SSF and SS- these do not abide by an specific sanctions regime in case information requirements are not adequately attended to verify compliance with their obligations in terms of AML-CFT

3.11. Fund remittance and transfer services (SR.VI)

3.11.1. Description and Analysis

626. Summary: The obligations referred to in this recommendation determined that the countries must ensure that individuals and companies that provide money or securities transmission services are authorized or recorded and subject to all FATF Recommendations applicable to Banks and non-banking financial institutions, is not established in the legislation, and therefore, this activity may be accomplished by nay individual without the registration or authorization need, fact which hinders to a great extent compliance with the mentioned Recommendations. Consequently, the application of penalties referred to in the special recommendation is not applicable.

627. Notwithstanding the above, both FIs and main companies that provide this type of service have internal policies established in terms of ML and FT prevention, which results in a certain degree of application in practice of FATF Recommendations.

Registration/Authorization to transmitters

628. Current legislation does not contemplate a system which requires persons that conduct funds transfer operations to be registered or authorized to accomplish such operations.

629. From the above we can deduct a lack of powers in order for authorities to accomplish an adequate control and monitoring of operations mitigating risks of operations related with FT.

630. Likewise, since there is no obligation or operators of this type of services to be recorded it is impossible to obtain compliance with obligation consisting in that such operators maintain an updated list of agents, in order to leave it at the disposal of competent authorities.

631. However, it is considered relevant to highlight that in practice, different FIs strictly comply internal policies that allow them to have determined controls related with FT prevention.

632. From the above, it is considered indispensable to increase controls on individuals or moral persons that offer this type of service, through the allocation of powers to financial authorities, allowing them to accomplish an adequate regulation and supervision thereof.

633. To that respect, it is important to highlight that AML Law includes as reporting entities funds transmitters, and therefore imposes over them basic obligations already described in section 4 of this report (identification of clients and reports of some operations to FIU). However, such obligations are not enforceable in practice since due to absence of a supervising entity empowered for such effects. Also such businesses are not obliged to be recorded before any authority whatsoever.

634. Article 19 of the regulation of AML Law determined obligations of all those individuals or legal persons that develop activities regulated by AML Law, which are not under the supervision of any specific entity or authority upon indicating as follows:

> *"Article 19.- Individuals or legal persons that develop activities subject to the control of the law and which are not under the control or supervision of a specific entity, must communicate to FIU the operations accomplished by its clients or users in a reiterated manner and in cash whenever exceeding the amount foreseen in Article 9 of the Law, or related with transactions of clients or users that due to the amount, number, complexity characteristics and special circumstances go far beyond the habitual or conventional patters of same nature transactions. For such purpose, persons shall use the form determined by the Attorney General´s Office of the Republic, which shall be remitted to FIU in a three working day term that shall be computed in accordance with the provisions contained in paragraph 1º of Article 3 of this regulation.*
>
> *Provisions contained in the Law and in these Regulations shall be applied to the persons indicated in the above paragraph as relevant."*

635. In accordance with the provisions contained in Article 19 above transcribed, which remits to Article 9 of AML Law, persons that accomplish funds transmission operations are required to inform FIU with respect to operations that exceed the amount of five hundred thousand colones or its equivalent in foreign currency (approximately $57,000).

3.11.2. Recommendations and Comments

636. (RE.VI) Appoint competent authorities in order for them to develop the registration and/or granting of the license to individuals and legal persons that provide securities or money transfer services, which shall maintain updated list with data of operators of this type of service, being further responsible to ensure compliance with the requirements established for the registration or granting of the license, as applicable.

637. Establish in the Law the obligation for the providers of these types of services to abide by FATF Recommendations.

638. Establish systems that allow authorities to accomplish an adequate monitoring of fund transfer service providers.

639. Establish in the Law the obligation that operators of these services have an updated list of agents with which they cooperate that shall be available to the financial authorities determined.

3.11.3. Compliance with Special Recommendation VI

	Rating	Summary of factors that support the rating
SR.VI	**NC**	• There is no system that requires persons that conduct value transmission activities, to obtain a registration or authorization for the accomplishment of such activities. • There are no authorities legally empowered to regulate and control above mentioned persons in the matters of ML and FT prevention. • Obligations foreseen in AML Law and the Regulation for this type of business have the same deficiencies identified in Section 4 of this report with respect to other financial institutions. • The Law does not foresee sanctions for the noncompliance applicable to transfers services suppliers.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL ACTIVITIES AND PROFESSIONS

4.1. Client due diligence; registrations (R.12) (R.5, 6, 8 a 11 & 17)

4.1.1. Description and Analysis

640. AML Law contemplates as reporting entities, casinos and gaming houses, real estate agents, merchants of metals and precious stones; however, and regardless of the regulation that such law provides for them, the obligation to issue certain FIU reports, none of the DNFBPs above indicated have established controls in terms of ML/FT. The above derived from the fact that to date there are no authorities in charge of the regulation and supervision thereof and there are no secondary provisions that allow compliance with obligations established in AML Law.

641. (C. 12.1 and 12.2) AML Law provides in its Article 2 that its provisions shall be applicable among other to imports and exports of agricultural inputs and products and new vehicles; casinos and gamming houses; commerce of metals and precious stones; real estate transactions; travelling agencies; air land and sea transportation; courier and postal package companies; construction companies; private security agencies; hotel industry, as well as any other institution, association, trade association, group or financial conglomerate.

642. With Independence of DNFBPs are reporting entities in accordance with AML Law, these do not have a specific regulation that allows them to comply with different obligations contained in such Law.

643. Likewise, there is no competent authority to regulate and control DNFBPs, which is a factor that added to the provisions contained in the above paragraph, prevents the fact of having adequate control of operations that these use.

644. In terms of casinos, the evaluating team was informed that this type of business are subject to local regulations, which provide opening trade requirements and monthly fees for operation; however, once operation is authorized there is no type of control over day-to-day operations.

645. It is worth to indicate that in El Salvador there are few casinos in operation, and that in certain municipalities the establishment of new businesses of this type is prohibited. To that respect, there is not much information about the amounts of operations executed by such casinos, nor by the owners thereof.

646. On its part, other DNFBPs refers to AML Law are not subject to regulation and supervision on ML/FT matters.

647. Notwithstanding the above, the regulation of AML Law provides in Article 19, as follows:

> ***"ACTIVITIES NON CONTROLLED BY A SPECIFIC ENTITY***
>
> *Article 19.- Individuals or companies that develop activities subject to the control of the Law and which are not under the control or supervision of a specific entity must inform FIU on operations accomplished by their clients or users, in a reiterated manner and in cash whenever the amount foreseen in Article 9 of the Law is exceeded or for transactions of clients or users that for the amount, number, complexity, characteristics or special circumstances, separate from habitual or conventional patterns of same gender transactions. To such end, such persons shall use the form determined by the Attorney General of the Republic which shall be submitted to FIU within a term of three working days that shall be*

computed in accordance with the provisions contained in paragraph 1º of Article 3 of this Regulation.

Provisions contained in the Law and in this Regulation shall be applied to persons indicated in the above paragraph as pertinent."

648. By virtue of the above transcribed article, DNFBPs are required to report to FIU, operations mentioned in the cited article; however, such obligation is insufficient, since upon lacking a regulating and supervising authority, it is impossible to establish adequate controls and, in this case penalties, in the case of noncompliance with the obligation in reference.

649. Consequently, no penalties are imposed to DNFBPs by virtue of the noncompliance with the regulations concerning ML and FT.

4.1.2. Recommendations and Comments

650. Appoint authorities with human resources and materials adequate allowing efficient regulation and supervision task of DNFBPs.

651. Issue provisions that allow DNFBPs compliance with obligations indicated in AML Law.

4.1.3. Compliance with Recommendation 12

	Rating	Summary of factors that related to s.4.1 that support the General rating
R.12	**NC**	• There are no competent authorities in terms of ML and FT the regulate or control DNFBPs. • There are no provisions that allow compliance with FATF Recommendations

4.2. Report on suspicious transactions (R.16) (R.13 to 15, 17 and 21)

4.2.1. Description and Analysis

652. As indicated in paragraph 4.1 of this report, AML Law provides as reporting entities casinos, real estate agents and merchants of metals and precious stones; however, and notwithstanding the existence of the obligation these have to issue reports to FIU, no DNFBPs have ML/FT controls, since to date there are no authorities in charge of their regulation and supervision, and there is no provisions and secondary rules that allow compliance with obligations established in AML law and consequently FATF Recommendations.

653. (C. 16.1, 16.2 y 16.3) El Salvador legislation, through its AML Law, although it contemplates as obliged subjects in terms of ML some of the DNFBPs indicated by the FATF Recommendations (Casinos, real estate agents, merchants of metals and precious stones), and that through the Regulation of such Law, they are imposed the obligation of issuing reports to FIU, is not efficient by virtue of the lack of authority empowered to accomplish the regulation and supervision of DNFBPs, added to the fact that there are no specific provisions that allow them compliance with provisions established in the mentioned AML Law.

Non-applicable obligations in El Salvador

654. Derived from the above, the following obligations are not applicable in relation to DNFBPs in El Salvador:

- Submit to FIU suspicious transaction reports (although this is contained in the Regulation of AML Law, this is an imperfect regulation since there are no mayor elements that allow its application and there is no authority that regulates or controls them) (Related with C.13.1).
- Submit to FIU suspicious transaction reports related with terrorism and its financing. (Related with C.13.2).
- Report all suspicious transactions, including those that were pretended regardless of the amount involved in the transaction. (Related with C.13.3).
- Report suspicious transactions, regardless if they are linked or not to other matters such as fiscal matters (Related with C.13.4).
- Grant protection to FIs with respect to the issue of reports of suspicious transactions. (Related with C.14.1).
- Prohibit FIs to reveal data or information related with suspicious transaction reports (Related with C.14.2).
- Establish and maintain internal control for the prevention of ML and FT (Related with C15.1, 15.1.1 and 15.1.2).
- Maintain independent audit tasks to prevent ML and FT (Related with C.15.2).
- Accomplish continuous training to employees allowing prevention and ML and FT (Related with C.15.3).
- Have procedures for the investigation of employee backgrounds of FIs (Related with C.15.14).
- Pay special attention to commercial relations and transactions with persons from or in countries that do not apply FATF Recommendations of if applied do so in an insufficient manner (Related with C.21.1 and 21.1.1).
- Examine backgrounds and purposes of transactions that do not have an apparent economic purpose or a visible lawful end (Related with C.21.2).
- Apply, on behalf of authorities of El Salvador, appropriate countermeasures in the case of countries in which FATF Recommendation are not applied, or if applied, are insufficient (Related with C.21.3).

4.2.2. Recommendations and Comments

655. DNFBPs must be required to report suspicious operations and keep internal controls for the prevention and detection of operations related with ML and FT T, in terms of the provisions contained in Recommendation 16 of FATF.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of the factors related with s.4.2 that support General Rating
R.16	**NC**	• There is no regulation in terms of prevention and detection of ML and FT applicable to DNFBPs. • There is no authority empowered to accomplish regulation and supervision tasks of DNFBPs.

4.3. Regulation, supervision, and monitoring (R. 24-25)

4.3.1. Description and Analysis

Recommendations 24

656. The legislation classifies casinos as reporting entities through its AML Law, and through the Regulation of such Law, obliges them to issue reports to FIU; however this type of business have no controls in terms of ML/FT, since there are no authorities in charge of the regulation and supervision, added to the fact that there are no Provisions and secondary Rules that allow compliance with obligations established in the mentioned AML Law, and consequently with FATF Recommendations.

657. (C. 24.1, 24.1.1, 24.1.2, and 24.1.3) There are no authorities empowered to regulate and control casinos in terms of ML and FT.

658. (C. 24.2 and 24.2.1) There are no authorities empowered to regulate and supervise other categories of DNFBPs, nor legislation that subjects them to have effective systems to monitor and ensure compliance with requirements in terms of ML and FT. The evaluating team did not obtain evidence allowing awareness of the degree of risk related with ML and FT in these sectors.

4.3.2. Recommendations and Comments

659. (Rec. 24) DNFBPs, including casinos must be subject to a regulatory and supervision framework in terms of ML and FT, through authorities legally empowered for such purpose and with provisions and rules that allow adequate compliance with this Recommendation.

660. (Rec 25) In addition to issue regulation necessary to implement obligations contained in Law for DNFBP must issue guidelines adequate to the nature of such institutions

4.3.3. Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBP)

	Rating	Summary of the factors related with s.4.3 that support the General Rating
R.24	**NC**	• There is no regulation in terms prevention and detection of ML and FT applicable to DNFBPs. • There is no authority empowered to accomplish regulation and supervisions tasks of DNFBPs.
R.25	**NC**	• No guidelines of any class have been issued for DNFBPs.

4.4. Other non-financial/professional businesses; Transactions Modern Techniques (R.20)

4.4.1. Description and Analysis

661. El Salvador has considered the application of FATF Recommendations to other activities and professions different from DNFBPs, upon including reporting entities of its AML Law, travel agencies, air, land and sea transportation, construction companies, private security agencies, hotel industry, as well as any other trade institution, association or corporation.

662. The above, making the reservation that above mentioned activities and professions, have the same treatment as DNFBPs, since there are no authorities that regulate and control them in terms of ML and FT prevention, added to the absence of regulations that allow an adequate application of obligations imposed by the mentioned AML Law.

663. On the other hand, taking as base the high degree of bancarization of El Salvador, in comparison with its territorial extension, population density and countries with similar characteristics, it is considered that the development of modern and safe cash management techniques have been satisfactorily increased less vulnerable to money laundering.

664. (C. 20.1) AML Law includes as obliged subjects activities different from DNFBPs indicated by FATF in its Recommendation, which is a result of the clear intention to establish controls in terms of ML prevention, in activities that could result pretty vulnerable to the cited offense.

665. Likewise, and in accordance with the provisions established in Article 19 of Regulation of AML Law, the referenced reporting entities with the Independence that they are not supervised by a specific entity, must communicate FIU the operations accomplished by their clients or users in a reiterated manner and in cash, whenever exceeding the amount foreseen in Article 9 of AML Law, or for transactions that due to the amount, number, complexity or special circumstances do not meet habitual patterns in comparison with same transaction type.

666. However, there are no Provisions or secondary Rules that allow adequate compliance with obligations established both in AML Law and in its Regulation, and consequently FATF Recommendations, added to the fact that there are no authorities empowered to execute such regulation and supervision of the mentioned subjects.

667. (C. 20.2) It is considered that El Salvador is a country with a high degree of bancarization, since it has different FIs, many of them affiliates to foreign institutions, which provide services to a great deal of the population under high control standards, among which we find ML and FT prevention. To that respect there are affiliates of the main international financial groups as local banks that offer different financial services and multiple sectors of the population.

668. Taking as base the latest criteria issued by FATF and adopted CFATF, upon including in its AML Law, as reporting entities individuals and activities different from DNFBPs indicated by FATF it is considered that EL Salvador has complied with the provisions contained in Recommendation 20, since was not only “considered” but included in a regulation body of the obligations in terms of ML prevention that the above mentioned persons must comply with.

4.4.2. Recommendations and Comments

669. We suggest the grating of empowerment to authorities for the regulation and supervision of reference activities in terms of Ml and FT prevention.

670. We suggest the preparation of Provisions and rules that establish a regulation framework that allows adequate compliance with obligations established in AML Law and its Regulation, applicable to new categories of APNDFs

671. Continue efforts for bancarization of the population and modernization of the payment systems tending to the use of cash in the economy.

4.4.3. Compliance with Recommendation 20

	Rating	Summary of factors that support the Rating
R.20	**C**	

5. LEGAL PERSONS AND LEGAL AGREEMENTS; NON-PROFIT ORGANIZATIONS

5.1. Legal Persons – Access to information on beneficiary and control (R.33)

5.1.1. Description and Analysis

672. In the country the Law of Commercial Registration is effective, published DO dated 05/03/73, which have had further amendments and the objective of which: establish the regulation in the inscription of trade registrations, general balance sheets, invention patents, trade and fabric brands and other commercial distinctive, commercial names, real right over ships, copyrights and trade acts and contracts, as well as documents subject by law to this formality in the Trade Registry, administrative office depending on the Ministry of Justice.

673. At the Republic of El Salvador there is a Registry national Centre, hereinafter CNR, autonomous institution, depending on the Ministry of Economy; access to information of CNR files is public.

674. CNR was created on December 1994, though Executive Decree Nº 62, dated December 5, 1994, published in Official Gazette No 227, Page No 325, dated December 7, 1994; as a Decentralized Unit attached to the Ministry of Justice

675. Further, through Executive Decree Nº 6 published on the Official Gazette dated June 1, 1999 the CNR was attached to the Ministry of Economy

676. Executive Director of CNR is directly appointed by the President of the Republic.

677. CNR is integrated into four great registration areas or dependencies:

a) Trade Registration

b) Intellectual Property registration

c) Real Estate and Mortgages Registration

d) Geographic Institute and National Caddaster

678. The Trade Registry offers legal security and registration publicity to acts or contracts that must be recorded according to the law.

679. Given the importance of the matter, it is worth highlighting that RNC has no obligation to update change of shareholders, being the different corporations the ones who throughout their bylaws regulate and establish how to consider applicability of the procedures and identification regulations of the new acquirers of such corporate securities.

680. This information is not always recorded in corporate books and consequently not available to the competent authorities, transforming into an opacity instrument with respect to the beneficial owner of such securities.

681. Evaluators have not found transparency measures applicable to the bearer shares

682. On the contrary and according to Article 154 of the Code of Commerce, shares covered by bearer securities are transferable through the simple material delivery of securities.

683. Article 13 of the Trade Registration Law concretely provides that the following shall be recorded at the registry, among other:

- Bylaws of the corporations, founder partners and managers.

- Company registrations, registration of premises, agencies and branches. Organization, modification, merger, transformation and liquidation corporate deeds; executories of rulings or certificates thereof declaring the nullity or ordering the dissolution of a corporation or approving its liquidation; and certificates about the minute points or public deeds where these are evidenced should they be recorded.

- Powers granted by merchants containing trade clauses; judicial powers, when these will be used for diligences that must be followed before the Trade Registry; documents whereby the mentioned powers or appointments are amended, substituted or revoked; appointment of factors and trade agents; credentials of directors, managers, liquidators and in general managers of the corporations and of external auditors.

- Deeds for the issuance of bonds and modification and cancellation thereof; deeds transferring companies or their premises, agencies or branches or sea vessels or constituting any other beneficial right over them.

- Organization documents of foreign companies and foreign investment registrations issued by the Ministry of the Economy.

684. Form whereby an individual limited liability corporation is organized. Certified balance sheets of merchants, as well as profit and loss statements and statements of changes in the shareholder´s equity, together with an opinion of the auditor and relevant annexes.

685. Lease of trade companies and maritime ships

686. Support operations for authorities concerning fight against money laundering which to date RNC has made are:

a) freezing or blocks of property, real and movable.

b) location of property holders.

c) information request by the Attorney´s Office.

687. Although many few have been accomplished, freezing or blocks requests for goods have been received for money laundering consequently operating; such shares are ratified by the competent judge.

688. The requests of preventive notes by Attorney General´s Office have been: 3 in 2007, one with several addressees; 2 in 2008, and none in 2009 (until August time of the evaluation).

689. With respect to the requests of locations and of information by the Attorney General´s Office, information is usually requested within a 48 hour term, being actual response time about three days, answer term which may be extended in function of the number of individuals or activities to report).

690. Maintain agreements with the Ministry of Treasury, Customs and Economy about the supply of information using data transmission means.

691. This data transmission system has not yet been requested by the Attorney General´s Office.

692. Neither is the data transmission system used by the financial sector, but there would not be any legal inconvenient for such use.

693. In addition of this RNC there are other sector registrations on or about:

a) individuals
b) vehicles
c) maritime
d) civil aeronautics
e) weapons

694. As punctual matters the team highlights the following:

695. Inscriptions, files and documents that form part of the Registration, are public and any person has right to consult them and obtain certifications.

696. Merchant shall establish upon the closing of each business year, economic situation of the company, which shall be evidenced through general balance sheet and profit and loss statement. The balance sheet the profit and loss statement and the statement of changes in the shareholder´s equity, shall be certified by an Authorized Public accountant, and recorded in the Trade Registry.

697. Article 474 of the Code of Commerce provides that trade corporations and limited liability individual companies, are obliged to submit general balance sheets for the closing of each term to the Trade Registry for deposit duly executed by the legal representative, accountant and external auditor, together for purposes of deposit in the same office with the relevant profit and loss statements, and statement of changes in the shareholder´s equity, together with the opinion of the auditor and its annexes thereof.

698. There are no administrative penalties for the absence of accounts deposit, and in all events deposited data do not presume veracity presumption.

699. All corporations are subject to a particular vigilance regime (audits), ruled among other in Articles 290, 435, 443, and subsequent of the Code of Commerce.

700. Finally indicate as analysis and description of the system that there is a Trade Obligation Superintendence, entity which depends on the Ministry of Economy, the function of which is to on behalf of the State, control merchants and managers both local and foreign verifying compliance with trade and accounting obligations.

701. (criteria 33.1) El Salvador has adopted different measures to try to prevent the unlawful use of legal persons in money laundering and FT, establishing different procedures for the control thereof as well as to know who is the beneficial owner behind them.

702. As it has been seen there is a Central Registration

703. Specially through its operating regulations, the Commercial Registration Law, the Code of Commerce, and the fiscal ordering provide and regulate controls of results and accounting situations of these entities (this way Articles 442, 456, 459, in addition to the ones mentioned at the beginning of the analysis of this Recommendation of the Chamber of Commerce)

704. Enforceability, supervision and control authorities have investigative and criminalization powers invested over them.

705. Concretely the different authorities and specially FIU concerning AML and FT, have powers for the obtainment of information, searching of establishments where these operate, registration and seizure of documents, etc.

706. Articles 17, 18, and 22 of AML Law establish different powers and obligations in the field of anti-money laundering, both public and private.

707. Implicitly it is also deducted from Article 41 of the law against terrorism acts the capacity of the institutions to evidence that the individuals that integrate direction or management bodies of the legal persons.

708. Bearer shares may generate opacity in the ownership title, notwithstanding interviewed persons indicated that SA with bearer shares are minimum at El Salvador.

709. (criteria 33.2) There are different cooperation mechanisms through which the competent authorities may obtain and have timely access to adequate, precise and updated information with respect to beneficial owner or even the legal persons itself.

710. The Attorney General of the Republic may request information to any state entity, autonomous, private or individuals for the investigation of the Money laundering offense being such parties required to provide requested information. (Article 17 AML)

711. The Attorney General´s Office of the Republic may request certificates, transcriptions and information necessary for the compliance with its powers. State and particular employees and officers, shall be in the obligation to provide them and may not reject such information under any grounds whatsoever. Such certificates, transcriptions and information shall no accrue taxes, rates, fees or other charges, and must managed in reserve for purposes that have motivated its requirement (Article 84 of the Organic Law of the Attorney´s Office)

712. State entities and institutions specially the Ministry of Treasury, Central Bank of the Reserve, Registration of Real Estate Property and Mortgages and public control entities shall be required to offer direct or electronic access to the relevant data base and the corresponding cooperation in the investigation of activities and crimes regulated by this law, at the request of FIU and in accordance with the provisions contained in the regulations (Article 16 AML)

713. (criteria 33.3) As it has been seen El Salvador measures are adopted to avoid legal persons to be unduly used for Money laundering purposes, establishing different precaution measures with respect to bearer shares. This type of stock are only admitted for fixed capital corporations with totally disbursed capital.

714. With respect to corporations the general rule in El Salvador are Corporations.

715. According to Article 134 of the Code of Commerce, share shall always be nominative as long as their value has not been totally disbursed.

716. Once the par value of the shares has not been totally paid, interested parties may request to be issued bearer securities, provided the bylaws do not prohibit such provision.

717. Article 155 of the Code of Commerce provides that capital corporations that issue nominative shares shall keep a record thereof, containing among other transformation data of nominative shares in bearer shares.

718. In accordance with Article 158 of the Code of Commerce totally paid-in shares shall be nominative or bearer, being subject of transfer without corporate consent even facing a contrary express agreement.

719. Shares covered by bearer securities are transferable through the simple material delivery of the securities (Articles 154 of the Code of Commerce).

720. In variable capital corporations, shares shall always be nominative.

721. In fixed capital corporations of the financial sector, shares shall always be nominative.

722. (criteria 33.4 additional element) As it has been indicated, financial institutions have access to registration data.

5.1.2. Recommendations and Comments

723. Establish network connections so that all public institutions, especially FIU have access to RNC information through data transmission means and consequently develops activities in a more efficient manner.

724. Provide the obligation of updating data of actual holders of the shares in the corporate books, and the registration of such books to be mandatory at the RNC deposit, allowing establishment of beneficial owners of the corporations

5.1.3. Compliance with Recommendation 33

	Rating	Summary of factors that support the Rating
R.33	**PC**	• There is a low degree of efficiency • Opacity of bearer shares

5.2. Legal Structures – Access to information about beneficial owner and control (R.34)

5.2.1. Description and Analysis

725. The Code of Commerce in its Articles 1233 and subsequent regulates the figure, structural elements and component of the trust. Concretely, as more of interest the following principles are indicated:

726. Only credit institutions or banks authorized to that end may act as trusts in accordance with special law on the matter.

727. In the document in which a trust is constituted the names of the trustee, fiduciary and trustor, except this latter case contemplated in paragraph second of the above article; property pertinent instructions and purposes for which it is created, which may not be contrary to the moral or the law. The lack of any of such requirements shall prevent the creation of the trust.

728. Trusts created over real estate, as well as revocations and reforms thereof, must be recorded at the Property Registry. These only affect third parties as of the presentation date at Registry.

729. All constitution, modification or cancellation act of a trust shall be recorded at the Trade Registry, although it shall also be recorded at the Property Registry.

730. Article 13. 9 of the Law of Commercial Registrations provides the obligation of registry inscription of the organization deed as well as those related with amendment and cancellation of trusts and deeds for the issue of trusts interest certificates.

731. (criteria 34.1) We consider reproduced the comments of R 33.1 since these are to a great extent applicable. El Salvador has adopted different measures to regulate the trust figure and try to demand adequate transparency to prevent its illegal use for ML and FT purposes, establishing different control procedures as well as to be aware of the ultimate beneficial owner.

732. Some of the persons interviewed during the evaluation visit indicated that although there is a clear internal ordering regulation in practice problems may arise upon identifying beneficial owner when dealing with third party countries.

733. (criteria 34.2) Law enforcement supervision and control competent authorities have investigative and penalty powers over trusts, trustors, trustees, and fiduciaries, being able to obtain adequate information of any of those.

734. Concretely the different authorities and specially FIU concerning AML and FT have powers for obtaining information, search of establishments where these operate, as well as registration and embargo of documents, etc.

735. Articles 17, 18, and 22 of AML provide different powers and obligations in the field of anti-money laundering, both public and private.

736. Implicitly it is also deducted from Article 41 of the Law against terrorism acts the capacity of the institutions to evidence which individuals integrate management or direction entities of the legal persons.

737. (additional criteria 34.3) In El Salvador, financial institutions are specially empowered to obtain information on beneficial owner to identify the participating parts given that the according to the regulation of the country credit institutions or banks authorized therefore in accordance with a special law on the matter may only act in capacity as trusts. (Article 1239 of the Code of Commerce)

5.2.2. Recommendations and Comments

738. Improve procedures to identify the beneficial owner, in the third country applicable trusts.

5.2.3. Compliance with Recommendation 34

	Rating	Summary of factors that support the rating
R.34	**LC**	• Practical problems to identify beneficial owner when it comes from other countries

5.3. Non-profit organizations (RE.VIII)

5.3.1. Description and Analysis

739. The main principles referring to Associations and Foundations, are ruled by:

- Article 26 of the Constitution, referring to personality of the Catholic Church and other churches.
- Article 542 and 543 of the Civil Code
- Law of non-profit Associations and Foundations.

740. Through Legislative Decree Nº 894 dated 21/11/96 the Law of non-profit Associations and Foundations was approved and regulated. The purpose of the mentioned text is: establish the provisions that regulate activity and tasks of non-profit association and foundations, through a registration that serves as formal publicity instrument of its creation, organization and direction, and in turn, provides legal securities to such persons, members and third contracting parties.

741. The Non-Profit Association and Foundations Law, regulates among other matters the contribution of property to the foundation, determining to that respect in Article 22:

> *"Property contribution to a foundation is indispensable for the constitution thereof. Founder may increase foundation capital whenever decided and foundations may receive third party donations to increase their equity, provided not expressly prohibited by founder and such donations are destined to the purpose for which it was created."*

742. Article 31 provides the following limits to Managers capacity:

> *"Managers of an association or foundation, may not avail capital of the entity for particular purposes nor may they contract with such entity, except in the case of associations, when the bylaws provide that determined agreement be authorized by General Assembly. Managers may not participate in the decisions of matters which are of personal interest or professional or commercial partners' interest, including their spouses or relatives within fourth degree con consanguinity and second of affinity, nor take part in voting over such matters."*

743. With respect to the criminal liability of this latter, Article 33 provides as follows:

> *"Managers, representatives and members of the associations and foundations shall be personally liable for violations committed to the bylaws and the laws, acting on behalf of entities they represent. Whenever the violation of the law constitutes offense or failure provision of the criminal legislation shall apply".*

744. In relation with foreign legal persons, the equal treatment principle and the mandatory inscription is provided in the corresponding registration in Article 44 of the Law.

745. Article 56 and subsequent of the Law, regulate and create a registration of associations and foundations, mandatory nature for all these institutions.

746. The different Churches present at El Salvador shall also be recorded and registered in accordance with this Law.

747. This registry has a data base which includes all such entities existing in the country, evidencing a series of basic data thereof, as follows: number of organization agreement of the entity, name, legal representative, founder.

748. According to Article 59, the registry shall public and may be consulted by any person.

749. Among other dissolution grounds for such entities there is judicial dissolution, whenever unlawful activities of direct profit are evidenced in contrary to the moral, security and public order or mismanagement of funds or property of the entity with serious and irreparable damage to third parties or the State, Article 75.

750. Article 75 and subsequent regulate judicial dissolution procedure, and Article 83 regulated violations.

751. Non-Profit Association and Foundations Law, does not provide anything specific in relation with prevention of money laundering or financing or terrorism.

752. (CriteriaVIII.1) In "Ordinary" regulation referring to non-profit entities El Salvador provides an adequate regulation.

753. This does not happen in relation with the regulation for the prevention for the misuse by these entities in relation with the risk of money laundering or financing of terrorism, since there is a gap to that respect.

754. According to opinion of evaluators, responsible parties of the Registry of non-profit entities occasionally gather with other Institutions involved in the prevention, but there is no formal and periodic agenda nor meeting instruments.

755. Sector public responsible parties understand that their regulations are adequate. In the country there is no normative supervision committee or Commission

756. For purposes of the inscription in the registry and tax control, since these entities have fiscal obligations, different domestic information sources are used as well as accounting and formal control.

757. In relation with the analysis of the use risk of such entities in the money laundering or FT, or identification there is no activity to that respect.

758. There are no periodic evaluations on possible vulnerabilities of terrorism financing risk

759. (CriteriaVIII.2) In the country the non-profit sector entities do not communicate the risk of abuse of the sector for money laundering or financing of terrorism.

760. They do not direct or impose the accomplishment of training activities for piracy

761. (CriteriaVIII.3) The Law of Non-profit Associations and Foundations establish a series of formal controls and NPO materials as gathered in the introduction for the analysis of this recommendation, both local and international, specially highlighting accounting controls, limitation of the equity capital of the entities, and limitation of the competence of managers.

762. In practice there is no real monitoring or supervision of such entities. Neither there is an analysis of an effective monitoring of their financial resources, activities or a comparison of similar international sectors.

763. (CriteriaVIII.3.1) Non-profit organizations, have to maintain in El Salvador, information about their organization purposes, identity of managers, being such information recorded in the relevant registration of available for adequate authorities.

764. As it has been indicated in the introduction of analysis of this Recommendation, Non-profit Associations and Foundations Law creates a specific registration thereof.

765. (CriteriaVIII.3.2) Non-profit Association and Foundations Law provides different responsibility possibilities in relation with them and their managers:

- Civil liability, regulated in Article 5 as follows "Associations and foundations have civil responsibilities of the actions accomplished on their behalf by managers or members, whenever they exceed powers granted through the regulating norm. Foundations and associations shall have no criminal liability, but are have civil liability for damages accrued or for offenses or crimes committed

by their managers or members, acting on their behalf under the terms indicated by the criminal legislation"

- Criminal liability, regulated in Article 33 as follows: "managers, representatives and members of associations and foundations shall be personally liable for violations committed to the bylaws and the laws, acting on behalf of the entities they represent" and whenever the violation to the law constitutes offense or crime provisions of the criminal legislation shall apply."

766. Concerning cautelary measure for the freezing of accounts, it may be fully applied by NPO, under the assumptions contemplated in Article 25 of Anti-Money Laundering law. Likewise, under the assumptions of suspicion of financing of terrorism, in accordance with provisions contained in Article 37 of the Law Against Terrorist Acts.

767. In relation with license or registration withdraw sanctions, Chapter VIII (Articles 71-82) of the Non-profit Associations and Foundations Law provides dissolution and liquidation grounds in which NPOs may incur.

768. Finally indicate that although there are a series of violations regulated in Article 83, the truth is that not having a supervising entity over NPOs there is no real supervision thereof.

769. Only tax management, referring to irregularities of such nature, or the Attorney General´s Office accomplish some type of control or investigation over these entities according to opinion given to evaluators by the interviewed individuals .

770. Formally NPOs are controlled by the Ministry of Treasury and by the Accounts Court (Article 42 of the Non-profit Associations and Foundations Law).

771. In accordance with Article 43 of the mentioned Law, the Attorney General´s Office of the Republic, whether through office or at the parties petition has investigation competence over those entities.

772. (CriteriaVIII.3.3) Non-profit entities have legal capacity, acquired through administrative agreement ruled by the law on the matter, prior timely procedure and compliance with established requirements, agreement which once published in recorded in the relevant registration. All this information is available for competent authorities.

773. (CriterioVIII.3.4) As indicated previously, for being enforced to accounting controls and the Ministry of Treasury, NPOs have the obligation to maintain documentation and accounting or at least availing it to competent authorities.

774. Tax Code of the country in Article 147, provides the preservation obligation and availability for applicable authorities, all instruments that shall be kept and a ten year term for the preservation.

775. (CriteriaVIII.4) In accordance with Article 42 of the Law of the matter "*The Attorney general´s Office of the Republic, at the petition of the party or officially shall order the investigation of any association or foundation, in order to defend the State and society´s interests and promote the justice action defense of legality, on the following cases: a) Whenever there is manifest and evidence incongruence between the objectives and purposes contained in bylaws and activities developed by the entities; b) Whenever there are sufficient evidence elements for entity´s funds deviation; c) For serving the entity as a means to elude the law or particular obligations of its members or directors; and d) In all those cases that constitute offenses or faults*.", assuring that the investigations and information gathering of NPOs may take place effectively. This without prejudice of the already analyzed generic competences of the Attorney Office in other points of this report.

776. (CriteriaVIII.4.1, 4.2 and 4.3) At El Salvador, formally, there is a regulation that allows the obtention and exchange of information obtained throughout investigations, matter deeply analyzed; notwithstanding, concerning NPOs it is certain that there is no real implementation of such formal regulations.

777. VIII.5 As indicated in R31, El Salvador has identified contact points and has material procedures to to respond to international information requests, through the participation of the Ministry of Foreign Affairs, Attorney General´s Office, and FIU. With respect to NPOs these channels and procedures which shall also be applicable being able to further include Own Registry of such entities.

778. In practice the mentioned Registration, only may inform some basic data which are contained in the background.

779. Notwithstanding, interviewed individuals informed that concerning NPOs, the existing Registration thereof has not received any international information request. Neither any request from the Attorney´s Office concerning this type of information.

5.3.2. Recommendations and Comments

780. Review suitability of regulations of non-profit entities concerning regulation for the prevention of the misuse of these entities in relation with risk related with money laundering of financing of terrorism.

781. Implement exchange of information referring to NPOs.

782. Accomplish periodic evaluations analyzing possible risk vulnerabilities for financing of terrorism.

783. Accomplish comparative monitoring or relational rations with homologous international sectors.

784. Communicate to non-profit entities sector the risk or vulnerability of the sector´s abuse for money laundering and financing of terrorism.

785. Establish and regulate a supervision entity for NPOs.

5.3.3. Compliance with Special recommendation VIII

	Rating	Summary of factors that support the rating
RE. VIII	**PC**	• CriteriaVIII.1 There is no revision of the sectorial normative regulation for the prevention that NPOs are used for the financing of terrorism • CriteriaVIII.2 There are no evaluations analyzing vulnerabilities of the sector of NPO concerning FT risk • The sector is not communicated on the use risks in the financing of terrorism • CriteriaVIII.3.2 There are no adequate mechanisms to sanction violation of NPO´s regulations

6. NATIONAL OR INTERNATIONAL COOPERATION

6.1. National cooperation and coordination (R.31)

6.1.1. Description and Analysis

786. In El Salvador there are certain mechanisms or instruments for the development and implementation of policies and activities to combat Money laundering and financing of terrorism, the objective of which is to cooperate and coordinate at internal level some public private instances.

787. The general specific regulation on the matter is based on Chapter IV of AML law, which in Article 16 to 23 provides the framework for inter-institutional cooperation on the matter.

788. Article 16 of AML Law, according to which:

> *"State entities and institutions and specially the Ministry of Treasury, the Reserve Central Bank, Registry Office for real Estate and Mortgages and public control entities, are obliged to provide direct or electronic access to their relevant data bases and the corresponding cooperation in the investigation of activities and offenses regulated by this Law, at the request of FIu and in accordance with the provision contained in the regulations".*

789. Article 17 of such text empowers the Attorney General´s Office of the Republic, to request information to any state, autonomous, private entity or individuals in the investigation of a money laundering offense, being such persons enforced to provide requested information.

790. On the other hand, the anti-money laundering regulation in force, Official Gazette dated January 31, 2000, in Articles 4 to 11 decrees a series of measures and obligations of institutions and states entities, as follows:

- Provide technical assistance required by FIU whenever dealing with investigations related with Money laundering.

- Under the supervision of the relevant control entities adopt, develop and execute, programs, regulations, procedures and internal controls, foreseen in the Law and in international treaties or agreements to prevent and detect activities related with money laundering

- Adopt a policy that sufficiently guarantees knowledge of clients, in order to reach objectives of the Law and this regulation

- Establish procedures to ensure high level of integrity of personnel and as an internal audit system in order to verify compliance with the law and this Regulation

- Bibliographic information about Money laundering and establish permanent training programs for the members of its staff, both in relation to processes and techniques for money laundering and in the manner of timely reporting to whoever corresponds, in a reasonable and documented manner, the cases in which the development of their positions, irregular or suspicious situations are detected;

- Analyze reports mentioned in the above point and immediately inform the Attorney General of the Republic, through FIU, and the relevant Superintendence whenever the corresponding exam considers the existence of any irregular or suspicious transaction, in order to adopt pertinent measures

- Communicate FIU and control or supervision entities, within a term of fifteen working days, the appointment or change of officers, with respect to: 1) those in charge of executing programs, internal

procedures and communications referring to irregular or suspicious transactions; and 2) responsible for the supervision of the work of parties in charge of such execution, who shall serve as link with FIU

- Provide officers in charge of the execution and supervision as referred to in the above paragraph, human resources and materials necessary and sufficient authority for the compliance with their tasks

- Provide adequate communication channels with FIu and control and supervision entities

- Keep confidentiality of all information transmitted or requested in accordance with the law and this regulation, in such a way that it may not be disseminated to any person, even users or investigated clients, except through the order of a competent judge or the Attorney general of the Republic

- Institutions shall procure the accomplishment of inter-intstitutional agreement to prevent misuse of such services, through which legality is pretended to funds arising from unlawful activities

- State entities and institutions that have data bases related with Money laundering must communicate FIU in order for it to directly or electronically have access to them whenever necessary; in addition, they shall cooperate in the investigations that such unit accomplishes in this activity. The same data bases shall serve for the Attorney General´s Office to prepare and maintain its own data base, where it shall gather both local and international information

- Control and supervision entities of the Institution, as well as any other entity or institution of the state that in any manner is related with activities that law subjects to its control, are obliged to cooperate and provide technical assistance to FIU in order to attain objectives of such law

- Superintendence and other officers that these delegate from entities in charge of controlling or supervising tasks must inexcusably, immediately and sufficiently report the Attorney General´s Office of the Republic, through FIU, information submitted to entities under its control, whenever it is warned that reported operations are irregular or suspicious

- Officer and employees of the State must communicate to the Attorney General´s Office through FIU as soon as become aware with respect of operations that may be related with money laundering

- Information obtained investigations related with Money laundering offenses if confidential and may only be provided to the competent authorities whenever required in accordance with the law, for the investigation of another crime/offense.

- The Attorney general´s Office of the Republic is empowered to issue forms deemed convenient for the control of activities subject matter to the Law and this Regulation

791. This formulation of inspiring principles, for what respects the public sector in relation or cooperation or operative coordination between public institutions is accomplished through different practical instruments:

792. One of the main has already seen is the Attorney general´s Office of the State that as director entity coordinates investigation activities of money laundering crimes and FT offenses.

793. Tax Administration or taxes general Direction through financial analysts, judicial experts

794. Customs cooperates whenever necessary, and has even offered financial analysis that gave rise to cases 30 and 31 during 2007.

795. Financial Superintendence place economic-financial experts or analysts at the availability of justice entities

796. Interviewed persons indicate that 100 per cent of judicial proceedings contemplates this figure and cooperation

797. Financial Offense Department also cooperates in these tasks

798. Although there are cooperation examples in terms of establishment of public policy, between the relevant authorities, these has taken place through different instruments:

799. There is a set of rules that regulate cooperation on the matter

800. At public institutions level there is 2001 memorandum according to which different institutions of the public administrations are integrated with this purpose, for which it is integrated with purpose indicated in the Ministry of Governance, Ministry of Economy, Ministry of Treasury, National Civil Police etc., this memo is effective

801. Inter-institutional Committee for Money Laundering and Financing of Terrorism prevention made up by Financial System Superintendence, Reserve Central bank, Financial Investigation Unit/Attorney General´s Office of the Republic

802. Refer finally to a group that if it is currently operating as indicated by an interviewed party, GRICTE, or Inter-institutional Group Against Terrorism, gathers institutions such as: Presidential House, Civil Aeronautics, Financial Investigation Unit/Attorney General´s Office of the Republic, Chancellors Office of the Republic, Intelligence Organization of the State, Armed Forces Chief of Staff and Financial System Superintendence, Ministry of Justice, and Security, FIU, Customs, National Police, Port Executive Commission and Ministry of Foreign Affairs

803. Concerning the participation of the private sector in the establishment of a public policy on the matter, it is worth indicating that: there has been certain cooperation and operativity with ABANSA, Salvadorian Banking Association, in which a mixed committee operates, made by the committee of compliance officers of the main financial institutions and by representatives of Ministry of Justice and security, the Ministry of Foreign Affairs, FIU, Customs, PNC, Port Executive Commission, Superintendence of Pensions, Superintendence of Securities, Financial System Superintendence, Central Bank of the Republic. However, it shall be indicated that joint public-private sector meeting, are sporadic and not ruled in addition to the fact that the participation of public institutions is quite unbalanced.

804. These initiatives and instruments are not formalized in concrete legal support, and would only be indirectly covered in any of the precepts indicated in analysis of the compliance degree of this Recommendation, Article 4 b of the above mentioned regulation.

805. As an example, the visit Questionnaire, was not concluded nor sufficiently coordinated; the same may be indicated from the evaluation visit, affecting the evaluating activity quality, that only for the personalized support of one of the liaisons of participant institutions or FIU responsible, may be applied to a certain extend in the evaluation report

806. In practice we could state that several of the principles established in the AML Law and its Regulation (Articles 4 to 11) stay in a formulation of intentions which are not adequately implemented.

807. (Criteria 31.1) Public policy makers, FIU, law enforcement branches, supervisors, and other authorities, have mechanisms that allow them to cooperate, use their regulations support, although operative or efficiency degree is lower or punctual.

808. (Additional elements, Criteria 31.2) there are mechanisms for the consultation among competent authorities and the financial sector, although the implementation degree is lower.

809. With other sectors there is practically no casinos and non-profit entities and some of these sectors are not even supervised

6.1.2. Recommendations and Comments

810. Create in the existing inter-institutional groups, formal working agendas that analyze compliance with principles regulated in the Law and in Regulations, studying the degree of operativity, implementation and efficacy of the system.

811. Implement the establishment of the coordination and creation of a real coordination public policy.

812. Establish second or third level regulations developing instruments or principles in the laws

6.1.3. Compliance with Recommendations 31

	Rating	Summary of factors that support the Rating
R.31	**PC**	• A real public policy in terms of coordination and cooperation has not been implemented. Internal

6.2. Conventions and Special Resolutions of UN (R.35 and RE.I)

6.2.1. Description y Analysis

813. (C.35.1/ I.1) The Republic of El Salvador entered to form part of the 1998 Vienna Convention on May 21, 1993 related with Unlawful Traffic of Narcotics and Psychotropic Substances (Vienna Convention) and internally included through Law issued on October 25, 1993. It also on March 18, 2004 ratified the United Nations Convention against Transnational Organized Delinquency (Palermo Convention), which was incorporated within the internal ordering through Law dated November 12, 2003. Further in May 15, 2003 at accessed 1999 International Convention for the Suppression of Financing del Terrorism and was incorporated through Law of the Republic on November 3, 2003.

814. (C.I.2) Concerning Resolutions of the Security Council of the United National related with FT, in accordance with the provisions of national authorities, the Chattel of United Nations dated July 12, 1945, was ratified same which was published as Law of the Republic on September 4, 1945. Article 25 of the mentioned international instrument provides the commitment of the countries to comply with Security Council Resolutions.

815. The form and scope with which such conventions have been applied in internal law has been analyzed throughout this report and its ratification was verified on the website of the United Nations Secretariat: http://treaties.un.org/Pages/CNs.aspx.

816. (C.35.2) Most of the provisions stated in the above mentioned Conventions have been incorporated to internal law. However, as explained in precedent sections of this report still it is necessary to advance in the effective implementation of regulations about financing of terrorism, which

are necessary for the regulation adaptation that demands Egmont Group on this matter. Likewise, it is necessary to make important advancements concerning regulation of communications interventions as part of the tools necessary for the effective development of investigations about organized delinquency and money laundering.

6.2.2. Recommendation and Comments

817. N/A.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors that support the Rating
R.35	**C**	
RE.I	**C**	

6.3. Mutual Legal Assistance (R.36-38, RE.V)

6.3.1. Description and Analysis

818. Constitutional principles that cover mutual legal assistance, are regulated in:

819. Article 144 of the Constitutional of the Republic of El Salvador, which read:

> *"International treaties entered into by El Salvador with other states or international entities, constitute laws of the Republic upon entering into effectiveness, in accordance with the provisions of the same treaty and this Constitution.*
> *The law may not modify or revoke what has been agreed in effective treaty for El Salvador. In case of conflict within the treaty and the law, the treaty shall prevail."*

820. The Republic of El Salvador has entered into and ratified different treaties of world or regional nature, which are applicable on this matter, as indicated in the description and analysis of R. 35 and R V.

821. Article 7 of the "Convention of December 20, 1988 of the United Nations against illegal narcotics and psychotropic substances, executed in Vienna, on reciprocal judicial assistance and Article 13 and 18 of the Palermo Convention, are integrated in internal ordering of the Country to result of Application 144 of the Constitution according to what has been previously indicated in this report.

822. Consequently, internal ordering of El Salvador shall apply obligations and powers provided in Article 7 of the Vienna Treaty, which we considered reproduced.

823. We can predicate the same from provisions of Article 13 of the Palermo Convention about: International Cooperation with confiscation purposes, which likewise we considered reproduced.

824. As well as provisions of Article 18 of the Palermo Convention, on reciprocal Judicial Assistance.

825. Concerning Article 182 of the Constitution it provides:

> *"The Supreme Court of Justice have the following attributions:*
> *3rd, - "…… ; order the course of rogatory commissions or orders issued to practice diligence beyond the State and order compliance of other applicable provisions of other countries, regardless of the provisions contained in the treaties and grant extradition;*
> *4ª.- Grant in accordance with the law and whenever necessary permit for the execution of rulings issued by foreign courts;"*

826. Central authorities of the country compliance with legal assistance, are the Supreme Court and FIU. Which shall apply competences if necessary.

827. (36.1) As indicated through application of Article 144 of the Constitution, international treaties entered into by El Salvador constitute laws of the Republic and consequently, for application of those indicated in previous points, in El Salvador there is possible mutual legal assistance in investigations, trials and proceedings in accordance with AML/CFT[3] matters. Concretely mutual legal help which is provided includes or may include:

(a) provision, seek and confiscation of information, documents or evidence (including records or financial statements) of financial institutions, or other individuals or companies.

(b) take of evidence or declarations from persons.

(c) delivery of originals or copies of documents and relevant records, as well as any other probatory information and articles.

(d) efficient delivery of judicial documents

(e) facilitate voluntary submittal of persons, in order to offer information or testimony for the country that submits the request.

(f) identification, freezing, seizure or confiscation of laundered assets or with respect to which there was laundering intentions, as well as ML assets and assets used for FT and means for such offenses and valuable corresponding assets.

828. (36.1.1) Institutions of the country are capable of providing this help timely in a constructive and effective manner.

829. (36.2) Mutual legal assistance in El Salvador, is not prohibited nor subject to non-reasonable unproportionate or undue restrictive conditions

830. (36.3) Although the practic and operation applied currently for mutual assistant may be efficient there are not clear procedures for the execution of mutual legal aid petitions timely executed and without undue delays.

831. (36.4) Mutual legal assistance petitions are not rejected over the base of the single grounds that the offense is considered as in also involving fiscal matters.

832. (36.5) Mutual legal assistance petitions are not rejected in El Salvador aluding laws the impose secrete or confidentiality requirements over financial institutions or DNFBP.

833. (36.6) Powers of competent authorities on R.28, are used or may only be used for the execution of of mutual legal assistance international petitions.

834. (36.7) Salvadorian Criminal Code, regulates in Article 7 and subsequent the apparent set of regulations and territoriality principles, the Nationality, Universality and application of "Extra-territorial

[3] Note to evaluators: Whenever there are deficiencies in the money laundering or financing of terrorism offenses, such as the lack of inclusion of all predicated offenses required or the lack of criminalization over the financing of a terrorist organization or terrorist individuals, these may have an influence in the evaluated country upon facilitating the international cooperation should there is dual criminality as a previous condition for the extradition or to offer mutual legal aid. This may constitute a factor that influences the assigned rating.

Favorability" in the two above cases to avoid jurisdiction conflicts and consequently determine the best place to accomplish trial for the accused in interest of justice, in cases in which these are subject to trial in more than one country.

835. (additional element 36.8) Interviewed parties belonging to the Judicature, Attorney General´s Office, Police, and FIU environments have indicated to the interviewers during the visit, that nothing opposes (lest remember integration principle of the Law) and in occasion it has been taken to practice in order for powers or empowerment regulated in R 28 be used whenever foreign law enforcement or judicial authorities address a direct petition to local homologue entities.

Recommendation 37

836. (37.1) Mutual legal assistance is provided or may be provided in absence of the double incrimination, particularly, for less intrusive and non-mandatory measures.

837. Article 28 of the Constitution of the country remits to international treaties as an extradition regulation element. The integration principle argument is not repeated, which shall also be applicable to the case.

838. In all events, regulated in Article 28 of the Constitution, the reciprocity principle is established.

839. According to Article 18 of AML State organisms and institutions, specially the Ministry of Treasury, Central Bank of the Reserve, Registration of Real Estate and Mortgage, public control entities, Attorney General´s Office of the Republic, to achieve higher efficacy, shall interchange information with other national and international institutions.

840. (37.2) For the extradition and those forms of mutual legal aid in which dual criminality is required (correct translation: double incrimination) in El Salvador there are no legal or practical impediments to provide assistance when both countries criminalize the conduct base of the offense. Technical differences among the state laws of that who presents the application and that who receives it, such a difference in the manner in which each country categorizes or names the offense, do not suppose any impediment whatsoever for the provision of mutual legal aid

841. Although there is not too much practice to that respect, in the Silva Pereira case, extradition without impediment was approved regardless of having a different criminal type denomination. .

Recommendation 38:

842. It has been seen in analysis of R 3, and RV, the feasibility of the Salvadorian ordering to identify, freeze, seize or confiscate property linked with laundering activities, and is currently applicable to check if such petitions from third party jurisdictions, covered by mutual legal help are applicable in relation with these actions.

843. Taking into account the already analyzed Article 144 of the Constitution.

844. Considering that El Salvador has ratified Vienna and Palermo treaties on the analyzed matter in this Recommendation and such treaties, in Article 7 of the first and Articles 13 and 18 of the second, provide the referred aid possibility, it has to be concluded that these are susceptible of being required and subject of petition of third party countries for the identification, freezing, seizure and confiscation of: laundered property or assets product of the ML, Ft crimes or other predicated offenses; as well as means used or that were pretended to be used in such offenses.

845. All the above regardless of the application of own internal laws on the matter, Criminal Procedural Codes and Criminal Code, AML Law special law against terrorist acts and Territorial Agreements.

846. (38.1) In El Salvador, there are procedures and regulatory principles to offer an effective and timely response to mutual legal aid petitions of other countries, in relation with identification, freezing, seizure and confiscation of: laundered property and assets products of ML and FT crimes and other predicated offenses; as well as means used or pretended to be used in the commission of such offenses.

847. Internal regulations to inititally execute such actions shall be: Criminal Procedural Code:

848. Article 140 makes briefly refers to the procedure that shall take place to applicable probatory conditions of foreign countries through diplomatic procedures being the Ministry of Foreign Affairs the branch for its remission.

849. In its Article 180 provides the judicial confiscation order, applied to a case of interest, likewise regulating in case of urgent need this measure, caution and further to judicial ratification may be ordered by the Police or by the Attorney General´s Office of the Republic.

850. Article 25 of AML law about the confiscation of documents and freezing of accounts, preventive seizure of property, account immobilization, funds, rights or goods shall also be applicable.

851. As well as Articles 35, 37, 38, of the Law against terrorist acts about: Seizure and Confiscation; Freezing of funds, confiscation of property, products or instruments for crimes committed abroad and , already analyzed.

852. According to interviewed authorities, El Salvador as enforced State applies or follows the following principles or procedures:

853. As per international treaty to apply and if it allows or regulates special actions, it is priority and urgently applied.

854. The Attorney General´s Office or in its case the competent authority analyzes the facts, types and criminal backgrounds.

855. If applicable the caution measures is adopted, proceeding urgently.

856. (38.2) Criteria 38.1 is also applied whenever the request refers to corresponding value property, specially since dealing with a procedure under execution.

857. (38.3) As previously analyzed El Salvador has institutions that coordinate and are in charge of executing seizure and confiscation actions with other countries concretely: International Affairs Units of the Supreme Court, Attorney General´s Office of the Republic.

858. (38.4) El Salvador has established a confiscated assets funds in which it deposits all of the seized properties, which is used to comply with objectives in the law enforcement branch,. health, education and other adequate purposes.

859. This Fund was created through Article 23 of the AML Law with the following purposes:

860. a) Financially reinforce State institutions in charge of combating drug dealing, money laundering and

861. b) A program of protection of witnesses, in the investigation of criminal activities related with money laundering,

862. c) Granting of rewards to particular persons that have effectively contributed to the discovery of the duly evidenced money laundering offense

863. d) Programs for rehabilitation of individuals victims of drug addiction

864. c) Social programs related with the prevention of child and youngsters drug addiction.

865. Through Regulation of the Financial Investigation Unit dated 21/3/07, related with special capital of seized property regulated procedure for the determination of destiny and beneficiaries of property, effects, instruments, which ever nature of the equity dealing with that have been subject of confiscation or economic sanction due to violations of the Anti-Money Laundering Law

866. (38.5) Salvadorian internal regulation, as seen in previous paragraphs, provides among other destinations, the allocation or distribution among Institutions of the State in charge of combating drug dealing, money laundering, part of the goods or funds seized.

867. Concerning the distribution between law enforcement institutions of the different countries, nothing opposes to the internal ordering for this possibility which shall be real and cover integration principle of international treaties in the Salvadorian internal ordering

868. (additional element 38.6) Non criminal foreign confiscation orders are not recognized or executed at El Salvador.

Special Recommendation V:

869. (V.1) At El Salvador, Criteria 36.1, 36.2, 36.3, 36.4, 36.5, and 36.6 (in R.36) are also applicable within the environment of the fight against financing of terrorism, regarding with application obligations under RE. V.

870. With respect to criteria indicated in the previous paragraph, it has to be indicated that "Special Law Against Acts of Terrorism", as it has been grounded previously in report, upon having a more specific and detailed and adequate technical regulation as per international standards, improves application capacity related with fights against terrorism and financing thereof.

871. (V.2) At El Salvador, Criteria 37.1 referring to legal assistance, is also applicable to obligations provided in this RE V, referring to terrorism acts and financing thereof.

872. (V.3) At El Salvador, Criteria gathered in paragraph 38.1, in relation with the identification, freezing, seizure and confiscation of determined active property or means; as well as provisions of paragraph 38.2, related with equivalent value property; and paragraph 38.3 related with the existence of coordination actions in the seizure and confiscation for third party countries, are also applicable to obligations provided in this RE V, referring to terrorism acts or financing thereof.

873. (V.4) At El Salvador, Criteria 39.1 and 39. 2 refer to extradition; and criteria 39.3 refers to the procedural cooperation and evidence means, which are applicable to obligations contained in this RE V, referring to extradition related with acts of terrorism or financing thereof.

874. Concerning criteria 39.4; internal ordering of the country, regulation la won the matter has been more detailed in the regulation of extradition and criminalization related with terrorist and FT acts,

establishing adequate measures in accordance with Articles 35 and subsequent of the "Special Law Against Acts of Terrorism".

875. (additional element V.6) (related to criteria 36.7) Interviewed authorities of the countries, indicated to the evaluators that they have not considered to regulate or apply mechanisms to determine the best place of criminals for financing of terrorism.

876. Having studied the regulations of the country, evaluators understand that nothing opposes among them so that the country may idealize and apply mechanisms to determine the best place for criminalization of FT offenders, given the complementary nature of the Criminal Code and the spirit of Article 9 and subsequent, in connection with Article 28 of the Constitution.

877. Arguments indicated in Criteria 36.7 are considered reproduced.

878. (in relation with criteria 36.8) Interviewed parties indicated that if direct collaboration is given between homologue authorities taking place both between Police units , Attorney General´s Office and the judicial world: nothing opposes to the direct petition among homologue authorities of judicial and law enforcement nature of El Salvador or foreign.

879. With respect to indications in the above paragraph, arguments indicated in Criteria 36.8. are considered reproduced in relation with the possible assistance in the fight against FT.

880. (additional element V.7) (in relation with criteria 38.4) Refers to the application of criteria 38.4 in relation with property seized linked with FT, interviewed authorities indicate that the application of the regulations in relation with special equity of seized property indistinctly applies to property arising from money laundering or FT.

881. To such end, it is applicable to indicate that application of Article 6 of AML Law- les remember that in its first paragraph provides, among other things, as predicated activity of money laundering " … criminal activity generating money laundering …"Additional elements 38.4 – 38.6 (in R.38) apply with respect to obligations under RE. V

882. (in relation with criteria 38.5) Arguments indicated in criteria 38.5 mentioned would be fully applied in FT cases.

883. (in relation to criteria 38.6) Non criminal foreign seizure orders are not acknowledged or recognized or executed at El Salvador.

884. (additional element V.8) Additional elements 39.5 (in R.39) apply to extradition proceedings related with terrorist acts or FT.

885. (additional element V.9) (in relation with criteria 40.11) No information has been received on the existence of information Exchange mechanisms between non homologue jurisdiction third party institutions, referring to information exchange concerning judicial procedures or investigations in FT matters.

886. (in relation with criteria 40.11) Salvadorian Financial Investigation Unit may obtain from other competent authorities or other persons relevant information requested by another foreign FIU in the assumptions of financing of terrorism, as per the precepts of Article 72. 6 of the Organic Law of the Attorney General´s Office of the Republic; and Article 47 of special Law against Act of Terrorism

6.3.2. Recommendations and Comments

887. **R. 36:** Establish a clear internal regulation entity or corpse that develops mutual legal assistance.

888. **R.38** Recommendation, consider that non-criminal orders related with foreign confiscation be acknowledged or executed at El Salvador.

889. **RE.V** Recommendation, consider to regulate or apply formal specific mechanisms to determine the best place for criminalization of offenders for financing of terrorism.

890. **RE.V** Implement at a practical and actual level special recommendation V measures

6.3.3. Compliance with Rec. 36 to, and RE.V)

	Rating	Summary of factors that support the Rating
R.36	**LC**	• There is no clear internal regulation corpse and develops mutual legal assistance, although this has not blocked cooperation in practice
R.37	**C**	
R.38	**LC**	• Lack of casuistry to know systems effectiveness • Insufficiently detailed regulatory procedures
RE.V	**PC**	• Lack or no real implementation of measures established to internationally cooperate with FT matters.

6.4. Extradition (R.37, 39, RE.V, R.32)

6.4.1. Description and Analysis

Recommendation 37

891. Article 28 of the country´s Constitution refers to international treaties as a regulation element of extradition

892. Mentioned Article provides: *"that extradition shall be ruled in accordance with International Treaties and when dealing with Salvadorians, shall only be applicable if the corresponding treaty expressly provides it and has been approved by the Legislative Entity of executing countries. In all events, its provision must contain the reciprocity principle and grant Salvadorians all criminal and procedural guarantees provided by the Constitution".*

893. "Extradition shall be applicable whenever the crime has been committed in the territorial jurisdiction of the requesting country, except when dealing with international transcendence crimes, and may not take place in any case for political crimes although by consequence of those ordinary offenses would result".

894. On the other hand Article Art 182.3 of the country´s Constitution provides that the Supreme Court of Justice among is empowered among other things to ".....grant extradition".

895. Concerning Article 47 of law against terrorism acts, it provides: *" In relation with extradition procedure, compliance with foreign rulings, legal or police assistance shall apply to the provisions contained in international treaties ,multilateral, regional, sub-regional and bilateral covenants and agreements in which the*

Republic of El Salvador is a party state; in international law principles, as well as internal legislation applicable to that respect"

896. The principle of integration of international treaties, already and repeatedly analyzed, would also be applicable in the case of extraditions.

897. Consequently principles established in international treaties are applicable; among other those gathered in Article 6 of the Vienna Treaty of December 20/88, as well as Article 16 of United Nations Convention Against Organized Crime dated December 12 of Palermo.

898. There is no specific internal law, except the mentioned precepts of Article 28 of the constitution, which regulates in El Salvador extradition and the brief reference to Article 47 and mentioned law against terrorism acts.

899. There is no internal specific law, except provisions of the precepts of Article 182 of the Constitution, that regulate in El Salvador extradition procedures.

900. CC in Article 9 provides that the Personal or Nationality principle, "…..shall also apply to offenses committed abroad by Salvadorians whenever requested extradition is denied, ……."

901. In El Salvador some extradition proceedings have taken place linked with money laundering, such is the case of Silva Pereira, and the case of Villatoro Montenegro, although there have been proceedings in which El Salvador was claiming country.

Recommendation 39

902. (39.1) Money laundering is a partially extraditable offense. In El Salvador, as it has been indicated, international treaties apply in internal regulations even Article 48 against act of terrorism mentions it in such sense for acts of terrorism and FT. However, from literality of constitutional principle of Article 28 a limitation to extradition seems to be deducted when dealing with international transcendence offenses and Money laundering and FT fit within such nature according to most of the legal operators interviewed. According to such provision: "*Extradition shall be applicable whenever the crime has been committed in the territorial jurisdiction of the requesting country, except whn dealing with international transcendence crimes*".

903. There are procedures for extradition of individuals accused with Money laundering, but only based on constitutional principles.

904. (39.2) At the opinion of evaluators it has not been clear that in cases of money laundering El Salvador may proceed to the extradition of third party jurisdictions of its own nationals, given the reservation provided in paragraph third of Article 28 of the Constitution. However, according to internal regulation El Salvador could apply Salvadorian criminal law to offenses committed by citizens abroad at the petition of third parties or through initiative (Article 9.2 CP)

905. (39.3) El Salvador has the practical and normative capacity to cooperate with third party countries. It was not possible to determine possible delays or effectiveness in the criminalization within the internal environment as a consequence of third party requests in case of not granting extradition of nationals.

906. (39.4) El Salvador has no measures or procedures that allow it to manage, without undue delay, extradition petitions and proceedings related with LD

907. (additional elements 39.5) There are no simplified extradition procedures, that allow direct transmission of extradition petitions. Persons may not be subject of extradition over the single base of arrest or trial orders from third party countries. In the country there is no simplified extradition procedure of individuals that agree to suspend formal procedures for extradition.

908. (37.2) In El Salvador there is no legal or practical impediment s to carry out extraditions requiring dual criminalization (correct translation: double incrimination) Technical differences between the laws of the state which submits the request and that who receives it, as differences in the manner in which each country categorizes or classifies the offense, do not suspend any impediment whatsoever for its provision.

909. As indicated previously, Article 28 of the Constitutions provides that extradition shall be ruled in accordance with international treaties, contained in reciprocity principle whenever affecting Salvadorian citizens.

910. Although there is not too much practice to that respect, in the Silva Pereira cases, extradition without impediment was applied, regardless or despite of the different criminal type denominations.

911. (V.2) In El Salvador, criteria 37.2 refers to extradition, is partially applicable to obligations established in this RE V, referring to terrorism acts or financing thereof. There are no legal or practical impediments to accomplish extraditions in which double incrimination is required. Technical differences among the laws of the State that submits the request and that who receives it, as differences in the manner in which each country categorizes or classifies the crime, do not suppose any impediments whatsoever for the accomplishment of extradition.

912. Limitation of the full application is determined in paragraph third of Article 28 of the Constitution, which makes a reservation in the extradition upon establishing: “that extradition shall be applicable whenever the crime has been committed in the territorial jurisdiction of the applicant country, except when dealing with international transcendence crimes”

6.4.2. Recommendations and Comments

913. To transfer to the ordinary legal regime (laws) the constitutional imperative of regulating extradition.

914. To transfer to the ordinary legal regime (laws) procedures for extradition.

915. To clarify active and passive extradition, both of Salvadorian citizens and foreign.

916. To establish simplified procedures for extradition allowing direct transmission of extradition petitions.

917. Study that persons may be extradited over the base only of third country trial or arrest orders.

918. Study simplified extradition procedures for persons that given consent to suspend formal extradition procedures

6.4.3. Compliance with Rec. 37 and 39, and RE.V

	Rating	Summary of factors that support the rating
R.37	**C**	•
R.39	**PC**	• There are no internal laws that clearly detail and adequately regulate extradition and related procedures.

		• Article 28 of the Constitution could be interpreted as a limitation to extradition when dealing with international transcendence crimes. • It could not be verified with concrete statistics the application of active extradition at the request of other countries.
RE. V	**PC**	• The same deficiencies with respect to R.36 and 39 affect compliance with RE.V with respect to extraditions: low implementation of measures to cooperate internationally; lack of laws and procedures that regulate extradition in a clear manner; absence of statistics on practical implementation.

6.5. Other International Cooperation Forms (R. 40, RE.V)

6.5.1. Description and Analysis

919. (C.40.1) At international cooperation level, AML/CFT preventive system of the republic of El Salvador, has been weakened with the Egmont Group decision of suspending FIU has a member of its organization. Such suspension mainly affects Access to Egmont Safe Network for the Exchange of information between homologue authorities. Notwithstanding, it is important to mention that this Unit, covering provision of the Organic Law of the Attorney General´s Office of the Republic has established mechanisms that allow to exchange information with FIUs of other countries in a timely and effective manner. The evaluating team did not receive a list of these agreements and did not acknowledge content thereof.

920. (C.40.2) Article 72 of the Organic Law of the Attorney General´s Office of the Republic in paragraph 6) proves as attribution of FIU the following: *"Enter into Memorandums of Understanding necessary for the information exchange with financial intelligence units of other States and with other institutions"* Such legal power arises as reference framework that allows FIU to establish mechanisms for international cooperation in information exchange with homologue foreign institutions.

921. There was no evidence that other authorities different from the Attorney General´s Office (and the Police in the Interpol´s framework) have MOUs or mechanisms to speed up cooperation with homologue institutions abroad. Such is the case of Superintendences, Customs General Direction and tax General Direction.

922. The Criminal Procedural Code, in its Article 139 provides as part of international cooperation mechanisms, the use of rogatory commissions, which shall abide by the international customs and treaties. Although such tool includes diplomatic procedures that in some cases are complex, the Salvadorian authorities cooperate internationally in a rapid manner to the requirements of the competent authority under alternative assistance figures, such as memorandums of understanding.

923. (C.40.3,6) FIU, as national authority in charge of investigation for ML and FT crimes, in accordance with the provisions of Article 18 of ML Law is empowered to exchange information with all and foreign authorities. To that end, paragraph indicates as follows:

"With the cooperation of the entities mentioned in Article 16 of this law, the Attorney General of the Republic, shall create and maintain a data bank related with money laundering, gathering local and international information.

For purposes of greater efficacy, information that such institutions obtain in the investigation and discovery of money laundering y shall be shares and if possible exchange with other local and international institutions"

924. As deduced from the above, FIU has power to provide information to homologue foreign entities, without the mentioned article excluding the possibility that this takes place only as per the requirement of a foreign authority; that is, the information may be shared at the request of a competent local or foreign authority.

925. (C. 40.4-5) As indicated in other paragraphs FIu is incorporated within an operative structure of the Attorney General´s Office of the Republic, condition which turns this unit to abide by provisions contained in the Organic Law of the Attorney General´s Office of the Republic, same which in Article 15 regulates the Functional Direction Principle, whereby the National Civil Police and public security entities are obliged to abide by the orders and instructions issued in this concrete case by FIU – for the investigation of punishable facts, among which ML and FT are included.

926. Likewise, Article 162 of the Criminal Procedural Code establishes the Probatory Freedom Principle through which execution authorities may obtain all elements of means of evidence that legally may be used within corresponding investigations.

927. (C.40.7-8) For obtaining evidence elements or means in ML investigation, the banking or tax secrete does not operate, therefore enforced activities shall provide information of interest. Articles 24 of the ML Law and 10 of the ML Regulation expressly regulate such special action jurisdiction.

928. (C.40.9) We do not omit to indicate that Article 10 of ML Regulation concerning the analyzed issue, provides:

> *"Regardless of the provisions contained in letter J) of Article 4, information obtained in Money laundering investigations is confidential and may only be provided to competent authorities whenever they request it in accordance with the law for the investigation of another crime."*

929. As deduced from the above, the use given to confidential information, in terms of ML, is restricted to the use that other competent or local or foreign authorities may give it in the criminal investigation.

6.5.2. Recommendations and Comments

930. R. 40. Accomplish legal adjustments corresponding to continue being active member of Egmont Group.

931. R. 40. Strengthen cooperation mechanisms of Superintendencies, Customs Office, General Tax Direction with homologue institutions abroad.

6.5.3. Compliance with Rec. 40 and Special Recommendation V.

	Rating	Summary of factors that support the rating
R.40	**LC**	• FIU is suspended from Egmont Group which limits its possibilities to cooperate with homologue units • No MOUs or mechanisms were found tos peed up cooperation with homologue institutions abroad by the Superintendences, Customs, Tax General Direction.
RE.V	**PC**	• The same deficiencies with respect to R.36 and 39 affect compliance with RE.V with respect to other forms of cooperation: Little implementation of measures to cooperate internationally; lack of laws and procedures that clearly regulate extradition; absence of statistics on practical implementation.

7. OTHER MATTERS

7.1. Resources and Statistics

	Rating	Summary of factors that support the rating
R.30	**NC**	• The number of officer that FIU is not enough to adequately develop tasks. • There is lack of functional autonomy for FIU, since it directly depends on operative and human resource decisions determined by the Attorney General of the Republic. • The real estate where FIU if located lacks modules or physical spaces for adequate storing and custody of documents. • FIU has no technological tools that allow direct informatics access to data bases of state entities and institutions or private companies to obtain analysis or investigation information efficiently or at least more rapidly. • FIU lack a permanent and adequate training program addressed to officers.
R.32	**NC**	• FIU has not achieved implementation of information mechanisms that provide reporting entities periodical reports on statistics, typologies, and criminal trends.(paragraph 45 of section 2.5) • Law enforcement authorities do not have result measurement systems that allow to effectively analyze the AML/CFT system.

7.2. Other relevant AML/CFT measures or matters

*Evaluators may use this section to include information on any additional measure or matter related with AML/CFT system in the country that is being subject of examination, and which is not included in any other part of the report.

7.3. General framework for AML/CFT system (see also Section 1.1)

*Evaluators may also use this sections to express comments on any legal or institutional general framework within which AML/CFT have been established, and particularly with respect to any additional structural element included in section 1.1, in cases in which it is considered that this general framework elements affect or inhibit the effectiveness of AML/CFT system.

TABLES

TABLE 1. RATING OF COMPLIANCE WITH FATF RECOMMENDATIONS

Rating of compliance with respect to FATF Recommendations must take place in accordance with the four compliance levels mentioned in the 2005 Methodology: Complied a (C), Largely Complied (LC), Partially Complied (PC), Not Complied (NC)), or, in exceptional cases it may be marked as non-applicable (na).

Forty Recommendations	Rating	Summary of factors that support the rating[4]
Judicial system		
1. ML classification	**LC**	• Implementation is insufficient since there is no adequate number of convictions, few of them are concerning serious or complex Money laundering cases (only cash smuggling) and upon investigating applicable crimes, there are no adequate prosecutions of the money laundering offense derived from predicate crimes.
2. ML classification – mental element and corporate liability	**LC**	• The only sanction for legal persons that incur in criminal liabilities is dissolution, which lacks graduality and proportionality. Not applied in practice
3. Confiscation and provisional measures	**LC**	No seizures are ordered in more than half of the ML cases investigated
Preventive measures		
4. Banking secrecy in accordance with Recommendations	**C**	
5. Due diligence by client	**PC**	• Lack of clarity, scope and clear and differentiated requirements in the instructions related with compliance with prevention and control of ML and FT • Legal deficiencies and important deficiencies concerning the implementation of CDD requirements for money transmitters or remittance companies • Inappropriate CDD indicator of US$57,142.86 for obligation of reporting operations in cash and transaction monitoring. • Absence of a concrete requirement to accomplish CDD in all cases in which there is suspicion of ML/FT or doubt with respect to whether the information from customer is sufficient and/or in case of uncertainty about veracity, modifications or alterations in the identification documents. • Deficient identity verification requirements for

[4] Factos shall be indicated whenever Rating is below Compliance.

		beneficial owners • Lack of general requirement for the obtention of information about actual nature and purpose of the business relation. • Absence of regulations and insufficient guidelines for CDD based on risk • Absence of controls and risk reduction for postponement of the verification of identification, including recently organized companies.
6. Politically exposed persons	**NC**	• Absence of provisions related with PEPs
7. Correspondent bank	**NC**	• Absence of provisions related with Correspondence Banks and cross-border business
8. New technologies and business which are not face to face	**PC**	• Absence of specific requirements for the implementation of measures for the prevention of inadequate use of technological developments.
9. Third party and intermediary submitters	**PC**	• Lack of specific regulations concerning the use of intermediaries that may accomplish certain CDD diligences on behalf of FI • Lack of requirements for FI (Insurance and Money Transmitters) to "immediately" obtain CDD information of third parties given that such entities are not expressly included in the FIU instructions • Inadequate supervision/monitoring of Money transmitters and paying agents (to whom compliance is conferred) by transmitter institution for AML/CFT obligations compliance.
10. Maintenance of records	**LC**	• In the case of companies not subject to financial legislation, the obligation of preservation of correspondence is not clearly established
11. Unusual transactions	**C**	•
12. DNFBP– R.5, 6, 8-11	**NC**	• There are no competent authorities in ML and FT matters that regulate and supervise DNFBPs. • There are no provisions that allow compliance with FATF Recommendations
13. Suspicious transactions report	**LC**	• The law provides a limited obligation of reporting suspicious operations of financing of terrorism with FT not being a precedent crime of ML.
14. Protection and no alert	**C**	
15. Internal controls, compliance and audit	**LC**	• Insufficient legal grounds for the Compliance Officer figure and its functional independence and authority in FI • Specific requirements are not evidenced with respect to scope and procedures of internal Audit to verify adequate compliance with AML/CFT Recommendations

16. DNFBP – R.13-15 & 21	**NC**	• There is no regulation on the matter of prevention and detection of ML and FT applicable to DNFBPs. • There are no authorities empowered to accomplish regulation and supervision tasks of DNFBPs.
17. Penalties	**PC**	• With respect to remittance entities and non banking financial entities not supervised by the SSF and SS there is no sanctioning regime extended and proportional to the seriousness of the offenses committed concerning noncompliance with AML-CFT regulations • There is no possibility of non monetary sanctions or the closing of violating entities, as well as sanctions to officers thereof due to specific noncompliance in the prevention of AML and FT, when dealing with remittance entities and non banking financial entities not supervised by the SSF and SS.
18. Fictitious Banks	**LC**	• There is no obligation of FI to ensure that respondent FI in other countries do not allow their accounts to be used by fictitious banks.
19. Cash transaction report	**C**	
20. Other DNFBP and secure techniques for transaction	**C**	
21. Special attention to higher risk countries	**PC**	• There are no obligations for FIs to pay special attention to commercial relations and transactions with persons from and in other countries where FATF Recommendations are not applied, or are insufficiently applied
22. Branches and subsidiaries abroad	**PC**	• There has not been a specific regulation developed concerning AML-CFT regulation to Foreign Branches or Affiliates
23. Regulation, supervision and monitoring	**PC**	• Insufficient resources (personal, equipment, training) by supervision entities to accomplish their oversight functions. • Lack of control and supervision of remittance entities and other non-banking financial entities that do not form part of a Financial Conglomerate
24. DNFBP- regulation, supervision and monitoring	**NC**	• There is no regulation in terms of prevention and detection of ML and FT applicable to DNFBPs. • No authority is empowered to accomplish regulation and supervision of DNFBPs.
25. Guides and Feedback	**NC**	• FIU and other competent authorities do not accomplish feedback processes to reporting entities. • No updated guides or guidelines have been issued to support regulated entities in the compliance with AML-CFT regulations

		• FIU has not given feedback to entities about quality and timeliness of suspicious transaction reports. • No guidelines have been issued for any type of DNFBPs.
Institutional other type of measures		
26. FIU	**PC**	• Simultaneous delivery of STR, both to FIU as to SSF which affect confidentiality of reports and creates parallel FIU in other entities. The number of officers that make up FIU, and their capacity to analyze information is very reduced relative to the number of reports received. • FIU has insufficient autonomy to accomplish its tasks. Attorney General of the Republic frequently removes attorneys from FIU to assign it to other tasks of the Attorney General´s Office and is empowered to give instructions to FIU about which cases are considered priority and which not. • There is no adequate access to databases of public entities and private subjects authorized by ML Law • There is no operative division among analysis and criminal investigation, with the judicial function having higher priority, which reflects lack of technical autonomy in the essential work to produce financial intelligence. • Public information about statistics and typologies is not produced. • FIU is suspended by the Egmont Group. • There is no permanent training program for FIU officers
27. Order authorities and investigation techniques	**C**	
28. Powers to access documents and information	**C**	
29. Supervisors - powers	**PC**	• Remittance entities and non financial banking entities which are beyond supervision of SSF and SS (leasing companies, credit cards, general warehouse stores, etc) are not subject of on-site inspections or are demanded documentation to verify compliance with AML-CFT • With respect to remittance entities and non banking financial institutions which are not supervised by SSF and SS – are not applied a specific sanctions regime in case information requirements are not adequately met in order to verify compliance with AML-CFT
30. Resources, integrity and training	**NC**	• FIU does not have the necessary number of officers to adequately develop tasks (paragraphs 35 and 45 of Section 2.5) • There is a lack of functional autonomy for FIU, since it depends directly from operative and human

		resource decisions established by the Attorney General´s Office. (see Section 2.5) • The real estate where FIU is located lack modules or physical spaces for adequate storing and custody of documents. • FIU has no technological tools that allow direct informatic access to date bases of State entities and institutions or private companies, to obtain investigation or analysis information in an efficient manner or at least more rapidly (section 2.5) • FIU lacks a permanent and adequate training program addressed to officers. (Section 2.5).
31. Domestic cooperation	**PC**	• A real public policy has not been implemented in terms of domestic coordination and cooperation.
32. Statistics	**NC**	• FIU has not been able to implement information mechanisms that offer obliged subjects periodical reports on statistics, typologies and criminal trends (Section 2.5) • Law enforcement authorities do not have systems to measure results, that allow to effectively analyze AML/CFT systems
33. Beneficial legal persons	**PC**	• Low degree of efficacy • Opacity of bearer shares
34. Legal agreements – beneficiaries	**LC**	• Practical problems to identify beneficial owner when it comes from third party countries
International Cooperation		
35. Conventions	**C**	
36. Mutual Legal Aid (AML)	**LC**	• There is not a set of regulations developing mutual legal assistance clearly, although this has not presented obstacles for cooperation in practice
37. Dual criminality	**C**	
38. AML in confiscation and freezing	**LC**	• Scarce number of cases does not allow to know the system's effectiveness • Poorly detailed regulatory procedures
39. Extradition	**PC**	• No internal laws that regulate clearly, in detailed and adequate manner the extradition and the procedures thereof • Article 28 of the Constitution could be interpreted as a limitation to extradition when dealing with internationally transcendence (internationally relevant) crimes. • It could not be verified with concrete statistics the application of active extraditions at the request of other countries.
40. Other forms of cooperation	**LC**	• FIU is suspended from Egmont Group which limits its possibilities of cooperating with homologue units

		• There were no MOUs or mechanisms found to speed up cooperation with homologue institutions abroad by the Superintendencies, Customs, General Tax Direction.
Nine Special Recommendations	**Rating**	**Summary of factors that support the Rating**
RE.I Implementation of UN instruments	**C**	
RE.II Penalization of financing of terrorism	**C**	
RE.III Freezing and confiscation of terrorist assets	**LC**	• Criteria III.6, inadequate functioning or implementation of operation of the availability of guidelines or terrorist lists. • Criteria III.9, no access or regulation of subjects to whom funds or assets have been frozen to amount necessary to cover determined basic purposes •
RE.IV Suspicious transactions report	**PC**	• Obligation to report limits to operations of persons mentioned in the lists of the Attorney General´s Office or international entities • The law establishes a limited obligation to report suspicious of financing of terrorism without considering it a precedent crime in the legitimation of capitals • Non-concluded suspicious operations is not requested nor reported (intended).
RE.V International Cooperation	**PC**	• Lack or no real implementation of measures established to cooperate internationally in terms of FT. • The same deficiencies with respect to R.36 and 39 affect compliance with RE.V with respect to extraditions and other forms of cooperation: low implementation of measures to cooperate internationally; lack of laws and procedures that clearly regulate extradition; absence of statistics about practical implementation
RE VI Money/value transfer business	**NC**	• There is no system that requires persons that accomplish asset transmission activities, to obtain a registration or authorization for the accomplishment of such activities. • There are no authorities legally empowered to regulate and supervise above mentioned persons in terms of ML and FT prevention. • The obligations foreseen in AML law and Regulation for this type of business have the same deficiencies identified in Section 4 of this report with respect to other financial institutions. • The Law does not foresee penalties for noncompliance applicable to transfer service

		providers
RE VII wire transfers	**PC**	• Remittance entities are not subject to supervision or registration on behalf of financial authorities, which prevents authorities from being aware of adequate compliance with the recommendation
RE.VIII Non-profit organizations	**PC**	• There is no revision of the sectorial normative regulation to prevent the use of NPO in the financing of terrorism. Criterion VIII.1 • No evaluations take place analyzing vulnerabilities of the NPO sectors with risk of FT. Criterion VIII.2 • The risks of use in the financing of terrorism are not communicated to the sector • There are no adequate mechanisms to sanction violations of NPO regulations. Criterion VIII.3.2
RE.IX – Declaration/Revelation of transborder cash	**PC**	• There is no output report system for cross-border transportation of Money or bearer negotiable instruments. • There is no adequate revision system for passengers. • PNC and FIU do not accomplish analysis of the relevant travelling forms • Customs authorities do not have adequate training and feedback of typologies by FIU. • No sanctions foreseen for any type of noncompliance with obligation to declare (except the offender is condemned with the ML crime).

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE AML/CFT SYSTEM

AML/CFT System	Action recommended
1. General	
2. Legal System and Related Institutional Measures	
2.1 Money Laundering Criminalization (R.1 & 2)	More specifically regulate the universal justice principle in relation with money laundering, regulating this principle in a very specific manner, relating it to the applicable criminal types, as well as to define scope and contents. Redefine Article 4.4 of AML Law, both in its considerable content and formally, as well as systematically located in a Chapter that does not generate any doubt whatsoever concerning its scope and application; although in current forensic practice this precept does not assume application of any absolutory excuse for the confession, for applying Article 21 of Criminal Procedural Code, according to the opinion of several individuals interviewed we are in the presence of a complex drafting. Improve Implementation of the anti-money laundering specially in: A) number of arrested and laundering sentences; B) extension of judicial processes to different underlying activities, specially drug trafficking in a first phase; C) extension and improvement of investigation of judicial files for laundering, deepening among other issues knowledge of accused and their backgrounds or relation with the subject element for the type, or knowledge of the criminal origin of the property, whether fully or indirectly, even through the application of judicial technique of deliberate ignorance. Redefine Article 4 of AML Law: a) make reference to the commission beyond the country also in the first paragraph; b) Incorporate third paragraph of the Article; c) redefine and relocate fourth paragraph. **Rec.2:** Redefine the penalty or measure established in Article 349 of the Code of Commerce in relation with the possible criminal penalty to legal persons, establishing a proportionality or graduation thereof. Alternatively, establish in the CC a graduated system of criminal and civil liabilities of legal persons. Use sanctions foreseen for legal persons.
2.2 Financing of Terrorism Criminalization (RE. I)	We suggest to improve definition of Article 29, regulating without doubt the delivery of funds to terrorist Organizations or individual terrorist, regardless of the intentionality of such

	delivery. Need to form legal operators on the scope of this criminal type and internal regulations.
2.3 Confiscation, freezing and seizure of crime assets (R.3)	Control official letter for the compliance with terms established in Article 161 of the Criminal Procedural Code. Operative differences detected show possibility of the premature release of frozen funds. Study the convenience of establishing a regulation of expropriation proceedings Increase resources for effective investigation of criminal organizations, the Money laundering processing, and the confiscations of the property or goods. Regulate civil confiscation within the internal ordering, given the receptiveness of the system to the figure.
2.4 Freezing of funds used for the financing of terrorism (RE. III)	Leave clear that in Article Art 37 of the law against terrorist acts, the fact that frozen funds be directly or indirectly controlled by persons indicated as terrorists, terrorist financers or terrorist organizations, or maybe extended to funds or assets derived or generated as the funds or assets belonging to or controlled by persons indicated as terrorist, terrorism financing agents, or terrorist organizations. To review procedures and instruments to offer clear lists or guides to financial institutions and other obliged entities or persons. To regulate or provide appropriate procedures to authorize access to funds or other frozen assets by virtue of S/RS 1267, considered necessary to cover basic costs, payment of certain fees, expenses and payment of services or extraordinary expenses. To regulate and establish procedures and apply administrative or criminal fines for noncompliance of enforced parties in relation to the noncompliance with obligations provided in the implementation of RE III. Recommendation: implement in the internal ordering best practices for the compliance of RIII. According to suggestions of additional criteria 14 of R III.
2.5 Financial Intelligence Units and its tasks (R.26)	Amend Agreement Nº 356 issued by the Attorney General´s Office of the Republic in order for report procedure of STR to

	be made only before FIU. Establish a feedback mechanism that allows orientation to obliged subjects on the adequate manner to submit STR. Implement technological tools that allow rapid informatic Access to data bases to State entities and institutions or private companies. Establish procedural manuals that reach a division between STR analysis and criminal investigation. Assign more provisional personnel for both analysis and investigation area. Strengthen FIU´s autonomy and provide higher labour stability to officers that integrate FIU, thus avoiding transfers to other specialized Prosecutors' Offices. To provide periodical reports to obliged subjects on cases reported criminal statistics typologies, and trends, that shall be considered as suspicious operations. To resolve all the legal limitations that grounded the suspension of the membership of Egmont Group of Financial Intelligence Units. To establish a permanent training program for FIU officers.
2.6 Law enforcement, Public Ministry and other competent authorities (R.27 and 28)	To incorporate within the legal ordering the figure of telephone interventions as an investigation method for money laundering crimes.
2.7 Declaration / disclosure of Cross-border cash	Make legally binding the cross-border report of the output of money in cash and bearers negotiable instruments. Adjust revision procedures for passengers in order to avoid establishment of random and subjective mechanisms accomplished by the shift officer or official. Establish analysis, compilation and storage procedures of all those declaration forms for travellers that migratory remit to PNC and FIU. Immediately and permanently accomplish training activities to migratory authorities about criminal typologies and trends in terms of ML and FT.
3. Preventive Measures – Financial Institutions	
3.1 Money laundering and financing of terrorism risk	

3.2 Client due diligence, including improved or reduced measures (R.5 to 8)	**Rec. 5** To accomplish a Country Risk Study in relation with ML-FT in order to determine the risk areas that require more attention as well as the regulatory needs and control needs in accordance with vulnerabilities encountered per each type of regulated entity. To review US$57,142.86 threshold contained in the Law for the control of cash operations. To review FIU Instructions in order to extend its scope, simplify structuring, increase clarity and congruence of thereof. To issue regulations related with adequate management of risks making special emphasis in specific needs for each sector. To review application environment for AML/CFT requirements for remittance companies to guarantee they include concrete obligations consisting in environment with AML/CFT provisions. CE 5.1 Determine the real existence of coded accounts and in such case consider it as risk products that require higher control limiting the use of such numbered and coded accounts to certain institutions and circumstances. CE 5.2 Extend clarity and increase consistency of instructions that are indicated by the five thousand colones or USD$500.00 threshold for the identification of a client. Money exchange businesses transmission and remittance centers, who fixed business relations that are identified and accomplish CDD, must be demanded regardless of the amount of operations of clients and extend the control threshold from US$57,142.86 to present FIU reports. In FIU Instructions and issued provisions related with ML-FT, indicate clear requirements that differentiate CDD for the establishment of business relations and occasional client conduct taking into account the need to have reasonable indicators for occasional transactions in all sectors. Consider CDD concrete provisions that demands the amount of related transactions below US$57,142.86 indicator (15 000 US dollars in accordance with FATF) c5.2 (b)) Require CDD for all transactions and activities provided it is worth it and there is suspicion with respect to the veracity of client information or whenever it differs from its

	profile. (See c5.15 and c5.16) CE5.3 (and CE5.14) Review all regulations to clarity/guarantee that provisions for the alternative identifications and verification measures do not reduce CDD in assumptions that the identification documents show modifications, amendments and/or are false according to and likewise determine rules to limit operations of the accounts, concerning clients that have not completed documentation thereof. CE 5.4 and CE 5.5 Concretely require that FI to establish/require that applicants of businesses indicate in the documents, the capacity with which they act and not only in the cases in which there are "indicators" that they are acting in representation of third parties. Require specific requirements for the opening of trust accounts, Civil Associations, and State entities and other legal structures. Review identification exception of clients in accordance with the risk establishing volume limits of operations and other control measures CE 5.6 Require that all FI obtain information with respect to the purpose and object of the business relation and actual economic activity regardless of the client risk level and financial institution size. EC 5.8 Demand KYC implementation based on risk in all provisions beyond risks related with clients and users transactions in order to include all elements necessary for establishment of client´s profile; additional client categories; economic activity; geography, etc. See CE 5.9 and CE 5.12 EC 5.9 Review adequation of the exempt client list and request a minor risk classification before applying simplified CDD. EC 5.12 Provide adequate guidelines to assist FI in the development of risk management system. EC 5.14 Review reasonable term to complete verification of identification of recently organized moral persons, including strict requirements for risk reduction such as financial transaction prohibition of certain amounts or special characteristics such as transfers, regional check books, etc. Request from all regulated entities to reject to open an account or accomplish a transaction provided the required identification documents may not be obtained or verified adequately, always

	that there is thought that they have been altered and/or are false. 5.17 Demand update of client files that already exist in appropriate times. **Rec. 6** Develop and issue specific regulations related with the control of PEPs taking into consideration all criteria indicated by FATF, as well as reference guides to determined standardized control mechanisms in all the regulated system. **Rec 7** Develop and issue prudent regulations about potential activities of Correspondent Bank in El Salvador taking into account all criteria indicated by FATF. **Rec.8** The development of the regulation must be considered to regulate minimum control mechanisms for operations made through modern technologies.
3.3 Third parties and intermediate business (R.9)	Issue specific rules that prohibit or regulate the use of third parties by FI to accomplish some CDD procedures. Include Money Transmitters and Insurers in the FIU Instructions, since is not the possibility to fully comply with Instructions related with obligations derived from the Law and its relevant regulation concerning client knowledge is weakened. Establish concrete requirements in the provision, (especially for money transmitters and Insurers) for FI to immediately obtain information of third parties that accomplish CDD on their behalf. Establish adequate control mechanisms to verify that the obligation of insurance companies to monitor compliance of their agents for obligations related with AML/CFT is complied with. Consider the possibility of implementing a system that demands remittance senders or money transmitters to monitor operations and compliance with provisions of the paying agents (over whom must comply with some CDD elements).
3.4 Financial institution on confidentiality or secrete (R.4)	N/A
3.5 Regulation of record maintenance and cable-graphic transfers (R.10 and RE. VII)	(**RE.VII**) Expressly enforce remittance entities to gather adequate and significant information with respect to transfer

	orderors, as well as to accomplish a detailed examination and control of funds transfers related with suspicious activities in consequence with RE.VII and modify SFF instructions on cablegraphic transfers in order to meet all RE requirements.
3.6 Transaction monitoring and relations (R.11 and 21)	(Rec. 21) Expressly establish the obligation that FIs pay special attention to commercial relations and transactions with individuals of other countries that do not apply FATF Recommendations ori f applied, do so insufficiently, and consequently, the obligation that in case the operations do not have an apparent economic purpose, examine background and purpose of such transactions, including conclusions in writing and available for authorities. Likewise, they shall leave evidence to apply appropriate countermeasures in case of the above mentioned persons.
3.7 Suspicious transactions reports and other reports (R.13-14, 19, 25 and RE. IV)	Extend the reporting obligation to clearly cover suspicions of terrorism financing with legal origin funds. Reinforce reporting entities about report to improve quality, usefulness and timeliness of STR. We suggest to review, update and clarify, FIU Instructions, which has not been modified since 2002, in order to incorporate recent international developments in terms AML/CFT and to eliminate ambiguities existing in several of its provisions. Consider feasibility and usefulness of implementing a cash transaction report.
3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)	**R. 15** Review congruence of the description, attributions and responsibilities of Compliance Officer described in FIU Instructions within the framework of indications contained in AML Law and its Regulation. Develop regulations referring to characteristics and scope of Internal and External Audit Programs as well as the obligation to communicate findings to FIU and supervising entities. **Rec. 22** Develop regulations referring to AML-CFT measures to Foreign Branch and Affiliates of FI.
3.9 Fictitious banks (R.18)	Expressly establish the prohibition that FIs or continue correspondent banking relations with fictitious banks.
3.10 Supervision and vigilance system – competent authorities and self-regulation entities Role, functions, liabilities and powers (including sanctions)	**Rec. 17.** CE 17.1 Develop effective, proportional and dissuasive penalty schemes in accordance with the type of offenses committed, criteria for the increase of the sanction in the penalty and in

(R. 23, 30, 29, 17& 25).	case of relapse clear and timely application mechanisms. Establish a statistic system of applied sanctions according to the type of entity, type of seriousness and lack and amount of applied sanctions. CE17.2 Define sanctions mechanisms for entities which are not subject to the supervision of specific entities such is the case of remittance companies and trade entities. CE17.3 Regulate sanction schemes for officers, directors, and high level management regulated entities that through false thereof does not comply with requirements to combat ML and FT. CE 17.4 Consider the application or inclusion of non monetary penalties for the noncompliance with AML/LFT requirements for entities not subject to authorization requirements by SSF or SV which includes a process to delete from the registry in cases of relapse or serious offense of the Law. **R23** • Provide supervision entities with human resource, Technology and training sufficient to comply with legal obligations related with AML- CFT matters. Reinforce compliance supervision of AML-CFT of preventive nature and review the obligation of SSF to analyze information submitted by regulated entities and in turn submitted to FIU whenever there is warning that in reported operations are irregular or suspicious in accordance with the provisions contained in Article 8 of the Regulation of Anti-Money Laundering Law, being this an essence a tasks of FIU in addition to imply large operative burden given the lack of available resources. Reinforce AML-CFT compliance supervision from the preventive view point and review the supposed duty of SSF to analyze irregular or suspicious operations, since this is the essential tasks of FIU. Develop supervision methods and manuals based on risks adequate to specific conditions of the different types of regulated entities. C23.1. Reconsider the convenience and efficacy of having granted in Law of FIU regulatory powers in terms of ML-FT concerning financial institutions and evaluate the possibility to assign them to the relevant supervision entities, specialized in financial matters.

	C 23.1 and C 23.2 Place all non-banking financial entities which are not part of financial conglomerates and are not subject to control entities, under the regulation and supervision of an entity with the sufficient capacity and resources to do so. C23.5 and 23.6 Remittance entities for their importance must have a special registration, receive license permit, and be ruled by a supervision entity in order to guarantee compliance with legal AML/ CFT requirements. Intensify the supervision of national FI with activities abroad and increase the use of memorandums of understanding in matters supervision to facilitate consolidated transborder supervision. Ensure in inspection that insurance and guarantee companies comply with the training obligation in AML/LFT topics for their agents and brokers, priorizing those who accept cash from clients and the detection and notice of irregular or suspicious activities. R. 25 C 25.1 Supervision authorities together with FIU and other necessary authorities must indicate guidelines, guides and technical documents in order for the regulated parties to increase AML/CFT obligations, particularly with respect to new ML and FT risks, ML/FT techniques and methods in the stages of organization and preparation of money laundering. This would help to implement CDD requirements CDD in function of risk according to the type of regulated entity. C 25.2 FIU should develop training meeting or workshops to reinstruct regulated parties on the quality, timeliness, and exactness of the suspicious or irregular operations reports, taking into account best practices of FATF on information mechanisms. R. 29 C29.1 Extend powers of the existing supervising entities in order to be able to make inspection and compliance supervision visits to remittance entities and non-banking financial entities that do not form part of financial conglomerates. Establish a sanction regime specific for the noncompliance with the obligation of attending requirements of the supervision entities.
3.11 Money/value transfer services (RE. VI)	(RE.VI) Appoint competent authorities in order for them to develop the registration and/or granting of the license to individuals and legal persons that provide securities or money

	transfer services, which shall maintain updated list with data of operators of this type of service, being further responsible to ensure compliance with the requirements established for the registration or granting of the license, as applicable. Establish in the Law the obligation for the providers of these type of services to abide by FATF Recommendations. Establish systems that allow authorities to accomplish an adequate monitoring of fund transfer service providers. Establish in the Law the obligation that operators of these services have an updated list of agents with which they cooperate, that shall be available to the financial authorities determined.
4. Preventive measures – Non designated Activities and professions	
4.1 Due diligence on client and maintenance of records (R.12)	Appoint authorities with human resources and materials adequate allowing efficient regulation and supervision task of DNFBPs. Issue provisions that allows DNFBP compliance with obligations indicated in AML Law.
4.2 Suspicious transaction reports (R.16)	DNFBPs must be enforced to report suspicious operations and keep internal controls for the prevention and detection of operations related with ML and FT T, in terms of the provisions contained in Recommendation 16 of FATF.
4.3 Regulation, supervision and monitoring (R. 24-25)	(Rec. 24) DNFBPs, including casinos must be subject to a regulatory and supervision framework in terms of ML and FT, through authorities legally empowered for such purpose and with provisions and rules that allow adequate compliance with this Recommendation. (Rec 25) In addition to issue regulation necessary to implement obligations contained in Law for DNFBP must issue guidelines adequate to the nature of such institutions
4.4 Other APNDF and Cash reductions (R.20)	We suggest the grating of empowerment to authorities for the regulation and supervision of reference activities in terms of Ml and FT prevention. We suggest the preparation of Provisions and rules that establish a regulation framework that allows adequate compliance with obligations established in AML Law and its Regulation, applicable to new categories of APNDF Continue efforts for bancarization of the population and modernization of the payment systems tending to the use of cash in the economy.
5. Legal Persons and Legal Agreements and Non-profit Organizations	

5.1 Legal persons – Access to information on beneficiary and control (R.33)	Establish network connections so that all public institutions, especially FIU have access to RNC information through telematic means and consequently develops activities in a more efficient manner. Provide the obligation of updating data of actual holders of the shares in the corporate books, and the registration of such books to be mandatory at the RNC deposit, allowing establishment of beneficial owners of the corporations
5.2Legal agreements – Access to information on beneficial owner and control (R.34)	Improve procedures to identify the beneficial owner, in the third country applicable trusts.
5.3 Non-profit organizations (RE. VIII)	Review suitability of regulations of non-profit entities concerning regulation for the prevention of the misuse of these entities in relation with risk related with money laundering of financing of terrorism. Implement exchange of information referring to NPOs. Accomplish periodic evaluations analyzing possible risk vulnerabilities for financing of terrorism. Accomplish comparative monitoring or relational rations with homologous international sectors. Communicate to non-profit entities sector the risk or vulnerability of the sector´s abuse for money laundering and financing of terrorism. Establish and regulate a supervising entity of NPOs.
6. Local and International Cooperation	
6.1 Cooperation and coordination at a local level (R.31)	Create in the existing inter-institutional groups, formal working agendas that analyze compliance with principles regulated in the Law and in Regulations, studying the degree of operativity, implementation and efficacy of the system. Implement the establishment of the coordination and creation of a real coordination public policy. Establish second or third level regulations developing instruments or principles in the laws
6.2 Conventions and Special UN Resolutions (R.35 and RE. I)	N/A
6.3 Mutual legal aid (R.36 -38, RE. V)	N/A
6.4 Extradition (R.39, 37 , RE. V)	**R. 36:** Establish a clear internal regulation entity or corpse that develops mutual legal assistance. **R.38** Recommendation, consider that non-criminal orders related with foreign confiscation be acknowledged or executed at El Salvador.

	RE.V Recommendation, consider to regulate or apply formal specific mechanisms to determine the best place for criminalization of offenders for financing of terrorism. **RE.V** Implement at a practical and actual level special recommendation V measures
6.5 Other forms of cooperation (R.40, RE. V)	To transfer to the ordinary legal regime (laws) the constitutional imperative of regulating extradition. To transfer to the ordinary legal regime (laws) procedures for extradition. To clarify active and passive extradition, both of Salvadorian citizens and foreign. To establish simplified procedures for extradition allowing direct transmission of extradition petitions. Study that persons may be extradited over the base only of third country trial or arrest orders. Study simplified extradition procedures for persons that given consent to suspend formal extradition procedures
7. Other aspects	
7.1 Resources and Statistics)R. 30 & 32)	FIU has not necessary number of officers to adequately develop tasks. Lack of functional autonomy for FIU since it directly depends from operative decisions and human resource defined by the Attorney General's office of the Republic. Real estate where FIU is located lacks modules or physical spaces for adequate storage and custody of documents. FIU has no technological tools that allow informatic direct access to databases of state or private companies to obtain analysis or investigation information rapidly or at least more efficiently. FIU has no permanent and adequate training program addressed to its officers.
7.2 Other measures or matters relevant in terms of AML/CFT	FIU has not achieved implementation of information mechanisms that provide reporting entities periodical reports on statistics, typologies, and criminal trends.(paragraph 45 of section 2.5) Law enforcement authorities do not have results' measurement systems allowing to effective analysis of the AML/CFT system.
7.3 General framework – structural aspects	

TABLE 3: RESPONSE OF AUTHORITIES REGARDING THE EVALUATION (IN CASE APPLICABLE)

Sections and paragraphs	Comment on the Country

ANNEXES

Annex 1: List of abbreviations.

Annex 2: Entities with which meeting took place during on site visit

Annex 3: List of all laws, regulations and other material received

Annex 1: Abbreviations

AML	Anti-Money Laundering
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
DNFBP	Designated Non Financial Businesses and Professions
FATF	Financial Action Task Force
FIU	Financial Intelligence/Investigation Unit
FT	Financing of Terrorism
ML	Money Laundering
MOU	Memorandum of Understanding
NPO	Non-profit Organizations (OSFL in Spanish)
PEP	Politically Exposed Person
SAT	Tax Administration Superintendence
SSF	Financial System Superintendence
STR	Suspicious Transaction Report/Operation
UN	United Nations

Annex 2: Entities with which meeting took place during the on site visit –

Ministries, other government entities, representatives of private sector and other

Public Sector

Attorney General´s Office of the Republic
- Financial Investigation Unit
- Anticorruption Specialized Attorney´s Office
- Specialized Attorney Offices Against Terrorism

Securities Superintendence
EL Salvador Reserve Central Bank
Registration National Center (CNR)- registration of corporations and property
Ministry of Government (NGOs and Immigration)
Municipal Mayor´s Office (casino regulating)
General Customs Direction (also with officers of Tax Administration and Tax Free areas)

Judiciary Entity

Civil National Police

Private sector

Banco Agricola S.A.
Banco HSBC EL Salvador S.A.
Banco Scotiabank l Salvador. S.A.
Banco de Fomento Agropecuario
Robre Acciones y Valores S.A.
Casa de Cambio Puerto Bus
Banco de los Trabajadores de la Pequeña y Micro Empresa S.A.
Comité de Oficiales de Complimiento de Bancos (committe for compliance officer of Banks)
Inversiones Bolivar S.A. (real estate agency)

Annex 3: List of laws, regulations and other material received

- Legislative Decree Number 498 dated December 1998 or "AML Law"
- Legislative Decree No. 108 dated September 2006 or CFT Law
- These complementary laws some provisions of other laws a) in criminal matters mainly criminal Code, Criminal Procedural Code and the Organic Law of the Attorney General´s Office of the Republic; in financial terms mainly, Organic Law of the Superintendence of the Financial System, Organic law of the Securities Superintendence, Code of Commerce and special laws that regulate the different financial intermediates.
- **Regulations:** "Regulation of AMl Law. Presidential Decree No. 2 dated January 31, 2000 (hereinafter AML Decree) .
- **Other enforceable means:** FIU Instructions (Agreement No. 356 of 2001 of the Attorney General´s Office of the Republic). This body of regulations contains the detail of AML/CFT obligations that financial institutions are subject to.